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Chairman: Mrs. Aase LIONAES (Norway).

AGENDA ITEM 33

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/12929, A/3077, A/C.3/L.460, A/3525, A/3588, A/3621, A/C.1/L.644-649) (continued)

ARTICLE 6 OF THE DRAFT COVENANT ON CIVIL AND
POLITICAL RIGHTS (E/2573, ANNEX IB) (continued)

1. Mrs. JONES (Liberia) said that in principle she approved of the provisions of article 6 of the draft Covenant on Civil and Political Rights (E/2573, annex I B), but she shared the reservations of certain delegations concerning the use of the word "arbitrarily" in the first sentence of paragraph 1 and suggested that it should be replaced by the word "unjustly".
2. She thought that the phrase "the most serious crimes" in paragraph 2 was open to a variety of interpretations. In some countries, a mere offence of opinion was regarded as justifying the death sentence. The Universal Declaration of Human Rights and the Convention on the Prevention and Punishment of the Crime of Genocide provided a number of safeguards for the individual, but some countries had not accepted or signed those instruments. Her delegation appreciated the force of the arguments in favour of abolishing capital punishment. It considered, however, that in cases of treason the application of that penalty was justified on security grounds.
3. It supported paragraphs 3 and 4 of the article. It could not, however, vote for amendments which would have the effect of reducing the article to a somewhat vaguely worded declaration.
4. She reserved the right to speak again, if further amendments were submitted at a later stage.
5. Mr. VELA (Guatemala) said that he endorsed the substance of article 6, but considered that the drafting should be improved. Paragraph 1 should begin with an affirmative sentence such as: "The life of everyone shall be protected by law, and it shall be the paramount duty of States to ensure enjoyment of that right." Such a provision would replace the idea of respect for life by the broader idea of the duty of the State to ensure the protection of its nationals. The word "unjustly", which had been suggested by the Liberian representative, was not a strictly legal term and should not therefore be used. The Colombian and Uruguayan proposal (A/C.3/L.644) was of great interest, but the death penalty still existed in Guatemala, and his delegation would accordingly be unable to vote in favour of the proposed provision, unless the abolition of the death penalty was merely described as desirable. However that might be, in any country where the death penalty existed, individuals must be provided with the maximum safeguards against its application. He suggested that paragraphs 2 and 3 should be redrafted to read:
 - "2. In countries where capital punishment exists, sentence of death may be imposed only exceptionally in the case of the most serious crimes, pursuant to the sentence of a competent court and in accordance with law not contrary to the principles of the Universal Declaration of Human Rights or the Convention on the Prevention and Punishment of the Crime of Genocide.
 - "3. Sentence of death shall not be carried out until all remedies, both ordinary and extraordinary, have been exhausted, and anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases."
6. He formally proposed (A/C.3/L.647) that paragraph 4 should be amended to cover minors. In many cases society might be regarded as responsible for offences committed by minors. In addition, minors benefited by the legal presumption that they were not fully competent. In modern criminal law, the idea of rehabilitation had replaced that of social revenge; it was usually assumed that under firm moral and intellectual guidance, a minor could again become a useful member of society. He would outline his delegation's views on the various amendments at a later stage.
7. Mr. GOMEZ ROBLEDO (Mexico) agreed with the Belgian and Salvadorian representatives that human beings should be protected even before birth, which would *inter alia* imply the prohibition of voluntary abortion. Article 22 of the Mexican Civil Code, which applied to the Federal District and the federal states, provided that everyone was placed under the protection of the law from the moment of his conception.
8. The first sentence of paragraph 1 was acceptable as it stood. The word "arbitrarily" had a precise meaning in Mexican legal terminology; it meant contrary to justice or to law. In any case, it would be sufficient to say: "No one shall be deprived of his life." Unfortunately, it was apparently not feasible to enumerate the cases in which a person could legitimately be deprived of his life. In the absence of a restrictive list, it was essential to retain the word "arbitrarily" or some equivalent expression.
9. His delegation approved of the first sentence of

the amendment submitted by Colombia and Uruguay (A/C.3/L.644). With regard to the second sentence, his delegation considered that the Committee was not competent to pass final judgement on so delicate and difficult a problem as that of the legitimacy of the death penalty. A more specific objection was the fact that, under the terms of the Mexican federal Constitution, the right to impose penalties was vested in the various states, although article 22 of that Constitution limited the cases in which capital punishment might be imposed to a restrictive list of offences. The federal Government could not therefore vote in favour of a text which would make the abolition of capital punishment compulsory. In the preparation of the draft Covenants, variations in domestic legislation must be borne in mind, and care should be taken not to set a standard based on the provisions enacted by individual Member States. It should be remembered that Article 2, paragraph 7, of the United Nations Charter prohibited the adoption of any measure which might be regarded as intervention in matters essentially within the domestic jurisdiction of States. The administration of justice was manifestly one such matter. For all those reasons, his delegation would therefore support the text of article 6, paragraph 2, proposed by the Commission on Human Rights (E/2573, annex I B); but it would not oppose purely drafting amendments such as those suggested by the representative of France (A/C.3/L.645).

10. Mrs. MORALES (Costa Rica) whole-heartedly supported the amendment submitted by Colombia and Uruguay (A/C.3/L.644). Human life was sacred, because it had been created by God, and she found it difficult to understand why the Committee should be hesitating over the form of words to be employed when it should proclaim the complete inviolability of human life. Everyone was familiar with the reasons why capital punishment could not be regarded as a valid solution to the problem of crime. Nevertheless, in view of the difficulties referred to by various representatives, her delegation had submitted an amendment (A/C.3/L.648); she hoped that it would be supported by a large number of delegations.

11. Mr. COX (Peru) said that he did not think it necessary to repeat the reasons why he considered the word "arbitrarily" unacceptable. It must, however, be recognized that the deletion of that word would require an enumeration of the exceptions to the principle that no one should be deprived of his life. In view of the statements of the representatives of Uruguay and Saudi Arabia (811th meeting), he thought that paragraph 1 might be worded to the effect that the law should protect everyone's right to life. It would then be clear that it was the law, and not the State, which ensured respect for the inviolability of human life.

12. In connexion with paragraph 2, he stressed that he was personally in favour of the abolition of capital punishment, which was repugnant to his conscience and seemed to him to be devoid of any legal justification. However, in order to take account of the objections raised to the amendment proposed by Colombia and Uruguay (A/C.3/L.644), he thought that the text proposed by France might be used, with certain amendments based on suggestions made in the course of the debate. Paragraph 2 might, for instance, read as follows:

"In countries where capital punishment exists, such penalty shall be prescribed only for the most serious

crimes and in accordance with the principles of article 14 of the present Covenant. Sentence of death shall not be imposed except in pursuance of the sentence of a competent court, pronounced in accordance with laws promulgated before the crime."

The reference to the Universal Declaration of Human Rights, on which several delegations had reservations, would thus be omitted. Finally, article 14 could of course not be mentioned unless it was accepted by the Commission.

13. The Peruvian delegation would vote in favour of paragraph 3 as amended by France (A/C.3/L.645).

14. He would not press the amendment to paragraph 4 he had suggested at the 810th meeting. He was ready to accept any wording that appeared more satisfactory.

15. As the Guatemalan representative had stressed, it was essential that article 6 should include a provision prohibiting the execution of minors.

16. Finally, the Convention on the Prevention and Punishment of the Crime of Genocide should receive more than brief mention. It should be expressly stipulated that that Convention would apply to all cases in which the imposition of the death sentence would in fact constitute the crime of genocide. He had drafted an amendment to that effect (A/C.3/L.649) and would be glad if other delegations would join him in sponsoring it.

17. Mr. MEANY (United States of America) stated that his Government was firmly resolved to encourage respect for human rights and individual freedoms but that, in its opinion, persuasion, education and example would have more satisfactory results than formal undertakings, which would lead to some countries imposing their social and moral standards on others. As the United States Government did not intend to ratify the Covenants, the United States delegation would abstain from voting and did not intend to participate in the debate. However, in so far as the discussion related to general policy issues affecting the work and activities of the United Nations outside the scope of the draft Covenants, the United States reserved the right to speak and to act. With respect to the meaning and scope of the word "arbitrarily", the use of that term did not, in the opinion of the United States delegation, give rise to any difficulty. It was used several times in the Universal Declaration of Human Rights. It safeguarded various human rights and liberties such as the right to a fair trial, protection against unjust arrest, and so forth. The United States and Chilean delegations had proposed the addition of that term to article 6 in 1952^{1/} because they had thought that preferable to any attempt to enumerate the limitations that might be imposed on the right to life.

18. Mr. ROJAS (Venezuela) said that, throughout history, ideas which were opposed to the social, political or religious structure of their age were impugned and condemned. The example of Jean-Jacques Rousseau, one of many, was particularly illuminating. The educational theories proclaimed by the Geneva philosopher in "Emile" and his political ideas in Le Contrat social were condemned by the religious and civil authorities of the day because they were not in conformity with the times. Generations later, those

^{1/} See Official Records of the Economic and Social Council, Fourteenth Session, Supplement No.4, para. 168.

same ideas, so bitterly criticized, so harshly judged, were embodied in the educational and political systems of the most civilized countries. It would appear that the historic moment for the universal acceptance of the idea of abolishing the death penalty had not yet arrived. And in fact that penalty was included in the laws of many countries.

19. The death penalty had been abolished in his country under paragraph 1 of article 35 of the National Constitution, in which it was stated: "The death penalty shall not be established by any law and it shall not be applied by any authority."

20. He did not wish to repeat the eloquent arguments of the representatives of Colombia and Uruguay. His sole purpose had been to evoke an awareness of a principle which in the opinion of his delegation should be abolished as soon as possible.

21. He understood the difficulty encountered by a number of delegations, the laws of whose countries still maintained the death penalty. Since it was necessary to face facts in a realistic manner, the Venezuelan delegation considered with sympathy the suggestion made by the representative of France (811th meeting) that a provision for the gradual abolition of the death penalty should be inserted in the Covenant. If that proposal was submitted formally, his delegation would support it.

22. Mr. MADEIRA RODRIGUES (Portugal) said that his country, which had abolished the death penalty a century before, fully appreciated the humanitarian motives that had inspired the amendment of Colombia and Uruguay (A/C.3/L.644). Nevertheless, the Portuguese delegation thought that the inclusion of the proposed provision would make it impossible for a great many countries to ratify the Covenant, and it would therefore abstain in the vote on that proposal.

23. Mr. PYMAN (Australia) was glad to find that many representatives understood the problem which the first sentence of paragraph 1 of article 6 posed for certain delegations. The alternative text proposed by the Netherlands (A/2910/Add.3) had seemed satisfactory, but as it would not apparently receive sufficient support, another formula would have to be sought. Several constructive proposals had been submitted, notably by El Salvador and Saudi Arabia (811th meeting). The Australian delegation would prefer an affirmative wording such as: "Everyone has the right to life. This right shall be protected by law." In his opinion, the second sentence of paragraph 1 would be sufficient, but he would not oppose the first if the majority was in favour of its retention. It had been proposed that the article should state that the right to life should be protected by the State. He thought that second formula, on which he would have to obtain his Government's instructions before voting, was less satisfactory than the first, because it was broader and less precise.

24. Like the Peruvian representative, he thought it would be preferable for paragraph 2 to refer to the Covenant itself rather than to the Universal Declaration of Human Rights, since, in accordance with the proposals of the Commission on Human Rights, clauses specifically restating the provisions of the Universal Declaration, particularly those of articles 2, 7, 10 and 11, would undoubtedly be incorporated in the Covenant. As for the Convention on the Prevention and Punishment of the Crime of Genocide, which Australia had ratified, it should be stressed that there was no conflict or overlapping between that Convention and the Covenant;

the Covenant could not replace the Convention. The provisions of article 5 of the draft Covenant would seem to provide a sufficient safeguard. As, however, several delegations were in favour of including a reference to the Genocide Convention in article 6, Australia would not press its amendment (A/2910/Add.2), unless it received majority support. The death penalty still existed in certain states of the Commonwealth of Australia, and the Australian delegation could therefore not support the proposal that that penalty should be abolished outright. Neither could it vote in favour of a provision providing for its gradual abolition. It hoped that the need for capital punishment would ultimately disappear, but it had to take account of the opinions of those States which wished to maintain it for the sole purpose of protecting their citizens.

25. He was not sure that it would be wise to delete the first sentence of paragraph 3. It seemed useful to state clearly that anyone sentenced to death should have the right to seek pardon. The Guatemalan proposal (A/C.3/L.647) could cause certain difficulties, though the principle behind it was sound; in many countries, a person attained majority at the age of twenty-one, but became criminally responsible at the age of eighteen.

26. Miss BERNARDINO (Dominican Republic) said she would have no difficulty in voting for all the amendments submitted, for her country's Constitution did not provide for capital punishment. Nevertheless, she clearly understood the difficulties which the amendment proposed by Colombia and Uruguay (A/C.3/L.644), for example, would create for some countries. The important thing was to find a text acceptable to the majority of the members of the Committee. The Chairman could perhaps invite the sponsors of the various amendments to meet as a working group with a view to drafting a satisfactory text that could be adopted by a large majority.

27. The CHAIRMAN was completely in favour of the proposal made by the representative of the Dominican Republic, but thought that it would be preferable for the working group not to meet until after the general debate on article 6 was concluded.

28. Mr. THIERRY (France) explained that his delegation had presented no formal amendments other than those contained in document A/C.3/L.645. As to capital punishment, he had simply stated, in order to speed up the discussion, that it would be desirable to seek a compromise solution.

29. Mr. EFFENDINUR (Indonesia) considered that the right to life did not need recognition by the State, since it far transcended the latter in importance. Since it was a fundamental right on which all other rights were based, it must be very precisely defined. In that respect, the word "arbitrarily" was unsatisfactory; it was too ambiguous to have any place in a legal instrument such as the proposed Covenant on Civil and Political Rights. The Indonesian delegation thought that the sacred nature of human life was better emphasized by the second sentence of paragraph 1. However, it was prepared to support those delegations which had suggested substituting article 3 of the Universal Declaration of Human Rights for the first sentence of that paragraph. That seemed to be a better solution than the one proposed by Colombia and Uruguay (A/C.3/L.644).

30. As to paragraph 2 of the article, he appreciated the lofty reasons that had prompted the Uruguayan representative to propose the abolition of capital punishment. That was an object to be sought by all States, and it was earnestly to be hoped that it would ultimately be attained. The fact remained that capital punishment still existed in many countries and it was necessary to be realistic in preparing an international legal instrument. The present need was to ensure that the death penalty was not imposed unjustly. The Indonesian delegation believed that, from that standpoint, the text submitted by the Commission on Human Rights (E/2573, annex I B) and the amendment submitted by the French delegation (A/C.3/L.645) were equally satisfactory.

31. In his opinion, the original text of paragraph 3 of the article was preferable to the other texts proposed, for it guaranteed to a sentenced person the right to seek pardon, a right expressly recognized by the provisional Constitution of Indonesia.

32. The Indonesian delegation would support paragraph 4, which in its opinion applied only to the period preceding the birth of the child.

33. Mr. ROSSIDES (Greece) did not share the view of those who had criticized the text of paragraph 1 of article 6. In his opinion, the word "arbitrarily" could only mean "in a manner contrary to law". Some representatives had argued that the law itself might be arbitrary and, in a certain sense, illegal. The death penalty was fully justified for such serious crimes as murder or high treason. In cases where that sentence was imposed for such offences as theft or carrying arms, it could be considered arbitrary and the adverb used in the first sentence was then completely appropriate.

34. The representative of Uruguay had raised the serious problem of the abolition of capital punishment, which deserved to be studied with the greatest care. There were two diametrically opposite views on that question. There were those who thought that capital punishment served as an example and acted as a deterrent to the commission of crimes. Those favouring abolition, on the other hand, argued that crime did not increase and often even diminished in countries where capital punishment no longer existed. Moreover, it should not be forgotten that it was necessary for a country to have reached a certain degree of civilization, a certain moral level, before it could abolish the death penalty. It was impossible, therefore, to require all countries to abolish that penalty immediately, for they could not agree to do so. The French representative's suggestion (811th meeting) was logical and satisfactory. It was the duty of the United Nations to emphasize that the death penalty should be abolished sooner or later. In an age of scientific progress it was likewise necessary to promote moral progress. In

imposing the death penalty, a State undeniably showed that it was lawful to kill in certain cases; it thus indirectly encouraged crime instead of helping to eliminate it.

35. Mr. CHAUDHURI (Pakistan) did not think that the first sentence of paragraph 1 of the article was very precise either with or without the word "arbitrarily". For that reason, he supported the French amendment (A/C.3/L.645) calling for the deletion of that sentence. It would be better for the article to begin with a positive statement, such as that contained in the second sentence of the original text. The balance of paragraph 1 might perhaps be improved by adding the words "No one may be deprived of his life except as provided by law" after the sentence "Everyone's right to life shall be protected by law".

36. Sir Samuel HOARE (United Kingdom) agreed with the representative of Australia that it was unadvisable to amend the expression "shall be protected by law" as suggested by the representative of El Salvador (811th meeting). The words "law" and "State" might appear to be interchangeable, but they actually had a very different meaning. The statement that "everyone's right to life shall be protected by the State" cast doubt on a State's right to impose the death penalty. Moreover, a provision of that kind would make it possible to hold the State responsible for compensation in cases of deprivation of life.

37. In his opinion, the deletion of the words "Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence" from paragraph 3, as proposed by the representative of France (A/C.3/L.645), made the text less satisfactory. There was a considerable difference between the right to seek pardon and the right to grant it. Nor did the French suggestion for the addition of the words "to a sentenced person" improve the original text, for it gave it too general a meaning. If the words were added, the paragraph would apply to all sentences and not merely to death sentences. A general provision of that kind would be more appropriate in some other article, such as article 14.

38. The United Kingdom delegation would like to know why it had been considered desirable to refer to the Convention on the Prevention and Punishment of the Crime of Genocide in article 6. A law contrary to the principles of the Genocide Convention could only mean a law directed to the extermination of a group. There was nothing in paragraph 2 which could in any way be regarded as countenancing such a law, and the addition of that reference seemed completely unnecessary, since paragraph 2 stated that sentence of death could be imposed only as a penalty for the most serious crimes and since the article as a whole was intended to serve as a safeguard against trumped-up legal procedures resulting in death sentences.

The meeting rose at 1 p.m.