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MEETING

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Chairman: Mr. Humberto DIAZ CASANUEVA
(Chile).

AGENDA ITEM 48

Draft International Covenants on Human Rights (A/2907 and Add.1-2, A/2910 and Add.1-6, A/2929, A/5411 and Add.1-2, A/5462, A/5503, chap. X, sect. VI; E/2573, annexes I-III; E/3743, paras. 157-179; A/C.3/L.1062 (continued))

ARTICLE 4 OF THE DRAFT COVENANT ON CIVIL AND POLITICAL RIGHTS (continued)

1. Mr. SHIELDS (Ireland) stated that the Irish delegation felt specially qualified to discuss the topic of human rights, since there was deep respect for human rights in Ireland and since Ireland had been one of the original Contracting Parties to the Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950. That Convention had established its own implementation machinery in that it had granted individuals the right of appeal to the European Commission of Human Rights, and had provided for the optional acceptance by Governments of the compulsory jurisdiction of the European Court of Human Rights set up under the Convention.

2. The detailed provisions in the Irish Constitution guaranteeing fundamental human rights corresponded closely to those in the draft Covenants before the Committee, and also to the provisions of the Convention to which he had just referred. Ireland's acceptance of the right of individual petition and of the compulsory jurisdiction of the European Court of Human Rights was no mere formality; in 1957, when the Irish Government had been obliged to take measures to deal with a particular internal situation, an appeal against that action had been lodged with the European Commission by an individual. The European Commission had decided that the Irish Government had not violated the Convention, a decision which had been upheld unanimously by the European Court in 1961. Those facts bore witness to the Irish Government's concern with the question of human rights and the extent to which it was prepared to commit itself so that those rights should be fully safeguarded.

3. Consequently, his government approached article 4 of the draft Covenant with caution, as the article

might be employed by unscrupulous Governments to restrict the exercise of human rights. Furthermore, the question arose as to how a Government anxious to comply with its obligations could be certain that it was acting in accordance with the provisions of the draft Covenant. The wording of article 4 was very strong: for any derogation from the Covenant, there must be a public emergency which threatened the life of a nation, and the measures taken must be strictly those required by the exigencies of the situation. However, such serious emergencies tended to be sudden and unexpected, and as the Government concerned would have no means of consulting the Third Committee or other enforcement body, it would have to decide for itself whether the situation warranted derogation from the Covenant. If the Government's action was subsequently challenged, there must be a presumption in favour of the Government having acted within the terms of the Covenant, in order to enable Governments to act speedily and effectively when the need arose. That view was shared by the European Commission of Human Rights, which had evolved a doctrine of the "margin of appreciation". According to that doctrine, the Commission had the competence and the duty to examine and pronounce upon a Government's determination of the existence of a public emergency threatening the life of the nation, but the Government had to be allowed some discretion and some margin of appreciation in making the determination. Thus the doctrine went some way to resolve the difficulties of Governments, while preserving the possibility of a review of their actions.

4. Having drawn attention to the difficulties for a Government inherent in the article before the Committee, he nevertheless supported article 4 as it stood.

5. Mr. NEJJARI (Morocco) stated that, while article 2 had been described by some delegations as the key-stone of the draft Covenant, article 4 served the opposite purpose in that it enabled the effect of part of the Covenant to be suspended at least temporarily. The argument that article 4 weakened the draft Covenant by allowing States to derogate from some of their obligations in exceptional circumstances was to some extent justified. Nevertheless, his delegation did not consider the article contrary to the spirit of the draft Covenant. While one of the objectives of the draft Covenant was to guarantee the civil and political rights conferred by the constitutions and organic laws of States, it did not presume to take over from States the exercise of their competence, which was to ensure the well-being of citizens. In so far as States discharged their obligations under the Covenant and ensured its implementation they were valuable agents and could not be dispensed with. The Covenant must permit them to derogate from their obligations when the very existence of the nation was in danger. Furthermore, the article in question had all the guarantees necessary to prevent any abuse on the part of the

Contracting States. Consequently his delegation considered that article 4 met the twin requirements of guaranteeing fundamental civil and political rights and safeguarding the existence of the nation.

6. He had listened with interest to the Romanian representative's statement (1259th meeting) and considered that his suggestions were a marked improvement upon the text.

7. Miss PEARCE (New Zealand) observed that article 4 presented some difficulty for New Zealand. If, as her delegation understood, the words "public emergency" should be interpreted as including a state of war, it was not possible to state that there should be no derogation from article 6, which protected everyone's right to life. In the Convention for the Protection of Human Rights and Fundamental Freedoms, that problem was dealt with by stipulating that there should be no derogation from the article on the right to life "except in respect of deaths resulting from lawful acts of war"; her delegation assumed that that would be the understanding with regard to the article under discussion, but would be interested to hear the views of others.

8. Mr. SHERVANI (India) suggested that, since no amendments had been submitted to article 4, the Committee should proceed to the vote.

9. Miss OROZCO (Mexico) stated that her delegation intended to propose an amendment.

10. Mr. BAROODY (Saudi Arabia) recalled the Romanian representative's suggestion concerning the right to marry, and formally proposed that a reference to article 22 of the draft Covenant should be included in article 4, paragraph 2. ^{1/}

^{1/} This proposal was subsequently circulated in document A/C.3/L.1171.

11. Mr. SHERVANI (India) proposed that the time-limit for the submission of amendments to article 4, as established at the 1259th meeting, should be advanced to 1 p.m. on 12 November.

It was so agreed.

12. The CHAIRMAN requested delegations which intended to propose texts for inclusion as new articles in the draft Covenants to do so as soon as possible.

13. Mr. BAROODY (Saudi Arabia) formally proposed^{2/} the inclusion in the draft Covenant on Economic, Social and Cultural Rights of an article on freedom from hunger, worded as suggested by the Director-General of FAO (1232nd meeting).

14. Mr. ELUCHANS (Chile) observed that the FAO text, being somewhat lengthy and discursive, was more appropriate to a declaration than to a covenant. His delegation strongly favoured the inclusion of an article on freedom from hunger, and it was endeavouring to prepare a draft which would be more concise and framed in more legal language. He hoped that other delegations—including, in particular, that of Saudi Arabia—would join in co-sponsoring the Chilean text.

15. Mr. MELOVSKI (Yugoslavia) announced that the text of a proposed new article on the rights of the child, on which a number of delegations had been conferring, would be ready for presentation in the near future.

16. The CHAIRMAN suggested that 6 p.m. on 12 November should be set as the time-limit for the submission of texts of proposed new articles in either of the draft Covenants.

It was so agreed.

The meeting rose at 12 noon.

^{2/} This proposal was subsequently circulated in document A/C.3/L.1172.