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CONTENTS

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/2929, A/3077, A/C.3/L.460, A/3525, A/3588, A/3621, A/C.3/L.644-652) (continued)

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

1. Mr. COX (Peru) said, in reply to a statement made earlier by the Australian representative (812th meeting), that article 5, paragraph 2, of the draft Covenant (E/2573, annex I B) did indeed cover the Convention on Genocide but that provision would apply only if the Covenant failed to recognize the rights accorded in that Convention or recognized them to a lesser extent. Since article 6 of the draft Covenant was intended to protect the life of the individual, it was broader than the Convention on Genocide, which protected groups, and article 5, paragraph 2, was therefore inapplicable. On the other hand, the Convention on Genocide contained stronger provision for implementation than the draft Covenant, and it was for that reason that Brazil and Peru had introduced their amendment (A/C.3/L.649) to cover the specific case of genocide.

2. He was well aware that Nazi tribunals had committed the crime of genocide by means of mass death sentences imposed after a travesty of the judicial process. Furthermore, they had not invented the method; colonial history was replete with instances of it. Consequently, he favoured the inclusion of a reference to the Convention on Genocide in a new paragraph, not because he failed to see the connexion between the death penalty and genocide but because he thought the Convention sufficiently important to merit a separate reference, and because such a reference would have the effect of discouraging any attempts to weaken or revise the principles set forth in the Convention.

3. Mr. DELHAYE (Belgium) observed that many amendments had been presented in writing and orally since he had last spoken. As a working party was to be established, he would not comment on the amendments in detail.

4. He felt that for the information of the working party and the Committee he should state his position on the main features. His delegation was prepared for some rearrangement of the text. Rearrangement, however, did not mean a complete upset, and that was what Colombia and Uruguay on the one hand (A/C.3/L.644) and Costa Rica on the other (A/C.3/L.648) were proposing.

5. The Belgian delegation was prepared to accept the first sentence of the text proposed in the Colombian-Uruguayan amendment, which was constructive and unequivocal. The second sentence was too radical. The Belgian delegation, in association with the Mexican and Salvadorian delegations, proposed that it should be replaced by the following text: "From the moment of conception, this right shall be protected by law."1/ Thus what was envisaged was protection by the law, not protection by the State—which, again, might seem too categorical—and protection "from the moment of conception", that is to say from the first physiological origin, as a matter of natural logic. If the United Nations really desired to demonstrate its concern with the right to life it could not ignore the period during which it would be decided whether there was to be a new life or not.

6. Returning to the subject of outlawing capital punishment, he drew attention to the impassioned discussions which had been held in the Press and in some legislatures. In Belgium, sentence of death was still pronounced, but it had not been carried out for the past seventy-five years. He pointed to the general position on the subject in the world today; the United Nations was not an international legislature and each State could decide whether or not to accede to the legal instrument which was in course of preparation. The Committee should avoid creating obstacles to accession.

7. For those reasons Belgium would again advocate retention of the substance of paragraphs 2, 3 and 4 of article 6.

8. The Belgian delegation reaffirmed the difficulties with regard to amnesty and the words "in all cases" in paragraph 3 which it had mentioned at the 810th meeting.

9. The amendments to paragraph 4 presented by Guatemala (A/C.3/L.647) and Japan (A/C.3/L.650) with regard to "minors" were not acceptable to the Belgian delegation as worded; his delegation hoped to have an opportunity to vote in favour of a provision on that subject.

10. Mr. ZEA HERNANDEZ (Colombia) observed that, after the changes introduced in the notion of national sovereignty as a result of two world wars, a return

1/ The amendment was subsequently issued as document A/C.3/L.654.

to that of absolute sovereignty was unthinkable. Consequently, there was no need to make international law fit national legislation; rather, the opposite was the case. No one had defended capital punishment in the course of the debate; at best, it had been deplored as a necessary evil. If that was all it was, the Committee would be making no progress if it perpetuated that evil in the draft Covenant. State after State had declared itself prepared to alter its legislation in order to grant a social or an economic right; there was no reason why they should not do the same to safeguard the right to life.

11. Whenever he reread the text of article 6 he saw fresh imperfections in it. Thus, it promised no exemption from the death penalty to minors or to persons convicted of political offences. If the word "arbitrarily", which had been discussed at such length, were omitted, many forms of deprivation of life would not be covered by the article, whereas if it remained, it would sanction the sort of legal murder by prejudiced tribunals to which mankind had so often been subjected in the past.

12. The adoption of the suggestion made by the French representative (811th meeting) would greatly improve the text, since it would then at least urge States to abolish capital punishment.

13. He warmly supported the amendment proposed by Brazil and Peru (A/C.3/L.649).

14. Mr. EL-FARRA (Syria) stated that the right to life was an inherent right and not a privilege bestowed by the State; on the contrary, it was the duty of the State to protect it. The purpose of article 6 was both to define that right and to impose that obligation. It had been said that the meaning of the word "arbitrarily" as used in paragraph 1 of the article was open to at least two interpretations; but the same was true of virtually all legal terms. Ambiguities were to be found in the Charter of the United Nations, yet eighty-two States had accepted it as a binding treaty. As the United States representative had explained (812th meeting), the word "arbitrarily" should present no difficulty in practice.

15. The purpose of article 6 was not only to protect the life of the individual by law, but to ensure that the law was just, and that the individual would not be deprived of his life in a capricious or despotic manner, at the will of an absolute sovereign. In effect, it called upon States to revoke any laws justifying arbitrary killing.

16. He was opposed to the suggestion that a reference to article 14 of the draft Covenant should be inserted in article 6, because the two articles pursued entirely different purposes.

17. It had been argued that the use of the term "arbitrarily" might permit an international body to intervene in purely domestic matters, which would be contrary to Article 2, paragraph 7, of the Charter. Under Articles 55 and 56 of the Charter, however, human rights, and in particular the right to life, had been brought under international jurisdiction; moreover, the draft Covenant would be a separate legal instrument and would not necessarily be subject to the same limitations as the Charter.

18. In his view, absolute sovereignty no longer existed. When the States had ratified the Charter and other treaties, they had renounced many of the attributes of sovereignty, and should not invoke it to prevent progress. It was true that, if properly enforced, article 6 might necessitate the revocation of some arbitrary laws and regulations, but that was precisely its purpose. Human beings had the right to expect that the United Nations would not leave them at the mercy of arbitrary forces. He was therefore in favour of article 6, with the Guatemalan amendment (A/C.3/L.647).

19. Mr. OSMAN (Morocco) said that much of the debate on article 6 had centred on the meaning of the word "arbitrarily", in paragraph 1. Although the word "arbitrary" was used in article 9 of the Universal Declaration of Human Rights, considerable objection had been raised to the introduction of the same notion into article 6 of the draft Covenant. Both there and in the Declaration, the meaning was obviously "contrary to law" and there could be no question of a State's undertaking to protect its citizens against fortuitous happenings, as had been maintained by some representatives, or of the word's being interpreted to mean "contrary to divine or natural law", which would involve vague and ill-defined criteria.

20. It was not so much the word "arbitrarily" as the whole first sentence of paragraph 1 that was at fault: it was a negative statement, which was less forceful than a positive one, and it could be interpreted to mean that it was allowable to take life, provided that it was not done arbitrarily. The problem could not be solved merely by deleting that sentence and leaving the second. The right should be stated unequivocally, as it was in article 3 of the Universal Declaration of Human Rights. That could easily be achieved by adopting the first sentence of the Colombian-Uruguayan amendment (A/C.3/L.644) and the second sentence of the Commission's text (E/2573, annex I B). Paragraph 1 would then read "Every human being has the inherent right to life. Everyone's right to life shall be protected by law."

21. With regard to paragraph 2 of the article, he said he sympathized with those who had so eloquently put the case for the abolition of capital punishment, the reasons for and against which had been argued many times, and he hoped that the death penalty would be eliminated in due course. It would be unwise, however, to include in the draft Covenant a provision obliging States to abolish capital punishment immediately, for in many cases that would be an obstacle to ratification. The compromise formula proposed by the French representative at the 811th meeting would not meet the objections of States which still maintained the death penalty. The formula proposed in the French amendment (A/C.3/L.645) would be preferable but there was no need to mention the principle of the legality of the penalty, which found its place in other articles of the draft Covenant, article 15 in particular.

22. Paragraph 3 was acceptable as drafted, although the words "in all cases", in the second sentence, did not seem entirely relevant.

23. Mrs. ROSSEL (Sweden) said that it was ironical that the discussion of the right to life had centred almost entirely on the cases in which the State should have the right to kill. It was encouraging to note, however, that the trend in most countries was towards the restriction of the right to impose capital punish-

ment. Even in those States where the death penalty could still be imposed by statute, the law was often more honoured in the breach than in the observance, either as a result of the example set by other countries, where capital punishment had been abolished, or under the pressure of public opinion. Even in the five years which had elapsed since the text of article 6 had been drafted by the Commission on Human Rights, considerable progress had been made.

24. Paragraph 4 of the article, which provided that sentence of death should not be carried out on a pregnant woman, evoked the full horror of capital punishment. Little was known of the deterrent effect of the death penalty, so often used as an argument by those who were in favour of capital punishment. A comparative study by the Sub-Commission on the Prevention of Discrimination and Protection of Minorities of the frequency of crimes punishable by death in countries where the death penalty had been abolished and in countries where it was still in force would be of great value. Such a study should be objective and deal with the subject from the historical, sociological, philosophical, legal and anthropological points of view. It would certainly be as useful as the other studies on discrimination carried out by the Sub-Commission and might be sufficiently thought-provoking to produce a movement for reform in the countries which still applied the death penalty. The fact that the question was under study would, in itself, be a step towards a positive solution. A seminar on the same subject might be organized simultaneously, under the programme of advisory services in the field of human rights.

25. In suggesting the study and the seminar, she did not intend to delay the work on the draft Covenants. The vital interest shown in the whole question of the right to life was reflected in the large number of amendments to article 6. The Netherlands amendment (A/C.3/L.651) was the only one which her delegation could unreservedly support. It was based on article 2 of the Convention for the Protection of Human Rights and Fundamental Freedoms adopted by the Council of Europe, which Sweden had ratified; her delegation hoped that the final text of the article would follow the Netherlands amendment as closely as possible.

26. Mr. CALAMARI (Panama) endorsed the views of those delegations which had stressed the advisability of reaching a compromise solution on the different articles of the draft Covenants rather than adopting by a majority vote articles which would make the Covenants as a whole unacceptable to many States.

27. Capital punishment was prohibited in Panama under article 30 of the Constitution; under article 28, prisons were regarded as places of detention and rehabilitation, in conformity with contemporary theories concerning the treatment of prisoners. But it was useless to treat the delinquent without attacking the causes of delinquency; poverty, hunger and injustice had to be eliminated in order to prevent young people from being launched on a life of crime. Among enlightened jurists, prevention was felt to be more important than punishment. By ensuring a healthy heredity and environment, and teaching sound principles in schools and religious institutions, it would ultimately be possible to banish crime from the world.

28. Those who defended the death penalty maintained that it was less inhumane than imprisonment for life. Suffering in the latter case was certainly great but there was a hope that the delinquent would eventually be rehabilitated and transformed into a useful member of society. Another argument was the supposedly deterrent effect of the death penalty, but there was no evidence that the rate of crime was higher in countries which did not impose the death penalty. Furthermore, the publicity surrounding the trial and execution of a criminal aroused unhealthy excitement and curiosity which could turn a potential offender into an actual criminal. It was impossible to say how many people had been deterred from committing a crime by the fear of the death penalty but it was unfortunately only too easy to count those who had not been deterred and had paid for it with their lives.

29. Although he had no difficulty in accepting the second sentence of the Colombian-Uruguayan amendment (A/C.3/L.644), he realized that it could not be accepted by countries like Australia, which had a federal structure. It would be unadvisable to insert in the draft Covenant a provision which could not be accepted by such States, many of which were desirous of abolishing the death penalty as soon as circumstances permitted. The first sentence, which was merely declaratory in character, could be retained and the second might be replaced by a more acceptable text. He hoped the sponsors of the amendment would be able to accept the following wording: "Every human being has the inherent right to life. The States Parties to this Covenant recognize the necessity of promoting the abolition of the death penalty." Although he sympathized with the oral amendment introduced by Belgium, he hoped the Belgian delegation would accept the text he had proposed.

30. The French amendment to paragraph 2 (A/C.3/L.645), as amended by the Salvadorian representative at the 811th meeting, was acceptable, either in that form, or in the form of the Philippine amendment (A/C.3/L.646).

31. He agreed with the Chilean representative's remark (811th meeting) that if the word "arbitrarily" was deleted from paragraph 1, paragraphs 2, 3 and 4 of the article would be unnecessary. He himself felt that the word was not very apposite and that the point it was meant to cover, namely, that no one should be deprived of his life without due process of law, was included in paragraph 2 of article 6 of the original text. The point was made even clearer in the text proposed in the Philippine amendment (A/C.3/L.646).

32. He would vote for paragraph 3 of the original text (E/2573, annex I B) and for paragraph 4 in the form proposed by Guatemala (A/C.3/L.647). The exemption of minors as well as pregnant women from the death penalty was in line with enlightened modern thought and in harmony with the practice of most countries. He agreed with the Colombian representative's statement at the 811th meeting that the article was unsatisfactory since it contained no provision prohibiting the imposition of the death penalty for revolutionary activity. He would support an amendment including a provision of that kind.

33. He strongly supported the amendment proposed by Brazil and Peru (A/C.3/L.649), and he would be happy to co-sponsor it.

34. Mr. D'SOUZA (India) said that his delegation recognized the great importance of article 6. Although the sacredness of life and State protection of individual lives was a universally acknowledged principle, the article had created greater controversy than other articles which did not set forth such clear principles. It was ironic that in modern times, when State after State was abolishing capital punishment, there was still so much callousness with regard to human life that millions of human beings perished in wars, internal insurrections and at the hands of ideological fanatics. The commandment "Thou shalt not kill" in Mosaic law, however, did not mean categorically that in no case should life be taken. Although mankind had a revulsion against killing and was in favour of preserving all lives, the State was still considered justified in many countries in depriving the individual of his life in certain instances.

35. The French representative had rightly said (810th meeting) that the inviolability and sacredness of life lay in the fact that the State could not grant it, but could only take it away. It was obvious that the State should therefore take life only as a last resort and in self-defence, in order to preserve the rights of organized society, but in its own interest the State must fix limitations. Countries which had not yet abolished capital punishment could not be accused of unethical and barbarous practices if adequate guarantees were provided.

36. His delegation fully endorsed paragraph 4 of the article, in the belief that the right to life extended not only to persons who were already alive, but also to those not yet born. He hoped that the provision would be made as strong as possible.

37. With regard to the French proposal (A/C.3/L.645) that the first sentence of the article should be deleted, he pointed out that, although the controversial word "arbitrarily" would thus be eliminated, the sentence gave balance to the statement of the principle concerned. He had also been impressed by the United States representative's persuasive arguments at the 812th meeting in favour of retaining the word.

38. Mr. BRATANOV (Bulgaria) said that his delegation considered paragraph 1 of the article to be the most important part, in view of the fundamental principles it proclaimed. The two elements of the paragraph, the first sentence proclaiming that no one could be arbitrarily deprived of life, and the second calling upon all States to regulate their legislation so as to protect the right, were interconnected and therefore absolutely necessary. The first sentence by itself would not represent a clearly stated legal obligation, and the second sentence without the first would merely be a weak statement, imposing no binding obligation upon States. The wording of paragraph 1 however could be improved. Several delegations seemed to be prepared to accept the first sentence of the Colombian-Uruguayan amendment (A/C.3/L.644) and to supplement it by a sentence to the effect that every person's right to life was protect by the law, as suggested by the Saudi Arabian representative. The Bulgarian delegation thought that such a text would be even more acceptable if the order of the two ideas were reversed, in accordance with the USSR representative's suggestion (810th meeting).

39. With regard to the Uruguayan representative's proposal for the abolition of the death penalty, he said that Bulgarian legislation provided that penalty only for the most serious offences and, as was stated in the penal code, only as a temporary and exceptional measure. Many countries had similar legislation on the matter. What the Committee had to consider, however, was not the theory involved, but the fact that the draft Covenant on Civil and Political Rights, unlike the draft Covenant on Economic, Social and Cultural Rights, did not provide for progressive implementation. Thus, although the Committee had been justified in stipulating a definite period for the elimination of illiteracy in an article of the other Covenant, such a provision would be out of place in article 6. Bulgaria was anxious to enable as many States as possible to accede to the Covenants and therefore, despite its intention ultimately to abolish the death penalty, it could not support a provision which would raise artificial obstacles to such accession.

40. Miss MacENTEE (Ireland) said that her delegation would have much preferred to be in a position to endorse categorically the commandment "Thou shalt not kill", but in the existing state of society few countries were able to do so. Her Government was able to subscribe immediately to the text proposed in the Netherlands amendment (A/C.3/L.651), because it was identical with the corresponding provision of the Convention for the Protection of Human Rights and Fundamental Freedoms, which Ireland had ratified. The text was straightforward and free from wishful thinking and represented at least a minimum safeguard of human life. Nevertheless, the Irish delegation did not consider that it represented the optimum that mankind could achieve in the matter. The fears of those who saw in the Netherlands text a licence to take life were comprehensible, but it could not be maintained that that was the intention of the proposal; its purpose was to limit and define strictly the sphere in which States might extend immunity from legal sanctions with regard to certain types of intentional homicide, and the Committee should ponder whether a superficially more liberal text might not admit of greater abuses.

41. The Irish delegation thought that the misconception might be corrected by rewording the article. A preface was essential, and the first sentence of the Colombian-Uruguayan amendment (A/C.3/L.644) seemed to be an admirable declaration of the right. Secondly, it must be made clear that the Covenant could not be regarded as an instrument perpetuating the institution of capital punishment. Her delegation could not accept a provision requiring the progressive abolition of the death penalty, but would suggest the addition of a new paragraph to show that the contracting States were not inimical to the principle. The paragraph would read:

> "Nothing in this article shall be invoked to prevent or to retard any State Party to the Covenant from abolishing capital punishment, either wholly or in part, by constitutional means."

42. Although her delegation had based its position on the Netherlands amendment (A/C.3/L.651), it would be able to vote for the text of the article prepared by the Commission on Human Rights, again preferably with the initial declaration of the right involved and with the suggested additional paragraph. That attitude was based mainly on her delegation's interpretation of the word "arbitrarily". It could not agree with some

English-speaking representatives who had questioned the meaning of the word; it was incorrect to state that only juridically defined words and phrases were intelligible in law, for in legal documents, as elsewhere, words carried their accepted meaning, unless expressly interpreted by the instrument itself or by a competent judge as meaning something different. "Arbitrarily" was no exception. Since "arbitrary" pertained in its essence to an "arbiter", it presupposed intention and the act of a conscious will. Accordingly, since accidents were manifestly outside human control, death by accident was not included in the provision. Besides being intentional, an arbitrary act was also subject to no control and was performed at the absolute discretion of the perpetrator. Anyone who arbitrarily deprived another of life arrogated to himself the right to kill; that was not the case of a judge, a soldier or a citizen carrying out his duty as provided by law, since in none of those cases did the ultimate responsibility rest with the individuals concerned. All the exceptions in the Netherlands amendment were therefore allowed for by the word "arbitrarily" in that context. If it were felt, however, that the word provided for a still wider range of exceptions to the prohibition, and might permit the agents of the State to take life with the authority of the State in many circumstances, the term would indeed be dangerous. The Irish delegation was convinced, however, that that was not so. The State, in the same way as the individual, was precluded from taking life "arbitrarily"; the article ensured that in that instance the authority of the State should derive from outside itself, and the State was firmly bound by its constitution and its laws in that respect.

43. Furthermore, the word "arbitrarily" in a legal context meant both "unconstitutionally" and "without cause based upon law"; that definition by an American judge established a persuasive precedent for other common law systems. English courts also had provided adequate definitions. "Arbitrary punishment" was that left to the discretion of the judge, and not prescribed by statute; statutory provision was made for the levying of "arbitrary fines" by corporations; and the word "arbitrarily" had been taken to cover the unreasonable exercise of discretion. In American jurisprudence, moreover, the word conveyed the meaning of anything "fixed or done capriciously or at pleasure; without adequate determining principle; depending on the will alone; absolutely in power; tyrannical; despotic; without cause based upon law; not governed by any fixed rule or standard". In view of such exhaustive interpretation, countries with common law systems could safely take the word "arbitrarily" to mean, at least, "without due process of law" and could subscribe to paragraph 1 of the original text. The Irish delegation, however, considered that the Netherlands text provided better safeguards against regression from positions held by States at the time of ratification. The possibility of constitutional or legal provisions being enacted to make the protection offered by paragraph 1 an illusory one could not be ignored, for while "arbitrarily" could often mean "illegally", it could not be regarded as synonymous with "unjustly". An arbitrary action might be entirely just. Her delegation therefore welcomed the reference in paragraph 2 of article 6 to the principles of the Universal Declaration of Human Rights. With regard to the Convention on the Prevention and Punishment of the Crime of Genocide, constitutional obstacles had prevented Ireland from adhering to it and her delegation would prefer the reference to be omitted.

44. Finally, her delegation could not vote for the English text of the Guatemalan amendment (A/C.3/L.647), because the word "minor" had a precise significance in English which was not conterminous with the category of young people who should not suffer the death penalty. She suggested that the amendment would be more acceptable if the Spanish term "menores de edad" were translated as "children and young persons".

45. The CHAIRMAN suggested that the Committee should set up a Working Party to consider the amendments submitted and to prepare a unified text. The Working Party should consist of the sponsors of amendments who wished to serve in such a group.

It was so decided.

The meeting rose at 1.15 p.m.

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