



Friday, 22 November 1957,
at 3.15 p. m.

NEW YORK

CONTENTS

	<u>Page</u>
Agenda item 33:	
Draft International Covenants on Human Rights (continued)	
Article 6 of the draft Covenant on Civil and Political Rights (continued)	279
Organization of work	281

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, A/C.3/L.648, A/C.3/L.651, A/C.3/L.654, A/C.3/L.655 and Corr.1, A/C.3/L.656) (continued)

ARTICLE 6 OF THE DRAFT COVENANT ON CIVIL AND POLITICAL RIGHTS (E/2573, ANNEX I B, A/C.3/L.655 AND CORR.1) (continued)

1. Mr. BONDEVIK (Norway) felt that it would be wrong to draft a text that was theoretically perfect but did not take present-day realities into account. Although his delegation approved of the Colombian and Uruguayan amendment (A/C.3/L.644) in principle, it thought that it would be unrealistic to adopt it at the current time as its adoption would reduce the chances of ratification of the Covenant. Most of the changes suggested by the Working Party (A/C.3/L.655 and Corr.1) were acceptable. His delegation, however, was not entirely satisfied with the text proposed for paragraph 4; it would prefer that provision to read:

"Sentence of death shall not be imposed for crimes committed by persons under eighteen years of age and by pregnant women."

He would vote against the new paragraph suggested by the Working Party, which he considered unnecessary, since paragraph 2 already gave adequate expression to the same idea, albeit indirectly.

2. Miss RADIC (Yugoslavia) considered the text submitted by the Commission on Human Rights (E/2673, annex I B) acceptable. While fully appreciating the humanitarian reasons for the Colombian and Uruguayan amendment (A/C.3/L.644) and the Costa Rican amendment (A/C.3/L.648) she would be unable to vote for them, because their adoption would raise insurmountable difficulties for a great many States.

3. She could not support the Netherlands amendment (A/C.3/L.651) to paragraph 1; the proposed enumeration was incomplete and the provision itself would be difficult to apply. The text "Everyone's right to life shall be protected by law" was satisfactory, but it was

important to remember that in order to protect the life of its nationals effectively, the State must take social and economic action. She also endorsed the provision for the protection of the right to life "from the moment of conception" (A/C.3/L.654), although the language used might be open to criticism on legal and technical grounds. She had some doubts concerning the word "arbitrarily", but would not oppose its adoption.

4. With regard to paragraph 2, her delegation considered that the reference to the Convention on the Prevention and Punishment of the Crime of Genocide ought to be retained. She could have accepted the four-Power text (A/C.3/L.649/Rev.1) if the words "in the States that are parties thereto" had not been included in the Working Party's revised version of it (A/C.3/L.655 and Corr.1); those words would, however, place States which had ratified the Covenants in a different position from States which had not done so. The same consideration applied to the Australian amendment to the four-Power text.

5. Her delegation had no objection to the text of paragraph 3 proposed by the Working Party and would accept the text of paragraph 4, in which it would, however, had preferred to see the word "minors" inserted. Lastly, it was in favour of the new paragraph suggested by the Working Party although the stipulation it contained was implicit in article 6 as a whole.

6. Mr. GOMEZ ROBLEDO (Mexico), referring to the five-Power amendment (A/C.3/L.654), pointed out that the idea of protecting the child's interests from conception dated back to Roman law, as far as inheritance was concerned; it was now enshrined in the legislation of a great many countries. Clearly, the proposed provision would not preclude States wishing to do so from authorizing any medical intervention that might be necessary in certain circumstances, for example to save the mother's life.

7. His delegation regretted that it had to vote against the Netherlands amendment (A/C.3/L.651). While that provision, which was taken from the Convention for the Protection of Human Rights and Fundamental Freedoms adopted by the Council of Europe, might be considered satisfactory for European countries, in other countries the enumeration of cases in which life might legitimately be taken might lead to the abuses which article 6 rightly sought to prevent. It should, for example, be made clear that the sentence pursuant to which a convicted person might be executed should be an enforceable decision not rendered by a special court and in accordance with the law in force at the time the crime was committed. The exception relating to cases where a lawfully detained person was prevented from escaping suffered from the same lack of precision and might give rise to the same danger of abuse.

8. He hoped that the sponsors of the four-Power and

Australian texts (A/C.3/L.655 and Corr.1) would succeed in drafting a joint text. If they did not do so, he would vote for the Australian proposal, which was more satisfactory from the technical point of view.

9. Mrs. SYSOEVA (Byelorussian Soviet Socialist Republic) thought that the text of article 6 proposed by the Commission on Human Rights (E/2573, annex I B) clearly and satisfactorily enunciated the principle that no one should be arbitrarily deprived of his life; it defined the essence of the right to life. The enumeration in the Netherlands amendment (A/C.3/L.651) was incomplete and its adoption would weaken the text of article 6; her delegation would therefore vote against that amendment. It would also vote against the Colombian and Uruguayan amendment (A/C.3/L.644) and the Costa Rican amendment (A/C.3/L.648), which omitted certain important provisions of article 6. The text of paragraph 2 drafted by the Working Party (A/C.3/L.655 and Corr.1) was on the whole satisfactory, because it re-stated the fundamental provisions of the original text. She reserved her delegation's position, however, regarding the words "in accordance with law which is in force at the time of the commission of the crime", since they might deprive the accused of the benefit of more lenient legislation enacted after the commission of the crime. She would support the text proposed by Japan for paragraph 4 and pointed out in that connexion that whatever text was adopted, her country would continue, as it was then doing, not to impose sentence of death for crimes committed by persons under eighteen years of age. She would vote in favour of the new paragraph suggested by the Working Party (A/C.3/L.655 and Corr.1). She would vote against the five-Power amendment (A/C.3/L.654), which was not sufficiently clear and was weaker than the original text; she would also vote against the Australian amendment to paragraph 3.

10. Mr. Hermes LIMA (Brazil) said that there could be no doubt of the propriety of including the four-Power amendment to paragraph 3 in an article concerned with protecting the right of life, for if it was proper to affirm that right with respect to the individual, there was all the more reason to affirm it with respect to the group. The crime of genocide belonged to all ages, but was even more frightful in a period when mankind had powerful weapons at its disposal. However, in view of the objections to the word "fully" and the difficulties that it might create for countries which had entered reservations to the Convention on Genocide, the sponsors had decided, in the hope of securing the unanimous support of the Committee, to accept the major part of the Australian amendment and to redraft their proposed paragraph 3 to read:

"When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any States Parties to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide."

11. Mr. TEJERA (Uruguay) could not accept the argument that it would be unrealistic to provide for the abolition of capital punishment in the Covenant because the penalty was still retained in a great many countries. While realities obviously had to be taken into account, that did not mean that whatever was, was unchangeable; otherwise progress would be impossible. If the Committee envisaged the abolition of the death penalty, it

would help to give currency to the idea and would ultimately earn the gratitude of mankind. He considered it his duty to continue to defend his point of view and do everything possible to secure the adoption of the proposals for abolishing capital punishment. He would therefore vote in favour of the text submitted by his delegation and the delegation of Colombia (A/C.3/L.644). He would also vote for the four-Power amendment (A/C.3/L.649/Rev.1), which he considered extremely valuable. If the text finally put to the vote contained no reference to the abolition of capital punishment, he would abstain, as he could not vote for a text which ran directly counter to the right of every person to life.

12. Begum JEHAN-MURSHID (Pakistan) was grateful to the members of the Working Party for their efforts, which had resulted in agreement on a number of points.

13. Her delegation was prepared to vote in favour of the first sentence of the amendment submitted by Colombia and Uruguay (A/C.3/L.644) but could not support the second sentence, for in Pakistan, as in many other countries, capital punishment still existed. The five-Power amendment (A/C.3/L.654), in particular the phrase "from the moment of conception", seemed pointless to her. The same was true of the text proposed by the Costa Rica delegation (A/C.3/L.648), which introduced nothing really new.

14. The second sentence of paragraph 1 in the article prepared by the Commission on Human Rights (E/2573, annex I B) admirably defined the sacredness of human life and she would therefore vote in favour of it. On the other hand, the word "arbitrarily" in the second sentence appeared to her to be so vague that she could not support the view that it should be retained.

15. Thanks to the conciliatory spirit shown by the sponsors of various amendments, the Working Party had been able to present a single text for paragraph 2 (A/C.3/L.655 and Corr.1). That text was completely satisfactory to her delegation, which considered it essential to maintain the phrase "at the time of the commission of the crime" in order to avoid the possibility of condemnation to death under special legislation enacted after the commission of the crime. If a separate paragraph was devoted to the Convention on Genocide, it was pointless to mention it in paragraph 2. Of the two texts proposed for the new paragraph 3 (A/C.3/L.655 and Corr.1), she preferred the text submitted by Australia to the Working Party. She was glad that the text of the original paragraph 3 had been retained and would support it.

16. The words "children and young persons" which appeared in the revised text of the Japanese amendment (A/C.3/L.655 and Corr.1) were so vague that the Working Party had been unable to take a decision. As it was impossible to believe that in such a situation the States would not act with all the justice and clemency desired, it would be preferable to delete those words and to retain the text proposed by the Commission on Human Rights.

17. She considered that the Netherlands amendment (A/C.3/L.651) had been put forward for reasons of realism and would gladly support paragraph 1 of the text proposed in it. She had no objection in principle to paragraph 2, but felt that such an enumeration was necessarily incomplete and might moreover give the impression that more importance was attached to the

limitations than to the right itself. She would abstain from voting on it.

18. In conclusion, she indicated that she would favour the new paragraph proposed for insertion at the end of article 6. She would also support the United Kingdom amendment (A/C.3/L.656).

19. Mr. BRILIANTES (Philippines) explained that his delegation had not formally proposed substitution of the phrase "without due process of law" for the word "arbitrarily" in the first sentence of article 6, paragraph 1, because it understood that the present wording was satisfactory to a great many representatives. If the wording it had suggested seemed preferable to some delegations, including that of the United Kingdom, and if they wished to present it as an amendment, his delegation was prepared to support them.

20. The three clauses mentioned by the Working Party for paragraph 1 (A/C.3/L.655 and Corr.1) seemed satisfactory to his delegation. If the first were retained, the second should, however, be drafted to read: "This right shall be protected by law."

21. He was gratified that the new text of paragraph 2 seemed to be satisfactory to a great many delegations. He considered that paragraph 2 as it stood did not weaken any of the provisions of article 15.

22. Comparing the four-Power amendment with the Australian amendment as set forth in the Working Party's report (A/C.3/L.655 and Corr.1), he expressed the view that the latter was more satisfactory because it could be easily accepted by all countries whether or not they had ratified the Convention on Genocide or had ratified it with reservations. He was grateful to the sponsors of the four-Power text for proposing a compromise solution. He hoped that it would attract a great many votes.

23. With regard to the Working Party's comments on paragraph 4 of the article (A/C.3/L.655 and Corr.1), he explained that his delegation had proposed that the term "juveniles" should be added to the list of suggested formulae, because its legal meaning was better defined than that of the term "children and young persons". The expression "persons below eighteen years of age" seemed equally satisfactory to him and he would gladly vote in favour of it.

24. Mrs. QUAN (Guatemala) was in favour of point 1 of the United Kingdom amendments (A/C.3/L.656) but could not agree to the substitution of the phrase "on children and young persons" for the words "for crimes committed by children and young persons". The amendment would eliminate any reference to the age at which the crime was committed and, in view of the slowness of penal proceedings, might result in the imposition of the death sentence for a crime committed before the accused reached the age of eighteen.

25. The Constitution of Guatemala formally prohibited the imposition of sentence of death on a woman. She therefore warmly supported the oral amendment proposed by the Norwegian representative and associated herself with the arguments he had put forward, with a view, still more, to prohibiting the imposition of the death sentence on a pregnant woman.

Organization of work

26. The CHAIRMAN said that the Committee would be able to hold only fourteen more meetings during the

remainder of the current session. It still had to consider item 32 (Recommendations concerning international respect for the right of peoples and nations to self-determination) and item 34 (Draft Convention on Freedom of Information) of the General Assembly's agenda. The Committee must therefore take a decision regarding the organization of its work for the remainder of the session.

27. Mr. ROSSIDES (Greece) proposed that the Committee should take up items 32 and 34 as soon as article 6 of the Draft Covenant on Civil and Political Rights had been adopted.

28. Mr. ZEA HERNANDEZ (Colombia) felt that the Committee's examination of the draft Covenants was progressing remarkably well and that it would be a pity to interrupt it and take up other items. In that connexion, he cited General Assembly resolution 1041 (XI) recommending that the Third Committee should devote enough time to its discussion of the draft Covenants on Human Rights to be able to complete their consideration, if possible, by the end of the thirteenth session.

29. In reply to a question by Sir Samuel HOARE (United Kingdom), Mr. VAKIL (Secretary of the Committee) said that, counting the current meeting, the Committee had devoted thirty-one meetings to the draft Covenants.

30. Mr. ROSSIDES (Greece) observed that taking into account the six meetings held by working parties and the additional meeting that would be required for a vote on article 6, the Committee would reach the total of thirty-eight meetings it had decided to devote to the draft Covenants (A/C.3/L.607) and during those thirty-eight meetings would have adopted only four articles. At that rate, it would be years before the Committee completed its consideration of the draft Covenants and it was, therefore, of little consequence whether it devoted a few additional meetings to them or not. On the other hand, it might be able to take decisions of immediate practical value concerning the two other agenda items.

31. Mr. BAROODY (Saudi Arabia) agreed that the six meetings of the working parties should be included in the total of meetings devoted to the draft Covenants. He therefore considered that the Committee should adopt the Greek representative's suggestion. It could divide its fourteen remaining meetings equally between items 32 and 34 of the agenda. Nevertheless, in view of the fact that the Committee had already taken a decision on the question of the right of self-determination of peoples (article 1 of the draft Covenants), he would favour the allocation of four meetings to agenda item 32 and ten to item 34.

32. Mr. TEJERA (Uruguay) drew attention to the letter of 21 September 1957 from the President of the General Assembly to the Chairman of the Third Committee (A/C.3/580) and expressed the view that it was the Committee's duty to take up items 32 and 34. He was prepared to accept either of the Saudi Arabian representative's suggestions but thought that it would be preferable to start with item 32, which seemed to him more important and of greater relevance to the aspirations of the peoples.

33. Miss BERNARDINO (Dominican Republic) and Mr. EL-FARRA (Syria) felt that it would be unnecessary to vote on the Greek representative's suggestion as the Committee had already decided to devote only thirty-eight meetings to the draft Covenants.

34. Mr. THIERRY (France) did not think that meetings of working parties could be considered on the same footing as meetings of the Committee. He was inclined to support the Colombian representative's view but suggested as a compromise that the Committee should consider one additional article of the draft Covenant on Civil and Political Rights.

35. Mrs. LORD (United States of America) noted that at the previous session the Committee had not considered meetings of working parties as meetings of the Committee.

36. Sir Samuel HOARE (United Kingdom) expressed the opinion that a meeting of the Committee could only mean a meeting of the whole Committee and not of a few members of it.

37. Mr. FOMIN (Union of Soviet Socialist Republics) remarked that the Committee was master of its own procedure and was therefore not bound by a previous decision. Arithmetical questions were of secondary importance. The fact was that several meetings would have to be devoted to the remaining agenda items. It might not be necessary to decide at the current stage how many meetings were to be devoted to each item, but the Committee should decide immediately what it intended to do after the vote on article 6 of the draft Covenant on Civil and Political Rights.

38. Mr. ROSSIDES (Greece) proposed that, after the vote on article 6, the Committee should consider the two remaining items in the order in which they appeared in the agenda and that the same number of meetings should be devoted to each.

39. Mr. LOPEZ (Philippines) feared that, if rigorously applied, the principle of equal division might cause difficulties. He suggested that the Committee should decide to consider agenda item 32 first, on the understanding that not more than seven meetings would be devoted to that item.

40. The CHAIRMAN put to the vote the first part of the Greek proposal, that after the vote on article 6 of the draft Covenant on Civil and Political Rights the Committee should consider item 32 and then item 34 of the General Assembly's agenda.

The first part of the proposal was adopted by 37 votes to 1, with 27 abstentions.

41. After a brief exchange of views in which Sir Samuel HOARE (United Kingdom) and Mr. BARODY (Saudi Arabia) took part, the CHAIRMAN stated that the question whether meetings of working parties could be considered as meetings of the Committee had been settled at the previous session.

42. She asked whether the Committee was prepared to adopt the Philippine suggestion that not more than seven meetings should be devoted to agenda item 32.

It was so decided.

The meeting rose at 5.45 p.m.