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Chairman: Mr. Salvador P. LOPEZ (Philippines).

AGENDA ITEM 35

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/4789 and Corr.1, A/C.3/L.903, A/C.3/L.930/Rev.1, A/C.3/L.932) (continued)

ARTICLE 26 OF THE DRAFT COVENANT ON CIVIL AND POLITICAL RIGHTS (E/2573, ANNEX I B) (continued)

1. Mr. ALBUQUERQUE MELLO (Brazil) said he was glad that the Committee had decided to place, immediately after article 19, which set forth the standards relating to freedom of expression and the restrictions which it was permissible to impose on it, the text of article 26 which was designed to suppress a clearly defined form of expression: advocacy of national, racial or religious hostility that constituted an incitement to hatred and violence. The amendment submitted by the Brazilian delegation (A/C.3/L.930/Rev.1) was intended to complete article 26 and to extend that prohibition to war propaganda.

2. Contrary to the opinion expressed by a number of representatives (1077th and 1078th meetings), he did not believe that that sort of propaganda was difficult to define. What it in fact meant was the repeated and insistent expression of an opinion for the purpose of creating a climate of hatred and lack of understanding between the peoples of two or more countries, in order to bring them eventually to armed conflict. That was an intention which any court should be able to establish as easily as it established *animus injuriandi* or *animus defendendi* in criminal law. Moreover, the fact of national laws making provision for sanctions against war propaganda would often exercise a deterrent effect.

3. The Brazilian delegation considered that article 26 as it stood was incomplete for, while it stipulated provisions to be included by States in their domestic laws, it did not lay down any international legal rule such as might possibly serve as a basis for international legal machinery designed to guarantee the protection of human rights. The text proposed by his delegation met that need. Its second sentence might be regarded as superfluous, since the first was binding on States ratifying the Covenant; nevertheless, it helped to strengthen the text.

4. He thanked the representatives of Chile and Saudi Arabia for their support. As the Chilean representative had recalled (1078th meeting), General Assembly resolution 110 (II), condemning war propaganda and inviting all Member States to take the appropriate constitutional steps, had been adopted unanimously. He regretted the change of attitude, in that regard, revealed by the statements of the representatives of the United Kingdom and the United States (1078th meeting).

5. In conclusion, he requested the Secretariat to try to bring the English, French and Spanish texts of his delegation's amendment into line. The first used the word "advocacy", and the other two the words "propagande" and "propaganda". He suggested the word "propaganda" for the English text, or the words "manifestation" and "manifestación" for the other two texts. Furthermore, in the English and Spanish texts he would like to see "shall be" and "ha de ser" replaced by "is" and "está"; the latter words would correspond better to the French "est".

6. Mrs. AFNAN (Iraq) pointed out that there was also a difference between the expression "law of the State", in the English text, and "législation nationale" in the French text.

7. The CHAIRMAN said the Secretariat would examine the question of the translation of the Brazilian amendment.

8. Mr. RADIVOJEVIC (Yugoslavia) said that article 26, as drafted by the Commission on Human Rights, was in essence acceptable to his delegation. It prohibited, clearly and unequivocally, the misuse of freedom of expression for the purpose of incitement to national, racial or religious hatred. The Yugoslav Constitution expressly forbade that abuse, and the Criminal Code provided for heavy penalties against it.

9. His delegation would prefer the expression "hatred and violence" to be replaced by "hatred or violence", and was ready to submit, if necessary, an amendment in that sense. The wording as it stood might make it possible to confine the application of the article to cases where the advocacy of hatred finally led to violence, whereas it was just as important to suppress manifestations of hatred which, even without leading to violence, constituted a degradation of human dignity and a violation of human rights.

10. Although the Yugoslav delegation had been willing to bow to the wish of the majority in not insisting on the inclusion in article 19 of a provision prohibiting war propaganda, it firmly believed that such a provision ought to appear in article 26; for that reason it supported the Brazilian amendment in principle. It would, however, prefer to see the words "war propaganda" placed at the beginning of the article.

11. The bitter experience of Yugoslavia, which twice in the recent past had been the victim of aggression,

showed that on each occasion aggression had been preceded by propaganda aimed at creating war psychosis, intolerance and hatred among peoples. It was therefore particularly necessary that provisions expressly prohibiting such propaganda should be included in the Covenant, even if there were a risk that such a prohibition, like any legal provision, might be open to abuse. The manifestations of racial discrimination, hatred and violence which had occurred since the Commission on Human Rights had prepared the draft Covenant abundantly proved the value of article 26. That article should therefore be retained in the draft Covenant, in as precise a form as possible; and it should provide for the prohibition of war propaganda, a prohibition which already existed in the national laws of many countries, Yugoslavia included.

12. Mr. CHAU SENG (Cambodia) recalled that, when the Committee had examined article 19, certain representatives had insisted above all on the duties and responsibilities which accompanied the exercise of freedom of information and, in support of their argument, had interpreted the concept of public order in a strictly legal way. But, in an age when political power was more and more encroaching on so-called judicial power, that concept was of wider scope and represented a very effective weapon in the hands of those who were willing to use it unscrupulously. Public order simultaneously embraced political order, economic order and social order. Where, in the name of that order, one restricted the freedom of opinion of the individual, who, thrown back on his own resources, lacked any effective means of changing the existing state of things, it was perfectly natural that one should impose on each society, each State—likewise in the name of order, but of international order in that case—certain responsibilities concerning the exercise of its rights.

13. The adoption of article 26 was an international necessity, particularly compelling in the interests of the small nations, which had neither the means nor the intention of threatening anybody but were subject to every kind of pressure on the part of the great Powers struggling amongst themselves for world domination. Propaganda in itself was neither good nor bad, but it was not an end in itself, and just causes had no need of it. Countries which, like Cambodia, had nothing to make propaganda about except their love of peace, of their neighbours, of life and of progress, considered that they had to protect themselves against foreign propaganda. The Cambodian delegation therefore supported the principle set forth in article 26.

14. It likewise supported the Brazilian amendment which, however, had the defect of not placing sufficient emphasis on war propaganda. The text proposed by the Brazilian delegation would be more satisfactory if the word "including" was replaced by "as well as" or "and particularly". His delegation did not think that in the context of article 26 there was a great difference between the terms "législation nationale" and "law". It considered, in any case, that there should be a mention of "hatred", the manifestations of which were characteristic and definable, even for legal purposes.

15. Mr. SAPOZHNIKOV (Union of Soviet Socialist Republics) said that his delegation, like many others, considered it very important for the draft Covenant to include specific legal provisions prohibiting any incitement to hatred, contempt and violence.

16. It also felt that article 26 should be broadened to provide for prohibition, by law, of all war propaganda. If such a provision were to be incorporated in a United Nations instrument, it would help to do away with the cold war and to promote peaceful co-existence between nations. Accordingly, although its own proposal amending article 19 in that sense had been rejected (1077th meeting), his delegation would urge that very clear provisions on war propaganda be included in article 26.

17. It should not, however, be forgotten that article 26 also touched upon the very serious problem of the dissemination of racialism, a frightful evil for which the prejudices of certain social groups were not alone responsible, since it was closely linked to the exploitation of man by man and to the colonial system. The idea of white superiority served to justify the enslavement of the coloured peoples, which was obviously motivated by economic, social and political considerations. Moreover, despite the rapid elimination of colonialism, racialism was still wide-spread—for instance, in the Non-Self-Governing and Trust Territories, where iniquitous laws deprived the indigenous peoples of their fundamental rights. In South Africa, where "apartheid" reigned, racialism had become a government policy. In other countries, marriages between members of different racial groups were forbidden and discrimination against various groups of society was practised.

18. The States which did not accept such an order of things were concerned to note that no legislation prohibiting racialism had yet been promulgated; that was why the Declaration on the granting of independence to colonial countries and peoples, adopted at the fifteenth session of the General Assembly (resolution 1514 (XV)), was focusing general attention on the measures which should be taken to put an end to racial discrimination. As far back as 1955, at the Bandung Conference, the States of Asia and Africa had regarded that question as a very serious one, and had demanded the adoption of measures to root out racialism. And, only very recently, the uncommitted countries which had taken part in the Conference of Non-Aligned Countries, held from 1 to 6 September 1961, at Belgrade, had expressly condemned South Africa's "apartheid" policy and had demanded the universal abolition of racial discrimination, constituting as it did a serious violation of the Charter of the United Nations and of the Universal Declaration of Human Rights (General Assembly resolution 217 (III)).

19. In those circumstances it was essential to include the provisions of article 26 in the draft Covenant, and he was surprised by the attitude adopted in that respect by the representatives of the United States and the United Kingdom, who seemed to feel that article 26, even in the very moderate form proposed by the Commission on Human Rights, might interfere with freedom of information. If everyone seeking to disseminate national, racial or religious hatred were held accountable for his acts by national law, such accountability could not be regarded as a violation of the freedom of expression.

20. He thought that the text of article 26 was too weak, for it appeared to make no provision for the prohibition of propaganda for national, racial or religious hostility unless such propaganda constituted actual incitement to hatred and violence—a position which reduced the possibility of eradicating the evil. The text should categorically provide for the prohi-

bition, by the State, of all incitement to national or racial hatred, or to war. He was not, however, submitting any formal proposal in that respect, and was prepared to consider the text of any amendment which would meet the need that he had just indicated.

21. Miss KUBOTA (Japan) said that she fully appreciated the importance of preventing the abusing of freedom of information; such abuse had always been only too frequent. She represented a people sincerely desirous of living in peace, in a world free from national, racial or religious hatred. She approved the spirit in which article 26 had been drafted; but she could not support its text, which might prejudice freedom of expression and information.

22. The application and interpretation of its provisions would involve serious difficulties in practice and would open the way to abuses, for any Government could invoke them to justify despotic control over all forms of expression and to suppress all opinions unfavourable to it, on the pretext that they constituted incitement to hatred and violence. How were words like "hatred", "incitement", "hostility" to be objectively defined? Advocacy of national, racial or religious hostility did not always lead to violence; should it nevertheless be forbidden? And would such a ban not be very detrimental to freedom of expression? Certain countries, equipped with a modern Constitution based on the Bill of Rights, would be unable to apply the provisions of article 26, even if they were left full discretion as to the laws to be adopted to that end.

23. Since the Japanese Government could not for its part undertake to implement that article, she would vote against the adoption of its text and would support its deletion.

24. Mrs. DEMBINSKA (Poland) said that, in the view of the United States and the United Kingdom delegations, article 26 had no place in the Covenants, since good understanding and peace between nations, races and religions did not constitute a fundamental human right. Those delegations also represented that article 26 could be supported only at the cost of abolishing the freedoms proclaimed by article 19; it could therefore be concluded that their opposition to the incorporation, in article 19, of the amendments relating to hatred and war propaganda was inspired solely by their desire to defend precisely what article 26 intended to prohibit.

25. In this connexion, she recalled that the delegations of those same countries, in opposing any amendment to article 19, had maintained that amendments relating to national, racial or religious hatred, and to war propaganda, would be more in place in article 26. But now they were saying that they opposed article 26. The Polish delegation hoped that those who had accepted their arguments would not let themselves be misled again, for if the mistake they had made on the question of article 19 was to be repeated in the case of article 26, it could not fail to have disastrous and even irreparable consequences for them.

26. She also warned them against the manoeuvre that might perhaps be attempted by certain representatives, who might at first categorically oppose the adoption of article 26, so as to be able subsequently to make a few partial concessions, in a pretended spirit of compromise, for the prohibition of national, racial or religious hatred and of war propaganda. The Polish delegation, for its part, would not let itself be hoodwinked by such a manoeuvre. It wished clearly and unwaveringly to defend the fundamental principle of the

total and unconditional prohibition of all racial, national or religious hatred—a prohibition which was already embodied in the Polish Constitution. Its position on that point was a position of principle, which had nothing whatever to do with the cold war.

27. Hatred and discrimination, in whatever form, were a disgrace to the present era. The Poles were particularly well qualified to speak on that point, for they themselves had been condemned as an inferior race by the Hitlerite Nazis, who, for the good of the "Herrenvolk", had taken a toll of 6 million Polish victims during the Second World War. The Poles today were all the more entitled to sound the alarm as those same racial theories were now being reborn, not only in the Federal Republic of Germany but in many other countries. Poland could not fail to be on the side of all those whose human dignity was still being outraged, all over the world, because of the colour of their skin.

28. Some Western Powers claimed that technical and legal difficulties obstructed the finding of appropriate terms for the prohibition of incitement to national, racial or religious hatred. Their arguments were not new, and they were not valid in the case of article 26, which was perfectly clear in its wording and therefore in its human implications.

29. It was essential to prohibit absolutely, once and for all, every form of hatred and discrimination. To that end, propaganda should first of all be prohibited, and in the best possible place—namely, in the Covenants. But unanimity on that point could be secured only on the basis of an attitude of principle, definite and unambiguous.

30. The prohibition of war propaganda, as envisaged in the text submitted by Brazil, was an essential human right. Those who claimed that it was impossible, on the pretext that it could not be determined what was war propaganda and what was not, should, she suggested, ignore that difficulty, agree to the prohibition of such propaganda, and then judge of the results. In any case, it was not by denying the usefulness of such measures that peace in the world could be consolidated.

31. Like all socialist countries and certain other countries such as Brazil, Poland had formally forbidden all war propaganda. That action should, however, be taken universally, especially at a time when mankind had at its command technical resources that enabled it both to annihilate itself within a few moments and to make rapid progress along the path of general well-being. There was no escaping the choice, and by prohibiting war propaganda the Third Committee would help to ensure that the right choice was made.

32. Her delegation was grateful to the delegation of Brazil for having submitted an amendment which allowed the Committee to play that part. She also thanked it for its other proposals regarding article 26. The text proposed should, however, be slightly modified in order to take account of the well-grounded doubts expressed by the representative of the Federation of Malaya (1078th meeting).

33. Mr. LIMA (Cameroun) noted that article 26 guaranteed not only national rights but also the rights and freedoms of the individual, which were man's most treasured property. In Cameroun those rights and freedoms were not merely set forth in the Constitution, but were also put into practice. The

present text of article 26 was simple, comprehensive and fully in accord with the provisions of the Charter of the United Nations. It was therefore entirely satisfactory to the Camerounian delegation, which would, however, support any amendments that improved it.

34. The significance of freedom to mankind could be measured by the efforts devoted to its cause by the international organizations. The present Commission on Human Rights and, before it, various League of Nations bodies had been set up for that purpose alone. There was also the very important treaty^{1/} signed at Paris, on 9 December, 1919, by Romania, on the one hand, and the United States, the United Kingdom, France, Italy and Japan on the other, which had guaranteed the free exercise of human rights and fundamental freedoms to all inhabitants of Romania, without any distinction.

35. The nations which had recently thrown off the yoke of colonialism and those which were still under some form of servitude had great need of the safeguards afforded by article 26. Deprived for years of all freedom and conditioned to serve the selfish interests of foreign masters, the inhabitants of those countries had almost forgotten what freedom meant in practice. They would have to make a great effort to undo the wrongs that had become an integral part of their way of life and then to establish true democracy.

36. The older nations also needed the safeguards written into article 26. Experience had shown that particular forms of government which had been regarded at one time or another as providing the best guarantee of human freedoms had not always lived up to expectation. Even when government was truly in the hands of the people, there was a danger that the people themselves, in times of crisis, would forget the basic principles to which they were traditionally dedicated.

37. Political freedom was the very basis of all other freedoms. It therefore had to be guaranteed to all by the international community represented by the United Nations. In adopting article 26, the Third Committee would provide the world with a significant safeguard for human freedom and the dignity of all nations.

38. Miss GRIÑAN (Cuba) said that she warmly supported the Brazilian amendment but would also vote in favour of any sub-amendments likely to improve it.

39. Cuba feared propaganda in favour of nuclear war, though fortunately the threat of such war had become less pressing owing to the fact that one, at any rate, of the two major world military Powers, the Soviet Union, was conscious of its responsibilities.

40. There was, however, another form of war, an older form it was true, to which Cuba was currently exposed after a vicious propaganda campaign. The Cuban delegation therefore wondered whether it was possible to speak out against the cold war while still opposing the fight against the propaganda which gave birth to all wars and kept them in being.

41. Mr. SITA (Congo, Leopoldville) did not consider that the text of article 26 called for any reservation as to its substance or that any abuse need be feared. Nevertheless, the article in its present form was totally ineffective. Propaganda was, undeniably, dif-

ficult to define. Moreover, the term "incitement to hatred" was lacking in precision and it would be difficult to enumerate all the cases where it could be applied. Such details had no place in a covenant. On the other hand, "incitement to violence" was a clear and precise notion and could be prohibited by the United Nations.

42. An examination of the existing situation showed that propaganda, whatever the two great Powers which were attempting to dominate the world might say, did exist, as the Congo (Leopoldville) had found—and was still finding—to its cost.

43. The noble declarations of principle made in various quarters were without much practical significance. The Third Committee should therefore seize the opportunity which it now had of really and effectively guaranteeing world peace and the tranquility of all nations, however small and weak they might be, by voting for an indispensable restriction on the freedoms which it had set forth in article 19.

44. Mr. BARRATT (South Africa) noted with regret, but without any real surprise, that the representative of the Soviet Union had seen fit to make a violent political speech in which he had referred specifically to South Africa. The South African delegation had always understood that it was not the practice in the Third Committee, which was not a political committee, to criticize a particular country. In any event, the Soviet representative in his speech had in fact indulged in one of those exercises in propaganda which he claimed he was combating.

45. On behalf of his own country, he categorically denied the Soviet representative's distorted and untrue description of South African policies, which in fact were aimed at avoiding national, racial and religious hostility. The Government of South Africa was firmly opposed to any incitement to hatred and violence, whereas the Soviet representative's statement could itself be regarded as constituting such an incitement. It was ironic, to say the least, that the Soviet representative should talk so much about forbidding war propaganda at the very time when the Chairman of the Council of Ministers of the Soviet Union was boasting about the size of his bombs.

46. Lady TWEEDSMUIR (United Kingdom), referring to the statement made by the representative of Brazil (1078th meeting), said that the United Kingdom delegation had in no way changed its mind about article 26, for it, like the Brazilian delegation in fact, had proposed as long ago as 1955 that that article should be deleted.^{2/} The reason why the United Kingdom had not seen fit to propose an amendment along those lines at the current session was merely that some members of the Committee were strongly in favour of article 26.

47. Replying to the representative of Saudi Arabia, she said that deletion of the words "to hatred and" would certainly go a long way to improve the text under discussion. However, she did not intend to submit any amendment to article 26, since she thought it unwise to insert a purely negative provision in a text which should be of a positive nature.

48. With regard to the Soviet representative's remarks about the present situation in the Non-Self-

^{1/} League of Nations, Treaty Series, vol. V, 1921, No. 140.

^{2/} See Official Records of the General Assembly, Tenth Session, Annexes, agenda item 28—Part I, document A/C.3/L.460, Part III, article 26.

Governing Territories, she had no reason to suppose that they were aimed specifically at the Territories under United Kingdom administration. She wished to emphasize, however, that her country had been very energetic—and successful—in sponsoring the speedy attainment of independence by those Territories.

49. She entirely agreed with the Soviet representative on the need to end the cold war and to uphold the principle of coexistence. Coexistence had, however, been specifically defined in the Statement of the Communist and Workers' Parties adopted in December 1960, in Moscow, as the ideological and economic struggle to establish communism throughout the world. As coexistence was conceived of by others as meaning the possibility for every country to live according to the system of its choice, without imposing its ideas on its neighbours, the first step must be to reach agreement on the meaning of the word "coexistence".

50. Mr. SAPOZHNIKOV (Union of Soviet Socialist Republics) said that, contrary to the assertions of the South African representative, his own statement had in no way been an exercise in propaganda. He had, in fact, merely quoted a resolution which had been adopted in the recent past by the Belgrade Conference and in which the non-committed countries had condemned the policy of "apartheid" in South Africa and had called for an end to discriminatory practices which violated the principles of the Charter of the United Nations and of the Universal Declaration of Human Rights.

51. With regard to coexistence, no communist party dreamed of imposing its ideological convictions by force; it was for the peoples of the different countries, and for them alone, to opt in favour of communism, and that was what they would do.

52. The Soviet delegation considered that the attitude of those who were unwilling to prohibit racialism and who were trying to give the impression that the whole problem revolved around the struggle between the major Powers was a mistaken one. It was, in fact, simply a matter of prohibiting racialism and incitement to the cold war. It was the duty of all States, regardless of their political, economic and social structure, to work towards that end.

53. Mr. MATE (Ghana) said that, in his opinion, article 26 was of great importance and should be kept in the draft Covenant. It was the result of very thorough work and had been drafted by the Commission on Human Rights in simple and direct terms. Unlike some representatives, he considered that there was a great difference between articles 19 and 26, since the former set forth individual rights while the latter defined collective rights.

54. Examining article 26 in detail, he said that religious hostility would seem to have disappeared today, but the important part played in man's history by religious conflicts and the extent to which men had thought it just to impose their own beliefs on others had to be remembered.

55. As to racial hostility, it could be aroused by mere spoken words—as exemplified by the fear of the "Negro" inculcated in children. Racial hostility could also be aroused by the written word, particularly in newspapers and school textbooks, some of which had at times been regarded by the authorities as so shocking that in the end they had had to be removed from the list of works used. Radio and television could

also do a great deal of harm; not that they were in any way to be condemned in themselves as information media, but they could become instruments of propaganda. The films, too, should always show countries and men in their most favourable light, but that unfortunately was not the case. He was aware that in certain States considerable efforts were being devoted to bringing about racial harmony, but that was a mere drop in the ocean. Nevertheless, it was necessary to look towards the future and to think that in a country like the United States of America, for example, where racial discrimination did exist, the Chief of State in thirty or forty years' time might well be a Negro.

56. As to national hostility, its effects could be measured in the light of the cold war, and it was difficult to see why some representatives should regard article 26 as unnecessary.

57. It was true, of course, that the provisions of article 26 would be meaningless if they were not actually put into effect. There was a United Nations police force, which all countries should want to contribute to and support. It could be made responsible for ensuring that the principles adopted by the Committee were put into practice, as otherwise they would be likely to remain a dead letter.

58. The delegation of Ghana would vote against any proposal to delete article 26 and would support any amendment designed to strengthen it.

59. Mr. BAROODY (Saudi Arabia) thanked the delegations of the United Kingdom, Chile, Brazil and the Federation of Malaya for the constructive comments and suggestions which they had made.

60. As a text like article 26 had above all to be simple, he, in collaboration with his colleagues from the Philippines and Lebanon, had drafted a more concise version (A/C.3/L.932) which took into account the criticisms of the United Kingdom delegation and the Chilean suggestions and which, it seemed to him, should not occasion any diverging interpretations.

61. The reason why the sponsors of the new text had changed the place of the word "hatred" was that, like the United Kingdom delegation, they recognized that hatred did not always appear on the surface and that so long as it was passive it could not be given a legal definition nor even be unmasked. On the other hand, if hatred was defined by placing the words "inciting to violence" after it, the difficulty no longer arose, since hatred was easy to detect as soon as it led to acts of violence. He hoped that the United Kingdom delegation would be able to support the proposed text and that other delegations would agree to appear among the sponsors of the amendment.

62. Mr. DIAZ CASANUEVA (Chile) said that the Spanish and French translations of the word "advocacy" would have to be changed.

63. Mr. SITA (Congo, Leopoldville) supported the Saudi Arabian representative's proposal and expressed the hope that the French translation of the word "advocacy" would be revised.

Organization of work

64. The CHAIRMAN drew attention to the item concerning African educational development and to the suggestion which had been made in that connexion

(A/4928). In reply to a question from Mrs. Della GHERARDESCA (Italy), he said that the time-limit for submitting amendments had been fixed at 4 p.m. on Friday, 20 October, but that it would always be

possible for delegations to submit sub-amendments to the amendments already submitted.

The meeting rose at 1.10 p.m.