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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, A/C.3/L.685/Rev.1, A/C.3/L.686-689) (continued)

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

- Mrs. DE ARENAS (Guatemala) said that she could not support article 9 of the draft Covenant on Civil and Political Rights (E/2573, annex I B) as a whole, although she fully approved of the intentions underlying it. Some of its provisions were contrary to the principles of the Constitution of Guatemala; the same was true of some of the proposed amendments.
- Paragraph 1 was quite satisfactory as it stood and she would not support the amendment submitted by the United Kingdom (A/C.3/L.686).
- Paragraph 2 was not fully in conformity with the provisions of the Constitution of Guatemala, article 64 of which laid down that anyone who was arrested must be interrogated within forty-eight hours and be informed of the reasons for his arrest at the time of the interrogation. She was therefore unable to support the amendment proposed by Israel (A/C.3/L.689), the Spanish text of which included the words "sin demora". For the same reason she would abstain from voting on the first sentence of the Costa Rican amendment (A/C.3/L.685/Rev.1) and on paragraphs 3 and 4, of the basic text.
- She would vote in favour of the second sentence of the Costa Rican amendment, which was on the same lines as article 86 of the Constitution of Guatemala, where the recourse known as "de exhibición personal" was available to all without reserve; as far as she was aware, it had not given rise to abuses or difficulties of any kind.
- The Guatemalan delegation would vote in favour of the Netherlands amendment (A/C.3/L.687) and the Liberian amendment (A/C.3/L.688). In addition, she suggested that the phrase "in accordance with the legislation of the country concerned" should be added to paragraph 5.
- In conclusion, she asked that the article should be put to the vote paragraph by paragraph.

7. Mr. ELMANDJRA (Morocco) said that his delegation supported article 9 as it stood. Amendments to the draft Covenants were useful to the extent that their discussion led to a clarification of the aim of the various provisions. The fact remained that in most cases the Committee finally reverted to the text drafted by the Commission on Human Rights. Article 9, in particular, had been adopted by the Commission—which, it should be remembered, was composed of members from the same geographical areas as the Third Committee and represented all the various types of legal systems—without any dissenting vote. In view of the fact that article 9 had been under consideration for the last six meetings, that most speakers had supported the original text and that those representatives who had not spoken were not likely to oppose it, it must be concluded that a lengthy debate at the current stage would serve no useful purpose. The Moroccan delegation therefore associated itself with those speakers who had called on the sponsors of the amendments to withdraw their proposals, in order to smooth the way for a vote, the outcome of which was beyond doubt and which would be the means of paying a deserved tribute to the Commission on Human Rights for its valuable work.

8. U AUNG THA GYAW (Burma) hoped that the text drafted by the Commission on Human Rights (E/2573, annex I B), which he considered to be a model of clarity and conciseness would be adopted without amendment. Paragraph 1 in particular seemed to him completely satisfactory, since the word "arbitrary" had a specific meaning and implication which went substantially beyond those of the word "unlawful". He would therefore vote against the United Kingdom amendment (A/C.3/L.686).

9. The Netherlands amendment (A/C.3/L.687) was unnecessary, since the provision that it sought to include was already implied in the Commission's text of the article.

10. The Liberian amendment (A/C.3/L.688) related to a procedural question rather than to the actual substance of a right. It would be better to leave such details to be settled in accordance with national legislation. The same argument applied to the Costa Rican amendment (A/C.3/L.685/Rev.1). It was the responsibility of national legislations to provide the necessary measures to safeguard the rights embodied in article 9. In any case, paragraph 4 dealt with the rights of persons illegally arrested or detained; in the context of that article there was no reason to extend those rights to other persons.

11. Mrs. LEFLEROVA (Czechoslovakia) said that the only amendments which raised questions of principle were those that the United Kingdom wished to make to paragraph 1 (A/C.3/L.686) and Israel wished to make to paragraph 2 (A/C.3/L.689).

12. As had already been pointed out, the United Kingdom amendment contained two proposals of a different kind. The Czechoslovak delegation could not agree to the deletion of the second sentence of paragraph 1, which related to violations of the right to liberty and security of person committed by the executive power or the police that were not in accordance with any judicial procedure. If that sentence was deleted there would no longer be any prohibition of violations of that nature.

13. Nor did it seem appropriate or necessary to add the phrase proposed by the United Kingdom to the third sentence of paragraph 1. It had been maintained that the laws themselves could be contrary to the right to liberty and security of person. That fear seemed groundless in view of the obvious fact that the provisions of each article were complemented by the general provisions of article 2, which required States parties to the Covenant to safeguard the civil and political rights referred to in the Covenant. The Czechoslovak delegation would therefore vote against the United Kingdom amendment to paragraph 1. It would also vote against the Israel amendment to paragraph 2, which would obviously have the effect of weakening the text drafted by the Commission on Human Rights.

14. The remaining amendments concerned purely formal changes. Since they did not provide any significant improvement, the Czechoslovak delegation would not vote in their favour and would stand by the original text.

15. The Marquis DE VALDEIGLESIAS (Spain) fully approved of the spirit of article 9, but bearing in mind the exceptional importance of the right to liberty and security of person, he stressed the necessity of working out a draft which would provide the strongest guarantees of that right; he wished therefore to state his views on the different points which had aroused discussion.

16. The use of the word "arbitrary" had led to a long debate, in which many arguments had been adduced. He himself considered that, in general the word "arbitrary" was used in reference to something that obeyed no fixed law and the action or effects of which were consequently to be mistrusted. The word "law" was therefore opposite in meaning to the word "arbitrary", and the law and its implementation were the only conceivable guarantees against the dangers of arbitrary action.

17. It would therefore seem that the second and third sentences of paragraph 1 expressed basically the same idea in different terms and that the retention of both was a compromise solution, the drafters having, as it were, been unwilling to choose between the two ways of expressing the idea. If that were so, there would be no great harm; repetition of an idea in such an important article could at a pinch be accepted and the United Kingdom representative had said that he was willing in that case to withdraw his amendment. If, however, the second sentence were given a different meaning, as had been done by most of the speakers, the concern of the United Kingdom delegation was more than justified and was fully shared by the Spanish delegation. If the law specified the circumstances and conditions in which citizens could be deprived of their liberty, it was possible for them to determine their behaviour in full knowledge of the facts. If, however,

the word "arbitrary" was used because the need for two distinct criteria was recognized—that of positive law and that of natural law—there was reason to fear that the additional provision, which could be interpreted in many different ways, might actually reduce the guarantees enjoyed by citizens by weakening the force of the only laws of which they were certain.

18. The idea of comparing positive law with a higher unwritten law had no place in a legal instrument. To judge the dangers of such an assertion, it was only necessary to recall that before the Second World War, Hitler had invoked such a law to punish the so-called attacks upon the German soul or spirit. He could thus maintain that the punishment imposed was not arbitrary; he would have found it difficult to claim that it was in keeping with the law. Article 9 should abide by the ancient principle "nullum crimen nulla pena sine lege", which the representative of Portugal had appropriately recalled, and should establish no other criterion than that of illegality. He would support the United Kingdom amendment (A/C.3/L.686).

19. The Netherlands amendment (A/C.3/L.687) expressed in one sentence the idea that anyone who was arrested should be informed of the reasons for his arrest and of any charges against him, in a language which he understood. He saw no objection to voting in favour of that amendment.

20. The Liberian amendment (A/C.3/L.688) expressed the same idea; the person detained should have a thorough understanding of the charges. He could accept that text, too, although it made article 9 rather cumbersome.

21. The Israel representative had been right in pointing out that the draft Covenant was concerned first and foremost with human rights, and only as a consequence with the obligations of States. The Spanish delegation could easily accept the Israel amendment (A/C.3/L.689) to paragraph 2 as the word "reasons" used in it included the charges mentioned separately in the draft article; he would, however, prefer the word "reasons" to be replaced by the word "grounds", as suggested by the representative of Peru.

22. With regard to the Costa Rican amendment (A/C.3/L.685/Rev.1), he too thought it necessary to specify that the competent court was a court "of justice" as opposed to an "administrative" court. He could not, however, support the second sentence of the proposed text, which seemed to him likely to lead to abuses.

23. Mr. CUNHA MELLO (Brazil) supported the text of article 9 as drafted by the Commission on Human Rights (E/2573, annex I B). He also supported the Costa Rican amendment (A/C.3/L.685/Rev.1), which included a provision similar to that which appeared in article 654 of the Brazilian code of penal procedure. He would vote against the United Kingdom amendment (A/C.3/L.686) to paragraph 1; the word "arbitrary", which the Committee had already accepted in article 6, had a very clearly defined meaning in Brazilian law, where it was used to describe abuses committed by the State in the exercise of its prerogatives. He would abstain in the vote on the United Kingdom amendment to paragraph 5. It would perhaps be preferable if the amendments proposed by the delegations of Israel (A/C.3/L.689) and Liberia (A/C.3/L.688) were not adopted; he would abstain from voting

on them, too. He would vote in favour of the Netherlands amendment (A/C.3/L.687) since it embodied a useful clarification. If, however, the majority of the members of the Committee preferred to adopt the original text of article 9, his delegation would gladly support that decision.

24. Mr. ALVARADO (Venezuela), referring to the United Kingdom amendment (A/C.3/L.686) to paragraph 5, observed that deprivation of liberty could take place in different ways: Venezuelan legislation provided for various forms of deprivation or limitation of liberty such as detention in a penitentiary or prison, internment in a penal colony and forced residence. Deprivation of liberty should be thought of as a general idea, and the various forms which it took as different ways of putting it into practice. There was thus a confusion between two concepts in paragraph 5 of article 9 which did not exist in paragraph 4. The United Kingdom amendment was most useful and he would vote in favour of it.

25. Turning to paragraph 1, he observed that if an arbitrary act meant—as defined in the dictionary of the Spanish Academy—an act contrary to justice, reason or law and inspired solely by self-will or caprice, such a definition would include the idea of illegality. It might therefore be argued that it was the third sentence of paragraph 1 that should be deleted rather than the second. If, however, it was remembered that the second sentence dealt with two special cases, arrest and detention, while the third sentence referred to deprivation of liberty in general, it would appear that the article forbade all forms of deprivation of liberty which were illegal but prohibited arbitrary arrest and detention only. That would lead to absurd conclusions: it could, for example, be argued that article 9 authorized arbitrary forced residence. Clearly, such an interpretation must be ruled out and there was the same confusion as in paragraph 5. Yet covenants were legal instruments which should be clear and precise and should be based on ideas which were neither too broad nor too narrow. The word "arbitrary" was obviously too broad: any case of detention could be described as arbitrary on the grounds that it might be held for one reason or another to be contrary to justice or to reason; conversely, by making use of one of the numerous ways in which that word could be interpreted, authority could be found in the name of justice and reason for actual attacks on the liberty of the person. Consequently, the provision embodied in the second sentence might have the result of cancelling out the first sentence instead of strengthening it. The third sentence, on the other hand, adequately ensured respect for the principle stated at the beginning of the paragraph. The right to liberty was embodied in the constitutions of most countries and every legislative provision which infringed that right in any way was accordingly null and void because it was unconstitutional. The Venezuelan Constitution proclaimed the principle set forth at the beginning of article 9 and went on the state explicitly that no one could be deprived of liberty except in accordance with the law. Bearing all those considerations in mind, he would vote in favour of the first part of the United Kingdom amendment to paragraph 1—the deletion of the second sentence—and against the second part of that amendment—the addition of a phrase. He requested that the two parts of that amendment should be put to the vote separately.

26. He had no serious criticism to make of the amendments to paragraph 2 submitted by the Netherlands (A/C.3/L.687) and Israel (A/C.3/L.689). It had been rightly observed, however, that the changes which they proposed would weaken the original provisions in the sense that the reasons for arrest would not necessarily be given at the actual moment at which the arrest took place but only "as soon thereafter as circumstances permitted" or "promptly". He saw no objection to the Israel amendment to paragraph 3, but he would abstain in the vote, since the initial wording seemed preferable, mainly because it left more latitude to the signatory States where provisional release was concerned. He would also abstain when the amendments proposed by Liberia and the Netherlands were put to the vote, since they dealt with procedural matters which were more within the province of national legislation than of the Covenants.

27. He inquired whether the Costa Rican representative had intentionally replaced the word "arresto" by "prisión" in the text of his amendment (A/C.3/L.685/Rev.1). Generally speaking, it was the expression "any person on behalf and as the representative of the person detained" that had aroused misgivings. It had been asked whether such a provision might not have some consequences where such institutions as the defence of the accused, the public prosecutor's office and authorized judicial representatives were concerned. The sole purpose of the amendment, however, seemed to be to enable the proceedings referred to in paragraph 4 to be taken in cases where the person who had been unlawfully detained was for one reason or another unable to take those proceedings himself. It was simply a matter of bringing the case to the notice of the court in order that it might institute an inquiry. Any difficulty could be overcome if the words were replaced by "acting for the person detained".

28. Mrs. GONZALES (Philippines) said that, generally speaking, she agreed with the drafting of article 9. The three sentences in paragraph 1 were important, both individually and in combination, and she would vote in favour of them. She would abstain in connexion with the addition proposed by the United Kingdom to that paragraph. It was unfortunate that the sponsors of the various amendments to paragraph 2 had not produced a joint text and thus facilitated the Committee's work. Perhaps it was still not too late for them to do so. Furthermore, the representative of Israel might consider meeting the wishes of a number of delegations which had expressed their preference for the original text of paragraph 3. She would ask the Costa Rican representative to replace the expression "court of justice" in his amendment by the words "competent court", which appeared preferable and which had already been adopted by the Committee in the article dealing with the right to life (article 6) (A/3764 and Add.1, para. 121). The objections raised to that amendment might be met either by inserting the word "appropriate" before the word "proceedings" in the first sentence, or by adding the word "authorized" before the word "person" in the second sentence. The United Kingdom amendment (A/C.3/L.686) to paragraph 5 was simply one of form; she would not object to it although she considered the wording of the paragraph to be satisfactory as it stood. She congratulated the sponsors of the various amendments on their work, which had given rise to a fruitful discussion and would enable the

Committee to come to a well-reasoned decision in full knowledge of the facts.

29. Mr. WAHLUND (Sweden) said that in his country the higher administrative bodies possessed judicial powers similar to those of a court. Such for example was the position of the provincial governments, which could order the arrest of certain persons such as alcoholics or the mentally diseased, without reference to a court. The rights of those arrested were, however, safeguarded, since proceedings could be brought before a court of appeal and then before the Supreme Court or before an ordinary administrative tribunal. Other administrative bodies at a lower level had power to order detention in certain instances; in such cases, an appeal could be made to special boards consisting of a few experts and under the chairmanship of either a judge or an eminent lawyer, which were required to consider the cases brought before them from the point of view both of the person concerned and of the community. The boards were completely independent, even where the executive power was concerned, and their decisions were final.

30. He was satisfied that the laws of his country guaranteed respect for all the rights set out in article 9 and more especially in paragraph 4. There were admittedly slight differences between Swedish law and that article, but as it was impossible to draft a text which corresponded exactly to the laws in force in all the States Members of the United Nations, his delegation had not submitted an amendment and would support article 9.

31. Mr. TUAN (China) pointed out that the Constitution of his country ensured to everyone the right to liberty and security of person. Article 9, as drafted by the Commission on Human Rights (E/2573, annex I B), was well-balanced, but his delegation would be prepared to support any amendment designed to improve it. It agreed with the representative of the United Kingdom that the word "arbitrary" was too vague to be used in an instrument which would impose specific obligations on the States parties to it. It would accordingly vote in favour of the United Kingdom amendment to paragraph 1.

Mr. Calamari (Panama), Vice-Chairman took the Chair.

32. Mr. RYAN (Australia) shared the anxiety of the United Kingdom representative in regard to the use of the word "Arbitrary" in article 9. There was nothing in the draft Covenant on Civil and Political Rights to elucidate the meaning and neither the Commission on Human Rights nor the Third Committee had taken a final decision on the subject. His delegation would accordingly be in favour of deleting the second sentence of article 9, paragraph 1, and would support the United Kingdom amendment (A/C.3/L.686). But as an obvious majority of delegations were satisfied with the use of the word "arbitrary" in that sense and since a number of representatives had pointed out that the word was used in the constitution of their country with the meaning suggested by the United Kingdom representative, he would not oppose paragraph 1 even if the United Kingdom amendment was not accepted. His delegation was satisfied with the existing text of paragraphs 2 and 4 as submitted by the Commission on Human Rights (E/2573, annex I B) but had no objection to the amendments proposed by the Netherlands (A/C.3/L.687) and Israel (A/C.3/L.689) to paragraph 2.

With regard to paragraph 3, there were in the existing text two points which had been the cause of some concern to his Government. The first arose from the words "or to release" in paragraph 3, since it was a common practice in Australia that persons arrested on a criminal charge were not released without trial although that was not an invariable procedure. Furthermore, the existing text tended, in his delegation's view, to infer that it would be compulsory to grant bail in all cases. If the Israel amendment were to be adopted, his reservations regarding the two points he had mentioned would disappear and his delegation would therefore support the Israel amendment to paragraph 3. With regard to paragraph 5, the drafting change suggested by the United Kingdom would be supported by his delegation.

33. Sir Samuel HOARE (United Kingdom) pointed out to the representative of Morocco that when article 9 had been adopted by the Commission on Human Rights, two delegations, one of which was the United Kingdom delegation, had abstained from voting. His delegation's opinion on the subject of the word "arbitrary" had not changed. It still took the view, as did many other delegations, that the word as used in the article raised difficulties which had not yet been dispelled and in those circumstances it could not withdraw its proposed amendment to paragraph 1 (A/C.3/L.686).

34. Mr. MANTILLA ORTEGA (Ecuador) said that article 9 was perhaps the most important in the entire Covenant. Paragraph 1 as it stood was acceptable to the Ecuadorian delegation. The word "arbitrary", which implied an unlawful, or unjust, or capricious act, seemed to it indispensable, so that it could not support the part of the United Kingdom amendment to paragraph 1 (A/C.3/L.686) which called for the deletion of the second sentence. If the two parts of the amendment were put to the vote separately, it would vote in favour of the second.

35. The amendments to paragraph 2 submitted by the Netherlands (A/C.3/L.687) and Israel (A/C.3/L.689) weakened the original text. The terms "promptly" and "as soon thereafter as circumstances permit" were less categorical than "at the time of arrest". His delegation would vote for the Liberian amendment (A/C.3/L.688), which introduced a very important element into the article. But it thought that the text would be clearer, more precise, and also more in conformity with the Constitution of Ecuador, if the words "and within a reasonable time" were deleted.

36. The Israel amendment (A/C.3/L.689) would weaken the original text of paragraph 3, which was quite satisfactory. Paragraph 4, as it stood, was also acceptable to his delegation, but it would vote for the Costa Rican amendment (A/C.3/L.685/Rev.1), because that represented a valuable addition to the text submitted by the Commission on Human Rights. Finally, he would support the amendment to paragraph 5 proposed by the United Kingdom (A/C.3/L.686).

37. The CHAIRMAN said that the Committee would vote separately on each paragraph of article 9 and on the amendments to it.

Paragraph 1

38. The CHAIRMAN announced that, in conformity with the request made by the United States representative, separate votes would be taken on the two

parts of the United Kingdom amendment to paragraph 1 (A/C.3/L.686).

The United Kingdom proposal for the deletion of the second sentence of paragraph 1 was rejected by 44 votes to 11, with 14 abstentions.

The second part of the United Kingdom amendment to paragraph 1 was rejected by 40 votes to 17, with 14 abstentions.

Paragraph 1 was adopted by 64 votes to none, with 5 abstentions.

Paragraph 2

39. Mr. YAPOU (Israel) said that his delegation would withdraw the amendment which it had proposed to paragraph 2 (A/C.3/L.689).

40. The CHAIRMAN called on the Committee to vote on the Netherlands amendment (A/C.3/L.687).

41. In reply to a question from Mr. MOROZOV (Union of Soviet Socialist Republics), Mr. ISHIBASHI (Japan) explained that his delegation would not insist that the phrase "in a language which he understands" should be put to the vote separately, it being understood that the language in question would not necessarily be the mother tongue of the persons concerned.

The Netherlands amendment was rejected by 30 votes to 16, with 23 abstentions.

The Liberian amendment (A/C.3/L.688) was rejected by 32 votes to 5, with 31 abstentions.

Paragraph 2 was adopted by 68 votes to none, with 4 abstentions.

Paragraph 3

The Israel amendment to paragraph 3 (A/C.3/L.689) was rejected by 49 votes to 4, with 19 abstentions.

Paragraph 3 was adopted by 67 votes to 1, with 4 abstentions.

Paragraph 4

42. At the request of Mr. RIBEIRO DA CUNHA (Portugal), the CHAIRMAN put the first sentence of the Costa Rican amendment (A/C.3/L.685/Rev.1) to the vote separately.

The first sentence of the Costa Rican amendment was rejected by 35 votes to 22, with 15 abstentions.

The second sentence of the Costa Rican amendment was rejected by 38 votes to 19, with 14 abstentions.

Paragraph 4 was adopted by 67 votes to none, with 4 abstentions.

Paragraph 5

The United Kingdom amendment to paragraph 5 (A/C.3/L.686) was adopted by 30 votes to 27, with 14 abstentions.

Paragraph 5, as amended, was adopted by 67 votes to none, with 5 abstentions.

43. The CHAIRMAN put to the vote article 9 as a whole, in its amended form.

A vote was taken by roll-call.

The Byelorussian Soviet Socialist Republic, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Byelorussian Soviet Socialist Republic, Cambodia, Canada, Ceylon, Chile, China, Colombia, Costa Rica, Cuba, Czechoslovakia, Denmark, Dominican Republic, Ecuador, El Salvador, Ethiopia, Federation of Malaya, Finland, France, Ghana, Greece, Guatemala, Haiti, Hungary, India, Indonesia, Iran, Iraq, Ireland, Italy, Japan, Jordan, Lebanon, Liberia, Libya, Luxembourg, Mexico, Morocco, Netherlands, New Zealand, Norway, Pakistan, Peru, Philippines, Poland, Portugal, Romania, Saudi Arabia, Spain, Sweden, Thailand, Tunisia, Turkey, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, United States of America, Uruguay, Venezuela, Yemen, Yugoslavia, Afghanistan, Albania, Argentina, Australia, Austria, Belgium, Bolivia, Brazil, Bulgaria, Burma.

Abstaining: Israel, Union of South Africa, United Kingdom of Great Britain and Northern Ireland.

Article 9 as a whole, as amended, was adopted by 70 votes to none, with 3 abstentions.

The meeting rose at 1.5 p.m.