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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, A/C.3/L.648, A/C.3/L.651, A/C.3/L.654-655) (continued)

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

1. Mr. MAHMUD (Ceylon) said that in Ceylon, a Buddhist country, there was reverence for life, whether human or animal. His delegation had therefore studied article 6 of the draft Covenant (E/2573, annex I B) carefully. As the Covenant was not to be a mere declaration but a legally binding instrument, it must be adaptable to different legal systems and the wording must be precise.

2. The word "arbitrarily", in paragraph 1 of the article, lacked precision. Although it might not be generally used in English legal texts, it appeared in many judicial decisions, as the Irish representative had pointed out (813th meeting). In those decisions, however, it appeared in a context which left no doubt of its meaning, that is, "not in accordance with law" or "contrary to the principles of natural justice". In paragraph 1, it was not defined by the context and was therefore open to different interpretations.

3. Nevertheless, his delegation, like many others, was reluctant to abandon the word entirely, because of its ethical implications. The notion of arbitrariness contained a moral judgement. It was possible to conceive of arbitrary actions which might be legally unassailable but morally indefensible, such as the use of law to quell oposition in a dictatorship. Conversely, a guilty person could be convicted arbitrarily, but perfectly justly. The word "arbitrary" could therefore mean either "unjustly" or "illegally"; the only criterion to be applied must be that of conformity with law.

4. What the Covenant should preclude was not so much arbitrary action by which a man might be deprived of his life as an arbitrary law which would make such action apparently justifiable. The use of discretionary powers to grant commutation of sentence might, for instance, be considered arbitrary. Recent history afforded many examples of legislation which could be called arbitrary, but the domestic legislation of sovereign States and their dependent territories was not a subject for the Committee to discuss.

5. If the word "arbitrarily" was retained, the sentence was vague; if it was deleted, the States parties to the Covenant would not be entitled to take life for any reason whatsoever. It had therefore been proposed that the sentence should be deleted. His delegation would abstain in the vote on the first sentence of the original text (E/2573, annex I B) and vote for the first two sentences of the text set forth in the Working Party's report (A/C.3/L.655). He could not support the five-Power amendment (A/C.3/L.654) for the same reasons as those given by the United Kingdom representative (815th meeting).

6. The new text of paragraph 2 proposed by the Working Party (A/C.3/L.655) was an improvement on the original. The question of capital punishment had been much discussed in Ceylon. The House of Representatives had passed a bill suspending capital punishment in cases of homicide, but the bill had been rejected by the Senate. In practice, death sentences were not carried out, as the prerogative of mercy was exercised in every case. In the current somewhat fluid state of public opinion on the question in his own and many other countries, it seemed unadvisable for the United Nations as a whole to take a definite stand. He had listened with deep respect to the moving pleas for the abolition of capital punishment made by the representatives of Colombia, Uruguay and others and was happy to note that the new text went some way to meet their views. The new wording at the beginning of paragraph 2, "In countries which have not abolished the death penalty", and the new final paragraph (A/C.3/L.655) were a step in that direction. The new final paragraph would be grammatically more correct if it was amended to read:

> "Nothing in this article shall be invoked to retard or to prevent progress towards the abolition of capital punishment by any State Party to the Covenant."

7. He supported the original text of paragraph 3 (E/2573, annex I B) and the text of paragraph 4 appearing in the Working Party's report (A/C.3/L.655).

8. He regretted that the Working Party had seen fit to add the words "in the States that are Parties thereto" at the end of the four-Power amendment. The Covenant should not contain any provisions which did not apply equally to all States.

9. Mr. SMALL (New Zealand) said that the new text submitted by the Working Party (A/C.3/L.655) was very far from the text on which Governments had commented over the years. Governments should be given an opportunity to consider the amendments, in their

context, in their interrelationship, and in the light of opinions expressed in the Committee. In view of the importance of the subject-matter and the difficulty many delegations would have in consulting their Governments, it would be appropriate for the vote to be deferred to a later meeting.

10. The Chairman of the Working Party had stated at the preceding meeting that the words "In countries which have not abolished the death penalty", at the beginning of the new text of paragraph 2, were intended to express the hope on the part of the international community that capital punishment would be abolished. His delegation certainly agreed with the general sense of the Committee that capital punishment should be imposed in the most limited cases only, but it could scarcely be expected that the many countries which thought it necessary to retain that penalty in the case of the most serious crimes would concur in the view that the retention of the death penalty indicated a lack of social progress on their part. The New Zealand Government would certainly not concur in that view and if that was a necessary implication of the Working Party's text, his delegation would be obliged to vote against it. In the view of his delegation, the opening words of the new paragraph 2 were merely a statement of fact. At all events, they were not materially different from the original text (E/2573, annex I B) and did not seem to carry with them any implications of the Committee's position with regard to capital punishment. The proposed new final paragraph (A/C.3/L. 655) served a useful purpose in rebutting any contrary suggestion that the article might retard the abolition of capital punishment in those countries which believed that to be the proper course.

11. He was glad that the Committee would have the opportunity of voting separately on the first sentence of paragraph 1 of the original text. The word "arbitrarily" had given rise to so much controversy that some alternative phrasing was clearly desirable. Instead of helping to make the Covenant acceptable to a greater number of States, the word "arbitrarily" had threatened to produce a deep cleavage of opinion. If its meaning were to be defined as "without due process of law", the idea was more adequately expressed in paragraph 2; if paragraph 2 did not cover the same ground, the word "arbitrarily" was capable of an extended meaning, of which delegations were rightly apprehensive. Given that divergent interpretations existed, and that the obligation involved could be of very wide extent, the word "arbitrarily" would be a stumbling-block to the eventual ratification of the Covenant by States which might otherwise become party to it. Adherence to the term was understandable if those who maintained it believed it had an ascertained advantage. But there was no general agreement on what the special advantage of the word "arbitrarily" was. If the delegations which favoured it were convinced that it had definite advantages, they were of course entitled to press for its retention but, as the advantages were not obvious, they might wish to consider whether it was worth inviting the great difference of opinion to which he had referred.

12. Mr. KRAJEWSKI (Poland) said that he was opposed to the first sentence proposed by the Working Party for paragraph 1 (A/C.3/L.655) as it would merely be an empty declaration, in view of the provisions of paragraph 2, with which, in any case, it conflicted. He would therefore vote only for the second and third sentences proposed by the Working Party for paragraph 1.

13. He had some reservations with regard to the new text of paragraph 2 (A/C.3/L.655). The words "in accordance with the law which is in force at the time of the commission of the crime" were intended to meet a situation which was already covered by article 15. Furthermore, they would prevent an offender from benefiting by any more lenient legislation which might have been introduced between the time when the crime had been committed and the time of sentencing. He requested a separate vote on those words.

14. He was also opposed to the words "to the provisions of this Covenant and", which had been inserted in the Working Party's text. There should be no conflict between the law of countries ratifying the Covenant and the Covenant itself; if such a conflict existed, a country would either refuse to ratify the Covenant or modify its legislation to bring it into line with the Covenant. Furthermore, it was useless to add stipulations of that nature to every article. It was also pointless to refer to the Covenant itself as a justification for any of its provisions. He asked for a separate vote on those words; he would vote against them.

15. He welcomed the addition of the words "in the States that are parties thereto" at the end of the four-Power amendment; he hoped that it would encourage other countries to ratify the Convention on Genocide. He could not support the Australian alternative text as it restricted the responsibility for the crime of genocide to States alone, whereas the scope of the four-Power amendment was much wider.

16. Sir Samuel HOARE (United Kingdom), referring to the new text of paragraph 2 drafted by the Working Party (A/C.3/L.655), endorsed the Polish representative's remarks with regard to the words "in accordance with the law which is in force at the time of the commission of the crime". There were two objections to that wording. First, although the intention of those words was to preclude the possibility of the death penalty being imposed for a crime which was not punishable by the death penalty at the time of its commission, the effect was in fact quite different. It could be interpreted to mean that, although the death penalty had been abolished for the crime in question, it could still be imposed if it had been in force at the time of the crime. In that case, there would be a conflict between article 6 and the last sentence of article 15, paragraph 1. It was unlikely that any State would adopt such an interpretation but it was always advisable to guard against such a possibility. Secondly, countries like his own would have considerable difficulty in carrying out that provision because it appeared to require that an offender should be tried in accordance with a specific law which had been in force at the time of the commission of the crime. In the United Kingdom, if that law had since been superseded, it would be repealed and would no longer exist; the offender would be tried under the new law, which would provide, in respect of offences committed before it came into force, for the application of the old penalty. Consequently, his objection was mainly one of drafting, and he might find it possible to accept the phrase if it were generalized so as to read: "in accordance with law in force at the time of the commission of the crime and not contrary to...".

17. With regard to the alternative texts proposed for a new paragraph 3 (A/C.3/L.655), he said that if the

Committee should deem it necessary to state that article 6 would in no way affect the provisions of the Convention on Genocide, he would prefer the Australian representative's text, since the alternative four-Power draft had the drawback of seeming to imply that the crime of genocide was likely to be committed by a State party to the Covenant.

18. With reference to the revised Japanese proposal for a new paragraph 4 (A/C.3/L.655), he remarked that in his country, when the sentence was imposed, the age taken into consideration was the offender's age at the time of conviction, rather than at the time of the commission of the crime. He therefore proposed that the words "for crimes committed by" should be replaced by the word "on"; if his proposal was not adopted, he would have to abstain in the vote on the paragraph, although he was in sympathy with the principles it embodied.

19. Lastly, he had no objection to the new paragraph (A/C.3/L.655) based on the Panamanian amendment (A/C.3/L.653), except that it would make the article still longer.

20. Mr. PYMAN (Australia) observed that the word "the" before the word "law" in the Working Party's text of paragraph 2 had not appeared in the drafts that the Working Party had considered. Its deletion might partly meet the United Kingdom representative's objection. It would be unfortunate to include in the article anything which might prevent a person accused of murder from benefiting by a revision of the law between the time of the commission of the crime and his conviction. Investigation of insanity laws in various countries were likely to lead to the widening of possibilities to plead insanity. The representatives who had made suggestions concerning the original Philippines proposal (A/C.3/L.646) might meet informally to discuss the issue. He therefore agreed with the New Zealand representative that it would be unwise to hasten the vote on such a complicated article.

21. Mr. LOPEZ (Philippines), speaking as the Chairman of the Working Party, confirmed the Australian representative's remark about the word "the" before the word "law" and said that it would be deleted from the final text.

22. Mr. Francisco LIMA (El Salvador) said he was unable to accept the Netherlands amendment (A/C.3/L.651) because it contained an incomplete listing of cases in which deprivation of life should be permitted.

23. He was opposed to the word "arbitrarily" in paragraph 1 because, if it implied that other States or international organizations had the right to question whether a national law was just or unjust, it opened the door to interference in domestic affairs; and if the intention was to ensure due process of law, the word was unnecessary since the matter was dealt with elsewhere in the draft Covenant.

24. He strongly supported the inclusion of the sentence: "Every human being has the inherent right to life", since it made it plain from the outset that the article dealt with a right not granted by the State but inherent in the human being.

25. Since many national legislations afforded protection to the unborn child, the Covenant should do no less, and he urged the Committee to adopt the provision that the right to life should be protected by law "from the moment of conception".

26. He was prepared to accept the text of paragraph 2 proposed by the Working Party (A/C.3/L.655). The purpose of the provision to which the United Kingdom and Polish representatives had taken exception was to ensure that no law carrying the death penalty could be made retroactive and thus to protect persons against the passage of emergency laws designed to punish by death crimes which were not so punishable at the time of their commission. If, on the contrary, a new law was milder than the old, the new law would certainly be applied, in accordance with the universally accepted principle that a law should be made retroactive only when the offender was favoured thereby. He did not think it necessary to explain that in detail in the article, which was concerned with general principles.

27. Turning to the two alternative texts (A/C.3/L.655) for a new paragraph 3, he said that the four-Power draft read as if its purpose were to ensure that in any conflict between the Covenant and the Convention on Genocide the provisions of the latter should apply. The real purpose, however, was to prevent a State party to both from using any provision of the Covenant as a a pretext for failure to apply the Convention on Genocide. Since the Australian text achieved that objective in a far clearer and more straightforward manner, he would vote in favour of it.

28. He had some difficulty with the present text of the Japanese amendment (A/C.3/L.655); the wording used should either be so precise as to impose the same obligation on all States or so general as to allow all States the same latitude of interpretation. He would therefore prefer the words "children or young persons" to be replaced by the words "persons below eighteen years of age"; if that was not adopted, some wording should be found which would allow each State to interpret it in accordance with its national legislation.

29. Since the Committee was not competent to decide the question of the abolition of capital punishment, he would be unable to vote for the Colombian-Uruguayan amendment (A/C.3/L.644). He would, however, have supported a positive statement urging States to promote the abolition of capital punishment, and he therefore regretted that the Panamanian amendment (A/C.3/L.653) had been withdrawn; in its absence, he would vote for the new last paragraph suggested by the Working Party.

30. Mr. COX (Peru) said he appreciated the Salvadorian representative's arguments in favour of a new paragraph referring to obligations under the Genocide Convention. That representative, however, had said that he preferred the alternative proposed by the Australian representative to the original four-Power amendment. That text had been taken from the Convention itself, while the Australian proposal was a paraphrase of article 21, paragraph 3, of the draft Covenant (E/2573, annex I B), on the right of association. Since both texts were technically acceptable, he thought that the one related most closely to the matter in hand should be favoured.

31. Sir Samuel HOARE (United Kingdom) said he agreed with the Salvadorian representative's remarks with the exception of his views on the Philippine delegation's amendment (A/C.3/L.646) incorporated in the

Working Party's text of paragraph 2 (A/C.3/L.655). The Salvadorian representative had said that all the aspects of the principle of retroactivity could not be stated in article 6 and that there was a general understanding among States on that score. He agreed with the Polish representative, however, that the whole subject of retroactivity was fully covered by article 15, which went even further than the Philippine amendment in referring to the applicability of lighter penalties introduced by subsequent legislation. The argument that article 15 had not yet been adopted was hardly valid, since it was most unlikely that its provisions would be whittled down; the piecemeal inclusion of excerpts from such general provisions of the Covenants in particular articles, moreover, could only lead to chaotic drafting and was liable to give rise to abuse.

32. Mr. PYMAN (Australia) agreed with the Salvadorian representative that the new paragraph proposed by the Working Party (A/C.3/L.655) was not wholly satisfactory, but considered that the Committee should be given an opportunity to vote on it.

33. His delegation had been unable to make any suggestion in the Working Party concerning the alternatives to the words "children and young persons" in the text set forth in the Working Party's report. On the whole, it would prefer the more precise wording "persons below eighteen years of age". He considered that the United Kingdom representative's oral suggestion with regard to that paragraph, if accepted, would help some delegations to vote for it.

34. The sponsors of the revised text of paragraph 3 (A/C.3/L.655) had been most conciliatory, but his delegation felt that it could not withdraw its alternative proposal, which would meet more nearly the position of Governments that had ratified the Genocide Convention with reservations.

35. Miss MacENTEE (Ireland), explaining her delegation's intentions with regard to the voting, said that she would support the Netherlands amendment (A/C.3/L.651), in the belief that it provided the best minimum guarantee of the sanctity of human life possible in existing circumstances. The objection that the amendment was not exhaustive had been raised. The Committee would, however, make it so by adopting it and the Irish delegation could only conclude that those who felt unable to vote for it envisaged the taking of human life to be lawful in a wider range of circumstances than those enumerated in the amendment. Accordingly, any text which was acceptable to those delegations was inherently weaker than that of the Netherlands. With regard to the force of the adverb "intentionally" in that text, the Irish delegation was satisfied that its use was well founded, since few notions were as well established and as carefully defined in all legal systems as that of intention in the case of homicide.

36. The Irish delegation was convinced, however, that even a weaker guarantee was better than none at all, and if the Netherlands amendment was rejected, it would vote for the text proposed by the Commission on Human Rights (E/2573, annex I B), with such additions and amendments as seemed to strengthen it. It preferred the original text of paragraph 2 to the Working Party's version (A/C.3/L.655), and would vote accordingly, unless further improvements were suggested. It would be obliged to abstain from voting on the new paragraph 3, since Ireland had not signed the Genocide Convention and could not presume to dictate the conduct of States which had done so; it must be assumed that those States would carry out the obligations they had undertaken. Her delegation would support the use of the phrase "children and young persons" in paragraph 4 and also the proposed additional paragraph concerning the abolition of the death penalty.

37. Mr. BAROODY (Saudi Arabia) questioned the advisability of using the phrase "From the moment of conception", proposed in the second sentence of the five-Power amendment (A/C.3/L.654). It was impossible for the State to determine the moment of conception and accordingly to undertake to protect life from that moment.

38. Although the Working Party's efforts were commendable, he did not think that the text agreed on for paragraph 2 was satisfactory and hoped that the Committee would be able to vote on the original text. In that event, he would ask for a separate vote on the words "as a penalty".

39. He shared the Philippine representative's view that delegations which did not agree with certain provisions should not abstain, but should vote against them.

40. Finally, he was inclined to favour the word "juveniles" as an alternative to the phrase "children and young persons", since the corresponding Arabic word conveyed the idea adequately.

41. Mr. ZEA HERNANDEZ (Colombia) said that he would not give his delegation's views on the Working Party's report (A/C.3/L.655) until a vote had been taken on the Colombian-Uruguayan amendment (A/C.3/L.644), which proposed a text to replace the article as a whole.

42. Mr. D'SOUZA (India) agreed with the New Zealand representative that it might be premature to vote on the texts at the following meeting, in view of the complexity of the Working Party's report and the number of suggestions made. His delegation would not, however, press the point if the Committee wished to vote.

The meeting rose at 12.55 p.m.

Litho. in U.N. 77301-February 1958-2,100