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(continued)*

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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.874/Rev.2)
(continued)**

**ARTICLE 17 OF THE DRAFT COVENANT ON CIVIL
AND POLITICAL RIGHTS (E/2573, ANNEX I B)
(continued)**

1. Mrs. THOMSEN (Denmark), introducing the new revised text of the three-Power amendment (A/C.3/L.874/Rev.2), said that the sponsors of the proposal had, from the outset of the debate on article 17, made it plain that they attached great importance, firstly, to the insertion of the words "his family" in paragraph 1, and, secondly, to the addition of a supplementary paragraph, giving a very precise definition of the cases in which public authorities might be empowered by law to interfere with the privacy, home or correspondence of the individual. The first amendments presented by Denmark and the Netherlands (A/C.3/L.874 and Corr.1) had been satisfactory in those respects. That text had been criticized, mainly from a formal point of view, several delegations having expressed a preference for the method of presentation of article 17 proposed by the Indian delegation (A/C.3/L.873). In their genuine desire to find a generally acceptable solution, the delegations of Denmark and the Netherlands, which had been joined by that of Ireland, had presented a revised text (A/C.3/L.874/Rev.1), that had not, however, met all the objections. As the representative of India had maintained his proposal to insert the word "family" in paragraph 1 of article 17 as drafted by the Commission on Human Rights (E/2573, annex I B), the delegations of Denmark, Ireland and the Netherlands had decided, in order to facilitate the Committee's work, to withdraw paragraphs 1 and 3 of the revised amendment (A/C.3/L.874/Rev.1), and to maintain only paragraph 2, the text of which appeared unchanged in the new document submitted to the Committee (A/C.3/L.874/Rev.2). The Danish delegation saw no reason why the privacy of the individual should not be as effectively guaranteed as any other right proclaimed in the draft Covenants. It associated itself with the remarks made by the representative of Ireland (1019th meeting) in reply

to the arguments put forward in that connexion. The three-Power amendment had but one object, namely, to strengthen the protection of fundamental human rights.

2. Mr. KASLIWAL (India) said that the Committee had been ready to vote at the previous meeting when the representative of Italy had moved the adjournment. He wondered whether, in those circumstances, the Committee could accept the new amendment of the three Powers, the text of which was very different from their original proposals (A/C.3/L.874 and Rev.1) and did not constitute a revision.

3. Mrs. MANTZOULINOS (Greece) maintained that the text before the Committee (A/C.3/L.874/Rev.2) was a revised version of the three-Power amendment (A/C.3/L.874/Rev.1), the essential part of which had been retained, only paragraphs 1 and 3 having been deleted. If the amendment under discussion was rejected by the Committee, the Greek delegation was prepared to accept article 17 as drafted by the Commission on Human Rights, but it felt that in view of its importance, the three-Power proposal should be put to the vote. The purpose of the proposed restrictive clause was to safeguard certain rights which must be jealously protected in any "democratic society". The meaning of that expression, which had been criticized by some delegations, was perfectly clear. In a democratic society, government was based on the will of the majority, but respected the opinions of the minority. The paragraph 3 proposed by Denmark, Ireland and the Netherlands, far from encouraging public authorities to interfere with the privacy of the individual, reminded them that it was their duty to safeguard the rights of the citizen.

4. Several delegations had thought it undesirable to use the expression "economic well-being of the country", which was not found in any other article of the draft Covenant. The examples quoted by the representative of Denmark (1018th meeting) had shown that interference with the privacy or home of the individual might be justified for economic reasons. Some countries might also be obliged to impose exchange control for such reasons and in order to enforce such control, the public authorities would, for example, sometimes have to interfere with the correspondence of the individual.

5. The CHAIRMAN held that the new text presented in document A/C.3/L.874/Rev.2 constituted a revision of the amendment previously submitted to the Committee in document A/C.3/L.874/Rev.1; paragraphs 1 and 3 had been deleted, but paragraph 2 had been retained word for word.

6. Mr. BAROODY (Saudi Arabia) pointed out that the Committee had concluded its debate and had been ready to proceed to a vote at its 1019th meeting. The meeting had been adjourned at the request of the representative of Italy, who had suggested that members of

the Committee might be tired, and that delegations should be given time to consider the suggestions made during the debate and have the opportunity to vote on a clear text. The Saudi Arabian delegation feared that the further revision of the three-Power amendment (A/C.3/L.874/Rev.2) might give rise to a discussion similar to that which had taken place on the first revised text (A/C.3/L.874/Rev.1) which would serve no useful purpose. He wondered whether the Chairman should not declare the latest text to be out of order, as it had been submitted after the Committee had been on the point of voting.

7. Mrs. MANTZOULINOS (Greece) said she also believed that the Committee would have proceeded to a vote at the 1019th meeting if the motion for adjournment had not been adopted, in which case paragraph 2 of the three-Power amendment (A/C.3/L.874/Rev.1) would have been put to the vote separately. She pointed out, however, that by voting on the new revised text (A/C.3/L.874/Rev.2), the Committee would arrive at the same result as if the former procedure had been adopted.

8. The CHAIRMAN said that the Committee had not begun to vote at the previous meeting, and the Italian representative's motion for adjournment had therefore been perfectly in order. For the same reason, the new revised three-Power amendment (A/C.3/L.874/Rev.2) could be accepted and debated at the present meeting.

9. Mr. CAPOTORTI (Italy) said that, at the previous meeting, he had had the impression that members of the Committee were tired after a heavy day, and wished to study at leisure the important amendments which had been proposed, especially those arising from the partial withdrawal of the Indian amendment (A/C.3/L.873). It seemed to him that most delegations had shared his own delegation's concern that the Committee should derive the maximum benefit from its debates and should have the opportunity to vote on as satisfactory a text as possible. By revising their amendment—for a revision was unquestionably involved—the delegations of Denmark, Ireland and the Netherlands had contributed to the clarity of the debate.

10. Mr. LOPEZ (Philippines) said he also thought that document A/C.3/L.874/Rev.2 merely presented the three-Power amendment (A/C.3/L.874/Rev.1) in a revised form. The document was, therefore, admissible and open to discussion, and the Committee should not become involved in a long procedural debate on the matter.

11. Mr. BAROODY (Saudi Arabia) said that, to save time, the Committee could vote without further delay on the new revised three-Power text and on article 17 itself.

12. The motion for adjournment of the 1019th meeting had been adopted by 28 votes to 27, with 14 abstentions, which showed that a majority of the members of the Committee had wished to vote at that time. The Saudi Arabian delegation thought the Committee should not waste valuable time to no good purpose by discussing a text presented under a new reference number but similar in all respects to paragraph 2 of the amendment which it replaced.

13. Mr. GLASER (Romania) said that while the rules of procedure no doubt enabled delegations wishing to improve a text to introduce useful amendments, the

rules were in the present case being used by those who wished to prolong debate and prevent the Committee from proceeding to a vote. It was well known that several Governments did not want the Covenants on Human Rights to be adopted, as that would place them in a difficult position. Some Governments had clearly stated that they would not sign the Covenants, while others were merely staving off their completion as long as possible. That was why the Committee had not yet been able to conclude its study of the few dozen articles of the Covenants, although the Commission on Human Rights and the Economic and Social Council had provided excellent material as a basis for its work. If all delegations had been really anxious for a definitive text of the Covenants, such a text would long since have been prepared.

14. From the beginning of the debate on article 17, it had been obvious that the text drafted by the Commission on Human Rights could be improved. The Indian delegation had made a very useful proposal to that end, but had withdrawn it in part, in order to expedite the Committee's work. The insertion of the word "family", which the Indian delegation still requested, raised no difficulty.

15. Other delegations had tried to complicate matters and to vitiate the original text by restricting its scope. The new paragraph proposed by the three-Powers (A/C.3/L.874/Rev.2) stipulated that "there shall be no interference by a public authority with the right of everyone to respect for his privacy, family, home or correspondence". Why should that prohibition apply only to public authorities and not to private organizations or private individuals who, on one pretext or another, might assume the right of interference? There must also be some assurance that public authorities would not only respect the right proclaimed in article 17 but would also ensure that it was violated by no one. In his view, the restrictive clause which the three Powers proposed should be inserted could be used to justify numerous violations of that right.

16. His delegation believed that if the sponsors of the new revised amendment had really wished to help to improve the text of the Commission on Human Rights, they could have followed the same course as the Indian delegation and could have announced before the vote, for example, that they were withdrawing their amendment (A/C.3/L.874/Rev.1) with the exception of paragraph 2. By submitting that paragraph in the form of a separate document (A/C.3/L.874/Rev.2), they seemed to be inviting a resumption of the debate, because some members of the Committee might feel that, with a new proposal before them, it was incumbent on them to restate their position. The representative of Italy had had the same end in view in moving the adjournment of the 1019th meeting, on the pretext that the members of the Committee were tired and needed time for reflexion, as the situation had supposedly been complicated by the partial withdrawal of the Indian amendment. The aim and result of that withdrawal, however, had obviously been to simplify and clarify the situation.

17. His delegation agreed with the delegation of Saudi Arabia that the Committee should vote without delay on the three-Power amendment and on article 17.

18. Mrs. THOMSEN (Denmark) was gratified by the Chairman's ruling that the three-Power amendment (A/C.3/L.874/Rev.2) was admissible; that proposal

had certainly not been submitted in order to prolong the debate but in order to facilitate the vote. Her delegation believed—and on that one point she was in agreement with the representative of Romania—that the Committee should proceed to a vote immediately, and she would therefore move the closure of the debate under rule 77 of the rules of procedure of the General Assembly.

19. Miss MacENTEE (Ireland) supported that motion. She would also like to make it clear that she assumed sole and entire responsibility for any delay which had occurred in putting article 17 to the vote; the delegations of Denmark and the Netherlands had been ready to proceed to a vote some days previously. At her suggestion, however, those two delegations had agreed to combine their amendment with that of India (A/C.3/L.873). It was also the delegation of Ireland which, after hearing, at the previous meeting, the various objections raised to the three-Power text and the interesting suggestions made by certain Latin American delegations, had decided not to press for a vote on the text contained in document A/C.3/L.874/Rev.1. The decision to withdraw an amendment to which its sponsors had given so much thought and care could obviously not be taken without due reflexion, and for that reason she was grateful to the Italian delegation for having moved the adjournment of the previous meeting.

20. In conclusion, she categorically repudiated the insinuations of the representative of Romania. The absurdity of the suggestion that Ireland had anything whatever to fear from the implementation of the draft Covenants would be patent to all Member States. She would repeat that the sole aim of the three Powers in submitting their amendment was to bring the text of article 17 into line with that of articles 6^{1/} and 9^{2/} of the draft Covenant.

21. The CHAIRMAN pointed out that a motion had been made for closure of the debate and that, under rule 77 of the rules of procedure, permission to speak could be accorded only to two speakers opposing that closure, after which the motion was immediately put to the vote.

22. Mr. JEAN-LOUIS (Haiti) said his only reason for opposing the closure of the debate was that he thought it necessary to draw attention to the wording of the additional paragraph 3 which the three Powers were proposing for insertion in article 17. The wording of that paragraph was somewhat peremptory in that it prohibited public authorities from acting in a certain manner; it was clear, however, from the preamble that the parties to the draft Covenants would be States, which would accede to them of their own free will. Care must, therefore, be taken not to usurp their powers. His delegation accordingly believed that it would be preferable to adopt a formula such as: "Public authorities undertake not to ...".

The motion for closure of the debate was adopted by 63 votes to 1, with 9 abstentions.

23. Mr. CAPOTORTI (Italy) pointed out that the summary record of the 1019th meeting clearly indicated that the Italian delegation had moved the adjournment

of that meeting so that delegations might have time to consider the various suggestions made and so that the Committee might have the best possible chance of voting on a clear and generally acceptable text. He also wished to protest against the attack on his intentions: every representative was entitled to ask that any interpretation of his statements should be based only on what he had actually said. It must not be taken for granted that some delegations were motivated by good intentions and others by bad. In any event, he was glad that the debate on article 17 was closed and the Committee could proceed to the vote.

24. The CHAIRMAN, inviting the Committee to vote on article 17, recalled that the Indian amendment (A/C.3/L.873) had been withdrawn except for the proposal to insert the word "family" after the words "his privacy" in paragraph 1 of the original text. The Committee also had before it the three-Power revised amendment (A/C.3/L.874/Rev.2). Article 17 might be voted on as follows: the Committee would first vote on the insertion of the word "family", then on paragraph 1 of the original text, then on paragraph 2, then on the three-Power amendment, and finally on article 17 as a whole.

25. Mr. TEJERA (Uruguay) requested a separate vote on the first part of the three-Power amendment up to and including the words "in accordance with law".

26. Mr. RIBEIRO DA CUNHA (Portugal), supported by Mr. LOPEZ (Philippines), pointed out that if the first part of the three-Power amendment was adopted and the second part rejected, paragraph 3 of article 17 would merely be a repetition of paragraph 1.

27. Mr. TEJERA (Uruguay) replied that, in that event, the responsibility for the repetition would lie, not with the delegations requesting a separate vote, but with the sponsors of the amendment. His delegation was in favour of the first part of the three-Power amendment and wished to support it, but could not vote for the second part of the amendment since the powers it would give to public authorities would mean that the rights proclaimed in article 17 were no longer effectively safeguarded.

28. Mr. FARHADI (Afghanistan) said that, while he appreciated the position of the representative of Uruguay, he would draw his attention to the fact that if the first part of the three-Power amendment was adopted and the second was rejected, paragraph 3 of article 17 would be meaningless, since the idea implicit in the words "except such as is in accordance with law" was already contained in the word "unlawful" in paragraph 1 of the original text. He therefore objected, under rule 91 of the rules of procedure, to the motion for division made by the delegation of Uruguay.

29. Mr. TEJERA (Uruguay) reiterated his view that the paragraph proposed by the three Powers was composed of two distinct parts, the first of which was acceptable to his delegation and which it would wish to support and the second, which was unacceptable to his delegation and which it would wish to reject.

The motion for division was rejected by 42 votes to 10, with 21 abstentions.

30. The CHAIRMAN put to the vote the Indian amendment to insert the word "family" after the words "his privacy" in paragraph 1 of article 17, as drafted by the Commission on Human Rights (E/2573, annex IB).

^{1/}See Official Records of the General Assembly, Twelfth Session, Annexes, agenda item 33, document A/3764 and Add.1, para. 121.

^{2/}Ibid., Thirteenth Session, Annexes, agenda item 32, document A/4045, para. 67.

The amendment was adopted unanimously.

Paragraph 1 of article 17, as amended, was adopted by 68 votes to none, with 5 abstentions.

Paragraph 2 of article 17 was adopted by 69 votes to none, with 4 abstentions.

31. The CHAIRMAN put to the vote the three-Power revised amendment (A/C.3/L.874/Rev.2).

At the request of the representative of the Netherlands, a vote was taken by roll-call.

The Ukrainian Soviet Socialist Republic, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: United Kingdom of Great Britain and Northern Ireland, Afghanistan, Austria, Belgium, Cambodia, China, Cyprus, Denmark, Federation of Malaya, Finland, France, Greece, Iceland, Ireland, Israel, Italy, Japan, Netherlands, Pakistan, Turkey.

Against: Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, Venezuela, Yemen, Yugoslavia, Albania, Bolivia, Brazil, Bulgaria, Byelorussian Soviet Socialist Republic, Ceylon, Chile, Costa Rica, Cuba, Czechoslovakia, Ethiopia, Ghana, Guatemala, Haiti, Hungary, India, Indonesia, Iran, Iraq, Lebanon, Liberia, Libya, Morocco, Nepal, Nigeria, Peru, Poland, Portugal, Romania, Saudi Arabia, Somalia, Sudan.

Abstaining: United States of America, Uruguay, Argentina, Australia, Burma, Canada, Colombia, Dominican Republic, Mexico, New Zealand, Norway, Paraguay, Philippines, Spain, Sweden, Thailand.

The three-Power revised amendment was rejected by 38 votes to 20, with 16 abstentions.

32. The CHAIRMAN put to the vote article 17 as a whole, as amended.

At the request of the representative of Brazil, a vote was taken by roll-call.

Czechoslovakia, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Czechoslovakia, Denmark, Dominican Republic, Ethiopia, Federation of Malaya, Finland, France, Ghana, Greece, Guatemala, Haiti, Hungary, Iceland, India, Indonesia, Iran, Iraq, Israel, Italy, Japan, Lebanon, Liberia, Libya, Mexico, Morocco, Nepal, Netherlands, New Zealand, Nigeria, Norway, Pakistan, Paraguay, Peru, Philippines, Poland, Portugal, Romania, Saudi Arabia, Somalia, Spain, Sudan, Sweden, Thailand, Turkey, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, Uruguay, Venezuela, Yemen, Yugoslavia, Afghanistan, Albania, Argentina, Australia, Austria, Belgium, Bolivia, Brazil, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Cambodia, Canada, Ceylon, Chile, China, Colombia, Costa Rica, Cyprus.

Against: None.

Abstaining: United Kingdom of Great Britain and Northern Ireland, United States of America, Cuba.

Article 17 as a whole, as amended, was adopted by 70 votes to none, with 3 abstentions.

33. Mr. BOUQUIN (France) said that he had not been present during the Cuban representative's statement

at the 1017th meeting, and had learned of her remarks—which had been entirely irrelevant to the subject under discussion—only from the summary records. He wished to point out that at the 1016th meeting, when he had explained his position on the Cuban amendment (A/C.3/L.872), he had not said that the amendment was a step backwards from article 12 of the Universal Declaration of Human Rights, as the provisional summary record stated, but merely that since it deleted one sentence of article 17 it might create the impression that the Committee was retreating from the text adopted by the Commission on Human Rights. Moreover, contrary to what the Cuban representative had implied in her statement, he had expressed no opinion regarding the implementation of the Universal Declaration in Cuba. There was nothing, therefore, to justify the charge made by the Cuban delegation against his Government, and if further statements of that kind were made, he would be grateful to the Chairman if he would apply rule 111 of the rules of procedure.

34. In explanation of his vote, he said that although he had found the text of article 17 drafted by the Commission on Human Rights satisfactory, he had not on that account been opposed to any improvement being made in the text. He had therefore regretted that the representative of India and the representatives of Denmark, Ireland and the Netherlands had withdrawn part of their respective amendments, which he had been prepared to support. He had voted for the three-Power revised amendment (A/C.3/L.874/Rev.2) because he had not been convinced by the Romanian representative's criticisms of it. To try to bring the texts of the various articles of the draft Covenant into line was not reopening an old argument; the records of the many bodies and committees which had discussed the Covenant were very instructive in that connexion. The possibility of inserting a limitations clause in article 17 had been considered at length by the Commission on Human Rights. Article 29 of the Universal Declaration, which was of general nature, contained such a clause as did articles 12^{3/} and 14^{4/} of the draft Covenant, which had been adopted by the General Assembly at its fourteenth session. If the Romanian representative had feared that to mention only the public authorities in the limitations clause might mean giving the impression that individuals and, especially, non-governmental organizations were authorized to interfere with the privacy of individuals, all he needed to have done to correct that omission was to submit a sub-amendment. For its part, the French delegation condemned interference with the privacy of persons by individuals and non-governmental organizations as well as interference by the State. It favoured effective protection of the rights of the individual against any arbitrary action and any pressure, regardless of its source. The three-Power amendment in no way limited the application of article 17. On the contrary, its effect would have been to protect individuals against any possible abuse of power by the public authorities, who were usually responsible for arbitrary or unlawful interference. For those reasons, he had voted for the three-Power amendment, and, after it had been rejected, for article 17 of the draft Covenant.

35. The Romanian representative had accused certain delegations of wanting to delay consideration of the

^{3/}*Ibid.*, Fourteenth Session, Annexes, agenda item 34, document A/4299, para. 19.

^{4/}*Ibid.*, para. 64.

draft Covenants. That charge could certainly not be made against the French delegation, which would support any steps likely to expedite the consideration of the Covenants. The real supporters and the real opponents of the Covenants would be revealed if the Committee took up the articles relating to implementation. That was where the real test lay, and the French delegation was quite prepared to follow that procedure.

36. Mr. BEAUFORT (Netherlands) very much regretted that the Committee had not adopted the three-Power revised amendment A/C.3/L.874/Rev.2), whose purpose had been to protect individual rights more effectively than did the text submitted by the Commission on Human Rights. The additional paragraph proposed was essential, if all arbitrary or unlawful interference by public authorities was to be genuinely prevented; for under the original text such interference still remained possible. In order to allow for the fact that the State enjoyed certain prerogatives, as for example in the interests of public order, the cases of justified interference by public authorities had been specified in a limitations clause. Such a strict delimitation of the prerogatives of the State could only have the effect of giving added protection to the rights of the individual.

37. Despite the rejection of the three-Power revised amendment, the Netherlands delegation had voted for article 17 as a whole because as it stood it expressed a sound idea, one which should, however, be expanded, particularly at a time when the omnipotence of the State was a constant threat to the rights of the individual.

38. Mrs. FEKINI (Libya) said that she had voted for the text as drafted by the Commission on Human Rights, with the addition of the word "family". She was glad that the word "arbitrary" had been retained, for the words arbitrary and unlawful expressed two separate ideas. She paid tribute to the delegations of Denmark, Ireland and the Netherlands for their efforts to make the text more explicit, but she had been unable to vote for their amendment (A/C.3/L.874/Rev.2), for fear it might be applied to justify interference with the rights of the individual on the part of the State. On the other hand, she would have been able to support the Indian amendment in its original version (A/C.3/L.873); however, she had bowed to the spirit of understanding shown by the Indian representative.

The meeting rose at 1.5 p.m.