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Chairman: Mr. Salvador P. LOPEZ (Philippines).

*In the absence of the Chairman, Miss Imru (Ethiopia),
Vice-Chairman, took the Chair.*

AGENDA ITEM 36

**Draft Convention on Freedom of Information (A/3868 and
Add.1-8, A/4173 and Corr.1 and Add.1-3, A/4401, A/4790,
A/AC.42/7 and Corr.1, A/C.3/L.843, A/C.3/L.969) (con-
tinued)**

ARTICLE 4 (continued)

1. Mr. ZULOAGA (Venezuela) said that he shared the Uruguayan representative's views (1127th meeting) on the draft Convention before the Committee. He would have preferred to begin by drawing up a declaration on freedom of information. The draft Convention under consideration raised certain difficulties to which other delegations had already referred. In addition, like any other international instrument, it implied a loss of sovereignty on the part of the States acceding to it. Such States would be placed at a disadvantage in relation to non-signatory countries by accepting obligations which the latter would not be compelled to respect.

2. Some representatives had laid great stress on the fact that article 4 related only to national law and that international problems were covered by the Convention on the International Right of Correction (General Assembly resolution 630 (VII)). That was an artificial distinction and entirely at variance with the facts, for any person or undertaking, settled in a foreign country which ratified the Convention, would enjoy the right of reply provided for in article 4.

3. The Indian and Saudi Arabian representatives' arguments had not convinced his delegation, which still felt that article 4 as originally worded was utterly meaningless. The power to establish any right or principle whatsoever was of the very essence of national sovereignty; hence to proclaim it in an instrument served no useful purpose. If the Committee heeded those delegations which did not want a positive article, the appropriate course was simply to delete article 4. If it wished the Convention to embody the principle in question it should work out a valid and meaningful text; it could use that of the six-Power

amendment (A/C.3/L.969) which happened to be available.

4. In many countries the right of reply and correction was embodied in law or custom and its free exercise even supplied the Press with extremely interesting subject-matter. He was thinking in particular of the many "letters to the editor" which appeared in United Kingdom newspapers and which frequently made fascinating reading. If the Committee adopted the wording proposed by the six Powers, countries whose laws made no provision for the right in question would have to remedy that deficiency.

5. Although the amendment as now worded was more satisfactory than that proposed orally by the Peruvian representative (1127th meeting), it could probably be improved. Instead of saying "freedom of information carries with it the right of reply", it might say: "the right of reply is an important element of the freedom of information". In order to satisfy those delegations which did not want too categorical an article, the latter part of the article, beginning with the words "and shall take", could probably be deleted. Article 4 would then comprise a statement of principle which would perhaps be more appropriate for inclusion in a preamble but which, even in the body of the Convention, would be more satisfactory than article 4 as it stood.

6. Whether or not his suggestions were accepted, his delegation would vote in favour of the six-Power amendment. If that amendment was not adopted it would vote against the original article, for it could not support a provision which it considered completely meaningless.

7. Mr. TAN (Indonesia) noted that the sponsors of the six-Power amendment to article 4 had redrafted their proposal in a conciliatory spirit. However, he did not think that text would satisfy all those who wished to leave the State as little scope as possible for interference with the freedom of information.

8. The original article 4 gave the Press, in particular, fair warning: if the Press abused its rights, the State might establish a right of reply or a similar corrective remedy. Therefore the value of that provision should not be underestimated. By adopting it, the Committee would be giving its moral support to measures which might become necessary on certain occasions in certain countries. That moral support and that warning to, *inter alia*, the Press should be sufficient if the organs of information had a sense of responsibility. If they lacked it, States were at liberty to adopt the necessary measures. It would be a mistake to go further and encourage the many individuals who liked seeing their names in print to swamp the Press with "replies" and demand their publication on the pretext of self-defence. His delegation considered that Governments should not be forced to establish a right which would cause needless annoyance, *inter alia*, to the Press in all countries.

9. His delegation felt that the text of the article before the Committee was open to improvement. To that end, the first part of the six-Power amendment might perhaps be retained and the latter part, beginning with the words "and shall take", might be replaced by the words "and may establish a right of reply or a similar corrective remedy". That would give article 4 additional strength without compelling States to take measures which in some countries might be neither necessary nor advisable.

10. Mr. SAHNI (India) expressed surprise at the varied interpretations placed on his views concerning article 4. That was probably due to the fact that his position did not coincide with that of any other delegation.

11. He accepted the right of reply in principle. Indeed, he doubted whether there was a single newspaper editor who did not jealously protect that fundamental right of his readers or a single Government unwilling to guarantee it. He was not satisfied with article 4 as it stood but he himself had found no other wording he liked better.

12. In his view the six-Power amendment suffered from the same shortcomings as the Peruvian representative's oral proposal. He did not see how a State could make the Press apply a law binding it to recognize the right of reply. The Indian Government, for its part, would never adopt such a law, for that would constitute interference with freedom of information, which was a fundamental right in India as it undoubtedly was in many other countries.

13. To adopt the text proposed by the six Powers would be playing into the hands of any tyrannical Government that might wish to place wrongful limitations on the freedom of the Press. India's information media, for their part, would not tolerate the enactment of any such law by the Government. However, they had voluntarily undertaken to observe a code of ethics which recognized that every individual had the right of reply and correction and which made it a serious breach of professional conduct to circulate incorrect information or to fail to publish a reply.

14. The six-Power amendment conflicted with article 3, which the Committee had already adopted (1126th meeting) and which recognized that nothing in the Convention might be interpreted as affecting rights already recognized by any State, such as, for example, the rights and freedoms granted to the Press. The proposed article 4, however, obliged States to restrict those rights and freedoms. Hence, if that proposal was embodied in the Convention as well as article 3, Governments would have to contravene the provisions of one article or the other.

15. He appreciated the efforts which the sponsors of the amendment and other delegations had made to find an acceptable wording. To help them in their task, he would suggest that the first phrase of the amendment should be altered, either as proposed by the Venezuelan representative or merely by replacing the words "carries with it" by the word "includes". In the second phrase, it would be preferable to use some form of words less categorical than "shall take"; failing that, the word "measures", which was too legal in tone, could be replaced by the word "means", which was equally applicable to laws, codes of ethics and agreements concluded between the Press and the Government. Again, if the sponsors of the amendment wished to retain the mandatory form "shall take", the

word "establish" could be replaced by "safeguard", which was both stronger and less specifically legal. Thus amended, article 4 ought to be more satisfactory and more effective than the original text.

Mr. López (Philippines) took the Chair.

16. Mr. MUNGUIA NOVOA (Nicaragua) said that, to his regret, he could not support the six-Power amendment in its present wording since, because of faulty drafting, it would not effectively protect the right in question.

17. In the first place, he would prefer the words "derecho de respuesta" in the Spanish text to be replaced by "derecho de rectificación", as being closer to the aim of article 4, which in his opinion was to protect the individual and the State against any information, true or false, which might be prejudicial to their interests.

18. In the second place, it did not seem logical to speak of "establishing" a right immediately after recognizing that freedom of information carried that right with it. He therefore suggested that the word "establish" should be replaced by the word "protect".

19. Last, like the Indian representative, he would prefer the word "means" to the word "measures".

20. Although neither the present wording of article 4 nor the six-Power amendment was satisfactory, his delegation felt it was necessary to ensure—as had been done in Nicaragua—that the State would guarantee to the individual the right of reply, and also to protect small countries against the distorted reports released by the great international news agencies.

21. Mr. COLOMA (Ecuador) felt that article 4 in its present wording was of no value. He would be happy to support the six-Power amendment if the authors agreed to replace the word "establish" by the word "guarantee".

22. Mr. BOUQUIN (France) was perturbed to see that a very simple matter was giving rise to increasing confusion. A number of delegations had apparently failed to understand the purpose of the six-Power amendment, which was to state the right of reply in stronger terms. Some feared that the amendment would open the door to state interference, whereas it was on the contrary intended to protect an individual right. Others had mentioned the danger of abuses of the right of reply which would compel newspapers to devote too much space to replies; it should not be forgotten, however, that in Latin American countries and in some other countries as well, the right of reply had been guaranteed by law for a long time and had been exercised without any such drawbacks.

23. The Nicaraguan representative had suggested amending the Spanish equivalent of "right of reply". He himself urged that that expression, which applied to an individual right, should in any event be maintained in the French text in order to avoid any confusion with the "right of correction", that being a right of the public authorities. The use of the word "correction", moreover, might lead to a confusion with the Convention on the International Right of Correction, which dealt with the right of correction of States.

24. Without wishing to imply that French legislation on the matter was any more perfect than that of other countries, he nevertheless would recall that it clearly defined the right of reply as a right recognized to the individual, provided that he was involved. Hence the

right of reply could not be confused with the right of any reader to write to a newspaper in order to comment on the views expressed in an article. Furthermore, the right should not be confused with protection against slander, false reports or defamation of character, which were offences on the part of the Press.

25. The six-Power amendment was a definite improvement on the text proposed orally by the Peruvian representative and he was glad to support it.

26. He also favoured, on the whole, the Indian representative's suggestions. He nevertheless preferred the word "measures" to the word "means", as being more precise and yet not having a legal meaning because it was not qualified in any way. He would have no objection to the substitution of "guarantee" or "protect" for "establish".

27. In conclusion, he said that article 4, forming part as it did of a draft Convention and not of a draft declaration, should not merely affirm the right of reply in principle, but should seek to apply it in a manner flexible enough to satisfy the majority. The six-Power amendment fulfilled those conditions admirably.

28. Mr. MUNGUA NOVOA (Nicaragua) said he was surprised by the distinction drawn by the French representative between the right of reply and the right of correction. In any event, it was clear from the preamble of the draft Convention^{1/}—which, like the preamble of any legal text, was of special importance—and from articles 5 (sub-paragraphs (d) and (e)) and 12 (A/AC.42/7 and Corr.1), that the text applied not only to the rights of individuals but also to those of States, since one of its aims was the maintenance of international peace and security. Article 4 should therefore provide for the right of correction both by States and by individuals.

29. Where the Spanish text was concerned, the expression "derecho de réplica" would be a perfect equivalent of "right of reply".

30. He also felt that the word "guarantee" would be a better replacement for the word "establish" than the word "protect".

31. Mr. BAROODY (Saudi Arabia) remarked that the Press seemed to be the only information medium mentioned during the debate, whereas there were others, particularly radio and television. In the case of those two information media, the exercise of the right of reply gave rise to special practical problems. While it was relatively easy to have a written correction printed in a newspaper, it was much more difficult for an individual to use his right of reply via television, for example, since that would call for a rearrangement of programmes scheduled far in advance and would also involve the question of time, that being a particularly important and rigorous factor where that medium of information was concerned.

32. He would therefore like to know the views of the sponsors of the six-Power amendment on that question and its implications, in particular as regards the domestic legislation of States. His delegation would

be guided by their explanations in voting on the proposed text.

33. Mr. DIAZ CASANUEVA (Chile) stated that the six-Power amendment was an improvement on article 4 in that it was clearer and more precise and was flexible enough to receive very wide support. It had the further advantage of linking together freedom of information and the right of reply, which were twin aspects of the same problem. By making it obligatory upon States to take appropriate measures to guarantee the exercise of that right, the sponsors had taken a realistic approach, for it was useless to grant to the individual the right of reply if he was not at the same time given the legal means of exercising it.

34. In a world where information media were so powerful and did so much to mould public opinion, it was more necessary than ever to enable the individual to defend successfully his dignity and reputation. In practice, the right of reply was often reserved for organizations—political parties, monopolies and religious groups—which had powerful means of defence, and the individual, weak and alone, was unable to make himself heard. It was therefore necessary to ensure that the right of reply—which in many respects resembled the right of petition—should be real and not mythical.

35. Some delegations had held that there was a conflict between article 3 and article 4 in that the right of reply implied a limitation of the very freedoms which, according to article 3, should not be limited by the provisions of the Convention. In his view, the right of reply restricted no other right, since it did not imply prior censorship in any form. For instance, it did not impair the right of newspapers to publish whatever they pleased, since it did not arise until after publication.

36. It was not clear to him why the Indian representative had asked that the word "measures" should be replaced by "means". In his own opinion, the word "measures", implying as it did the establishment of a system, was more satisfactory than the word "means", which had a physical and limited connotation.

37. Some delegations appeared to think that it would be difficult to apply article 4 because some countries—such as those of Latin America—included the right of reply in their legislation, while others did not. That was not a sound argument, for if a principle was recognized to be valid at the international level, it should also be recognized as valid at the national level.

38. For the benefit of those who feared that the exercise of the right of reply might give rise to abuses, he remarked that the only way to prevent those abuses would be by regulating the right of reply.

39. Speaking on behalf of the delegation of Guatemala as well as of his own, he said that the two delegations were ready to accept any suggestion which would improve the text of the joint amendment, their one concern being to produce the best possible text acceptable to the majority. As regards the first phrase of the amendment, the two delegations were ready to accept Venezuela's proposal. In the second phrase, they had no objection to the word "establish" being replaced by either "guarantee" or "protect".

^{1/} Official Records of the General Assembly, Fourteenth Session, Annexes, agenda item 35, document A/4341, annex.

AGENDA ITEM 38**Draft Declaration on the Right of Asylum (A/C.3/L.970)**

40. Mr. GORIS (Belgium), introducing the joint draft resolution deferring consideration of this agenda item until the seventeenth session of the General Assembly

(A/C.3/L.970), expressed the hope that the text, which had already been agreed to in principle, would be unanimously accepted.

The draft resolution was adopted without a vote.

The meeting rose at 6.10 p.m.