

# GENERAL ASSEMBLY

THIRTEENTH SESSION

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

1. The CHAIRMAN invited delegations to explain their votes on article 8 of the draft Covenant on Civil and Political Rights (E/2573, annex I B).

2. Mr. BRILLANTES (Philippines) said that he had abstained on the Netherlands amendment (A/C.3/L.682) because persons on conditional release were neither in prison nor under detention, and article 8 therefore did not apply to them. He had requested a separate vote on the last part of paragraph 3 (c) (ii), as he had wished to abstain in the vote on that section because conscientious objection did not exist in the Philippines. He had abstained on the Bulgarian proposal because he had wished to make some comments on the joint amendment (A/C.3/L.683/Rev.1). His vote must not be taken as any indication of his attitude to that amendment. He had voted for article 8 as a whole.

3. Mrs. LEFLEROVA (Czechoslovakia) said that while she had been in complete agreement with the substance of the joint amendment (A/C.3/L.683/Rev.1), she had felt some misgivings as to the propriety of inserting it in article 8. In any event, she had felt that such a text should be included in the general clauses rather than in a specific article, and she had therefore voted for the Bulgarian proposal, and also for article 8 in its original form. As the practice of imposing certain work or service on persons conditionally released from prison was unknown in Czechoslovakia, she had abstained on the Netherlands amendment (A/C.3/L.682).

4. Mr. MASSOUD-ANSARI (Iran) said that he had voted for the original text of article 8. He had also voted for the Bulgarian proposal, not because he

was opposed to the joint amendment (A/C.3/L.683/Rev.1) in substance, but because his delegation felt, as at the previous session, that such clauses should not be included in each separate article. The Covenants would form a human rights "code", and should accordingly contain all ideas and principles already embodied in previous conventions. He agreed with the Moroccan representative that the point of the joint amendment was already covered by article 5, paragraph 2, and that it would be preferable to include it among the general clauses. However, its sponsors were to be congratulated on their attempt to bring article 8 into line with other international instruments. He agreed with the Swedish and Danish representatives that work done by vagabonds and drunkards for their own rehabilitation could not be considered as forced or compulsory labour within the meaning of article 8, and he had voted for the article on that understanding.

5. Mr. KANG (Cambodia) said that he had voted for the Netherlands amendment (A/C.3/L.682) because the inclusion in article 8 of the idea contained in it, which was very commendable, did not affect his country's legislation in any way. He had abstained on the second part of paragraph 3 (c) (ii) because conscientious objection was unknown in Cambodia, there being no compulsory military service. He had voted for the Bulgarian proposal because he had considered that the substance of the joint amendment (A/C.3/L.683/Rev.1) should be included in the final articles of the Covenant, not in article 8.

6. Mrs. KHADDURI (Iraq) said that she had been under a misapprehension when the vote had been taken on article 8 as a whole. She had abstained on it in error, and wished now to state that she was in favour of the original text.

7. Mr. ARAUJO (Colombia) said that he had voted against the Bulgarian proposal because he had wished to vote for the joint amendment (A/C.3/L.683/Rev.1), which represented a most laudable effort to improve the text. That amendment had been opposed on several grounds. First, there had been the objection that if it was adopted some countries might feel themselves freed from obligations resulting from previous treaties. That objection had been met by the new wording of the revised text (A/C.3/L.683/Rev.1). Secondly, it had been held that the reference to other international instruments containing clauses of progressive application might reduce the force of article 8. That was mere sophistry, as the purpose of the amendment had in fact been to prevent the signatories of the draft Covenant from citing the Covenant as a pretext for evading obligations under other international instruments. Thirdly, it had been argued that the text of the amendment was out of place in article 8. He could not agree; the conventions mentioned in the joint amendment were closely linked

with the substance of article 8, and the purpose of the amendment was manifestly to strengthen the article. If the same point was dealt with in a general clause, the wording of article 8 would have to be much more general, and therefore weaker. He had voted for the Netherlands amendment (A/C.3/L.682), on the understanding that work done by persons on conditional release should be remunerated.

8. Mr. BONDEVIK (Norway) said that he had voted for article 8 as a whole. However, as paragraph 3 (b) conflicted in some respects with Norwegian legislation, his Government reserved the right to make appropriate reservations.

9. Mr. TUAN (China) said that he had voted for article 8 as a whole with some regret. His delegation had welcomed the Mexican suggestion, and would have liked to have had the opportunity of voting for the joint amendment, which would have greatly improved the text. The main objection to it had been that the point was covered by article 5 and other articles of implementation. He could not agree; in his view the amendment was one of substance. He had voted against the Bulgarian proposal because he had wished to vote for that amendment. He hoped that it would eventually be adopted.

10. Miss FAROUK (Tunisia) said that she had abstained on the Netherlands amendment for the same reason as the Philippine representative. She had voted for the Bulgarian proposal because it seemed more logical that the question of bringing the draft Covenant into line with other international instruments should be discussed as a matter applicable to all articles. She congratulated the sponsors of the joint draft resolution and the Mexican representative for having brought that question clearly before the Committee. She had voted for article 8 as a whole, as the adoption of the Netherlands amendment had not involved any change of substance.

11. Miss BERNARDINO (Dominican Republic) deplored the confusion which had reigned at the previous meeting during the voting on article 8 and the amendments to it. Such confusion left a painful impression and augured ill for the Committee's future work on the Covenant.

12. Now that article 8 had been adopted, she wished to point out that it prohibited certain practices and institutions similar to slavery which affected women, such as child marriage, incapacity to inherit property and, particularly, certain barbarous customs affecting the physical integrity of women.

13. Mr. MOROZOV (Union of Soviet Socialist Republics) pointed out that at the very outset of the debate his delegation had taken the position that references to international conventions dealing with the same subject-matter as article 8 should be embodied in a separate article, perhaps in part II of the draft Covenant. Since the Committee had at one time appeared inclined to include such a provision in article 8 itself, his delegation had collaborated on the joint amendment, which it supported in principle. However, when it had become clear that the idea of a separate article commanded majority support, his delegation had naturally reverted to its original position.

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

14. Mr. RIBEIRO DA CUNHA (Portugal) remarked that while his delegation was in full agreement with the content of article 9, it felt that the text went into unnecessary detail.

15. Mr. ZAMORA ELIZONDO (Costa Rica) said that his delegation, representing a people justly proud of its traditions of personal freedom and security, gave its wholehearted support to the principles set forth in article 9. State protection of the individual from abuses of justice and acts of despotism was not merely a guarantee of freedom, democracy and economic progress; it was a guarantee of peace itself, since only a world in which the individual was treated with due respect could hope to enjoy peace.

16. Paragraph 4 of the article was perhaps not entirely effective. As it stood, it provided that the person unlawfully arrested or detained must institute proceedings for his own release; but a person in that situation might be prevented from communicating with the outside world and unable to take such action. The provision should therefore be altered to enable any person whatsoever to enter such an application on behalf of any arrested or detained person. Moreover, the paragraph used the word "court" without any qualifying adjective; that word should be replaced by the term "court of justice", in order to exclude administrative courts and special tribunals not offering adequate guarantees of due process. His delegation would accordingly submit amendments to paragraph 4, unless other representatives suggested better texts.

17. Mr. RIOSECO (Chile), commenting on the observations by Governments (A/2910 and Add.1-6), said that both the Netherlands and the United Kingdom Governments had sought to amend the second sentence of article 9, paragraph 1, on the ground that the word "arbitrary" used in it was nowhere defined. While the approach chosen by the Netherlands Government would make the paragraph more precise, it involved the danger that the list of exceptions to the general prohibition of deprivation of liberty might not be complete; the method suggested by the United Kingdom was better, but the actual wording suggested was not entirely satisfactory.

18. He supported the Netherlands Government's suggestion with respect to paragraph 2.

19. The Government of Thailand had suggested a change in paragraph 3 which in its view would make the paragraph much more decisive and imperative; he failed to see that it was anything more than a drafting change.

20. His delegation found the text of paragraph 4 acceptable, but it would be glad to study the point raised in that connexion by the Costa Rican representative.

21. He was opposed to the changes suggested by the Netherlands and the United Kingdom Governments in paragraph 5, since the existing wording, "unlawful arrest or deprivation of liberty", was in exact accord with the provisions of the Chilean Constitution.

22. He gave a brief account of the seminar on the protection of human rights in criminal law and pro-

cedure held in Chile in May 1958 since it related to the subject under discussion. His delegation would be glad to make the report of the seminar available to members of the Committee.

23. Sir Samuel HOARE (United Kingdom) said that his delegation wished to introduce formally the amendments to article 9 which it had submitted in response to General Assembly resolution 833 (IX) (A/2910/Add.1).

24. He could not agree with the Portuguese representative that the text drafted by the Commission was unduly detailed. The subject of article 9, which was one of the most important in the draft Covenants, lent itself to precise legal definition; and since precision was, for once, possible, it would be unadvisable to reduce the article to a few laconic phrases merely for the sake of brevity.

25. Paragraph 1 was the most important provision in the article. The first sentence might be described as declaratory, while the second and third sentences dealt with the practical implications of the initial declaration. The term "deprived of... liberty" in the third sentence covered the "arrest or detention" referred to in the second, and the sense of the third sentence was that no one should be arrested or detained except by due process of law; full legality was ensured, moreover, by the reference to both grounds and procedure. But the second sentence was not merely the same as the third. The difference between the two was that the second sentence laid down the criterion of arbitrariness, whereas the third sentence was based on the criterion of legality. The majority of the members of the Commission on Human Rights had considered that the rule of law did not provide adequate safeguards against the possible promulgation of unjust laws, which would enable dictators to subject people to arrest and detention without the proper grounds and procedures.

26. The United Kingdom delegation wished to ensure that there should be no wide area of doubt as to the obligations of States under the Covenants. States could not sign such important instruments without being reasonably sure of what they were undertaking; and since under the proposed measures of implementation the final decision on whether or not a complaint of violation of human rights was valid would rest with the Human Rights Committee, States should be fully aware of the grounds for such decisions. In the light of those considerations, his delegation considered that, if it was felt that the criterion of lawfulness did not in itself provide adequate safeguards, the criterion of arbitrariness was too vague and indefinite as an additional safeguard.

27. In order to achieve greater precision, the Netherlands delegation had suggested listing the exceptions to the general prohibition of deprivation of liberty. Theoretically, that would provide an ideal solution, but in practice it would be very difficult to agree on the list, and the possibility would always remain that it would be incomplete. The United Kingdom delegation therefore, proceeding on the premise that the reason for introducing the criterion of arbitrariness had been that the legal grounds and procedures referred to in the paragraph might themselves be open to question, had proposed an amendment to the effect that those grounds and procedures must not in themselves be incompatible with respect for the right enunciated in the first sentence. The proposed text had been criticized on the ground that it went in a circle, since it would relate the second, or operative, sentence to the first, or declaratory one. That criticism he thought unfounded. But the important point, in his opinion, was to clarify the intention underlying the use of the word "arbitrary"; and the fact that the right to liberty and security of person was proclaimed in the first sentence did not seem to be an argument against invoking that right in the second sentence as a criterion.

28. Mr. ROSSIDES (Greece) observed that the Committee's rate of progress so far showed that all efforts to expedite its work under the method it had adopted were vain, and that the time had come to make constructive proposals for a different procedure. When the Universal Declaration of Human Rights had been signed ten years previously, it had been clearly stated that the provisions of the Declaration would be rendered enforceable in the near future; but at the current rate, at least ten more years would be needed to complete the Covenants, particularly since the measures of implementation had been left to the last. It was ironical that the Committee should be discussing the prohibition of torture and of detention without trial at a time when those practices were occurring daily in various parts of the world. The Greek delegation's proposal for interim measures had not been accepted in its original form; an amended version had been adopted on the understanding that the draft Covenants were to be completed by the thirteenth session of the General Assembly; but since that objective could clearly not be attained some other method, such as the establishment of an *ad hoc* committee on the draft Covenants, or the prolongation of the session of the Third Committee, must be sought. He hoped that members would be able to make suggestions for urgent action on the matter.

The meeting rose at 12.30 p.m.