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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.785-788, A/C.3/L.790-799, A/C.3/L.801-803, A/C.3/L.805-808, A/C.3/L.812/Rev.2, A/C.3/L.813) (continued)

ARTICLE 12 OF THE DRAFT COVENANT ON CIVIL AND POLITICAL RIGHTS (E/2573, ANNEX I B)
(continued)

1. Mrs. DIEMER (Netherlands) said that since the words "public order" appeared in the new version of article 12 of the draft Covenant proposed by Argentina, Belgium, Iran, Italy and the Philippines (A/C.3/L.812/Rev.2), she would withdraw her amendment (A/C.3/L.796).
2. Mr. RUDA (Argentina), introducing the combined text (A/C.3/L.812/Rev.2) on behalf of the co-sponsors, expressed the hope that those delegations which had criticized the wording of paragraph 3 of the earlier version (A/C.3/L.812/Rev.1) would be satisfied with the changes which had been made. The new text represented a compromise and he personally was not happy with the word "arbitrarily" in paragraph 4.
3. Mr. FARHADI (Afghanistan) expressed satisfaction with the new combined text and was glad that its sponsors had taken the Irish representative's observations into account. While he appreciated the reasons for which some delegations objected to the word "arbitrarily", he could see no possible alternative. The latest text was, in his view, a considerable improvement on that of the Commission on Human Rights (E/2573, annex I B) in that it was more concise and that the limitations were placed after and not before the right.
4. Miss MacENTEE (Ireland) observed that, while she appreciated the spirit of co-operation in which the co-sponsors had attempted to meet her point, she was still not satisfied with the wording of paragraph 4. The use of the word "arbitrarily" in the context of paragraph 4 extended all the restrictions enumerated in paragraph 3 to the right to enter one's own country. If certain countries recognized exile as a legal punishment and wanted the Covenant to take cognizance of the fact, the provision should be set forth in clear

and unmistakable terms. She accordingly submitted an amendment (A/C.3/L.813) to the new combined text, according to which paragraph 4 would read: "Everyone shall be free to enter his own country, unless lawfully exiled".

5. Mrs. LEFLEROVA (Czechoslovakia) remarked that the amendments to article 12 did not depart from the principles laid down in the text drafted by the Commission on Human Rights (E/2573, annex I B). Both texts contained a reference to "his own country" and she wished to make it clear that she understood the expression to refer to the State whose citizenship had been bestowed upon the person in question in accordance with that State's laws and regulations. In that definition, emotional, historical and geographical factors had no relevance. The case of the Sudeten Germans, for example, had nothing in common with the right of a person to enter his own country as dealt with in article 12. They had been expelled from Czechoslovakia as members of Hitler's fifth column, which had betrayed Czechoslovakia and sought to exterminate the Czechoslovak people. Following on the Allied victory, it had been decided that measures should be taken to prevent a repetition of such events. The expulsion of Germans from Czechoslovakia had been carried out as a just measure, on the basis of an international agreement and in accordance with Czechoslovak law. Those Germans were not Czechoslovak citizens and Czechoslovakia was not their own country.

6. Sir Samuel HOARE (United Kingdom) said he would like to be clear about the meaning of the words "ordre public". Articles 18 and 20 referred both to public safety and to public order and the words "public safety" had been in article 12 of the text prepared by the Commission on Human Rights, but they did not appear in the new combined text. He wondered whether they had been advisedly deleted and whether the words "public order" had been used instead. The Commission on Human Rights had apparently seen no inconsistency in having the words "public safety" and "public order" in the same article. He interpreted the words "public safety" in articles 18 and 20 as referring to physical safety, which could be imperilled by factors such as overcrowding, and he thought that the concept should be covered in article 12.

7. Mr. COX (Peru) observed that the Covenants were intended to guarantee the rights laid down in the Universal Declaration of Human Rights. The articles they contained should be both general and flexible, since they were intended to provide a common denominator for progressive national legislation. Care had to be taken, however, to ensure that they should not impinge on matters within the domestic jurisdiction of States. He supported the new combined text because it met those requirements.

8. Mr. RUDA (Argentina) said that, as he understood it, the term "orden público", which was used in Roman

law, did not include the concept of public safety. It expressed a complex of ideas which were the basis of the structure of the State.

9. Mr. LOPEZ (Philippines) recalled his earlier doubts regarding the validity of the expression "public order" as a translation of the French term "ordre public". Given the broad scope of the latter expression, if it were used the effect would be to increase the restrictions on the right set forth in article 12, whereas the intention of the Commission on Human Rights had been to limit them very specifically. That was why it had used the expression "public safety" which made it clear that the right could be limited only if its exercise involved danger to the safety of persons. In drafting the first version of the amendment to article 12 (A/C.3/L.812), which his delegation had co-sponsored, he had insisted on the retention of the words "public safety", but in the endeavour to find a generally acceptable text he had subsequently agreed to their replacement by the words "public order". His doubts had not, however, been resolved by the inclusion of the words "ordre public" in parentheses. Unless it was made absolutely clear that the term was not to be interpreted as meaning "public policy" there was a danger that it might be invoked to justify excessive restrictions on the right in question. He had in mind such matters as racial segregation laws. The alternative was to follow the example of the Commission on Human Rights and to use the words "public safety" instead of "public order" in the English text.

10. Although he agreed that the right of a person to enter his own country should be restricted as little as possible, he did not feel that the wording proposed by Ireland (A/C.3/L.813) was appropriate. Exile was known to exist in practice, but no State officially admitted retaining it as a form of punishment. Furthermore, an international instrument which was intended to guarantee human rights should contain nothing which might be taken as sanctioning such a form of punishment. Although he sympathized with the Irish representative's objections, he felt that the word "arbitrarily" could be accepted in the context. It had been used in articles 6^{1/} and 9^{2/} which proclaimed respectively the right to life and the right to liberty and security of person, rights that were even more important than the right to freedom of movement.

11. Sir Samuel HOARE (United Kingdom) was unable to accept the Philippine representative's suggestion that the expression "public order" in paragraph 3 of the combined text should be replaced by the words "public safety". According to some delegations, the French expression "ordre public" covered both public order and public safety. The Argentine representative had maintained that it did not, but in that case it was difficult to see why the expression "public safety" had not been included in the combined text, as it had in articles 18, 20 and 21. It was necessary to cover traffic regulations, for instance, which, although they impeded freedom of movement to a certain extent, could not be considered as a violation of the right laid down in article 12, and he would like the sponsors to consider whether that was covered by their text.

^{1/} See Official Records of the General Assembly, Twelfth Session, Annexes, agenda item 33, document A/3764 and Add.1, para. 121.

^{2/} Ibid., Thirteenth Session, Annexes, agenda item 32, document A/4045, para. 67.

12. Mr. SHARAF (United Arab Republic) drew attention to the following sentence in the annotations on the text of the draft Covenants (A/2929, chap. VI, para. 113): "The common law counterpart of 'l'ordre public' is 'public policy' rather than 'public order'", and suggested that the words "public order" in paragraph 3 of the combined text (A/C.3/L.812/Rev.2) might be replaced by the words "public policy".

13. Mr. ROMERO (Ecuador) said that it was clear from the debate that delegations were sharply divided on the question how far the right to freedom of movement should be restricted. He felt that it should be limited as little as possible, in fact, in normal circumstances only in the interests of national security, and in accordance with article 4 of the same draft Covenant. In view of the many restrictions contained in the combined text, he asked for a separate vote on each paragraph.

14. Mr. VIDAL GABAS (Spain) felt that the confusion which had arisen about the meaning of the expressions "public safety" in English, and "ordre public" and "orden público" in French and Spanish, should be cleared up before the Committee proceeded to a vote. His delegation believed that freedom of movement should be restricted only in the interests of the State. There were three aspects of the welfare of the State to be considered: national security, public health and public morals and spiritual values. All of them were covered by the expression "orden público". All that was needed was to find a suitable English equivalent for that expression.

15. Mr. YASSEEN (Iraq) said that such terms as "ordre public", which were open to different interpretations and led to controversy, should be avoided in the draft Covenant. Although the expression "public policy" was very close in meaning to the French term, it was not an exact synonym and should therefore not be used. It would be preferable to say that restrictions should be imposed only to protect the vital interests of the State. Although that wording was not a legal term, its meaning was at least clear and it covered health, order and security. To enable the Committee to express itself clearly, he asked for a separate vote on the words "ordre public", in paragraph 3 of the combined text.

16. He also asked for a separate vote on the word "arbitrarily", in paragraph 4 of the same text, as he wished to vote against it. Everyone should have a home in which he could take refuge, and the existing wording might be used to deprive people of that right.

17. Mrs. DE ARENAS (Guatemala) supported the Iraqi representative's request for a separate vote on the word "arbitrarily"; she wished to abstain on it because exile was prohibited under the Guatemalan Constitution.

18. Mr. OSEGUEDA (El Salvador) said that vagueness must at all costs be avoided. Neither the original text of article 12 (E/2573, annex I B) nor the combined text (A/C.3/L.812/Rev.2) was entirely satisfactory to his delegation. His country, like most Latin American countries, was quite unable to accept the principle that a State could exile its own citizens. The intention of article 12 was to prohibit exile for political reasons, but it did not in fact do so. By prohibiting only arbitrary exile, it countenanced exile which was not arbitrary, and that was quite inadmissible in an international instrument sponsored by the United

Nations. He had had some doubts about the appropriateness of the expression "orden público", but he had been able to accept it after hearing the interpretation put upon it by other Latin American delegations.

19. Mr. COLUCCI (Italy) expressed the view that the English words "public order", intended to be a translation of the French words "ordre public", represented the best possible means of expressing the ideas which the sponsors of the combined text had in mind. He did not think that article 12 should be made to apply to any restrictions on freedom of movement except those of a political nature: it should not apply to such domestic matters as traffic regulations and the like and the sponsors had had no intention, in using the words "public order", of giving it such a broad connotation.

20. The fact that the terms "public order" and "public safety" were both used in articles 18 and 20 of the draft prepared by the Commission on Human Rights had no bearing on article 12; the important thing was that they had not been used in the articles already adopted. If the Committee decided to keep only "public order", it might well be setting a useful precedent for the discussion of future articles, including articles 18 and 20.

21. With respect to paragraph 4 of the combined text, he was not satisfied with the word "arbitrarily", which was itself quite arbitrary. However, it had seemed to the co-sponsors that to use that word was the only way to reach a compromise solution. Under Italian law, a person could be exiled only for reasons of national security (for example, in order to prevent disorders), but never as a means of punishment.

22. He hoped that the wording proposed in the combined text would be adopted by a large majority.

23. Mr. BOUQUIN (France) said that, if the words "ordre public" were deleted as the result of a separate vote, he would propose that they should be replaced by the words "sûreté publique", the latter term being one element of the former. The French delegation could not agree to anything less. He failed to understand the opposition of certain delegations to "ordre public", and reminded the Committee that the expression was used in the texts of articles 18, 19, 20 and 21 prepared by the Commission on Human Rights. The term had also proved acceptable in article 29, paragraph 2, of the Universal Declaration of Human Rights. He wondered whether the opposition to the term reflected a desire to revise the Declaration as well. If, however, the problem arising in connexion with the words "ordre public" was merely one of translation, surely it should be possible to find a solution.

24. Mrs. MANTZOULINOS (Greece) agreed that neither "sûreté publique" nor "public policy" was as broad in meaning as the term "ordre public", which referred to the very basis of a country's economic, political and social system. In Greece, for example, matters relating to the royal family or the question of monogamy were matters of "ordre public" and had nothing whatever to do with public policy. Her delegation would favour the retention of the words "ordre public" in quotation marks.

25. Mr. CALAMARI (Panama) thanked the sponsors of the amendment (A/C.3/L.812/Rev.2) for their efforts to reach a unified text. His delegation was not

satisfied with the word "arbitrarily". The use of that word had been discussed exhaustively in connexion with article 6 of the draft Covenant^{3/} and its reappearance in the text of article 12 had revived the question of its suitability. He supported the proposal that the word should be voted on separately.

26. As exile was prohibited under his country's Constitution, he would request a separate vote on the last phrase of the Irish amendment (A/C.3/L.813), "unless lawfully exiled".

27. He regretted the failure to reach agreement on the term "ordre public". If the French delegation submitted an amendment replacing that term by the words "sûreté publique", he would support that amendment.

28. Mr. SHARAF (United Arab Republic) said that, in referring to the Secretariat's interpretation of the equivalence of the terms "public policy" and "ordre public", he had merely made an informal compromise suggestion. He understood the arguments of the French representative and would support the term "ordre public". He drew attention to article 5, paragraph 2 (b), of the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards,^{4/} in which the words "public policy" in the English version had been translated as "ordre public", in the French version.

29. Mr. RUDA (Argentina) endorsed the remarks of the French representative. The absence of equivalent terms in different languages was nothing new: there were many English legal terms which had no satisfactory equivalents in Spanish. The word "arbitrarily" in paragraph 4 of the combined text had been used as a necessary compromise. A similar compromise solution had been reached in the Final Act of the Fourth Meeting of the Inter-American Council of Jurists, which used the phrase "no one may be arbitrarily exiled". The word "exile" in the Irish amendment (A/C.3/L.813) would create difficulties for the representatives of Argentina and other Latin American countries, in which there was no such thing as lawful exile. He would therefore have to vote against that amendment.

30. Mr. YASSEEN (Iraq), referring to the French representative's comments on the meaning of "ordre public", said that any attempt to interpret a law had to be made with reference to the whole legal system of which that law was a part. Accordingly, a term used in an international instrument could not be interpreted in the light of the rulings of some national body, such as, for example, the French Conseil d'Etat or the Italian Court of Appeals. Since the term "ordre public" was used in several articles of the draft Covenant, the Committee should do its utmost to define it clearly. He would be unable to vote in favour of the words "ordre public" in the context of article 12, but that did not prejudice his attitude on their use in other articles.

^{3/} Ibid., Twelfth Session, Third Committee, 809th to 821st meetings; and *ibid.*, Annexes, agenda item 33, document A/3764 and Add.1, paras. 114-115.

^{4/} United Nations Conference on International Commercial Arbitration, New York, 20 May-10 June 1958, *Final Act and Convention on the Recognition and Enforcement of Foreign Arbitral Awards* (United Nations publication, Sales No.: 58.V.6).

31. Miss MacENTEE (Ireland), referring to the remarks of the Philippine representative, said that her delegation had indeed accepted the use of the word "arbitrarily" in article 6 and "arbitrary" in article 9 of the draft Covenant; but that did not mean that it had to accept the term in all contexts. In articles 6 and 9, the meaning of the words in question was amplified and defined in several paragraphs. That was not true of the combined text of article 12. In deference to countries whose legal system provided for exile, her delegation was willing to agree to the single limitation on the right of a person to enter his own country which was provided for in its amendment (A/C.3/L.813). However, the word "arbitrarily" went much further and opened the way for the adoption of laws under which a considerable number of persons could be exiled for a wide variety of reasons, all in the interests of "ordre public". She welcomed the suggestion of the Panamanian representative concerning a separate vote on the phrase "unless lawfully exiled" in her amendment; she would vote against those words herself.

32. Mr. RUDA (Argentina) was unable to share the view of the Iraqi representative that rulings of national legal bodies could not be taken into account in the interpretation of international instruments. Article 38, paragraph 1 (d), of the Statute of the International Court of Justice stated that the Court

should, *inter alia*, apply judicial decisions of the various nations.

33. Mr. WJESINHA (Ceylon) found that there was little difference between the text of article 12 as drafted by the Commission on Human Rights and the version in the combined text. He asked that the Committee should be given an opportunity to choose between the original and more complete form, and the combined text.

34. Mr. MAHMUD (Ceylon), citing rule 132 of the rules of procedure of the General Assembly, proposed that the original text of article 12 should be put to the vote before the combined text.

35. The CHAIRMAN agreed that the combined text was not an amendment within the meaning of rule 131 of the rules of procedure but rather a complete replacement of the text of the Commission on Human Rights. Therefore, the Commission's text would be put to the vote first.

36. Mr. BOULOS (Lebanon) moved the closure of the debate.

37. Mr. MOROZOV (Union of Soviet Socialist Republics) moved the adjournment of the meeting.

The motion for adjournment was carried.

The meeting rose at 1.5 p.m.