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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) (continued)

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

1. The CHAIRMAN understood that there had been a certain amount of dissatisfaction with the procedure followed at the time of the voting on article 26 (1083rd meeting): certain delegations wishing to explain their votes before the vote was taken had been prevented from doing so. He very much regretted any disappointment they had suffered. He had, of course, been obliged to apply the rules of procedure relevant to the motions put forward by members of the Committee. He would, however, appeal to members in the future to show understanding towards the legitimate wishes of their colleagues.

2. He invited delegations which wished to do so to explain their votes on article 26.

3. Mr. LEIRO (Norway), explaining the votes cast by the delegations of Denmark, Finland, Iceland, Sweden and Norway, said that the debate in the Committee and the fact that it had decided to consider article 26 immediately after article 19 had convinced those delegations that, when it came to the application of the provisions of the two articles, many would argue that they were closely inter-connected and must be interpreted as a whole.

4. The delegations for which he spoke believed that freedom of expression and freedom of information had already been subjected to restrictions and, indeed, endangered by the text of article 19 as adopted. They believed that those freedoms were further placed in jeopardy by the provisions of article 26 as adopted at the previous meeting. Moreover, they considered that since article 26 did not proclaim any individual human right it was out of place in the present Covenant.

5. The Scandinavian countries were as vigorously opposed to war propaganda and to national, racial and religious hatred inciting to violence as anyone else. They did not, however, feel that it was appropriate

for the United Nations to formulate treaty provisions which lent themselves to conflicting interpretations and contradictory applications—for what was condemned in one country as war propaganda might be welcomed in another as laudable activity in pursuance of a positive policy. A phrase like "advocacy of national hatred that constitutes incitement to hostility" was so easy to misconstrue that those whom the provision was supposedly designed to protect might very well find themselves its victims.

6. It was for those reasons that the Scandinavian delegations had voted against the sixteen-Power amendment (A/C.3/L.933) and article 26 as a whole.

7. Miss WARREN (Australia) said that her delegation had wished to explain its vote before the vote had been taken since it could have voted for the text of article 26 as drafted by the Commission on Human Rights. Her delegation had long had reservations about the advisability of including an essentially negative article in a draft Covenant consisting primarily of a positive statement of the rights of the individual.

8. In 1955 Australia had put forward an amendment to article 26.^{1/} In deference, however, to the great weight of opinion in the Committee in favour of the inclusion of a caveat of that kind in the draft Covenant, it had subsequently withdrawn that amendment. While entirely in agreement with the sentiments behind the article, her delegation had felt that it was difficult to formulate them in strictly legal terms. It had, however, come to the conclusion that the text of article 26 as it stood represented the best formulation that could be hoped for. She had voted against the sixteen-Power amendment for purely technical and legal reasons.

9. She had not been able to vote for paragraph 1 because the concept "propaganda for war" was not clearly related to any right of the individual, was not defined and opened the way to stringent limitations on freedom of speech.

10. She had abstained in the vote on paragraph 2 because many of the elements in it defied strict legal definition. The term "hostility", for example, according to the dictionary meant not only enmity and a state of warfare but also unfriendliness, antagonism and, even, contrariness. Thus, under the article as drafted, the legal prohibition could be interpreted as covering a mere difference of view. Finally, the sixteen-Power amendment twice contained the expression "prohibited by law": it was her delegation's view that the subject of state legislation necessitated by the Covenant was adequately covered by article 2, paragraph 2.

^{1/} Official Records of the General Assembly, Tenth Session, Annexes, agenda item 28 (part I), document A/C.3/L.460.

11. Miss HAMPTON (New Zealand) said that her delegation, too, had wished to explain its position prior to the vote for, while sharing the doubts of many regarding the propriety of including an article which did not proclaim a positive human right in the draft Covenant, it had nevertheless been prepared to defer to the views of the majority who wished to include some reference to those matters in the instrument. Within that context, her delegation had found the text of the four-Power amendment (A/C.3/L.932) acceptable, as also certain other formulations which had been proffered but had not come to the vote. Unfortunately, the sixteen-Power amendment, which was not a true compromise, accentuated the undesirable aspects of the nine-Power amendment (A/C.3/L.930/Rev.2), and New Zealand had therefore been unable to vote for it.

12. She regretted that her delegation had not had the opportunity to register a positive vote on article 26.

13. Mrs. DELLA GHERARDESCA (Italy) recalled that she had expressed misgivings (1081st meeting), concerning the wording of article 26 as drafted and the proposed amendments, and had suggested an alternative text which was less vague and legally more sound. When any activity was made an offence under national legislation, it should be so clearly defined that any infringement of fundamental freedoms was precluded.

14. The sixteen-Power amendment, being neither succinct nor precise, did not meet that requirement. Moreover, the adoption of article 26 as amended threatened the structural balance of the draft Covenant, the essential purpose of which was to safeguard human rights, and not to legislate against crime. A vague threat of penal sanctions and increased police control, which might possibly bring the guilty to book but would certainly restrict the freedom of the innocent, could not be justified by an aversion, fully shared by Italy, to war propaganda and to the advocacy of national, racial or religious hatred.

15. While confirming its adherence to the principle concerned, her delegation had therefore been unable to support article 26 in the form in which it had finally been adopted.

16. Mrs. CASSELMAN (Canada) said that her delegation could have voted for the original text of article 26, and, since it had had reservations about the reference to "hatred", it could have given even firmer support to the four-Power amendment.

17. She had voted against the sixteen-Power amendment because some of its terms were so imprecise and abstruse that the usefulness of including them in a legally binding document was open to question. There was, for instance, no general agreement on what constituted war propaganda; the Committee's own discussion of the article amply illustrated that fact. It was inadvisable to include a formulation which in the present state of the world could be interpreted only in accordance with the national interest of each State. Furthermore, although inciting to violence was an offence in many countries and law courts were accustomed to dealing with such matters, the other categories of incitement referred to in the sixteen-Power amendment—particularly incitement to hostility—did not lend themselves to the exact formulation required in a legal text.

18. Canada agreed with the objectives set forth in the original draft of the article, but it was not con-

vinced that the amendment which the Committee had adopted offered a practicable means of attaining them.

19. Mr. ALCIVAR (Ecuador) explained that he had voted against paragraph 1 of the sixteen-Power amendment because its adoption might lead to restrictions on freedom of opinion; moreover, although war propaganda was harmful, wars were caused, not by propaganda, but by conflicts of interest. Lastly, war propaganda, or what might be regarded as such, was made by Governments themselves.

20. He had voted against paragraph 2 because the meaning of the term "national hatred" had not been explained satisfactorily.

21. Mrs. FEKINI (Libya) stated that she had voted in favour of the sixteen-Power amendment because its formulation was better than that of the original text and conformed with Libyan concepts and practices. She did not agree with the view that article 26 was out of place in the draft Covenant because it was not concerned with fundamental human rights; on the contrary, it would protect those very rights which the Committee was engaged in formulating.

22. Lady TWEEDSMUIR (United Kingdom) remarked that her delegation maintained its objection of principle, which could not be overcome by mere drafting changes; namely, that article 26 was inappropriate in the draft Covenant because it did not proclaim any human rights.

23. The United Kingdom's second objection, that the article was open to abuse, had not been met by any of the amendments submitted; indeed, the sixteen-Power amendment seemed to combine the worst features of the two previous ones. Propaganda for war being undefined, the text could provide an excuse for a Government to limit or prohibit any comments on its foreign policy by domestic or foreign journalists. The term "incitement to hostility" was even broader than "incitement to hatred" and was entirely out of place in a legal document; it introduced a completely subjective notion which defied any rational or legal definition or measurement.

24. Those considerations had led her delegation to vote against the retention of references to war propaganda and incitement to hostility and, consequently, against the text as a whole. It had voted, not in favour of war propaganda or racial discrimination, but against the inclusion in the draft Covenant of concepts so imprecise as to make the article unworkable and to endanger the rights embodied in article 19. The United Kingdom relied on the guarantee contained in article 2 of the draft Covenant to give every individual effective protection against discrimination in the field of human rights.

25. Mrs. COCEA-BREDICEANU (Romania) said that her delegation had voted in favour of the sixteen-Power amendment because of its superior drafting; the text provided for positive legal sanctions to deal with any manifestation directed against peace, human dignity, equality of rights or freedom of opinion. Thus, not only the action, but the intention, was legally defined, and there could be no misinterpretation of the terms "propaganda for war" and "advocacy of national, racial or religious hostility". Her delegation was in favour of brevity, but not at the expense of clarity, and, since a majority of the Committee was in agreement on the principles underlying article 26, it followed that those principles must be given

clear expression. That had been achieved in the sixteen-Power amendment.

26. Begum Aziz AHMED (Pakistan) stated that her delegation had been in favour of the original article and had also welcomed the appearance of the four-Power amendment, which was concise and to the point and placed the emphasis in the proper place—propaganda for war and incitement to violence.

27. Her delegation had voted for paragraph 1 of the sixteen-Power amendment.

28. In reply to the French representative, she said she was aware that the Pakistan delegation had not brought up the subject of "propaganda for war" in the Commission on Human Rights and she agreed with him that the draft Covenant should be for all times and not for a specific occasion. Nevertheless, as the Committee was today discussing article 26 under the threat of a devastating nuclear war, it must not overlook any opportunity to do what it could to avert that horrible danger.

29. Regarding paragraph 2 of the amendment, her delegation had held that the references to discrimination and hostility confused the issue and misplaced the emphasis. She had therefore abstained in the vote on those words, but when the majority had supported their retention, she had nevertheless voted for paragraph 2.

30. Despite its imperfections, the sixteen-Power amendment represented an admirable attempt to cover the various views expressed in the Committee and it was unfortunate that some delegations had found it impossible to support it.

31. Mr. GONZALEZ FERNANDEZ (Colombia) regretted that he had been unable to vote for the sixteen-Power amendment. Like many representatives, he had considered its wording too general, imprecise and susceptible of abuse by Governments anxious to curtail freedom of expression. His country was a steadfast supporter of friendship among all peoples and races, and its vote on the amendment should not

be interpreted as a rejection of the principles set out in article 26 of the draft Covenant.

32. Mr. ASIROGLU (Turkey) observed that racial, religious and national discrimination had never existed in his country, which was moreover a staunch advocate of world peace. In voting against the sixteen-Power amendment his delegation had been motivated solely by the fear that a tendentious application of that text might detract from the rights embodied in article 19 of the draft Covenant.

33. Mr. BOUQUIN (France), referring to a remark made by the Brazilian representative (1083rd meeting), said that he himself had had no intention of criticizing Brazil and entirely agreed with the Brazilian representative that the world was changing rapidly. His own country had had several Constitutions since the first, and although French law did not expressly prohibit war propaganda, which was difficult to define in legal terms, it included provisions relating to discrimination similar to those proposed by the Commission on Human Rights. But the Committee was not concerned with comparative constitutional law; it must seek to define, and include in the draft Covenants, universal standards, so that those instruments would be applicable as widely and for as long a period as possible.

34. He had long been acquainted with the Saudi Arabian representative and knew that the manner in which he expressed himself was peculiar to him and implied no malice. For his part, Mr. Bouquin regarded the incident as closed.

35. Mr. DOMINGUEZ CABALLERO (Panama) said that although his delegation believed that all human rights carried with them certain obligations, it could not endorse any legal provisions which would permit Governments to restrict freedom of information. He hoped that his delegation's abstention in the vote on the sixteen-Power amendment would not be taken to mean that it was opposed to the spirit of the text.

The meeting rose at 1.20 p.m.