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CONTENTS

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, A/C.3/L.791-794, A/C.3/L.795/Rev.1, A/C.3/L.797-799, A/C.3/L.801, A/C.3/L.803, A/C.3/L.805/Rev.1, A/C.3/L.806-808, A/C.3/L.814) (continued)

ARTICLE 14 OF THE DRAFT COVENANT ON CIVIL AND POLITICAL RIGHTS (E/2573, ANNEX I B)

1. Sir Samuel HOARE (United Kingdom), introducing his delegation's amendments (A/C.3/L.792) to article 14 of the draft Covenant submitted by the Commission on Human Rights (E/2573, annex I B), said that the proposal for the deletion of the first sentence of paragraph 1 was merely a drafting change. He had no desire to dissent from the sentiments of that sentence but articles 16 and 24 contained similar formulations which fully covered the subject, so that there was no need to mention it in article 14.

2. His proposal in respect of paragraph 2 was also one of form. The principle laid down in the first sentence of paragraph 2 was of such fundamental importance that it deserved to be the subject of a separate paragraph.

3. The proposal for the deletion of paragraph 4, on the other hand, turned on a matter of substance. He realized that the paragraph had been carefully drafted by the Commission on Human Rights and successfully expressed its intention. Nevertheless, he questioned the practicability of introducing a provision concerning the right to compensation in such an instrument as the Covenant. It was true that the Committee had earlier adopted a provision concerning compensation, in article 9, paragraph 5.[1] But in the cases to which that provision referred, the determination of the unlawfulness of an arrest was made by a judicial body and the arrest could be the subject of civil proceedings. In the cases covered by article 14, paragraph 4, on the other hand, there was often no person at fault or no person from whom damages could be secured. Furthermore, the paragraph excluded cases which in his country would give rise to compensation and included others in which none would be paid. Examples of the first type were cases where there was no new fact but there were such grave defects in the investigation or the proceedings that the decision could not stand. In such cases compensation was clearly appropriate. Examples of the second type were cases in which, though there had been every intention to violate the law, it was discovered that the particular conduct resulting in conviction was not technically a contravention. Such cases had no merits and did not deserve compensation at the expense of the State. Then there were cases where honest witnesses had made an honest mistake, for example, in identity. If neither the police nor the machinery of justice had in any way been at fault, it was not generally accepted that the State should give compensation in such cases. Although its intentions were of the best, the paragraph was attempting to deal with an intricate matter which defied simple treatment. His delegation therefore felt that it would be best to abandon any attempt to prescribe a norm with regard to compensation and to leave the entire subject to the discretion of the authorities concerned.

4. Mr. RUDA (Argentina), introducing his amendments (A/C.3/L.805/Rev.1), fully endorsed the remarks of the United Kingdom representative concerning the redundancy of the first sentence of paragraph 1 and the desirability of deleting paragraph 4.

5. In submitting a new version of paragraph 1, the Argentine delegation had been guided by the following drafting considerations: first, the word "criminal" before the word "charge" in the second sentence was redundant as all charges were criminal charges; secondly, there was no need, in the third sentence, to specify in what kinds of cases judgements should be rendered publicly, as the phrasing used in fact embraced all cases; thirdly, it was unnecessary, in the same sentence, to mention the guardianship of children, since there was already a reference to juveniles.

6. The Argentine version of paragraph 1 also embodied an important change of substance, namely, the omission of the provision that everyone should be entitled to a public hearing. That change had been prompted by the fact that in most Latin American countries many proceedings were conducted entirely on the basis of written depositions, so that in fact no "public hearing" took place. It was felt that such proceedings afforded sufficient guarantees to the parties, and the tradition was so much an established fact in Latin America that the idea of public hearings had not even been mentioned in the article on the subject recently adopted by the Inter-American Council of Jurists at Santiago. The text of that article formed

[1] See Official Records of the General Assembly, Thirteenth Session, Annexes, agenda item 32, document A/4045, para. 67.

the basis of the Argentine amendment. The amendment should also provide for the deletion of the provision in the original text referring to the exclusion of the Press and the public, since that was a matter for the individual States to decide.

7. Mr. BEAUFORT (Netherlands) said that the deletion of paragraph 4, which had been proposed by the United Kingdom and Argentine representatives, was also the subject of the Netherlands amendment (A/C.3/L.797). Like the United Kingdom representative, he felt that the Covenant was hardly the place for an article on such a complicated matter as compensation for miscarriages of justice.

8. Mr. FARHADI (Afghanistan) observed that, while no one would oppose the principle of compensation in cases such as those referred to in paragraph 4, the determination of the procedure to be followed and the nature and amount of compensation to be made, gave rise to technical problems. He was convinced that the difficulties could be overcome by the introduction of appropriate legislation, and had accordingly submitted his amendment (A/C.3/L.801) to that paragraph.

9. Mrs. KUME (Japan), introducing the Italian-Japanese amendment (A/C.3/L.803), said that the sponsors were proposing the addition of a new paragraph 5 because they believed that the principle that no one should be tried twice on the same charge was of vital importance in a democratic society and should be included in article 14. It was a very old principle, which had found its place in English common law as early as the thirteenth century and was recognized today in the constitutions of many countries with widely differing legal systems. In Japan it was embodied in the 1946 Constitution, and it had become established in Japanese jurisprudence in the last century. Unless the principle was accorded universal recognition the danger would persist of Governments arbitrarily bringing their political opponents to trial more than once on the same charge. That a man should live in constant fear of retrial constituted a violation of an inherent human right. She therefore appealed to the Committee to support the amendment, which would undoubtedly strengthen the article.

10. Mr. BAROR (Israel), introducing his revised amendments (A/C.3/L.795/Rev.1), said, with reference to the amendment to the second sentence of paragraph 1, that the text as drafted by the Commission was obviously based on article 10 of the Universal Declaration of Human Rights in which, however, the word "competent" did not appear. As used in paragraph 1, it was probably intended to mean "a tribunal of competent jurisdiction", but it might easily be construed as meaning that the tribunal should possess the necessary knowledge or integrity. He could not agree with that interpretation. A judge might be incompetent according to those criteria but, provided he was lawfully qualified and appointed, the trial in question could not be deemed to constitute a violation of human rights. He felt that the wording which he proposed clarified the text.

11. Turning to his amendment to the third sentence of paragraph 1, he said that like those preceding it, that sentence was obviously intended to refer to trials in general, but much of it seemed to refer only to the actual passing of judgement. The reasons for which the Press and public might be excluded were equally pertinent at all stages of a trial. He did not think that cases such as those mentioned by the Argentine representative, where proceedings were entirely in writing, presented any real difficulty. The proceedings could be made public by opening the records to the general public or the Press. Therefore he could see no reason for limiting the publicity to judgements. He had attempted to redraft the sentence to cover his point without omitting anything of substance. As regards the words "when the interest of the private lives of the parties so requires" in the text of the Commission on Human Rights, he felt that if what the Commission had been thinking of was cases in which one or more of the parties required special protection, such, for instance, as those relating to guardianship, adoption, juvenile delinquency and the like, it would be preferable to refer to them specifically.

12. In proposing the amendment to paragraph 2 (b), he had had in mind the fact that articles 14 and 15 taken together were intended to provide the minimum code of criminal procedure which should be applied universally. Accordingly, anything which was generally regarded as essential in guaranteeing the minimum rights of the parties in a court of law, whether criminal or civil, should be included in those articles. The phrase "to have adequate time and facilities for the preparation of his defence", standing on its own as it did in the Commission's text, might be used as an excuse for undue delay in holding a criminal trial, and he could conceive of nothing more dangerous to the proper administration of criminal law. Such delay almost invariably constituted a denial of justice. He had advisedly proposed his addition to paragraph 2 (b) rather than 2 (c) of the Commission's text for, although the latter referred to the right to legal assistance, that right did not per se entitle the person charged with an offence to consult with counsel before and during the trial.

13. Although paragraph 2 (c) of the Commission's text implied that the defendant was entitled to be present at the trial, he thought the principle should be stated explicity, as it was essential to a fair trial. He had therefore proposed the insertion of the words "To be tried in his presence, and" at the beginning of the sub-paragraph.

14. His next amendment provided for the insertion, after paragraph 3, of a new paragraph relating to the right of appeal in criminal cases. He felt very strongly that there could be no justice in criminal law unless everyone's right of appeal to a higher court for review of judgements were recognized. Only a higher court could decide whether a trial had been conducted in accordance with the principles formulated in article 14.

15. He had no strong feelings regarding the inclusion of the right to compensation in article 14, but if it were included he felt that the wording used by the Commission on Human Rights in paragraph 4 of article 14 could be improved upon. The principle was really a simple one and he believed that the text which he had proposed in his amendment to that paragraph would meet the case if the words "in a final judgement" were inserted after the word "convicted".

16. Mr. RUDA (Argentina) said that his attention had been drawn to the fact that his objections to the words "en audiencia pública" in the Spanish text of paragraph 1 (second sentence) did not apply to the French text. He wished to consider a new wording for his own

amendment to paragraph 1 along the lines of the French version.

17. Mr. ROMERO (Ecuador) supported the deletion of the first sentence of paragraph 1, as proposed by the representatives of the United Kingdom and Argentina, for the reasons they had advanced. He also supported the Argentine amendment (A/C.3/L.805/Rev.1), with one small change. He proposed that the words "Toda sentencia" should be replaced by the words "Todo juicio", as a "sentencia" (verdict) was always rendered in public. Lastly, he supported the deletion of paragraph 4.

18. Miss BERNARDINO (Dominican Republic) asked what was meant by the words "Every judgement shall be given due publicity" in the text proposed in the Argentine amendment (A/C.3/L.805/Rev.1). She asked whether the publicity was to be given in the newspapers or in some sort of official gazette. In any event, her delegation had no objection to public hearings, since the Constitution of her country, which devoted an article to human rights, clearly provided that no one could be sentenced without having had a hearing or having been duly summoned, nor without observance of the procedures established by law to ensure a fair trial and the exercise of the right of defence. Hearings had to be public, except in the cases provided by the law where publicity might be prejudicial to public order or public morals. She felt that the Ecuadorian amendment improved the text.

19. Mr. RUDA (Argentina) said that a public hearing necessarily implied oral proceedings. The aim of his amendment was to safeguard the right of countries like his own to apply a procedure by which a case was judged on the basis of written documents. Such documents could be made public, but they should not have to be read in court.

20. He had some doubt about the applicability of the Ecuadorian proposal to criminal procedure. In his country, as in many other Latin American countries, the preliminary judicial investigation (sumario) of a criminal case was always secret. However, the point was well taken and he would be happy to consult the Ecuadorian representative with a view to agreeing on a mutually acceptable text.

21. Mr. MANICKAVASAGAM (Federation of Malaya) said that, with the exception of paragraph 4, article 14 was acceptable to his delegation, as it was fully in harmony with the legal system of his country, which was based on the United Kingdom system. It provided for an independent judiciary and the equality of all persons before the courts in both criminal and civil cases. In cases involving capital punishment, counsel for the accused was always available. Interpreters not only into the main languages spoken in the Federation of Malaya but into the numerous dialects used were always at the disposal of the court. There were separate courts and procedures for juvenile delinquents, except in cases of murder, when the juvenile stood his trial in the normal criminal court. However, if he was under eighteen, his name was not revealed and the proceedings were held in camera. The emergency regulations effected the legal system to some extent, but they were voted for only one year at a time and would be abandoned as soon as circumstances permitted.

22. Mr. NEDBAILO (Ukrainian Soviet Socialist Republic) strongly opposed the deletion of the first sentence of paragraph 1. It was important that article 14, which enunciated the right to a fair trial, should open with a clear statement of principle. The first sentence was not, as the United Kingdom representative had maintained, the exact equivalent of the provisions contained in articles 16 and 24. The recognition of everyone as a person before the law and the provision that all persons should be equal before the law did not necessarily ensure that they should be equal before the courts and tribunals. In fact, equality before the law could become a farce without equality before the courts. For instance, if there were special courts for persons of different races, there could be no real equality before the law. The first sentence would strengthen the provisions in articles 16 and 24 if it was retained, but those articles would not make up for it if it was deleted.

23. Mr. TCHOBANOV (Bulgaria) asked the Israel representative whether the right of appeal envisaged in the new paragraph proposed in his amendments (A/C.3/L.795/Rev.1) involved merely a review of a case by another court or whether new evidence had to be introduced. He also asked whether the words "established by law", in the text proposed in the amendment to the second sentence of paragraph 1 referred to the word "tribunal" or to the word "jurisdiction". The French text indicated the former.

24. Mr. BAROR (Israel) replied that in the amendment to the second sentence of paragraph 1 it was the tribunal that was established by law. Regarding the new paragraph which he proposed, he said that his only intention was to provide for some form of appeal. As different legal systems made different provisions for appeal, he did not wish to specify how that appeal should be made. He would reword that amendment so as to make that point quite clear.

The meeting rose at 1 p.m.

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