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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.933) (continued)

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

1. The CHAIRMAN drew attention to the sixteen-Power amendment (A/C.3/L.933) to article 26. The text had been prepared by a working group consisting of the sponsors of the nine-Power amendment (A/C.3/L.930/Rev.2) and the four-Power amendment (A/C.3/L.932), both of which had now been withdrawn, and of other interested delegations.

2. Mr. ALBUQUERQUE MELLO (Brazil) said that his delegation's original intention had been to embody in article 26 enforceable legal rules which would be binding on States. In working with other delegations towards a unified amendment, he had stressed the need to separate the rules of international law from their application under national legislations, for he was not entirely convinced that the provisions of article 2 of the draft Covenant under discussion applied explicitly to article 26. He had nevertheless bowed to the wishes of the majority and could commend the amendment now before the Committee as more precise and complete than the original text of article 26.

3. War propaganda was forbidden in the constitutions and legal systems of many countries, including his own, and had been the subject of a solemn declaration by the United Nations (General Assembly resolution 110 (II)). Since furthermore there seemed to be a strong feeling in the Committee that a very clear condemnation of war propaganda should be made, the sponsors of the joint amendment had decided to devote a separate initial paragraph to the matter.

4. In paragraph 2, the sponsors had tried to establish a gradation among the various motives which might lead to hostility among individuals and groups. The words "national, racial or religious" already existed in the original text and it was thought best to retain them in that order. While "national hatred" referred to hostility aimed against certain ethnic groups within a State, including minority groups,

"racial or religious hatred" related to specific forms of hostility which might be independent of the national features of the peoples concerned.

5. The amendment included the word "hatred" as the point of departure and as the prime cause of violence. Naturally, the draft Covenant could not deal with the subjective aspects of hatred but must condemn incitement to hatred only when it was externalized, at which point it was quite readily determined by the courts.

6. The inclusion of the word "discrimination" has seemed absolutely indispensable, and the climax was reached with the word "violence".

7. The final words of the amendment, "prohibited by law", meant that the actions covered by the article would be prohibited by the domestic law of the countries acceding to the Covenant.

8. He appealed to the Committee to give its unanimous support to the joint amendment, which was the result of serious efforts to obtain an objective, non-political text.

9. Mr. KARAPANDZA (Yugoslavia) said that he would merely indicate the main reasons why the sponsors of the nine-Power amendment had accepted the new text.

10. The removal into a separate paragraph of the reference to war propaganda brought it to the foreground and, at the same time, met the objections of those delegations which had regarded the linking of war propaganda with incitement to violence as implying the possibility of war propaganda which did not incite to violence.

11. Paragraph 2 of the new text represented a compromise between those who held that hatred could not be legally defined and that the nine-Power text might lead to the suppression of freedom of information and those who felt that an article mentioning incitement to violence alone would be no innovation, since such incitement was already prohibited by most national legislations.

12. In the sixteen-Power amendment, the term "hatred" was defined by the addition of the words "that constitutes incitement to discrimination, hostility or violence". The sponsors of both the earlier amendments had agreed that the inclusion of the word "discrimination" did not involve duplication of article 24, since the latter concerned a different matter, equality before the law.

13. To meet the views of the sponsors of the four-Power amendment, the sentence reading: "This prohibition shall be incorporated in the law of the State" had been deleted on the understanding that the new text placed an obligation on every country to include the provisions of article 26 in its national legislation.

14. It was gratifying that some delegations which had been unable to support the earlier amendments

had co-sponsored the present text, which he hoped would receive unanimous support.

15. Mr. MARAÑÓN (Spain) endorsed the Chilean representative's remarks (1078th meeting) on the subject of propaganda. He also agreed with the USSR representative (1081st meeting) that it was both necessary and important to include an article such as the present in the draft Covenant and that its provisions should be formulated in a clear and categorical manner.

16. The prohibition of all propaganda, whether violent or not, against nations, races and religions was in complete harmony with his country's legislation and, indeed, with its entire history. Both in Africa and in South America, Spain's record was one of constructive co-operation with peoples of other races. Religious hostility and hatred were unknown in Spain. Spain had always remained neutral in the great world conflicts.

17. It therefore welcomed article 26 of the draft Covenant and believed that future generations would have reason to be grateful to the Third Committee for adopting it.

18. Mrs. ROSSIDES (Cyprus) expressed her delegation's strong support for the spirit of article 26, but feared that any vagueness in the text might lead to infringements of the right to freedom of expression. The concept of what constituted incitement to hatred varied from country to country, and she would have preferred the text of the four-Power amendment, which made prohibition dependent on incitement to violence, thus reducing the risk of abuse.

19. Mr. ALCIVAR (Ecuador) said that his delegation's only reservation in connexion with the sixteen-Power amendment related to the broad drafting of paragraph 1. If the words "Any propaganda that incites to war" were substituted for "Any propaganda for war", he could support the amendment.

20. Mr. ZULOAGA (Venezuela) stated that his delegation was prepared to vote for the sixteen-Power amendment. It might appear paradoxical that the countries of Latin America, which had so hotly defended the principle of non-interference with freedom of expression through prior censorship, should be prepared to accept the restrictions provided in the present text. There were sound historical reasons for their fear of Government censorship. However, those countries had never themselves been guilty of war propaganda or advocacy of national, racial or religious hatred and were opposed to such abuses of freedom of expression. Neither the Western European system, under which the public had to choose between often conflicting reports from various agencies, nor the system prevailing in the socialist countries, where the State controlled all sources of propaganda, was satisfactory to them.

21. He therefore hoped that the sixteen-Power amendment, despite its imperfections, would be approved, if not unanimously, at least by the great majority of members and, in particular, that the United Kingdom and the United States would not vote against it.

22. Miss KUBOTA (Japan) observed that there could be no doubt that such practices as war propaganda and the advocacy of national, racial or religious hatred must be eliminated.

23. The question the Committee should examine was not the principle of article 26, with which no one could disagree, but the method of implementation. For signatory States to prohibit propaganda for war and hatred might be the shortest way and might even promote international peace. But the shortest and most incisive way was not always the best. While the article might achieve its own specific objectives, it was very likely that at the same time it would destroy freedom of expression and information. The Committee should take a long-range view and strive for the permanent and universal applicability of the draft Covenant. Moreover, modern criminal law required precise definitions of the criminal act. Because of the vagueness of the wording used in the article, her country would be unable to implement it even if it was adopted.

24. For all those reasons, her delegation believed that it would be better not to incorporate article 26 in the draft Covenant. It could not accept the sixteen-Power amendment, which differed from the original drafting only in degree and not in kind.

25. That position might be termed too legalistic and idealistic, but her Government felt that it must bear constantly in mind the lofty objectives of the Universal Declaration of Human Rights (General Assembly resolution 217 (III)) and devote itself to the cause of freedom of expression and freedom of information. Restrictions on those freedoms represented a far greater threat to lasting world peace than did propaganda for war and hostility.

26. Mr. CHANG (China) said that his delegation was unable to support article 26 in either its original or its amended form. It was often difficult to determine what constituted "propaganda for war", especially as a problem of semantics was involved. The slogan "peaceful coexistence" was entirely unobjectionable when it meant to live and let live, but, as could be seen from the Statement of the Communist and Worker's Parties published in Moscow in December 1960, it meant to some an intensification of the struggle for the triumph of socialist ideas. Under a totalitarian régime, all media of mass communication were State-owned and hence the perpetrator of war propaganda would be the State itself. It might be asked how the law of a State could prohibit war propaganda when the State itself was the offender.

27. Furthermore, although the original article and the amendment to it sought to eliminate the advocacy of national, racial or religious hatred, they disregarded the promotion of another form of hatred which was equally vicious and which lay at the root of practically all the ills of the present-day world—class hatred. On the international plane, class warfare was directed at the overthrow of all non-communist Governments. On the domestic plane it resulted in social unrest and bloody civil wars. All States had an obligation towards their citizens and should recognize the right of everyone to adequate and constantly improving living conditions, but that was not the same thing as advocating class hatred and warfare.

28. For the reasons he had stated, he would abstain on the original text of article 26 and on the amendment.

29. Mr. BAROODY (Saudi Arabia) warmly endorsed the views expressed by the Venezuelan representative. The objections to the joint amendment raised by some speakers would have been valid had it read

"Any propaganda for war shall be prohibited", for in that case a State could arbitrarily term anything it wished war propaganda and order its suppression. But by saying "shall be prohibited by law", the text clearly gave the dominant role to the courts. He would submit, furthermore, that the courts in all countries fulfilled a certain independent function. The Committee must scrupulously avoid dividing the world into totalitarian and democratic countries, for there was no nation that was not in some ways or at some times totalitarian.

30. In the present nuclear age war propaganda could do irreparable harm to the entire world. Indeed, if it accomplished its aim there would be no freedom of expression or information to defend. The Third Committee could no longer afford to say nothing about the question.

31. To those who feared that the words "discrimination" and "hostility" in the joint amendment might interfere with freedom of expression he wished to point out that they were now linked with the word "hatred", a far more specific term than "hostility". Two groups or nations might be hostile towards each other without coming to blows or closing the door to a settlement of differences, but hatred was a deep-seated emotion with fairly definite causes and effects. He had at first opposed a reference to discrimination in article 26 because it was covered in article 24, but since it had been pointed out that article 24 dealt with equality before the law, and since discrimination was one of the great scourges of the modern world, he had become convinced of the need to refer to it in article 26.

32. The joint amendment was the fruit of prolonged efforts to find an acceptable formulation of article 26 and he hoped that the Committee would speedily adopt it.

33. Mr. COX (Peru) said that while freedom of expression was not ambivalent, propaganda, as other representatives, notably those of Chile and Colombia, had pointed out, could be either good or bad. When it

was good, as for example the spreading of information through the United Nations Office of Public Information, it was a positive contribution to people's knowledge. All negative propaganda, on the other hand, should be discouraged.

34. The prohibition of propaganda likely to sow hatred between nations was clearly in accordance with the Charter of the United Nations. It was also fully in accord with the Latin American legal tradition. The resolutions of many inter-American conferences called specifically for the prevention of such activity.

35. His delegation therefore entirely endorsed the idea of including an article of the kind now being considered in the draft Covenant on Civil and Political Rights, and it hoped that the great majority of the Committee would support what amounted to an effort to stamp out one of the great evils of modern times, and thereby serve the cause of peace.

36. Mr. DIAZ CASANUEVA (Chile) regretted that the representative of Japan, a country which had suffered so much during the last world war, should be so strongly opposed to the inclusion in the draft Covenant of an article prohibiting war propaganda, particularly as that attitude appeared to be in direct contradiction with article 9 of the Japanese Constitution and the provisions of the Japanese criminal code.

37. With regard to the sixteen-Power amendment, his delegation was entirely satisfied with paragraph 1: it was categorical and definitive and, as the representative of Saudi Arabia had said, the words "by law" provided adequate safeguards against abuses.

38. His delegation was less happy about paragraph 2 however, for it contained a number of subjective and emotional elements difficult to define in strict legal terms. It was for that reason that he would ask for a separate vote to be taken on the words "discrimination" and "hostility".

The meeting rose at 12.55 p.m.