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CONTENTS

Chairman: Mrs. Georgette CISELET (Belgium).

In the absence of the Chairman, Mr. Mahmud (Ceylon), Vice-Chairman, took the Chair.

AGENDA ITEM 34

Draft International Covenants on Human Rights (E/2573, annexes I-III, A/2907 and Add.1-2, A/2910 and Add.1-6, A/2929, A/4149, A/C.3/L.778, A/C.3/L.785, A/C.3/L.791-794, A/C.3/L.795/Rev.2, A/C.3/L.797-799, A/C.3/L.801, A/C.3/L.803/Rev.1, A/C.3/L.805/Rev.2, A/C.3/L.806-808, A/C.3/L.814-815, A/C.3/L.816/Rev.1, A/C.3/L.717-718) (continued)

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

1. Mr. STAHL (Sweden) said that the first sentence of paragraph 1 of article 14 of the draft Covenant as submitted by the Commission on Human Rights (E/2573, annex I B) should be retained. It laid down a basic principle, which should appear in article 14 even if it was restated elsewhere. However, articles 14 and 24 did not in fact enunciate the same principle. To convince oneself of that, as the Ukrainian representative had rightly pointed out (962nd meeting), one need only glance at the Universal Declaration of Human Rights.

2. He supported the text proposed in the revised Israel amendment for addition to paragraph 2 (b) and the new paragraph proposed for insertion after paragraph 3 (A/C.3/L.795/Rev.2). Those texts provided additional safeguards for accused persons and were in accordance with the laws of Sweden.

3. He supported the various amendments proposing the deletion of paragraph 4 of article 14.

4. Mr. DUMITRU (Romania) said that he had no difficulty in accepting article 14 as drafted by the Commission on Human Rights. The principles of equality before the courts, juridical independence, the holding of proceedings in public and the right of due defence were all contained in the Romanian Constitution. Moreover, the Romanian rules of judicature and codes of procedure were in complete harmony with the provisions set forth in article 14, and gave even wider and more numerous safeguards of impartiality.

5. Nevertheless, article 14 was not completely satisfactory. It omitted certain basic principles, yet included details of administration which should be left to the discretion of States.

6. The key paragraph of the article was paragraph 1, and the first sentence of that paragraph was of capital importance. It reminded every judge that the law was impartial and that he, too, should be impartial in administering the law. Administering the law was not a purely automatic operation. A judge sometimes had to interpret legislative provisions. Moreover, the law itself often gave him a certain power of discretion—when, for example, he had to decide on a penalty, within specified limits, to fix damages, to weigh the value of statements by witnesses or of circumstantial evidence, or to decide on the amount of surety for bail. It was not enough, therefore, to proclaim the principle of equality before the law in article 24. It was also necessary to see that the law was administered impartially. For that reason, he would vote against the first Argentine amendment (A/C.3/L.805/Rev.2). With regard to the first Israel amendment to paragraph 1 (A/C.3/L.795/Rev.2), he thought it would be preferable to retain the recognized expression "tribunal compétent" in the French text. He would abstain from voting on the second Israel amendment to the same paragraph because the laws of Romania specified that even when the Press and the public were excluded from judicial proceedings the judgement must always be pronounced publicly, failing which it was void.

7. With regard to the amendments to paragraph 2, his delegation would support the United Kingdom proposal (A/C.3/L.792), which gave due prominence to the principle that "Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law". It would also vote in favour of the Israel amendments to paragraph 2 which strengthened judicial safeguards while keeping to basic principles.

8. For the same reason, he was in favour of the insertion of the new paragraph proposed in the revised Israel amendments.

9. Though the wording of paragraph 4 could be improved, the idea it expressed was excellent and in complete conformity with the laws of Romania. As had been pointed out, the term "pardoned" was used quite incorrectly. He would support the Afghan amendment (A/C.3/L.801), which improved the drafting of the paragraph.

10. His delegation took a favourable view of the Ceylonese sub-amendment (A/C.3/L.817), which would make the amendment submitted by Italy and Japan (A/C.3/L.803/Rev.1) acceptable to a greater number of countries.

11. Mr. WIJESINHA (Ceylon) said that the purpose of the Ceylonese sub-amendment (A/C.3/L.817) was

to bring the amendment submitted by Italy and Japan into line with the law and penal procedure of a greater number of countries. The word "tried" might not imply the whole of the proceedings, from the moment of their institution to the actual judgement and sentence. Moreover, the amendment could be interpreted as precluding any re-trial, even where the accused had been condemned or acquitted in error. It could even prevent the resumption of a trial which had been dropped or postponed sine die, for example, because the quorum needed for the jury had not been obtained. Such a provision was plainly incompatible with the laws of many countries. The well-established principle of law was that there should not be "double jeopardy" and that principle referred to punishment and not to trial. Moreover, to prohibit the re-trial of a person acquitted in error and ordered to be re-tried would be a measure of excessive indulgence at variance with the general interest. The replacement of the word "tried" by the word "punished" would make the text acceptable to a greater number of countries as punishment was the outcome of a trial and the final phase of it. One could not visualize a trial alone for its own sake without the resultant liability to punishment. He would be grateful if the Italian and Japanese delegations would accept the change he had suggested.

12. The main purpose of the Ceylonese sub-amendment (A/C.3/L.818) to the new paragraph proposed by Israel was to add the phrase "according to law" at the end of the proposed text; due regard would then be paid to the conditions to which the right of appeal was generally made subject, in order to prevent abuses. The addition would permit the deletion of the words "other than petty offences", which introduced a provision of operative detail which was a matter for internal legislation. Article 14 should simply state the principle of double jurisdiction, leaving its implementation to States.

13. Mr. ROMERO (Ecuador) said that he had not been convinced by the arguments put forward against the retention of the first sentence of paragraph 1. The fundamental principle contained in that sentence had to be proclaimed, for only the proper administration of justice could, in the long run, guarantee the individual the enjoyment of all the rights set forth in the Covenant. His delegation supported paragraph 2 of the article; the constitutions of most countries, including that of Ecuador, laid down that everyone was presumed innocent until proved guilty according to law.

14. He would be glad if the Italian delegation would explain the reasons for its amendment to paragraph 3 (A/C.3/L.815). The laws of Ecuador, like those of many countries, upheld the principle that a juvenile who had committed an act against the law or the social order was to be considered not as an offender liable to punishment, but as a socially ill-adapted person who needed rehabilitation. His delegation would not be able to accept the Italian amendment, unless the words "A juvenile charged with a criminal offence shall be tried according to" were replaced by "The procedure with respect to juveniles will take into account", and the words "juvenile offenders" were replaced by "juveniles".

15. Mr. BOUQUIN (France) said that the purpose of the Third Committee's work was not to draft a convention on procedure but to proclaim and guarantee, in an article of the Covenant, the right of everyone to be judged fairly. That right was fundamental, and while the need to safeguard the vital interests of States must not be overlooked, the interests of the individual should not on that account be sacrificed to those of the State. The Commission on Human Rights had tried to establish a balance between those two types of safeguards in its draft of article 14. In paragraph 1 it had enunciated the right itself, followed at once by an essential guarantee embodied in the word "public"; for justice must not be secret. The interests of society and of the State were safeguarded by the provision for closed hearings, while those of the individual were guaranteed by the provision that judgements must be pronounced publicly in all but two clearly specified cases. The provisions of paragraph 1 would not be adequate to ensure the proper administration of justice where a person charged with an offence was not guaranteed the means of defending himself. That guarantee was given in paragraph 2, as supplemented by paragraph 3, which provided for a special procedure in the case of those who, because of their age, would be unable to defend themselves properly even if they were assured all the guarantees laid down in paragraph 2. Since miscarriages of justice could occur even where all due precautions had been taken, paragraph 4 provided for the compensation of persons who had suffered punishment as a result. Article 14 as drafted by the Commission on Human Rights was therefore complete and perfectly balanced. His delegation would be happy to support it if it was put to the vote in the form in which it stood.

16. The first sentence of paragraph 1 had given rise to some difficulties. The arguments against its retention advanced by the Argentine representative (961st meeting) were quite convincing. It was true that the same idea was expressed in articles 16 and 24 of the draft, and that it also appeared, in a slightly different form—closer to that used in article 10 of the Universal Declaration of Human Rights—in paragraph 2 of article 14. Furthermore, as paragraph 1 dealt with the publicity of hearings and judgements, the first sentence seemed out of place. However, his delegation had no objection to the principle stated in the sentence.

17. Some delegations had maintained that the word "independent" was redundant. But the separation of powers ensured the independence of the judiciary only vis-à-vis the political power; protection against the influence of pressure groups was still needed. The word "independent" was therefore essential to article 14.

18. The adjective "competent" obviously did not have the same meaning in all languages—which explained why various representatives had criticized its use. The wording proposed in the Israel amendment (A/C.3/L.795/Rev.2) was preferable, in that respect, to the original text, but it still failed to satisfy all members of the Committee. The word "competent" might perhaps prove generally acceptable if it was preceded by the word "legally"—which would require the deletion of the words "established by law".

19. The expression "huis clos" had also given rise to translation difficulties; but those difficulties were not insurmountable, since there existed in English such expressions as "closed doors" and in camera, which could be used to render the expression employed in the French text.

20. The second Israel amendment (A/C.3/L.795/Rev.2) to paragraph 1, requiring the deletion of the last part of the third sentence in paragraph 1, called into question the very spirit of the paragraph and, in addition, would upset its balance. To delete the words "when the interest of the private lives of the parties so requires" would be a pity, since it would remove a very important idea. Nor could his delegation agree to the omission of the words "in a democratic society". Human rights must inevitably be made subject to certain limitations, but those limitations must not be unqualified, or the Covenants would be valueless. To ensure that States should not interpret the expressions "national security" and "public order" too categorically, and to safeguard the individual rights stated in article 14 against arbitrary action, it was necessary to state clearly the cases in which those two considerations could be invoked. It was for that reason that the Commission on Human Rights had used the words "a democratic society". The expression was not a new one; it appeared in article 29, paragraph 2, of the Universal Declaration of Human Rights and in article 8, paragraph 1 (a) and (c) of the draft Covenant on Economic, Social and Cultural Rights.[1] Far from being unjust towards the inhabitants of undemocratic countries, as the Indian representative had believed (962nd meeting) it was addressed very specially to them. Nothing, therefore, could justify its deletion.

21. His delegation supported points 4 and 6 of the Argentine amendments (A/C.3/L.805/Rev.2). On the other hand, it had some doubts about the fifth amendment, against which the United Kingdom representative had already levelled some highly pertinent criticisms (963rd meeting). The amendment raised difficulties for countries in which the institution of trial by jury existed. Furthermore, the expression "any judgement shall be public" was much too vague to convey the essential idea of the paragraph. He hoped that the Argentine delegation would not press its fifth amendment to the vote.

22. His delegation had no objection to the purely formal amendment which the United Kingdom had proposed to paragraph 2 (A/C.3/L.792). It wished to point out, however, that there was a link between the presumption of innocence and the guarantees of defence, and that the provisions of paragraph 2, unlike those of paragraph 1, applied exclusively to criminal proceedings and should therefore remain grouped together. Nevertheless, his delegation would not vote against the United Kingdom amendment; and it would vote in favour of the two additions to paragraph 2 proposed by Israel (A/C.3/L.795/Rev.2).

23. The text of paragraph 3 as drafted by the Commission on Human Rights was completely satisfactory. He had no criticism to make of the Italian amendment (A/C.3/L.815) but he was not sure that he understood its exact purpose.

24. Unlike the representatives of Argentina, the Netherlands and the United Kingdom, he considered it essential that the victim of a miscarriage of justice should have the right to compensation; and article 14 would be incomplete if it contained no statement of that right. Article 9, paragraph 5,[2] provided that anyone who had been the victim of unlawful arrest or detention should have an enforceable right to compensation. There was no reason why the same right should not be granted to a person who had been convicted although innocent; such a person had suffered far more serious material and moral injury. The representatives of Israel (A/C.3/L.795/Rev.2) and Afghanistan (A/C.3/L.801) had proposed certain modifications to paragraph 4; but the French delegation was satisfied with the text drafted by the Commission on Human Rights and would support it. Some countries, however, might consider that the payment of damages to persons who had been the victims of miscarriages of justice would impose too heavy a burden on States. That was an argument worthy of consideration, although the burden would not necessarily in the final analysis fall upon the State, which was at liberty to refer the liability to third parties. In addition, it might be feared that the right to compensation would be granted in all cases, which would be excessive, since every case had to be decided on its own merits. The French delegation therefore suggested that paragraph 4 should be replaced by the following sentence: "The judicial recognition of the innocence of a convicted person shall confer on him the right to request the award of damages in respect of the prejudice caused him by the conviction." That would provide not for an automatic entitlement to compensation but for the right to make an application for compensation.

25. As to the additional paragraph proposed by the Israel delegation (A/C.3/L.795/Rev.2) for insertion after paragraph 3, he pointed out that means of legal redress—which in some countries, like France, had achieved a highly refined stage of organization—involved some very subtle and complex ideas, such as the distinction between appeal and cassation. It was very hard to find an exact and concise formula which did justice to those subtleties and took into account all the cases which might arise in practice. It would therefore be well to be content with as general as possible a formula.

26. Lastly, the paragraph proposed by Italy and Japan (A/C.3/L.803/Rev.1) set forth a principle recognized by France, which, like all countries which had been subject to the influence of Roman law, had incorporated in its legislation the rule non bis in idem. Although the amendment was satisfactory as regards substance, its drafting could be improved. The Ceylonese representative had already proposed a modification. For his part he suggested the following wording: "No one may be tried for a given act if he has already received a final sentence for that same act".

Mrs. Ciselet (Belgium) took the Chair.

27. Mr. BAROR (Israel) said that the Committee had correctly interpreted the Israel delegation's amendment to the second sentence in paragraph 1. What was important was not that each of the judges individually should have the necessary competence, but that the court should be legally competent to try the case. If the Committee decided that the French representative's suggestion was in accordance with the Israel delegation's intentions, he would be prepared to accept it.

28. As to his amendment to the third sentence of paragraph 1, he saw no justification for the distinction made, with regard to publicity, between the different

[1] See Official Records of the General Assembly, Eleventh Session, Annexes, agenda item 31, document A/3525, para. 75.

[2] Ibid., Thirteenth Session, Annexes, agenda item 32, document A/4045, para. 67.

stages of the proceedings, on the one hand, and the judgement, on the other; in many cases the reasons which necessitated the exclusion of the public and the Press also justified the judgement not being pronounced publicly, and there was no ground for giving the courts more limited powers in the second case than in the first.

29. Although the French representative's comments had been highly interesting, he felt that he could not include the words "in a democratic society" in his amendment. It was clear from the text that restrictions on the principle of publicity should be enforced only by a court acting in the interest of justice, which meant acting in a democratic spirit.

30. He was gratified at the fact that a number of delegations had expressed their support for the Israel amendments to paragraph 2. For reasons of logic and elegance, he suggested that the paragraph should be rearranged. The right of any person charged with a criminal offence to be tried without delay should go hand in hand with his right to have adequate time for the preparation of his defence. Accordingly, sub-paragraph (a) might perhaps be followed by a sub-paragraph (b) worded as follows: "To be tried without undue delay". That would be followed by a sub-paragraph (c), which would be the text of sub-paragraph (b) drafted by the Commission on Human Rights with the addition of the following words: "and to communicate with counsel of his own choosing". That idea was rightly included only once, in paragraph 2 (c) as drafted by the Commission on Human Rights, because the legislation of many countries provided that when legal counsel was provided gratis for the defence of a person charged with a criminal offence, it was for the court to appoint him. In all other cases however, a person charged with a criminal offence should be entitled freely to choose his own legal assistant or counsel.

31. The Ceylonese representative had sought to improve the wording of the text proposed by Israel for insertion after paragraph 3. He wished to point out that his delegation was concerned not with matters of application but with the recognition of an essential principle, the principle that, as a general rule, any person convicted of a crime had the right of appeal. That was a basic guarantee of the proper administration of justice, for it was the only way to deal with miscarriages of justice before it was too late. It was clear from paragraph 4 as drafted by the Commission on Human Rights that the right to appeal was essential. If there was to be some guarantee that persons would not be wrongly condemned to years of suffering, there must be some provision for the review of every case by a higher court. The Ceylonese sub-amendment (A/C.3/L.818) stated that principle in adequately general terms, and he was prepared to accept it.

The meeting rose at 1.5 p.m.

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