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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, A/C.3/L.684, A/C.3/L.690) (continued)

ARTICLE 9 OF THE DRAFT COVENANT ON CIVIL AND POLITICAL RIGHTS (E/2573, ANNEX I B) (concluded)

1. The CHAIRMAN invited representatives to explain their votes on article 9 of the draft Covenant on Civil and Political Rights.

2. Mr. SHALIZI (Afghanistan) said he had voted for the text of article 9 drafted by the Commission on Human Rights (E/2573, annex I B). Although that text might not be perfect, it was the best that could be prepared in the circumstances. The Afghan delegation had made no statement during the debate only because it did not wish to slow down the Committee's work, not because it had taken up a rigid position from the outset. It had found the debate most useful and, after weighing the various arguments, it had decided to vote against the first part of the United Kingdom amendment (A/C.3/L.686) to paragraph 1. The original text seemed more logical and the Afghan delegation favoured the word "arbitrary", for which there had already been several precedents and which made the provision stronger and more comprehensive. He had also voted against the second part of that amendment; in view of articles 2 and 5, the proposed clause was superfluous. He had voted against the Netherlands amendment (A/C.3/L.687) to paragraph 2, because the inclusion of the word "promptly" meant that the right to liberty and security of person would be less well guaranteed than it was by the original text; furthermore, as paragraph 2 provided that anyone who was arrested should be informed of the reasons for his arrest, it was unnecessary to add the words "in a language which he understands". He had abstained on the Liberian amendment (A/C.3/L.688), which applied more to the measures of implementation than to the Covenant itself. He had voted against the Costa Rican amendment (A/C.3/L.685/Rev.1), because the adoption of the words "court of justice" would have made the article incompatible with the legislation in force in many countries. Furthermore, the second sentence of that amendment might have been prejudicial to persons who had been arrested, as it might make the task of the competent authorities more difficult. Finally, the Afghan delegation had voted against the United Kingdom amendment to paragraph 5, because the concept of "deprivation of liberty", which was already included in paragraph 4 and was in harmony with the general purposes of the article, was broader and more comprehensive than the concept of "detention".

3. Mrs. CISELET (Belgium) said she would have voted for the phrase "in a language which he understands", if that part of the Netherlands amendment (A/C.3/L.687) had been put to a separate vote. However, as some delegations had emphasized, the same words were to be found in article 14, paragraph 2 (a). For that reason, the Belgian delegation had not thought it necessary to request a separate vote and had abstained on the Netherlands amendment as a whole.

4. Mr. BARRATT (Union of South Africa) recalled that, for reasons stated in the past, his delegation was continuing for the present to abstain on all the articles of the draft International Covenants on Human Rights, even when it found the contents acceptable. The South African Government would be able to define its attitude to the draft Covenants again when they were completed. In the meantime, his delegation would continue to follow the Third Committee's debate on the draft Covenants with interest.

5. Mr. YAPOU (Israel) stressed his country's "broad and constructive" approach in the field of human rights affecting "liberty and security of person". That concept went beyond article 9 and included also the right to be protected from inhuman and degrading treatment, discrimination and other violations of fundamental human rights.

6. The Third Committee's objective should be to facilitate the full application of the fundamental principles of the Covenants by defining them as clearly and as realistically as possible. It was in that spirit that the Israel delegation had submitted amendments (A/C.3/L.689) to paragraphs 2 and 3 of the article.

7. Turning to paragraph 2, he said he still felt that it should contain a statement of the rights of the arrested person rather than of the duties of the person making the arrest. He had therefore abstained on the original text.

8. The reason which had prompted the Israel delegation to propose its amendment to paragraph 3 was that, in its view, a clear distinction should be made between two different rights: first, any individual who was arrested was entitled to have the lawfulness of his arrest verified; secondly, and individual who was arrested should be judged without delay. As its main

consideration was to see that the provisons of the Covenants were implemented in good faith, the Israel delegation had tried to make article 9 more realistic, not to weaken it. In fact, the law in force in Israel provided that a person arrested—with or without a warrant—must be brought before the judge within forty-eight hours of his arrest. That was an illustration of what Israel had had in mind in its amendments. It was still convinced that its amendments, or any similar proposals which other delegations might put forward, would facilitate the application of the fundamental principles involved. It had voted against paragraph 3 of the original text and abstained on the article as a whole in order to show that, in its opinion, the text should be reconsidered at a later date.

9. Miss HAMPTON (New Zealand) said that she had the same doubts as the United Kingdom representative regarding the use of the word "arbitrary". The delegations which had maintained that that word had a precise legal meaning had given rather different definitions of it and they had not all interpreted paragraph 1 in the same way. In the opinion of the New Zealand delegation, the United Kingdom amendment (A/C.3/L. 686) would have ruled out any ambiguity.

10. The difficulty of drafting a legal instrument to take account of the several different legal systems existing throughout the eighty-one Member States was, however, appreciated. Moreover, New Zealand law and practice were entirely in harmony with the spirit of article 9, which she considered established that no one should be subjected to arrest or detention otherwise than within the rule of law. For that reason, she had felt able to vote for the original text of paragraph 1 after the United Kingdom amendment had been rejected.

11. If the words "in a language which he understands" had been put to a separate vote, she would have been able to support them. However, feeling that the Netherlands amendment (A/C.3/L.687) as a whole was less satisfactory than the text proposed by the Commission on Human Rights (E/2573, annex I B), she had abstained on the Netherlands proposal. She had not been able to support the Israel amendment (A/C.3/L.689) either, as it would have weakened paragraph 3. She sympathized with the motives which had prompted the Costa Rican delegation to submit its amendment (A/C 3/L.685/Rev.1) but the wording was not satisfactory and it had not been possible to modify the text before voting. She had voted against the Liberian amendment (A/C.3/L.688), which laid undue emphasis on one particular aspect of the right proclaimed in the article. She had been happy to join with other delegations in supporting the United Kingdom amendment to paragraph 5. That paragraph was now in harmony with the other paragraphs of the article and it ensured that anyone who had been unlawfully arrested or detained should have the right to sue for and obtain damages. The New Zealand delegation had been glad to vote for article 9, which it felt to be one of the most important in the Covenant on Civil and Political Rights.

12. Mr. SIMPSON (Liberia) regretted that the Committee had not adopted his delegation's amendment (A/C.3/L.688). The right of every arrested person to see the charges brought against him in written form was not implicit in article 9. It would have been advisable to state the provision clearly, since at the current time many innocent people in certain countries were imprisoned, but could not defend themselves because they were unaware of the charges brought against them.

13. Mr. MORIN (Canada) explained that he had voted in favour of article 9 on the understanding that a federal clause would be included in the Covenant.

14. Mr. CALAMARI (Panama) observed that he had been in the Chair when the vote had been taken and had therefore been unable to give his views on article 9 and the amendments thereto. His delegation could have voted for the text submitted by the Commission on Human Rights, because the Constitution and legislation of Panama ensured respect for the right of every person, whether a national or an alien, to liberty and security of person. He had no objection to the United Kingdom amendment (A/C.3/L.686) to paragraph 5, which did not alter the substance of the original article.

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

15. The CHAIRMAN invited the Committee to consider article 10 of the draft Covenant on Civil and Political Rights (E/2573, annex I B).

16. Mr. MAHMUD (Ceylon) deplored the lengthy and often fruitless controversies which were delaying the adoption of the draft Covenants.

17. The Ceylonese Government fully approved of the letter and spirit of article 10, but thought that provisions concerning juvenile delinquents, whose numbers were constantly growing and for whom special treatment should be provided, should be included in the text. The problem of juvenile delinquency was not a new one, but it had become particularly acute in a number of countries. That might be seen from statistics published in the United States or from the papers sent by the Governments of the Philippines and Japan to the Second Asia and the Far East Seminar on the Prevention of Crime and the Treatment of Offenders. The Ad Hoc Advisory Committee of Experts on the Prevention of Crime and the Treatment of Offenders, at its session in May 1958, had shown special interest in the problem and its incidence in societies in the process of transition. The number of juvenile delinquents in Ceylon was not very large, but it was increasing and the Government hoped to institute in the near future a juvenile delinquency treatment system (including juvenile courts, juvenile detention and classifying centres, approved schools and attendance centres).

18. Juvenile delinquents could not and should not be treated in the same way as adults. Although the Covenant on Civil and Political Rights could not, of course, provide in detail for the measures to be taken, it should embody the principle that a special system should be established for juveniles. Once that principle had been proclaimed, each country could adopt appropriate programmes corresponding to its own needs.

19. In considering the case of juvenile delinquents, certain factors had to be borne in mind, such as the conditions and duration of provisional detention, the nature of the judicial authority, the procedures to be followed during examination and adjudication and the nature and duration of the treatment, which must, in particular, conform with the accepted principles of correctional treatment for juveniles and be adapted to the individual needs of each delinquent. The Ceylonese

delegation had therefore submitted some amendments (A/C.3/L.684), with a view to supplementing the Commission's text of article 10 accordingly. He specified that the words "legal status" in the sub-paragraph that his delegation proposed should be added to paragraph 2 meant "legal in the terms of the national laws of the country concerned". The word "judicial" in that sub-paragraph should not be interpreted in the strict sense, for juvenile delinquents might conceivably be examined by an authority other than a court of law, such as a social agency. Furthermore, the "accepted principles of correctional treatment for juveniles" need not necessarily be those already approved or recommended by a given country or international agency. That part of the amendment envisaged the methods and techniques which a country might consider satisfactory for its own purposes.

20. He asked the Secretariat to give him some information concerning the part of the Standard Minimum Rules for the Treatment of Prisoners [1] which related to the question he had mentioned, in order that his delegation might, if necessary, alter the wording of its amendment, which he hoped the Third Committee would support.

21. Miss FAROUK (Tunisia) thought that the text of article 10 submitted by the Commission on Human Rights should be amplified and made more precise. The term "treated with humanity" in paragraph 1 was open to erroneous and restrictive interpretation. It might be thought, for example, that persons deprived of their liberty should be treated less inhumanly than usual, whereas the point was that they should be treated as human beings. The purpose of the article was to ensure for prisoners satisfactory material conditions (such as healthy accommodation and adequate food) and treatment compatible with their human dignity. The Tunisian delegation therefore suggested that paragraph 1 should be replaced by some such text as: "The human dignity of all persons deprived of their liberty shall be respected."

22. With regard to paragraph 2, she shared the views that had led the Ceylonese delegation to submit its amendment and was prepared to support that text, but thought it could be improved. She wished to draw the Committee's attention to the position of first offenders, who should be protected from contact with hardened criminals, so that prisons should not become breeding-grounds for crime. Everything possible should be done to prevent what might be an accident in a human life from becoming a habit.

23. The Tunisian delegation believed that the words "to the fullest possible extent" in paragraph 3 had a restrictive meaning and would prefer them to be replaced by the word "increasingly" which, while taking the realities of the situation into account, stressed the need for progress.

24. Mr. ROSSIDES (Greece) supported the Ceylonese representative's remarks on the consideration of the draft Covenants. Some of the statements on the two articles just examined had been extremely interesting, but the fact remained that, in the end, the Committee had, generally speaking, adopted the text prepared by the Commission on Human Rights. The important thing was to adopt the Covenants, and that as soon as possible; in devoting too much time to minor aspects, the Committee was behaving like a legislator examining the minutiæ of draft laws in a country where no law yet existed. Accordingly, statements should be as brief as possible—and that would require considerable preparatory work by delegations—and a time limit should be fixed in principle for the discussion of each article. Finally, as the Greek delegation had stated on several occasions, it was essential to find a way of completing the draft Covenants as soon as possible.

25. Mr. BONDEVIK (Norway) said he was inclined to support article 10, since its spirit seemed to be praiseworthy, but thought that paragraph 2 in its existing form was perhaps unduly categorical. He doubted the practical possibility of always segregating accused persons and convicted persons and of subjecting them to separate treatment. The rigidity of the wording might be tempered by using the word "normally" or some such phrase as "if in any way possible"; the paragraph would then be more flexible and more realistic, since it would take into account the conditions which seemed to prevail in many countries.

26. Mr. LOPEZ-REY (Secretariat), replying to the Ceylonese representative, traced the background of the work that had resulted in the adoption of the Standard Minimum Rules for the Treatment of Prisoners in 1955. Those Rules had been considered by regional consultative groups convened in Europe, Latin America, the Middle East and Asia and the Far East, [2] and therefore took into account the peculiar characteristics and needs of various regions of the world and the principal legal systems. In its resolution 663 C I (XXIV), the Economic and Social Council approved the Rules, drew the attention of Governments to them and recommended that favourable consideration be given to their application and that arrangements should be made for the widest possible publicity to be given to them.

27. There were ninety-four Standard Rules. They related to many points of detail, but were based on certain basic considerations, such as avoidance of all discrimination, stress on the idea of rehabilitation rather than of punishment, equitable remuneration of prisoners' work and separate treatment of accused and convicted persons. In connexion with the treatment of juvenile delinquents, he cited rules 5 and 85 (2), which contained some provisions on the subject.

28. Mr. RIBEIRO DA CUNHA (Portugal) said he would vote for the article and for the Ceylonese amendment (A/C.3/L.684), which he considered very useful. He wished to know, however, exactly what was meant by the words "penitentiary system" in paragraph 3 of the Commission's text. Most countries drew a distinction between prisons properly so called and penitentiaries, where persons sentenced to long terms were usually confined. He was therefore not sure whether the term "penitentiary system" referred to "systems in force in penitentiaries", or whether a wider meaning should be ascribed to it. He asked for explanations on that point.

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.

2/ Ibid., part II, para. 47.

29. Mr. BAROODY (Saudi Arabia) made the same reservations as the representative of Norway with regard to the drafting of paragraph 2. The insertion of the word "normally" would certainly be an improvement; the expression "in any way possible", on the other hand, was too weak and might encourage the authorities to ignore the principle set forth in paragraph 2.

30. The phrase "treated with humanity" was too vague and too obscure, as the representative of Tunisia had rightly pointed out. It might be feared that without necessarily being inhuman, Governments might try to economize, and thereby cause suffering to the prisoners, for instance by neglecting to build new prison premises. The Standard Minimum Rules for the Treatment of Prisoners should be examined to find out whether they provided any guarantees which would make it unnecessary to redraft paragraph 1.

31. Finally, as the representative of Portugal had said, it would be interesting to know how the term "penitentiary system" was to be understood.

32. The amendment proposed by Ceylon (A/C.3/L. 684) led him to make a survey of the underlying causes of juvenile delinquency, one of the scourges of present-day society. In his opinion, the explanation must be sought in social evolution rather than in economic changes as such. The decline of the religions, considered from the viewpoint of the moral systems which they offered to their adherents rather than as strictly spiritual or mystical creeds, had also played a decisive part. There was a tendency to replace religion by various ideologies, such as nationalism, in the name of which some allowed themselves to commit outrages. Among individuals, rationalism and a more widespread knowledge of modern psychology were tending to detach man from his traditional values. The world was passing through a transition period, comparable with those through which the Christian and Arab worlds had passed on the collapse of the régimes which had exercised spiritual and temporal power simultaneously. In the contemporary overthrow of values, it would seem that no one had succeeded in producing ethics valid for the modern world.

33. Amongst the most immediate causes of juvenile delinquency must be mentioned in the first place films and publications which pandered to the basest and most mediocre instincts and which, through modern methods of dissemination, were placed within the reach of all, particularly of impressionable young people. He was not in any way trying to suggest or to defend the establishment of censorship; he was merely mentioning indisputable facts. Moreover, the individual was more isolated at the present time than he had ever been before; he was surrounded by less affection and was also capable of less. However that might be, the amendment submitted by the Ceylonese delegation was of outstanding importance. He was prepared to vote for it, either as it stood or with any formal amendments which might be made to it.

34. Mr. RYAN (Australia) pointed out that paragraph 1 of article 10 covered both accused persons and convicted persons, while paragraph 2 referred only to accused persons and paragraph 3 to prisoners. In those circumstances, the term "penitentiary system" was perfectly appropriate as it referred to persons serving penances, whatever the institutions in which they did so. The concern of the representative of Portugal accordingly appeared rather unjustifiable.

35. Sir Samuel HOARE (United Kingdom) agreed with the representative of Saudi Arabia with regard to the causes of juvenile delinquency, in so far as it was possible to diagnose those causes accurately. The recrudescence of juvenile delinquency which had occurred in England soon after the war could be attributed to the material and psychological consequences of the way, but obviously other factors peculiar to modern society would have to be taken into account to explain the recent rise in juvenile delinquency, which constituted an alarming and widespread phenomenon. There were certain publications which undeniably exercised a pernicious influence on adolescents. He briefly outlined the measures which had been taken in the United Kingdom to protect young people from them, while respecting as far as possible the principle of the free circulation of printed matter.

36. The representative of Australia had made a correct analysis of the structure of article 10. His delegation was prepared to accept that article but would like to make some improvements in form.

37. The representative of Tunisia had shown a deep understanding of the real issues, by drawing attention to the importance of the treatment of first offenders. That, however, was a difficult matter, and even the definition of "first offender" was not simple: it did not necessarily mean an offender convicted for the first time. It was of the utmost importance that everything possible should be done to prevent first offenders from relapsing into further crime. But many countries encountered technical difficulties and were unable to assume any commitments binding them to subject first offenders to separate treatment and segregate them from other convicted persons. In the United Kingdom, much hard work had been required to achieve that result. If the Tunisian delegation was thinking of submitting an amendment, it might take those considerations into account.

38. He was in favour of the substance of the Ceylonese amendment. But with regard to the form, the text of article 10 was noticeably brief, while the proposed amendments were rather lengthy; it would be advisable to make them more succinct. The clause requiring that juveniles charged with delinquency should be brought as speedily as possible for judicial examination and adjudication was pointless, because article 9, paragraph 3, already contained a provision to that effect for all persons arrested or detained. The addition proposed by Ceylon to paragraph 3 was too long and too categorical in tone; the limitations imposed by such factors as the absence of suitable premises and inadequate financial resources must be taken into account. It would be better to state some more general principle, which would not constitute such a binding obligation. On its side, the United Kingdom would have no difficulty in undertaking such an obligation.

39. The objection raised by the representative of Tunisia concerning the wording of paragraph 1 did not apply to the English text, which was satisfactory; it stated that all persons deprived of their liberty should be treated with humanity and that included the conception that their physical and moral dignity should be respected. Article 7 really covered the ground because it already provided that no person should be subjected

to inhuman treatment; there was however no objection to restating that principle in article 10 in relation to persons under detention.

40. He was not sure that the term "régime pénitentiaire" had been properly translated into English. An alternative translation would be "penal system". The authors of article 10 had obviously not wanted to make the text too restrictive, but the Portuguese representative had drawn attention to the possibility that it might be restrictively interpreted. He was prepared to accept the existing wording, but would reserve his opinion on the question whether a better wording could be found. If the Committee agreed that the wording should be read in an inclusive and not in a limiting sense, perhaps the Portuguese delegation would be able to accept it.

41. Another question of form arose in connexion with paragraph 3; that was the word "condamné" in the French text, rendered in English by "prisoners". The French version was better and an effort should be made to improve the English text. Perhaps the words "convicted and detained" would be more appropriate.

42. He hoped that the Committee would be able to solve those minor difficulties and reach a unanimous decision, especially if the representative of Ceylon agreed to shorten the text of his amendment and reduce the commitments which it implied.

43. Mr. JUVIGNY (France) explained that in French the régime pénitentiaire was the system applicable in prisons. The term would therefore cover everybody but persons detained for a few hours in the cells of a police station, but that did not matter, because paragraph 3 in any case referred only to prisoners; the term "régime pénitentiaire" was accordingly fully in keeping with the purposes of the article. The case of persons deprived of their liberty but not yet committed to prison was satisfactorily covered by paragraph 1.

The meeting rose at 1 p.m.

Litho. in U.N. 77301-January 1959-2,075