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

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/Rev.1, A/C.3/L.972) (continued)

ARTICLE 4 (concluded)

1. Mr. HENDRANINGRAT (Indonesia) favoured the existing text of article 4 of the draft Convention as being most adaptable to the specific conditions of each country, particularly the developing countries which wanted freedom to evolve their information media. The revised six-Power amendment (A/C.3/L.969/Rev.1) was a rigid text, imposing on Governments an obligation to adopt legal measures which were perhaps not advisable or necessary. The right of reply was marginal to freedom of information and a flexible text was needed. Moreover, the draft Convention was intended to deal with the right of reply in the domestic sphere, and the wording "the Contracting States... shall safeguard the exercise of that right..." made the amendment unacceptable, being tantamount to inviting international intervention in domestic affairs. However, even if the co-sponsors changed the formula to "Each Contracting State...", he would still vote against the amendment because of his objections to the remainder of the text. He would however strongly support the Saudi Arabian sub-amendment (A/C.3/L.972) if such a change was made in its first three words.

2. Mrs. TSIMBOUKIS (Greece) agreed with those delegations which felt that article 4, as drafted, was vague and perhaps superfluous, since a State did not require permission to establish any given right. The right of reply was an essential element of freedom of information and its exercise must therefore be guaranteed in the draft Convention. Newspapers would not be swamped with letters from readers, as had been suggested, because, while everyone would be free to exercise the right, no one would be obliged to do so. The revised six-Power amendment was flexible and precise and she would vote for it.

3. Mr. BELAUNDE (Peru) felt that the position of the sponsors of the revised six-Power amendment had been clearly explained but he would endeavour to clarify certain points further. Where the first part of the text was concerned, a variety

of words might be used to express the idea that freedom of information included or implied the right of reply; the word "corollary" in the Saudi Arabian sub-amendment did not change that idea, but its connotations were mathematical and it should not be used in the present connexion.

4. He believed that the change in the order of the words in the second part of the amendment had been proposed by Saudi Arabia because, in many countries, the right of reply existed by custom and was not embodied in legislation. However, the co-sponsors believed that, where international obligations were involved, the emphasis should be on the word "means"; they had endeavoured in the revised amendment to go some way towards meeting the position of the countries concerned, and he was surprised that the Indian representative had seemed to feel that they were moving in the opposite direction.

5. The substitution of the word "may" for "shall", as proposed by Saudi Arabia, was completely unacceptable; the permissive nature of the original text had been precisely the reason for the introduction of the amendment. Indeed, the second part of the Saudi Arabian sub-amendment contradicted the first part. The representative of Saudi Arabia had referred (1129th meeting) to the practical problems arising from the exercise of the right of reply through media other than the Press; the right could of course be exercised only to the extent possible, but it would be absurd to conclude that there could be no right of reply through those media and that no attempt should be made to safeguard it.

6. The revised six-Power amendment had been criticized by some delegations for being too specific and by others for being too broad and open to conflicting interpretations. He believed that it was very explicit and he regretted that it did not satisfy all States which recognized the right of reply. The Saudi Arabian sub-amendment appeared to be more in the nature of a second amendment to the original text; he felt it would be more logical to vote on the revised six-Power amendment first but he would not press the point.

7. Mr. GHAUS (Afghanistan) expressed the view that the right of reply or to re-establish the truth was not a restriction on the exercise of freedom of information but a corrective remedy necessary to ensure and safeguard the rights of others. He had at first been prepared to accept the original text of article 4 despite its ambiguity, because it appeared to have been chosen deliberately in order to accommodate different schools of thought and to offer some flexibility.

8. However, he welcomed the revised six-Power amendment as an attempt to strengthen the formulation but with the reservation that, in his view, the right of reply was not an element, but a con-

sequence, of freedom of information; he would, therefore, like the word "element" to be replaced by "consequence" or "corollary". The word "shall" was acceptable to his delegation, because the term "appropriate means" placed no limitation on Governments in their choice of the means to be used, whether a code of ethics, legislation, the jurisdiction of the courts or a well-established tradition.

9. Mr. GRISHCHENKO (Ukrainian Soviet Socialist Republic) recalled that he had asked the co-sponsors of the revised six-Power amendment some questions (1130th meeting) which had not really been answered. In asking how the exercise of the right of reply was to be safeguarded in practice, he had had in mind the question how a newspaper could possibly publish a flood of replies to any comment and how a State could technically ensure the exercise of the right. Such confusion and difficulty would ensue that the right of reply would remain effectively in suspense; that might be the case also in countries where the Press was not in the hands of the people and was not really free.

10. His delegation could not, therefore, vote for the second part of the amendment but the Saudi Arabian sub-amendment, which substantially improved the text of both parts of the amendment, might provide the basis for a generally acceptable text.

11. The representative of Chile, in his earlier reply (1131st meeting), had apparently not understood how the right of reply was exercised in the Ukrainian SSR, where an injured party could not only institute legal action but could demand publication of a reply through the same medium as was used for the original statement. However, the Ukrainian delegation's main question had been to ask who could exercise the right of reply; the Uruguayan representative had answered that not only citizens of the country concerned but foreign Governments also could do so. If that were so, any Government could demand the right of reply in the newspapers of another State literally every day. Thus the amendment was directed primarily against the sovereignty of small nations since it would be easier for large countries to interfere in the affairs of small ones than vice versa. Consequently, he could not support the second part of the amendment and would vote in favour of the Saudi Arabian sub-amendment.

12. Mr. ZULOAGA (Venezuela), speaking in exercise of the right of reply, said that the Indian representative appeared to have misinterpreted remarks which he had made previously and had seemed to suggest that he was defending the interests of individuals in Venezuela. That was of course an erroneous interpretation since all members of the Third Committee represented their Governments.

13. As the Peruvian representative had said, it was paradoxical that, while the co-sponsors of the amendment were endeavouring to bring their text closer to the views of the Indian representative, the latter claimed that each change was for the worse. He also agreed with the Peruvian representative that the revised six-Power amendment should be put to the vote before the sub-amendment, the second part of which was almost identical with the corresponding part of the original text.

14. Mr. BOUQUIN (France) recalled that the USSR representative had given a number of reasons (1131st

meeting) to explain why his delegation would not be able to vote for the second part of the revised six-Power amendment and had mentioned the French delegation in the course of his arguments. The USSR representative had said that the concept of the right of reply was itself not clearly defined and had given rise even in the Committee to a range of interpretations varying from the most precise to the widest. He had correctly ascribed the narrow view to the French delegation. However, France was not a sponsor of the amendment and, for the purposes of voting on that amendment, it was the interpretation of its sponsors which should be known. It appeared from the subsequent remarks of the representatives of Chile and Peru that their views coincided closely with those of France. The USSR representative should therefore have no doubt on that score.

15. The supplementary argument which the USSR representative had attempted to draw from article 12 of the draft Convention, referring to the International Court of Justice, was not valid since that article had not yet been adopted and might well undergo substantial revision. In any case, in the event of a dispute being brought before it, the Court would have to take account of all the preparatory work, including the expression of the view of the sponsors of the revised six-Power amendment.

16. The USSR representative had also invoked practical difficulties and had suggested that those wishing to exercise the right of reply might be compelled to pay for the publication of their replies, with the result that a penniless person would in effect be deprived of his right. Where France was concerned, the law specifically stated that publication of the reply should always be free of charge and that a person whose reply was to be published could not secure additional space by offering to pay for it.

17. The USSR representative had further argued that the revised six-Power amendment was juridically faulty and could lead to interference by the State in the affairs of the Press. In that connexion he had recalled the discussion of article 2. The French Government was naturally opposed to any interference with the Press by the public authorities. In the matter of the right of reply, however, there was no question of such interference; it was simply a matter of multiplying the sources of information and giving the reader a more exact knowledge of the facts. There was certainly a danger that freedom of information might be abused: the right of reply offered a very convenient mechanism for remedying such abuse.

18. Mr. SAHNI (India) said that the Venezuelan representative had unfortunately misunderstood his earlier remarks and his reply had thus been somewhat wide of the mark. It was, moreover, not quite fair to say that while the sponsors of the amendment had been moving forward the Indian delegation had been moving backward. His delegation had supported the original text of the six-Power amendment which had used the term "implies"; it was very happy now to support the Saudi Arabian sub-amendment, for the word "corollary" was exactly what was required and was itself strictly definable. As regards the debate on "may" or "shall", he could only say that there were other and equally effective ways of doing what some wished to do by specific legislation.

19. Mr. DIAZ CASANUEVA (Chile), referring to the remarks of the Ukrainian representative, declared that it had never been the intention of the sponsors of the amendment to extend the right of reply to the international sphere, so that it became a possible subject for international dispute or an excuse for interference by foreign Powers in the affairs of small States. Needs at the international level were already covered by the Convention on the International Right of Correction (General Assembly resolution 630 (VII)). The sponsors intended that their text should apply only at the national level. Within a given State, however, the right of reply could be and frequently was used by foreign diplomats. Again, the sponsors had never at any time envisaged payment for the exercise of the right of reply; in the countries with which they were familiar, the right was always granted free of charge. Lastly, they had not conceived of the right of reply as a legal restriction but rather as a moral restraint upon those who might commit abuses of freedom of information.

20. It appeared from the remarks of representatives that the right of reply was recognized in all countries. It was somewhat paradoxical, therefore, that not all delegations were prepared to embody that right in an international convention.

21. Mr. LEIRO (Norway) recalled that his delegation's position of principle on article 4 as on the draft Convention as a whole was, as he had stated earlier (1127th meeting), that the cause of true freedom of information was not served thereby. After hearing the statements of various representatives, he was bound to say that he sympathized with the intention of the revised six-Power amendment but in view of Norway's position of principle he could not vote for it; he would therefore abstain. He would vote against the sub-amendment.

22. Miss KUBOTA (Japan) said that her delegation was still not convinced that a generally acceptable legal conception of the right of reply had yet been reached. In Japan freedom of expression was taken to include the right to correct false information and for that purpose various types of guarantees were provided. There was thus no special provision in Japanese legislation for the right of reply as such. Her delegation therefore considered that the article safeguarding the right of reply should be optional and not mandatory; it would not be able to vote for the revised six-Power amendment and would abstain.

23. The CHAIRMAN invited the Committee to vote on article 4. As there was no formal objection to voting on the Saudi Arabian sub-amendment (A/C.3/L.972) first, he put to the vote point 1 of that sub-amendment.

*At the request of the representative of Nicaragua, a vote was taken by roll-call.*

*Pakistan, having been drawn by lot by the Chairman, was called upon to vote first.*

*In favour:* Pakistan, Poland, Romania, Saudi Arabia, Tunisia, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, Yemen, Afghanistan, Albania, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Cambodia, Ceylon, Cuba, Czechoslovakia, Ethiopia, Guinea, Hungary, India, Indonesia, Iraq, Libya, Mali, Mongolia, Morocco, Nepal, Nigeria.

*Against:* Panama, Peru, Sweden, Turkey, United States of America, Uruguay, Venezuela, Argentina, Belgium, Brazil, Chile, Colombia, Denmark, Finland, France, Ghana, Greece, Guatemala, Iceland, Italy, Netherlands, Nicaragua, Norway.

*Abstaining:* Philippines, Portugal, South Africa, Spain, Thailand, Togo, United Kingdom of Great Britain and Northern Ireland, Yugoslavia, Australia, Canada, China, Congo (Brazzaville), Dominican Republic, Haiti, Iran, Ireland, Israel, Japan, Mexico, New Zealand.

*Point 1 of the Saudi Arabian sub-amendment was adopted by 30 votes to 23, with 20 abstentions.*

24. The CHAIRMAN put to the vote point 2 of the Saudi Arabian sub-amendment.

*At the request of the representative of Peru, a vote was taken by roll-call.*

*The United Arab Republic, having been drawn by lot by the Chairman, was called upon to vote first.*

*In favour:* United Arab Republic, United Kingdom of Great Britain and Northern Ireland, United States of America, Yemen, Albania, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Cambodia, Canada, Ceylon, Cuba, Czechoslovakia, Ethiopia, Hungary, India, Indonesia, Iraq, Ireland, Israel, Libya, Mali, Mongolia, Morocco, Nepal, New Zealand, Poland, Romania, Saudi Arabia, Somalia, South Africa, Tunisia, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics.

*Against:* Uruguay, Venezuela, Argentina, Belgium, Brazil, Chile, Colombia, Denmark, Finland, France, Ghana, Greece, Guatemala, Haiti, Iceland, Italy, Netherlands, Nicaragua, Norway, Panama, Peru, Spain, Sweden, Turkey.

*Abstaining:* Yugoslavia, Afghanistan, Australia, China, Congo (Brazzaville), Dominican Republic, Guinea, Iran, Japan, Liberia, Mexico, Nigeria, Pakistan, Philippines, Portugal, Thailand, Togo.

*Point 2 of the Saudi Arabian sub-amendment was adopted by 34 votes to 24, with 17 abstentions.*

25. Mr. ZULOAGA (Venezuela) requested that, in the voting on the revised six-Power amendment (A/C.3/L.969/Rev.1), as amended by the Saudi Arabian sub-amendment, separate votes should be taken on the first and second parts, the latter beginning with the words "and may establish...".

26. The CHAIRMAN drew attention to rule 130 of the rules of procedure of the General Assembly and noted that the proposed procedure would seem to involve a repetition of the votes just taken.

*The request of the Venezuelan representative was approved by 35 votes to 9, with 25 abstentions.*

*The first part of the revised six-Power amendment, as amended, was adopted by 56 votes to none, with 16 abstentions.*

*The second part of the revised six-Power amendment, as amended, was adopted by 31 votes to 21, with 20 abstentions.*

*Article 4 as a whole, as amended, was adopted by 33 votes to 5, with 37 abstentions.*

27. Lady TWEEDSMUIR (United Kingdom) explained that her voting on article 4 had been guided by the United Kingdom's attitude towards the draft Convention as a whole. It had been a matter of pro-

found disappointment to her Government that a document which it had hoped would affirm and guarantee complete freedom of information throughout the world had in effect developed in the direction of defining limitations to that freedom. It seemed to her delegation that the present article added yet another limitation to those already included in article 2.

28. A second difficulty her delegation had faced was that the right of reply was a concept that had no validity in the law of the United Kingdom. It would accordingly have preferred not to see any reference to it in the draft Convention. In view of the categorical provisions set out in the revised six-Power amendment, her delegation had supported the more permissive Saudi Arabian sub-amendment; it had however been obliged to abstain on the article as a whole.

29. Mrs. AFNAN (Iraq) said that the right of reply was legally recognized in her country; her delegation had nevertheless voted for the less categorical text because it was not entirely certain, despite the various statements made, whether the article was national or international in scope.

30. Mr. HENDRANINGRAT (Indonesia) stated that his delegation had voted for the Saudi Arabian sub-amendment on the understanding that it meant that each Contracting State would be free to take the measures it deemed appropriate under the terms of the article.

31. Mr. NUTTING (Canada) said that the right of reply had existed in his country for many years. His delegation had abstained on article 4 as a whole

because in its view the right of reply was not a matter that should be dealt with in an international convention on freedom of information. He had voted for the second point of the Saudi Arabian sub-amendment because it modified the mandatory nature of the revised six-Power amendment.

32. He shared the views expressed in the Committee regarding the difficulties of interpretation and implementation to which the article would give rise and felt, furthermore, that the incorporation of the right of reply in international law was not only unnecessary but might well open the way to abuse and inhibit the very freedom which the Committee was seeking to preserve.

33. Mr. VAN HEUVEN (United States of America) remarked that his delegation firmly adhered to the principle that every person should have an opportunity of exercising freely his right to freedom of speech and hence of responding to any statements made in his regard. His delegation would have supported a text embodying that principle but unfortunately the original text of article 4 failed completely to define the substance of the right of reply. Nor did the provision just adopted meet his delegation's point of view, since it also gave no indication of the nature of the right of reply and made no mention of the manner in which that right was to be exercised; it did not state that the right must be accorded to all persons on a basis of equality and it contained no firm guarantee against abuse. For those reasons, his delegation had been unable to support the final text.

The meeting rose at 5.55 p.m.