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Chairman: Mr. Eduard MEZINCESCU (Romania).

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/4397, A/4428, A/C.3/586, A/C.3/L.875-877) (continued)

ARTICLE 18 OF THE DRAFT COVENANT ON CIVIL AND POLITICAL RIGHTS (E/2573, ANNEX I B) (continued)

1. Mr. FARHADI (Afghanistan) recalled that the Commission on Human Rights had adopted the formula "freedom to maintain or to change his religion or belief" in a perhaps exaggerated spirit of compromise. He paid a tribute to the Philippine representative, who, because of his outstanding personal qualities and the fact that he came from a region where the most varied ideologies and religions existed side by side, was in a particularly good position to submit constructive suggestions, likely to be acceptable to the majority of delegations, on important and delicate questions. The phrase "of his choice" proposed by Brazil and the Philippines in their amendments (A/C.3/L.877) was clear and very general in scope; it should be acceptable to all delegations which favoured the principle set forth in article 18, including the Saudi Arabian delegation. In essence, it was only a matter of wording that separated the various members of the Committee and he would like to associate his delegation with the Moroccan delegation, which at the 1024th meeting had expressed the hope that the formula proposed by the Philippine delegation would seem reasonable to the Saudi Arabian representative.

2. Mr. DE LAS BARCENAS (Spain) said that he had not intended to take part in the debate on article 18, since the text had seemed to him so clear and precise that courts would have no difficulty whatever in interpreting it. Moreover, some of the amendments, which had been eloquently introduced by their sponsors, would definitely improve the text. By the end of the previous meeting, however, his optimism and illusions had vanished, for article 18 had suddenly seemed to enshrine not religious liberty but the opposite, and to protect opinions completely antagonistic to the principles under discussion, namely, not

only indifference, agnosticism and passive atheism but also active and aggressive atheism which sought to save believers from their errors whether they wanted to be saved or not. If that was indeed the meaning of article 18, no amendment, however radical, could bring it into line with the Spanish delegation's views. He had accordingly given very careful study to the text of article 18, in which many delegations, some of them reluctantly, had seen a veritable charter for believers. He was now reassured: the interpretation given by some representatives, whose arguments were by their own admission so unsubstantial that they were likely to be forgotten overnight, could not stand scrutiny. The arguments advanced by the Argentine representative were more weighty; the Spanish delegation wished to affirm that article 18 was not designed to protect unbelievers or sceptics, who could more properly rely on article 19. Article 18 was not an atheist manifesto; on the contrary, it reflected man's fundamental concern, that which distinguished him from the animals. It was man's privilege to be capable of believing in a God; those who renounced their belief or who felt no need for it should not try to distort the meaning of article 18 or to use it in order to arrogate to themselves privileges and advantages which the article was not designed to accord them. If he were not convinced that believers constituted the majority of the Third Committee, he would propose a new text leaving no doubt about the meaning of article 18, even at the risk of being accused of obstructing the elaboration of the draft Covenants, as certain representatives had been at a previous meeting. Article 18 did not, however, seem to require any radical amendment; at all events, he wished to make it quite clear that he would vote in favour of the right to have a religion and not in favour of indifference or atheism.

3. Turning to the amendments, he expressed himself strongly in favour of the Greek proposal (A/C.3/L.875); while he had originally wondered whether article 18 was the right place for the proposed paragraph, he had become convinced, after hearing the succinct and seemingly irrefutable arguments of the Greek representative, that the insertion of that text would be most advisable. Similarly, the amendments submitted by Brazil and the Philippines (A/C.3/L.877) improved the original text, for the right to have a religion was the essential right, and the freedom of an individual to maintain or change his religion was only a secondary aspect of that right. He did not think that the adoption of the words "religion or belief of his choice" would limit the scope of the article, because, if there were indeed people who wished to be able to change their belief at every opportunity, they had an unlimited choice of religions open to them.

4. In conclusion, he pointed out that article 18 did not deal with material things or earthly goods but was concerned with eternal values. Such words as

"God", "faith" or "religion" should not be used lightly; those words touched upon ideas for which, from the very beginning of time and in all parts of the world, men had sacrificed not only their comfort and material well-being but also their own lives and those of their families, a sacrifice which had won them the esteem, respect and admiration of their fellows. Those were the considerations by which the Spanish delegation would be guided in the vote. It was in that spirit that it would support article 18, the Greek amendment and the Brazilian and Philippine amendments. It would prefer that only delegations which shared its convictions should vote with it, for an apparent but fictitious unanimity could not serve a just cause.

5. Begum Aziz AHMED (Pakistan) wished to exercise her right of reply in respect of certain remarks made at the previous meeting by the representative of Saudi Arabia, who had referred to the personal beliefs of Sir Mohammed Zafrullah Khan, former Minister for Foreign Affairs of Pakistan and head of the delegation of Pakistan to the third session of the General Assembly. Those references had been out of order and irrelevant. In 1948 Sir Mohammed Zafrullah Khan had not expressed his personal opinion but the views of the Government of Pakistan, whose position, moreover, had not changed.

6. Mr. BOUQUIN (France) shared the view that the right to maintain or change one's religion was a fundamental right. On that point, the Study of Discrimination in the Matter of Religious Rights and Practices^{1/} was convincing; Mr. Krishnaswami, the author of the Study, had worked out a number of basic rules, the first of which proclaimed the freedom to maintain or change religion. He had listened attentively to the observations of delegations which were opposed to that wording and wished to point out that France, which had been the scene of particularly terrible religious conflicts in which the right of individuals to embrace a new religion or to maintain their own religion had been at stake—both aspects of the question should be mentioned because excesses had been committed in both respects—could not support the Saudi Arabian amendments (A/C.3/L.876) because they would have the effect of rendering a very important article meaningless. It had been argued that the phrase "freedom to maintain or to change his religion or belief" did not apply to atheists. The French delegation interpreted article 18 in its broadest sense: freedom of conscience as recognized by the French Constitution implied both freedom to believe and freedom not to believe. In effect, that spirit of tolerance was shown in article 18 and it was that spirit by which the French delegation was prompted in stating that it was prepared to support that text. Moreover, there was no doubt that article 18 applied to all cases, even that of atheists, for the word "belief" had a very broad meaning. As for the argument that the Saudi Arabian amendment would have the effect of restoring the balance between religious freedom and the other aspects of freedom of thought, it should be recalled that, as the Argentine representative had pointed out, religion had to do with the whole man since dogma was a matter for the spirit, faith for the conscience, and rites for the physical activity, as it were, of the individual. There was absolutely no reason to refer

to missions in article 18, which concerned the right of the individual to maintain or change his own religion and not that of others. Incidentally, he would draw the attention of the Saudi Arabian representative to the fact that the author of the book entitled Is God French?—to which he had referred at a previous meeting—was not a Frenchman, as he had indicated, but a German, Friedrich Sieburg, which might explain the interrogative form of the title. In any event, the arguments adduced were not sufficient to justify any drastic change in the wording adopted in the Universal Declaration of Human Rights. There had been some talk of compromise. Compromise, however, had already been achieved: it had consisted of the addition of the word "maintain". In that connexion he referred the Committee to the summary record of the 319th meeting of the Commission on Human Rights (E/CN.4/SR.319). Those who had taken part in that meeting had belonged to areas of the world where many different religions were practised and it was the Egyptian delegation which had suggested the insertion of the word "maintain".^{2/} The representative of Lebanon had supported that Egyptian amendment because it had "confirmed the freedom of the individual to maintain or change his religion". Furthermore, the Commission on Human Rights had adopted the Egyptian amendment unanimously, then paragraph 1, then paragraph 2, and finally the article as a whole. For those reasons, the French delegation was very much attached to the text transmitted by the Commission on Human Rights (E/2573, annex I B).

7. He paid a tribute to the spirit of compromise the delegations of Brazil and the Philippines had shown in the hope of satisfying the delegations which had explained how difficult it would be for them to support the original text. The wording they had proposed, however, had the serious disadvantage of being ambiguous. A choice was an option, but was that option final or permanent? Had the individual the right to choose once and for all or the right to maintain or change his option at any time? Thus the word "choice" embodied an ambiguity and if that ambiguity was not eliminated from the two-Power text (A/C.3/L.877) the French delegation would be unable to vote in favour of that text. If, on the contrary, it was simply a matter of words—in which case there did not appear to be any reason to amend the original text—the French delegation would not vote against the amendments of Brazil and the Philippines, on the understanding that article 18 stated a fundamental right and that it should not be emasculated.

8. Miss GRINAN (Cuba) said that she was fully prepared to accept article 18 as drafted by the Commission on Human Rights. In her country everyone enjoyed complete freedom of conscience and of worship, and the exercise of that freedom was limited only in so far as that was necessary to protect public order and morals. Since the wars of independence all the Cuban constitutions had proclaimed the principle of the separation of Church and State, and that principle was enshrined in the basic law by which the relations between the State and the citizens were now governed. Consequently the State did not subsidize any religion. Public education was secular. Private denominational schools did exist but they were financed exclusively by religious institutions and by the parents of the pupils.

^{2/} See Official Records of the Economic and Social Council, Fourteenth Session, Supplement No. 4, para. 233.

^{1/} United Nations publication, Sales No.: 60.XIV.2.

9. The Cuban delegation was of the opinion that, in view of the social evolution in the overwhelming majority of countries, it was proper to give explicit recognition to everyone's right to maintain or to change his religion. The provisions of the limiting clause in paragraph 3 would enable countries where there was a State religion to guard against any proselytizing or missionary activities likely to be carried out in their territory for political ends. Freedom of religion, on which all delegations agreed, was safeguarded all the better if the right to change religion was explicitly recognized. That was the Cuban delegation's attitude to the Saudi Arabian amendments (A/C.3/L.876).

10. In the text drafted by the Commission on Human Rights, the two phrases in paragraph 1 expressed different ideas. She agreed with the representative of Ghana that the amendments submitted by Brazil and the Philippines (A/C.3/L.877) introduced a repetition into the text. If that were avoided, the true value of those amendments could be appreciated.

11. The Cuban delegation would vote against the Greek amendment (A/C.3/L.875), for it saw no reason to add to article 18 a provision which already appeared in article 14 of the draft Covenant on Economic, Social and Cultural Rights^{3/} and which would be out of place in a text designed to proclaim the right to freedom of thought, conscience and religion.

12. Mr. EL-ERIAN (United Arab Republic) stressed that under the constitutional and statutory provisions in force in his country everyone had the right to freedom of thought, conscience and religion. His delegation was therefore strongly attached to the principles underlying article 18, which was one of the most important articles in the draft Covenant and which enshrined the spirit of tolerance that was a sign of progress and of civilization and a safeguard of peace. In the Preamble to the Charter, the peoples of the United Nations proclaimed their determination to practise tolerance and to live together in peace with one another as good neighbours. Mankind had been fighting for centuries to win freedom of thought, conscience and religion, and its efforts, which had been crowned by the granting of bills of rights, the adoption of constitutions and the proclamation of the Universal Declaration of Human Rights, should be crowned also by the adoption, ratification and implementation of the draft Covenant. He laid stress on the spirit of tolerance which Islam had always demonstrated and which had been described by Mr. Arthur Nussbaum in his book, A Concise History of the Law of Nations.

13. Article 18 of the draft Covenant should certainly be based on the Universal Declaration of Human Rights, but it should be borne in mind that the General Assembly had drafted the latter instrument purely as a declaration, whereas what the Third Committee was now engaged upon was legislative work. The Covenants would be binding on the States which became parties to them and they would have to be implemented. Full account must therefore be taken of the comments of delegations and a clear and precise text must be drawn up which they could all accept. At the eighth session of the Commission on Human Rights Azmi Bey, the representative of Egypt, had taken an active part in the discussion on article

18 of the draft Covenant and had submitted two amendments^{4/} for the improvement of the text. He had informed the Commission at its 319th meeting that in Egypt a person could not be discriminated against for changing his religion, but he could change it only after three conversations with a minister of the religion that he wished to renounce. If, as the representative of France had said, the Commission on Human Rights had amended the text in a spirit of compromise, it was to be hoped that the Third Committee would be able to follow that example and make the necessary changes in article 18 so that it could be unanimously adopted. He thought that the amendments submitted by Brazil and the Philippines (A/C.3/L.877) provided an excellent basis for agreement. In its present wording article 18 gave rise to some misgivings and was liable to misinterpretation. To obviate that risk, which was particularly serious in view of the juridical scope of the Covenants, it was important to correct the wording of the article. In their eagerness to achieve a compromise, the delegations of Brazil and the Philippines had managed to dispel the misgivings and eliminate the ambiguities, at the same time preserving intact the fundamental principles of article 18.

14. Mr. REY (Venezuela) said that he did not think that article 18 could be interpreted as proclaiming the right to be an atheist. The text was not intended to defend atheism, but on the other hand it did not, as it stood, imply any obligation to have a religion. Article 18 was neither an article on religion nor an article on atheism; it was a proclamation of the freedom of religion. As the representative of Uruguay had said, religion was a highly personal matter. It could not be held for a certainty that a man who had a religion was better than a man who had not; mankind had done much good in the name of religion but also a great deal of harm. It was not for the Third Committee to hold forth upon God and religion; its duty was simply to establish a liberal principle recognized by all civilized nations. While the Brazilian and Philippine amendments (A/C.3/L.877) were judicious and well phrased, they did not explicitly proclaim the right of everyone to change his religion. The text of the Commission on Human Rights was preferable in that respect. He thought that it was possible to reconcile the original text and the two-Power amendments provided that the principle that everyone had the right to change his religion was expressly formulated.

15. His delegation could not support the Greek amendment (A/C.3/L.875), which would be unsuitable in the context of article 18.

16. Miss DOBSON (Australia) declared her delegation's support for the text of the Commission on Human Rights, which was complete, explicit, well drafted and in conformity with the Constitution of Australia.

17. None of the amendments submitted improved the text. For instance, the amendments of Brazil and the Philippines (A/C.3/L.877) made no mention of the right of everyone to change his religion, which was a sufficiently important right to be expressly proclaimed. The amendments submitted by Saudi Arabia (A/C.3/L.876), like those of the two Powers, re-

^{3/} See Official Records of the General Assembly, Twelfth Session, Annexes, agenda item 33, document A/3764 and Add.1, para. 50.

^{4/} See Official Records of the Economic and Social Council, Fourteenth Session, Supplement No. 4, paras. 233 and 234.

stricted the scope of article 18. The Greek amendment (A/C.3/L.875) was laudable in intention but might give rise to difficulties of implementation. The word "children" raised problems of interpretation, the words "in conformity with their own convictions" were imprecise, and it was not sure that the proposed addition was appropriate in that place. In any event, in view of the general scope of the principle recognized in paragraph 1, it seemed unnecessary for article 18 to deal with the particular case envisaged in the Greek amendment.

18. Mr. PERERA (Ceylon) thought that a subject as delicate, personal and controversial as that of freedom of thought, conscience and religion should be approached dispassionately. The debates on article 18 had been particularly lively and had remained so in spite of the suggestions that had been made. His delegation had been perturbed at the views of certain representatives who had maintained that the sole purpose of article 18 was to safeguard freedom of religion and that it did not protect the rights of atheists. Such an attitude seemed to him retrogressive. Article 18 proclaimed above all freedom of thought, of which freedom of religion was only one aspect. The right to freedom of thought was a fundamental right of the individual and should be examined in its entirety, no one of its elements being given more importance than another.

19. The wording proposed by the Commission on Human Rights could certainly be improved. It should, for example, be possible to find a more satisfactory formula to replace the expression "freedom to maintain or to change his religion or belief", though the idea of choice which was implicit in those words must be maintained. The individual must be allowed not only to choose his religion or belief but also to renew his exercise of that choice if he so wished. Mankind had progressed since the time of the Inquisition, when individuals had been persecuted for not believing that a given religion had a monopoly of truth. The coexistence of religions testified to the progress achieved in that respect. Every religion, every philosophy and every belief was good in itself, and it was for the individual to decide what path he wished to follow. His delegation was categorically opposed to dogmatism. Any dogma destroyed the fundamental right of the individual to think for himself and to arrive at his own conclusion on a question. The modern world was still not entirely free from threats to that freedom, for as soon as a religion became organized and wished to impose itself it perfected techniques which were perhaps more discreet than those employed in the Middle Ages but just as dangerous. Doctrines of any kind should encourage the progress of human society: whether agnostic, scientific, delist or religious, their value lay in the fact that they represented human thought.

20. The first phrase of article 18 proclaimed the principle of freedom of thought, conscience and religion, and hence the freedom of choice in the matter. It was not enough, however, simply to imply freedom of choice. The formula adopted by the Commission on Human Rights to give it expression had been criticized; efforts should therefore be made to improve that formula, not to eliminate it completely. His delegation thought that the text submitted by Brazil and the Philippines (A/C.3/L.877) offered a very satisfactory solution. It hoped that the representative

of Saudi Arabia would reconsider his position in the light of that text.

21. He could not support the Greek amendment (A/C.3/L.875), although he appreciated its intentions. The additional paragraph proposed would not be appropriate in article 18 and would duplicate a paragraph of article 14 of the draft Covenant on Economic, Social and Cultural Rights. Moreover, it might serve to justify those who sought to impose the presumed religion of the parents on the many children who had neither family nor guardian.

22. Mrs. KUME (Japan) said that article 19 of the Constitution of her country guaranteed the freedom of thought, conscience and religion of citizens and article 20 established the principle of the secularity of the State. In Japan every individual was completely free to choose, to maintain, to change or renounce his religion or belief. He was free moreover to have no religious or other beliefs at all.

23. Her delegation could not interpret article 18 of the draft Covenant in the same way as did the representative of Spain. It supported the text of the Commission on Human Rights, on the understanding that it applied equally to atheists, whose rights were not protected at all by article 19. Although the first sentence of the article under discussion implied the right of every individual to maintain or change his religion or belief, the rest of paragraph 1 was not superfluous. It provided some useful details and reinforced the whole article. She hoped that the limitations clauses incorporated in several articles of the Covenant would be drawn up in the same terms except where the purport of the text to which they applied necessitated some change.

24. Her delegation could not support the Greek amendment (A/C.3/L.875). The Constitution of Japan forbade any State interference in religious matters and her Government could not undertake to enforce respect for the liberty recognized for parents and legal guardians in the proposed paragraph 4. The text would be more appropriate in an article devoted exclusively to education.

25. Mrs. MANTZOULINOS (Greece) explained, for the information of the representative of Ceylon, that the aim of her delegation was to ensure that children who had no family would receive a religious and moral education in conformity with the presumed wishes, and not the presumed religion, of their parents.

26. Mr. BARODY (Saudi Arabia) thought that the right of everyone to change, maintain and even renounce his religion or belief was implicitly recognized in the first sentence of article 18. Nevertheless, as certain representatives were anxious to have the right expressly proclaimed his delegation was prepared to withdraw its amendments (A/C.3/L.876) in favour of the compromise text submitted by Brazil and the Philippines (A/C.3/L.877).

27. In so doing, his Government was not retracting the views it had expressed on article 18, which reflected the attitude of the great majority of Moslems to the principle in question. Although Saudi Arabia did not claim to speak on behalf of the Moslem world, it received innumerable pilgrims, both at Mecca and Medina, and was in a particularly favourable position to know the mind of the faithful of Islam. Had it not been for the fact that its own text, being furthest

removed from the original article 18, would have to be put to the vote first, his delegation would not have withdrawn it but would have asked the Committee to vote first on the text submitted by Brazil and the Philippines. It was giving up its proposals in a spirit of compromise and to avoid asking the Committee to adopt—as indeed the Committee could—a special procedure. His delegation would vote in favour of the two-Power amendments, which should satisfy the

great majority of delegations. Thus amended, the text of article 18 would not be entirely satisfactory to his delegation but it would no longer be liable to convey the impression that the Committee unwittingly sanctioned interference with beliefs that some people regarded as sacred.

The meeting rose at 1.5 p.m.