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CONTENTS: Draft international covenant on human rights: article 14 (E/CN.4/253)

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| Chairman: | Mrs. ROOSEVELT | United States of America |
| Rapporteur: | Mr. MALIK | Lebanon |
| Members: | Mr. SHANN | Australia |
| | Mr. STEYAERT | Belgium |
| | Mr. SAGUES | Chile |
| | Mr. CHANG | China |
| | Mr. SOERENSEN | Denmark |
| | Mr. LOUTFI | Egypt |
| | Mr. CASSIN | France |
| | Mr. GARCIA BAUER | Guatemala |
| | Mrs. MEHTA | India |
| | Mr. ENTEZAM | Iran |
| | Mr. INGLES | Philippines |
| | Mr. KOVALENKO | Ukrainian Soviet Socialist Republic |
| | Mr. PAVLOV | Union of Soviet Socialist Republics |
| | Miss BOWIE | United Kingdom |
| | Mr. MORA | Uruguay |
| | Mr. VILFAN | Yugoslavia |

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| Mr. ARNALDO | United Nations Educational, Scientific and Cultural Organization |

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| Miss SENDER | American Federation of Labor |
| Mrs. MEAGHER | World Federation of United Nations Associations |

Category B:

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| Mr. BERNSTEIN | Co-ordinating Board of Jewish Organizations |
| Mrs. AIETA | Catholic International Union for Social Service |
| Miss SCHAEFER | International Union of Catholic Women's Leagues |
| Mr. NOLDE | Commission of Churches on International Affairs |

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| Mr. HUMPHREY | Representative of the Secretary-General |
| Mr. LAWSON | Secretary of the Commission |

DRAFT INTERNATIONAL COVENANT ON HUMAN RIGHTS: ARTICLE 14 (E/CN.4/253)

The CHAIRMAN announced that the Commission would consider Article 14, the original text of which, together with the amendments proposed to that text by the United States of America, the United Kingdom, India, France and Egypt, was to be found in document E/CN.4/253.

Mr. LOUTFI (Egypt) said that he did not think there was any need to justify the principle of trying war criminals, to which some reference had already been made in the Universal Declaration on Human Rights; his delegation therefore proposed the deletion of paragraph 2. If paragraph 2 were retained, it might give rise to difficulties in the ratification of the covenant, in particular by States which did not adhere to the London Convention.

Mr. CASSIN (France) said that the French amendment had been proposed because it was felt desirable to bring article 14 of the

covenant into line with the Declaration. That article proclaimed the principle of non-retroactivity, both for the offence and for the punishment. His country had no difficulty in accepting the principle in both cases, but he knew that some other countries did not approve of the principle with regard to punishment. He felt that the original text had been drafted in a somewhat obscure manner and that the text agreed upon during the discussion on the Declaration was more adequate, particularly in that it made the principle of non-retroactivity apply internationally as well as nationally. If a text similar to that of the Declaration was adopted, he would accept the Egyptian amendment; otherwise he could not agree to the deletion of paragraph 2.

He pointed out that the rule of non-retroactivity in criminal sentences was not merely humanitarian, but was based on considerations of security. That rule had not yet been established in international law, but its necessity had now been recognized. Provisions already existed against international traffic in women, and against slavery and other internationally recognized crimes; and he hoped that an international penal law, embodying the principle of non-retroactivity, would shortly be established.

The covenant was the instrument in which provisions of international law concerning human rights should be embodied, and he therefore hoped that the Commission would incorporate article 11, paragraph 2, of the Declaration in the covenant.

Miss BOWIE (United Kingdom) said that her delegation's amendment proposed the deletion of the second part of paragraph 1: if, therefore, the French amendment were accepted, she would be forced to propose the deletion of its second sentence.

An increasing recognition of the value of the human personality had tended towards a lessening of criminal sentences, but at times that same recognition acted in the opposite way and brought about an increase in the sentence. In the United Kingdom, for example, a recent Act had increased the sentence for certain sexual offences. She therefore felt that an increase in the sentence was not a violation of human rights.

/The CHAIRMAN

The CHAIRMAN, speaking as the representative of the United States of America, said that her delegation's amendment attempted to redraft the Drafting Committee's text in the interests of accuracy. If the article were stated other than as a prohibition against the enacting of retroactive penal laws, it would impair the useful function of courts of interpreting established statutes. According to the original text of article 14, an accused person would be able to appeal against a decision of a court which was contrary to a previous decision based on the court's interpretation of a certain statute. The United States amendment would ensure that it was the promulgation of a retroactive penal statute that was to be guarded against, and not variations in the court's interpretation of the law.

She thought that the prohibition should also extend to a retroactive increase in the penalty, and she could not therefore agree to the deletion proposed by the United Kingdom.

Like the amendments proposed by the delegations of India and Egypt, the United States text omitted the original paragraph 2. The French amendment suggested a merger of the two paragraphs, using the words of the Declaration. In that amendment the significant words were "under national or international law". She would not object to the idea introduced by the French amendment provided that its statement began, as in the United States amendment, "No State shall enact..."

Mrs. MEHTA (India) said that her delegation had proposed the deletion of paragraph 2 for the same reasons as the Egyptian representative. It was for the victors in a war to deal with the question of war criminals, should the need arise, and it was not, therefore, necessary to refer to it in the covenant. She stressed the fact that she had no sympathy with war criminals, but she felt that the paragraph was too vague to be useful. The wording proposed by the French delegation had already been accepted in the Declaration and she preferred it to any other. She supported the French amendment.

Mr. GARCIA BAUER (Guatemala) said that article 14, which dealt with various provisions of penal law, was very important because it embodied the principle of security.

/Considering

Considering the various amendments proposed, he said that the United States amendment was intended to prevent the enacting of retroactive laws by States. It led to the same result as the original paragraph 1 but was worded with reference to the duty of the State rather than to the right of the individual man. Since the Commission was dealing with human rights, he preferred the original text.

The first paragraph of the United Kingdom amendment attempted to leave open the possibility of increasing the penalty for an offence. The principle enunciated in the second part of paragraph 1 of the Drafting Committee's text was, however, traditional and fundamental in penal law and he thought it should be retained.

He agreed with the Indian and Egyptian amendments for the deletion of paragraph 2, on the grounds that that paragraph was too vague to be included in the covenant, which should be a precise instrument. In any case measures would be taken for the prevention of war crimes in the light of the experience gained and the precedent established by the Nürnberg trials.

The French amendment also implied the deletion of paragraph 2. It added the word "penal" before "offence", which was merely a question of language. It also proposed the addition of the words "under national or international law". It was necessary in that connexion to clarify the concept of international law. International law, if accepted by a State, became national law. Moreover, it might be accepted by a large body of States, such as the United Nations, or by a small group of two or three States. He felt that the intention in referring to international law should be more clearly expressed.

Mr. INGLES (Philippines) supported paragraph 1, but could not support paragraph 2 because it established an exception to paragraph 1. "General principles of law" only comprised questions of municipal jurisprudence, and not of international law. For example, polygamy was not criminal in a universal sense, because it was recognized by certain States. He thought there should be no exception to the retroactivity of penal laws, so that in the case cited, the State which wished to penalize polygamy could only punish those who committed polygamy in the future.

/If paragraph 2

If paragraph 2 were to cover war crimes, it would widen the scope of the present covenant, and for the reasons already stated by the representative of Egypt, he would support its deletion. For the same reasons, he could not support the French amendment.

With regard to the wording of paragraph 1, he supported the United States draft of that paragraph. Since penalties could only be provided by law, and States alone could promulgate laws, the United States amendment was a more exact expression of the principle which was to be embodied in the covenant. He pointed out that the Commission was not drafting an international penal code, but rather a covenant on human rights, the object of which should be to protect the individual against the State.

Mr. MORA (Uruguay) remarked that the United States amendment and the French amendment to paragraph 1 had much in common, and that it might be possible to find a common formula. The French amendment had the merit of being a reproduction of paragraph 2 of article 11 of the Universal Declaration of Human Rights, but the United States amendment was more stringent, and therefore fulfilled the basic aims of the covenant, the object of which was to establish clearly defined obligations, deriving from the principles embodied in the Declaration.

He proposed that in the second line of the United States amendment, the words "under national or international law" should be added after the words "penal offence". He agreed to the deletion of paragraph 2. He shared the opinion of the representatives of France and Egypt that the principles established at Nürnberg should be embodied in a new international covenant.

Mr. MALIK (Lebanon) also agreed to the deletion of paragraph 2. He favoured the French text of paragraph 1, but would support the United States text if it were altered in accordance with the Uruguayan suggestion.

Mr. SAGUES (Chile) stated, with regard to paragraph 1, that he could not object to the principle of non-retroactivity in penal law, nor to the principle of not increasing the penalty, but he felt that the paragraph overlooked the case in which, after offence had been committed, the law dictated a lighter penalty for that offence. In that case, the lighter penalty should be applied to the accused, and an effort should be made to incorporate that principle in the text.

/He felt

He felt that paragraph 2, if it were retained, should refer clearly to war criminals. He therefore suggested that the words "any war criminal" should be substituted for "any person", and that the word "international" should be inserted before "law". In that form, he would have no objection to the maintenance of paragraph 2.

Miss BOWIE (United Kingdom) stated, with regard to the United States amendment, that all the articles accepted so far were basic statements of the rights of the individual, and not of the duty of the State. She therefore preferred the original text of the Drafting Committee. She pointed out that the penal law of the United Kingdom tended to emphasize re-education rather than punishment.

Mr. PAVLOV (Union of Soviet Socialist Republics) remarked that paragraph 1 of the Drafting Committee's text was humane in purpose, and that humanity and justice would suffer if the principle of non-retroactivity was not recognized. That principle was recognized in the penal codes of most countries, and the covenant would make impossible such laws as those with regard to dangerous thoughts, which were enacted in Japan.

Paragraph 2 justified the exception of war criminals. The main defence of the German war criminals had been that their crimes were not crimes under German law. In that connexion it was most important that there should be nothing which might be of service to fascism. He could not therefore agree to the deletion of paragraph 2. If it were retained, however, the word "democratic" should be substituted for "civilized", for as it stood it contained a distinction between civilized and non-civilized peoples, which could not be justified.

The Commission should bear in mind the principles contained in paragraph 2 of article 11 of the Universal Declaration of Human Rights, which forty-two nations had supported at the General Assembly. He suggested that, if some countries could not accept paragraph 2 of article 14, paragraph 2 of article 11 should be substituted for it. In reply to the representative of Guatemala, he pointed out that the Nürnberg Judgment had become a part of international law.

Finally, with regard to the United States amendment, he pointed out that it did not, in his opinion, contain anything which was not in the original text of the Drafting Committee, and there was therefore no reason to accept it.

Mr. CASSIN (France) regretted that he was unable to accept the United States amendment, even in its latest form, as it afforded protection from retroactive punishment of crime only on the level of law and was consequently too narrow; a similar protection was necessary against action of judges and administrators.

With respect to the suggestion of the Chilean representative, he remarked that while France too had a law under which any changes of penalty favourable to the criminal applied retroactively, that law did not operate too satisfactorily and he did not think, therefore, that that principle should be recognized in the draft covenant.

He was equally unable to accept the United Kingdom amendment, although he recognized that it might be fully consonant with the system prevailing in the United Kingdom. That country might, perhaps, make a reservation on that particular point. France, which during the war had seen men executed for crimes which, when committed, had been considered relatively minor, could not accept retroactive increases of penalty.

He called attention to the fact that the reference in the French amendment to international law applied to the future as well as to the past. With respect to the future, it constituted an additional guarantee of security to the individual, whom it protected from possible arbitrary action even by an international organization. With respect to the past, there was no intention to disavow the principles proclaimed at Nürnberg or the legality of the action taken by the Nürnberg Tribunal. The omission of paragraph 2 of the original text should not therefore be interpreted as casting the least shadow of doubt on that legality.

The CHAIRMAN, speaking as the United States representative, stated that article 14 dealt exclusively with penal laws, which were passed by States. The phrasing of the United States amendment, which spoke of States, was therefore in no way inconsistent. While it differed stylistically from the text of other articles, style could, on that particular occasion, be sacrificed to accuracy. She pointed out that the term "penal offence", which replaced the term "offence" used in the original text, was more accurate. The latter would also cover breaches of civil obligations, with which article 14 was not concerned.

She then put to the vote the United States amendment, as amended by the Uruguayan representative, as being furthest removed from the original text.

The United States amendment was rejected by 9 votes to 4, with one abstention.

The CHAIRMAN stated that the two sentences of the French amendment would be put to the vote separately, in order to take into account the United Kingdom amendment to delete the second sentence.

At the request of the Guatamalan representative, the first sentence would be put to the vote in parts, so that the phrase "under national or international law" might be voted upon separately.

Mr. INGLES (Philippines) wished to explain why he would vote against that phrase. He did not think that international law formed the subject of the covenant; it was covered by other conventions and the principles which had emerged from the Nürnberg trials were already being dealt with by the International Law Commission and would shortly become part of international law. The draft covenant of human rights was intended to implement only a part of the principles contained in the Universal Declaration of Human Rights, and should not duplicate the subject matter contained in other conventions.

The part of the first sentence of the French amendment, reading "No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence," was adopted unanimously.

The phrase, "under national or international law," was adopted by 10 votes to 3, with 1 abstention.

The remainder of the first sentence, reading "at the time when it was committed," was adopted by 12 votes to none, with 2 abstentions.

The first sentence of the French amendment was adopted as a whole by 12 votes to none, with 2 abstentions.

The second sentence of the French amendment was adopted by 13 votes to one, with no abstentions.

/Miss BOWIE

Miss BOWIE (United Kingdom) explained that her delegation had opposed the second sentence of the French amendment on purely humanitarian grounds and because it wished the United Kingdom to be free to apply progressive humanitarian measures in the penal field. She had abstained from voting on the phrase "under national or international law" because she would have preferred to retain paragraph 2 of the original text.

After a brief discussion in which Mr. CASSIN (France) explained that his amendment had been intended as a total substitution for both paragraphs of the original text of article 14, the USSR and Chilean representatives withdrew their amendments to paragraph 2 of the original text.

The French amendment to article 14 was adopted as a whole by 11 votes to none, with 3 abstentions.

The meeting rose at 1 p.m.