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Chairman: Mrs. Georgette CISELET (Belgium).

AGENDA ITEM 34

Draft International Covenants on Human Rights (E/2573, annexes I-III, A/2907 and Add.1-2, A/2910 and Add.1-6, A/2929, A/4149, A/C.3/L.778, A/C.3/L.785-786, A/C.3/L.790-795, A/C.3/L.797-799, A/C.3/L.801-803, A/C.3/L.805-808, A/C.3/L.812/Rev.2, A/C.3/L.813) (continued)

ARTICLE 12 OF THE DRAFT COVENANT ON CIVIL AND POLITICAL RIGHTS (E/2573, ANNEX I B) (concluded)

1. The CHAIRMAN said that at the preceding meeting the Ceylonese representative had pointed out that the text proposed in the revised five-Power amendment (A/C.3/L.812/Rev.2) which was to replace article 12 of the draft Covenant submitted by the Commission on Human Rights (E/2573, annex I B), was not really an amendment, and he had asked that in accordance with rule 132 of the rules of procedure of the General Assembly the proposals should be put to the vote in the order in which they had been submitted. But even if the revised text of the five-Power amendment could not be regarded as a true amendment, it replaced various other texts which unquestionably were amendments. She suggested that the Committee should decide what would be the most suitable voting order, as it was authorized to do under rule 132 of the rules of procedure.

2. Mr. BOULOS (Lebanon) said that at the previous meeting he had moved the closure of debate in accordance with rule 118 of the rules of procedure.

3. Mr. COLUCCI (Italy) thought that the debate should not be closed before the Committee had had the opportunity of considering the Ceylonese representative's proposal. The order of voting would be crucial; the Canadian and Netherlands amendments had been withdrawn in favour of the five-Power text, and moreover that text had replaced the Argentine amendment (A/C.3/L.804).

4. Mr. BOULOS (Lebanon) said that his motion for the closure of the debate related only to the debate on article 12 and not to the question of the voting order.

5. Mr. ROMERO (Ecuador) supported the motion for the closure of the debate.

The motion was carried by 22 votes to 10, with 34 abstentions.

6. Mr. RUDA (Argentina) considered that the five-Power text (A/C.3/L.812/Rev.2) was not a new proposal but was indeed an amendment to article 12. Paragraphs 1 and 2 were identical with sub-paragraphs (a) and (b) of paragraph 1 of the text submitted by the Commission on Human Rights (E/2573, annex I B). The differences were in paragraph 3, which corresponded to the first part of paragraph 1 of article 12, and consisted merely of deletions and revisions in accordance with the definition in rule 131 of the rules of procedure of the General Assembly. The five-Power amendment changed only the form of the article, and not its substance; the basic principle remained unaltered.

7. Furthermore, the five-Power amendment was based on the Argentine amendment (A/C.3/L.804), which had not been withdrawn but had been replaced by the amendment contained in document A/C.3/L.812, as the Argentine representative had made clear at the 956th meeting. That amendment in turn had been replaced by revised versions (A/C.3/L.812/Rev.1 and A/C.3/L.812/Rev.2). Consequently, from the point of view of both form and substance the five-Power text must be considered an amendment.

8. Lastly, due regard must be paid to the good faith of the sponsors. He therefore asked that in accordance with rule 131 of the rules of procedure of the General Assembly the five-Power text should be put to the vote first.

9. The CHAIRMAN said that it was for the Committee to decide the question.

It was decided, by 57 votes to 1, with 12 abstentions, to vote first on the five-Power text (A/C.3/L.812/Rev.2).

10. At the request of Mr. ROMERO (Ecuador), the CHAIRMAN put the proposed text (A/C.3/L.812/Rev.2) to the vote paragraph by paragraph.

Paragraph 1 was adopted by 71 votes to none, with 2 abstentions.

Paragraph 2 was adopted by 70 votes to none, with 3 abstentions.

11. The CHAIRMAN said that the representative of Iraq had asked for a separate vote on the words "public order (ordre public)" in paragraph 3.

12. Mr. BOUQUIN (France) felt that if the words "public order" were rejected, they should be replaced by the words "public safety", which appeared in the text submitted by the Commission on Human Rights.

13. Mr. BAROODY (Saudi Arabia) asked that if the words "ordre public" were retained in the

English text they be put in italics and not in quotation marks.

14. Mr. LOPEZ (Philippines), referring to the French representative's suggestion, pointed out that the rules of procedure did not provide for the submission of a conditional proposal.

15. Mr. BOUQUIN (France) said that he had proposed the substitution in question on two occasions, and until now there had been no objection to it. However, since the Philippine representative did not accept the proposal, he would withdraw it.

The words "public order (ordre public)" were adopted by 58 votes to none, with 15 abstentions.

Paragraph 3 was adopted by 67 votes to 1, with 3 abstentions.

16. The CHAIRMAN asked the Committee to vote on the Irish amendment (A/C.3/L.813) to paragraph 4 of the five-Power text (A/C.3/L.812/Rev.2).

17. Mr. BOULOS (Lebanon) and Mr. CALAMARI (Panama) asked for a separate vote on the words "unless lawfully exiled".

18. Mr. MOROZOV (Union of Soviet Socialist Republics) said that the Committee had decided to vote first on the five-Power text, and had taken no decision about the vote on the Irish proposal. That proposal could not be regarded as a sub-amendment to the five-Power amendment in the sense in which that amendment constituted an amendment to article 12 of the text of the Commission on Human Rights. The effect of the Irish proposal was purely to restore the substance of the original text, with only slight drafting changes.

19. Moreover, if the Irish proposal was voted on first, delegations which wished to improve the text but were not however prepared to give up paragraph 4 of the five-Power amendment at the current stage would find themselves in a difficult situation. He therefore considered that it would be to the Irish representative's advantage not to press for her amendment to be voted on first. It would then be for the Committee to decide on the procedure to be followed, and it could, if necessary, reverse its previous decision. The matter was not merely one of form; there was an issue of substance involved.

20. Miss MacENTEE (Ireland) said that her amendment was a compromise between article 12, paragraph 2, drafted by the Commission on Human Rights and paragraph 4 of the five-Power amendment. She left it to the Committee to decide whether her proposal was in fact a sub-amendment or not. If the decision was in the negative, she requested that, should paragraph 4 of the five-Power text be rejected, paragraph 2 of the Commission's text should be put to the vote next.

21. Sir Samuel HOARE (United Kingdom) said that the Committee should decide whether the Irish amendment should be voted on first as a sub-amendment.

22. Mr. FARHADI (Afghanistan) agreed with the United Kingdom representative. The Committee should decide on the order in which the texts would be voted on. If it ruled on the substance of the Irish amendment, the representative of Ireland would be unable to obtain satisfaction whatever the decision; for if the amendment were judged to be identical in substance

to the text of the Commission on Human Rights, it would not be a sub-amendment, while if it were considered a compromise, it could be argued that, since it was closer than the other proposal to the original text it should be voted on second.

23. Mr. BOULOS (Lebanon) said that the Committee's decision, under rule 132 of the rules of procedure of the General Assembly, not to follow the order of submission had related only to the five-Power amendment, and applied to all of the paragraphs of the text proposed therein.

24. Mr. MOROZOV (Union of Soviet Socialist Republics) did not think that the Committee could reverse its decision to vote on the five-Power amendment first. Paragraph 4 of that text should be voted on, and if it was rejected the Irish amendment could then be put to the vote. That was the normal procedure and the one that should be followed. The Irish delegation, moreover, did not appear to have any objection to its text being voted on after the five-Power text.

25. The CHAIRMAN observed that the Committee's decision at the beginning of the meeting did not apply to the Irish amendment to paragraph 4 of the five-Power text.

26. Miss MacENTEE (Ireland) said that she was prepared to withdraw her delegation's sub-amendment if, instead of facilitating the Committee's work, it was likely to set off a procedural debate. She wished to make it clear that paragraph 2 as drafted by the Commission on Human Rights was entirely acceptable to her delegation. On the other hand, her delegation could not accept the word "arbitrarily" in paragraph 4 of the five-Power text, and if that word was retained it would be compelled to vote against the paragraph as a whole.

27. The CHAIRMAN put the word "arbitrarily" in paragraph 4 of the five-Power amendment (A/C.3/L.812/Rev.2) to the vote.

The word "arbitrarily" was adopted by 29 votes to 20, with 20 abstentions.

Paragraph 4 of the five-Power text was adopted by 44 votes to 6, with 22 abstentions.

Article 12 as a whole, in the text proposed by the five Powers, was adopted by 58 votes to 1, with 11 abstentions.

28. Miss IMRU (Ethiopia) said that she had voted against the word "arbitrarily" because the right of everyone to enter his own country should not be made subject to any restrictions.

29. Mrs. CASUSO (Cuba) said that she had opposed the word "arbitrarily" because the Constitution of her country expressly prohibited exile in any form. She had unfortunately been obliged, as a result, to abstain in the votes on paragraph 4 and on article 12 as a whole.

30. Mrs. Aguilar DE COLMANT (Honduras) said that she had acted in the same way as the representative of Cuba, for the same reasons.

31. Mr. VAN HEUVEN (United States of America) said that article 12 in the form in which it had just been adopted by the Committee did not appear to differ appreciably from the text of the article drafted by the Commission on Human Rights. Paragraphs 1 and 2 stated two general principles dealing with the

right to liberty of movement within a country and with freedom to leave any country. Paragraph 3 set out the restrictions to which those principles were subject. He noted that the term "reasonable restrictions" was not used in paragraph 3. Nevertheless, it was the view of his delegation that the term "public order (ordre public)" incorporated the idea of due process of law, which was the very standard of reasonableness. It was for that reason that his delegation was of the view that paragraph 3 was an improvement on the text drafted by the Commission on Human Rights.

32. With respect to paragraph 4, he would have preferred to have it state the right first and then give the exceptions to it. For that reason his delegation would have preferred the text of the Irish amendment to paragraph 4 of the five-Power text.

33. Mr. FARHADI (Afghanistan) thanked the Irish representative for having drawn attention to the dangers involved in subjecting the right of everyone to enter his own country to the general restrictions set out in paragraph 3 of the five-Power text. His delegation had been happy to vote for the new version of article 12.

34. Mr. ROMERO (Ecuador) pointed out that his delegation had been opposed to placing the right stated in article 12 under any restrictions other than those already defined in articles 4 and 5 of the draft Covenant, as it had stated at the 957th meeting. It could not agree to limitations on any of the rights proclaimed in the Covenants, except in cases where the very existence of a State or other human rights were threatened.

35. Mr. SUTANTO (Indonesia) said that article 12 as adopted by the Committee was preferable to the article drafted by the Commission on Human Rights both in content and in form. His delegation had no objection to the terms "public order (ordre public)" or "arbitrarily". It had therefore voted for their inclusion and for article 12 as a whole.

36. Mrs. DE ARENAS (Guatemala) said that she endorsed the principles proclaimed in article 12, but had had to vote against the article because she had been unable to agree to the word "arbitrarily", which might be used to justify the perpetration of injustices by the authorities. Her delegation wished to state that exile was prohibited under the Guatemalan Constitution.

37. Mr. MONTEZUMA HURTADO (Colombia) said that he had abstained from voting on the word "arbitrarily" and on article 12 as a whole for the same reasons as those given by the Guatemalan representative.

38. Mr. COLUCCI (Italy) said that he was grateful to the Irish representative for having given the Committee an opportunity to vote on paragraph 4 of the five-Power proposal. He thanked all the delegations which had co-operated in drafting a text for article 12 that adequately conveyed the Committee's intentions.

ARTICLE 13 OF THE DRAFT COVENANT ON CIVIL AND POLITICAL RIGHTS (E/2573, ANNEX I B)

39. Baron D'ANETHAN (Belgium) said that his delegation's amendment (A/C.3/L.786) to article 13 of the draft Covenant submitted by the Commission on

Human Rights (E/2573, annex I B) did not call for any comment. That article, which was designed to protect aliens against arbitrary expulsion, obviously applied only to aliens who were lawfully established in a country and were remaining there for a long period. The purpose of his country's amendment was to make that quite clear.

40. Mr. BAROR (Israel) emphasized that his delegation's amendments (A/C.3/L.790) were of a purely editorial nature. The Covenants would have to be interpreted by the courts and their wording should be as precise and clear as possible. It was therefore particularly important that the same idea should always be expressed in the same terms. In order to ensure the necessary consistency, his delegation proposed that the wording of article 13 should be brought into line with that of article 9, paragraph 1. It also thought that article 13, in its existing form, was too long. The phrase "or a person or persons especially designated by the competent authority" contributed nothing essential and should preferably be deleted. Furthermore, any question of delegation of powers was a matter for domestic legislation. It was not the function of the Covenant to specify how the competent authority called upon to review the case of an alien threatened with expulsion should be constituted.

41. He drew attention to the fact that the expression "State Party to the Covenant" was frequently replaced in other articles by expressions which were similar but not identical.

42. Mr. FARHADI (Afghanistan) pointed out that the French and Spanish translations of the second amendment contained in document A/C.3/L.790 did not completely correspond to the English original. In the French text, it was merely a question of deleting the words "ou par une ou plusieurs personnes spécialement désignées par ladite autorité" while retaining the last words of the article, "en ce faisant représenter à cette fin".

43. The CHAIRMAN said that the Secretariat would issue a corrigendum aligning the French and Spanish texts with the original text of the second Israel amendment.

44. Sir Samuel HOARE (United Kingdom) felt that article 13, as drafted by the Commission on Human Rights, was entirely acceptable.

45. The Belgian delegation wished to give the benefit of the article only to aliens lawfully established in the territory of a State. While the Committee was free to adopt the Belgian suggestion of limiting the categories of aliens who would benefit, he was not sure that the insertion of the word "established" would prove a very happy solution. Whereas most of the articles of the draft Covenant applied to all individuals irrespective of their status, article 13 concerned aliens only. It was therefore extremely limited in scope and he wondered whether it was desirable to limit its scope still further by inserting a word which was, moreover, lacking in precision and would make it possible for States to give their own definition of the requirements to be met.

46. With regard to the first Israel amendment, he pointed out that article 9 dealt with one of the most important rights of the human person. Article 13 dealt with a somewhat different question, that of the alien expelled by administrative decision because he was

considered undesirable. Such a decision was required to be reached in accordance with law, and that was equivalent to saying that the grounds should be established by law. There was no need to require a procedure prescribed by law because the procedure of actual expulsion was very simple. Article 9 and article 13 were not therefore comparable. In the case of expulsion of an alien, it was sufficient to require that such expulsion should be in accordance with the law, that the decision should be reached in full knowledge of the facts and that the person concerned should have an opportunity to submit representations. His delegation could not therefore support the first Israel amendment, nor—for that matter—the second one. Although the phrase which had been criticized did lengthen the article, he did not think that was sufficient reason for its deletion. In some countries, the expulsion of an alien was a matter for a judicial authority, but in others that was not the case. It was to the latter countries that the Commission on Human Rights had wished to suggest the following solution, without, however, making it mandatory: if, under their domestic laws, an administrative authority had competence in matters of expulsion, such administrative authority should have the possibility of delegating its powers to an outside person or persons, for example, to a judicial officer. In other words, the Commission on Human Rights had sought to provide the alien with a further safeguard.

47. Mr. BAROODY (Saudi Arabia) said that as no attempt had been made to include in article 13 a provision concerning the right of asylum and extradition, it should be possible to adopt the article without delay. He shared the views of the United Kingdom representative with regard to the Belgian amendment (A/C.3/L.786). The insertion of the word "established" would have the effect of excluding one category of aliens from the benefit of article 13, namely, visitors or tourists who were in the territory of a State for a short time and had neither their home nor their place of business there. It seemed undesirable to leave that category of aliens no recourse against a possible expulsion order. If a tourist who had arranged to spend several months in a country was, after one week, made the subject of an expulsion order for which no reasons were given, he should have an opportunity to defend himself. He was therefore unable to support the Belgian amendment.

48. Mr. FARHADI (Afghanistan) said that the word "established" had a very definite and precise meaning. An alien could not be considered to be established in a country unless he exercised a trade or profession and had his home there. The Belgian representative should either withdraw his amendment or find some more general term than the one he had proposed. With regard to the amendments contained in document A/C.3/L.790, he shared the views expressed by the United Kingdom representative and believed that it would be preferable to retain the text submitted by the Commission of Human Rights.

49. Baron D'ANETHAN (Belgium) said that his delegation had not wished to limit the scope of article 13 or to deprive some aliens of the safeguards which they were entitled to expect from the law. Clearly, any alien, even one on a brief visit, could ask to be informed of the reasons for his expulsion. The Belgian amendment was in fact designed to give special protection to lawfully established aliens, without

depriving those not so qualified of the benefit of the provisions of the article. An individual who had his place of business, his property and his home in a foreign country should enjoy certain privileges. In many cases, such persons had had to apply for special authorization from the host State and the latter, by granting it, had assumed a certain obligation towards him and could not therefore deny him certain safeguards. That category of aliens permanently established in a country deserved all the more attention because of its greater vulnerability. It was, in fact, the one likely to suffer most as a result of expulsion. There was a growing tendency, evidenced by certain recent international instruments, to grant aliens an increasingly favourable status the longer they stayed in the country. His delegation therefore proposed a revised amendment consisting in the addition to article 13 of a new paragraph reading as follows: "These safeguards shall constitute the minimum guarantees which shall be enjoyed by an alien regularly resident in the territory for more than ten years."

50. The CHAIRMAN said it seemed to her that the Belgian representative's proposal in fact constituted a new amendment; she pointed out that the time limit for the submission of amendments had expired.

51. Mr. REY (Venezuela) endorsed the views of the representatives of the United Kingdom, Saudi Arabia and Afghanistan with respect to the Belgian amendment. By seeking to protect an alien who was lawfully "established" in the territory of a State against arbitrary expulsion, it would deprive the ordinary visitor of any safeguards. If the Belgian amendment were adopted, States could avail themselves of article 13 to expel persons not permanently resident in their territory whom they considered undesirable. The wording proposed by the Commission on Human Rights on that point should therefore be retained.

52. Mr. COLUCCI (Italy) said that there was a discrepancy between the English and the French versions of article 13 in the text of the Commission on Human Rights. According to the French text, only an alien who was lawfully within the territory could invoke the protection of the article, whereas, according to the English text, the article would apply even to aliens who, for any reason, temporarily left the territory in which they resided. The English text of the article was therefore broader than the French. The insertion of the word "established" would increase the discrepancy between the two versions since the French text would then stress the fact that the alien, in order to enjoy the protection of the article, had to be within the territory of the State in which he normally resided.

Mr. LIMA (Brazil) said that Brazil, which was a country of immigration, had expelled, and would continue to expel, undesirable aliens, but that, under the legislation in force, the parties concerned could appeal to a court if they considered the decision against them to be unjustified. His delegation was therefore in favour of the principle expressed in article 13. It would vote for the first Israel amendment, but abstain from voting on the second, which seemed less useful. Adoption of the Belgian amendment did not appear advisable, since it would have the drawback of excluding from the protection of the article aliens who were in transit through or only temporarily residing in the territory of a State.

54. Mrs. ANEGAY (Morocco) pointed out that the Spanish equivalent of the French words "qui se trouve" was "que se encuentra", and not "admitido".
55. Mr. ASSAR (Iran) did not think it would be desirable to insert the word "established", for article 13 was broad in scope and should be applied as widely as possible. Since the representative of Belgium wished to give special protection to aliens lawfully established in a country, he had taken the right course in proposing the addition of a new paragraph relating more particularly to that category of aliens. Article 13 would thus retain its general character.
56. The words "State Party to the Covenant" should be deleted, since they might be interpreted as meaning that an alien in the territory of a State which was not a Party to that Convention had no recourse against an arbitrary measure of expulsion, especially since those words did not appear in the preceding articles.
57. Despite the explanation which had been given by the United Kingdom representative, he was not clear as to the meaning of the phrase which the representative of Israel proposed should be deleted. The words "competent authority" seemed sufficiently explicit, as they referred to any person or group of persons qualified to deal with a particular matter.
58. Furthermore, article 13 was very long. That was immaterial, if all the words had a specific legal connotation, but the phrase "to submit the reasons against his expulsion and to have his case reviewed" might perhaps be replaced by the words "to defend himself", or some such formula. He would welcome the views of other representatives on that point.
59. Mr. BAROR (Israel) said that, in view of the observations by the United Kingdom representative, he thought it preferable to withdraw his first amendment. With regard to the second, the competent authority might be either a judicial or an administrative authority. He therefore saw no point in retaining the phrase his delegation had proposed should be deleted, since it merely defined the words "competent authority". In any event, he wished to make it clear that in proposing its deletion, he had not intended to limit the
- right of any alien to have his case reviewed by the competent authority.
60. Mrs. MAN'TZOULINOS (Greece) agreed that the phrase in question was superfluous, since the competent authority was the authority officially designated to deal with a particular matter, the procedure to be followed being defined by law. She was not sure that she had fully grasped the explanation given by the United Kingdom representative. She noted that the commentary on the text of article 13 merely pointed out that the article had been based on article 32 of the Convention relating to the Status of Refugees of 28 July 1951 (A/2929, chap. VI, para. 64).^{1/} She would be grateful for any light which could be shed on that point by the Director of the Division of Human Rights of the United Nations Secretariat or by the representatives who had taken part in the drafting of the Commission on Human Rights text.
61. Sir Samuel HOARE (United Kingdom) said that the competent authority referred to in article 13 was in some cases an administrative authority, as the representative of Israel himself had indicated. In the interest of aliens, such an authority should be able to refer cases of expulsion to an absolutely independent authority, which might or might not be judicial. If the phrase in question were deleted, there would obviously be no difficulty in cases where the competent authority was a court or a judge. On the other hand, if the competent authority were, for example, a government department, it could not, were it to comply with the article, invite an outside person to undertake a review of the case, if the last phrase were deleted.
62. Mr. MATHIEU (Canada) hoped that the vote on article 13 would not be taken until the following meeting in order that he might have an opportunity of studying the arguments put forward by the sponsors of amendments.

The meeting rose at 6 p.m.

^{1/} United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons held at Geneva, Switzerland, from 2 to 25 July 1951, Final Act and Convention relating to the Status of Refugees (United Nations publication, Sales No.: 1951.IV.4).