



C O N T E N T S

| | Page |
|--|------|
| Agenda item 58: | |
| Draft international covenants on human rights (<i>continued</i>) | 179 |

Chairman: Mr. Jiří NOSEK (Czechoslovakia).

AGENDA ITEM 58

**Draft international covenants on human rights
 (A/2714, A/2686, chapter V, section I, E/2573,
 A/C.3/574, A/C.3/L.410) (*continued*)**

FIRST READING (SECOND PART)

1. Mr. GAMARRA (Uruguay) emphasized how important it was that the final drafting of the covenants should be completed. As the Israel and Brazilian representatives had said, the time had come to pass from statements of principle to the drafting of juridical texts. The Uruguayan delegation had submitted a proposal (E/2573, annex III) concerning the implementation of the covenants; for if there was to be international supervision guaranteeing to every individual the effective enjoyment of the specified rights, explicit provisions were necessary. The question of the procedure to be adopted in that connexion was truly a question of substance, since a right whose exercise was not safeguarded lost any real meaning.

2. In the memorandum it had submitted on the main aspects of the proposal for the establishment of an Office of the United Nations High Commissioner (Attorney-General) for Human Rights (A/C.3/564),¹ the Uruguayan delegation had pointed out that the idea of that proposal was in its essentials a simple one. A representative of the international community, of the highest standing and authority, would receive petitions from individuals or organizations relating to any violations of the covenants; he would undertake their preliminary examination and investigation, would seek to find satisfactory solutions through negotiation with the States concerned and, if necessary, would present the case before the United Nations organ competent to rule on the substance of the question. That would overcome the difficulty raised by the existing differences on the question whether an individual was or was not a subject of international law. According to traditional doctrine, only States could plead before an international court; on the other hand, some modern authors considered that the individual was a subject of international law. That problem would not arise in connexion with the Attorney-General since he would rep-

resent the United Nations, which the International Court of Justice had defined in its advisory opinion of 11 April 1949² as an international person, a subject of international law, capable of possessing international rights and duties, and as having capacity to maintain its rights by bringing international claims. In its memorandum, the Uruguayan delegation had explained both the drawbacks of the other methods and the advantages offered by the methods it was proposing.

3. In paragraph 72 of his work *La Déclaration universelle et la mise en œuvre des droits de l'homme*, Mr. René Cassin had said that the appointment of an attorney-general was not absolutely necessary, but that the establishment of the organ proposed by Uruguay would contribute to the development of international law and would help to resolve a number of practical difficulties. Mr. Cassin had emphasized how useful it would be for an impartial third party to intervene between the States and the individual, and had enlarged on the services which the proposed Office would render by acting as a clearing-house for petitions, screening them and submitting them on its own responsibility to the human rights committee.

4. The Uruguayan delegation had explained that the Attorney-General would exercise functions somewhat similar to those of the public prosecutor in national legal systems since, for example, he would represent the international community and not the complainants. The comparison should not however be pushed too far. The Attorney-General's task would primarily be one of conciliation, and his suggested title, Attorney-General in English, *Fiscal General* in Spanish, should not be allowed to create any false impression in that connexion.

5. Mr. Gamarra wished to supplement the arguments put forward by the Uruguayan delegation in its memorandum. If the draft covenants were adopted as they stood (E/2573, annex I), without provision for an Attorney-General's Office, an individual whose rights were invaded would be required, under article 40 of the draft covenant on civil and political rights, to find a State which would agree to defend his interests. He would only be able to turn to official authorities, whose attitude would depend on a number of circumstances which were easy to imagine. The Ecuadorian representative had very rightly observed that the general rule would be inaction: it would be absurd for the State directly concerned to complain against itself, and no other Government would willingly undertake to defend the cause of a foreigner. That system would be harmful to the victim, to the State accused, to the State asked to intervene and to the international community. The complainant would be

¹ See *Official Records of the General Assembly, Sixth Session, Annexes*, agenda item 29.

² *Reparation for injuries suffered in the service of the United Nations, Advisory Opinion, I.C.J. Reports 1949, p. 174.*

obliged to appeal to a powerful State or to a Government which was on bad terms with the accused State. The necessary atmosphere of impartiality would probably suffer from such a situation. The Uruguayan delegation regarded that system as an inevitable source of frictions and conflicts. On the other hand, an Attorney-General's Office, if it existed, would be an impartial, specialized and competent organ, accustomed to acting as an arbitrator between States and would be able if the complaint was well founded, to avoid any complication, either by finding a compromise solution or by referring the matter to the human rights committee. Intervention by the Attorney-General in the domestic affairs of a State would be less serious than intervention by another State.

6. The mode of appointment of the Attorney-General would give him the standing of a high magistrate; and the procedure he would have to follow would be similar to that provided for under article 43 of the draft covenant on civil and political rights, and would thus ensure that his decisions would be just. Such dangers as might legitimately be apprehended would not come from the proposed technical formula; they would reside in the veritable revolution represented by the establishment of an absolutely new control organ. But Uruguay had wished as far as possible to obviate any difficulties. The legislator should be cautious, realistic, and concerned with the practical consequences of his decisions; that threefold requirement was met by the draft submitted, which embodied a simple, reliable, and efficient procedure for ensuring the real implementation of human rights. It might be noted that the International Law Commission had applied the principle underlying the Uruguayan proposal by providing, in article 11, paragraph 1, of the two draft conventions on statelessness,³ that the Contracting Parties should undertake to establish, within the framework of the United Nations, an agency to act, when it deemed appropriate, on behalf of stateless persons before Governments or before the tribunal referred to in paragraph 2.

7. With regard to the other important provisions of the draft covenants, the Uruguayan delegation was opposed to the so-called federal and colonial clauses, both of which would make for juridical inequality between the contracting parties. In addition, a federal State should, by definition, be regarded in its relations with other countries as a whole; and so far as the Non-Self-Governing Territories were concerned, their position made international control particularly necessary if respect for human rights was to be ensured within their boundaries.

8. Lastly, Uruguay was opposed to the acceptance of any reservations; the covenants would be in the nature of treaty-laws, and it was therefore essential that their contents should be uniform and that all their provisions should be simultaneously and immediately applied.

PROCEDURAL PROPOSAL SUBMITTED BY COSTA RICA (A/C.3/L.410) (continued)

9. Mr. PAZHWAK (Afghanistan) submitted the amendments (A/C.3/L.411) which his delegation was proposing to the Costa Rican draft resolution (A/C.3/L.410).

³ See *Official Records of the General Assembly, Ninth Session, Supplement No. 9*, para. 25.

10. The object of the first amendment was accuracy: the Committee had completed the general discussion and had already started on the second part of the first reading; the existing text, which mentioned only "a general debate at the ninth session", was therefore wrong.

11. With regard to the second proposed modification, he considered that the English word "initial" was superfluous; it would be sufficient to say that the Third Committee should devote its meetings to a discussion of the draft covenants.

12. Lastly, the Afghan delegation thought it essential to specify that the Committee should proceed "article by article"; in any event, that was the only method it would be able to apply at the next session, since the first reading, including a general debate, would be over by then. Besides, the preamble of the draft resolution provided for the possibility of Governments submitting amendments; and such amendments could refer only to individual articles.

13. He would vote for the draft resolution (A/C.3/L.410) if the amendments he proposed were approved.

14. Mr. NUÑEZ (Costa Rica) said that in the Spanish text of the Costa Rican draft resolution the words *un simposio que contenga* in paragraph 2 of the operative part should be replaced by the words *una compilación de*.

15. He accepted the first amendment proposed by Afghanistan.

16. With regard to the second modification proposed, it appeared that the English version did not correspond to the Spanish original, which contained no adjective equivalent to "initial". He had merely wished to specify that at the tenth session the Third Committee should start with the draft covenants, and should deal with that item before any other. If the intentions of the Afghan delegation corresponded to his own, he was prepared to accept the amendment and to modify the Spanish text accordingly.

17. Mr. PAZHWAK (Afghanistan) thought that the word "initial" in the English text should be deleted; paragraph 3 of the operative part would then mean that the Committee's meetings during the tenth session would be devoted to a detailed discussion of the draft covenants. The Committee should start with such a discussion and should continue article by article until the end. If necessary, the whole session could be devoted to the draft covenants; for the Third Committee it would be a session of human rights. It was for those reasons that Afghanistan had proposed the second amendment.

18. Mr. NUÑEZ (Costa Rica) accepted the second Afghan amendment. He also accepted the third amendment, in order to meet the point made by the Afghan delegation.

19. He thought it might perhaps be advisable in addition to provide for the participation of non-governmental organizations in the discussion. A paragraph to that effect might be added to the operative part of the draft resolution; indeed, emphasis might be laid in the preamble on the importance of public approval for the future of the covenants. He had not thought it advisable to include a formal provision to that effect in the draft resolution without hearing the Committee's views on the matter.

20. Miss BERNARDINO (Dominican Republic) drew the Committee's attention to the effect of the second Afghanistan amendment. The Committee was required to examine all problems referred to it by the Economic and Social Council in its report. If the Committee devoted its tenth session to the examination of the draft covenants, it would not be able to discuss other important social questions, and that would be regrettable.

21. Mr. JUVIGNY (France) paid a tribute to the conciliatory spirit shown by the representative of Costa Rica, who had taken into account the observations made at the preceding meeting.

22. Replying to the representative of the Dominican Republic, he said that his delegation saw no reason why the next session of the Committee should not be devoted to the draft covenants on human rights; however, since new social problems might arise in the meantime, it might perhaps be advisable to insert after the word "meetings" in paragraph 3 of the operative part the words "and in any case most of the time at the disposal".

23. He thought that the expression "article by article" would tie the General Assembly's hands too tightly. It implied that the articles would have to be discussed in the order in which they appeared in the draft covenants. But various articles were closely connected and ought to be examined simultaneously. Moreover, there was no article on the question of reservations, the Commission on Human Rights having left it to the General Assembly to take a decision in the matter. The expression "article by article" might therefore be interpreted too narrowly and he suggested that it should be replaced by the words "to a discussion . . . of the provisions of the draft covenants . . .".

24. Mr. MENDEZ (Philippines) could not agree that paragraph 3 of the operative part should make any reference to the "initial meetings" of the Third Committee being devoted to a detailed discussion; under normal parliamentary procedure the members of a Committee could not give directives to members who would be sitting at the following session. Moreover, there was no certainty that at the next session the Committee would wish to begin its work with the discussion of the draft covenants. Accordingly, he thought it would be preferable simply to say "Decides that the Third Committee, at its tenth session, shall take up a detailed discussion of the draft covenants . . .".

25. Mr. AZKOUL (Lebanon) thought it would be better at the current stage not to go into too many details concerning the work of the Third Committee at the next session. However, a decision had to be taken on general principles. All delegations wished the Committee to adopt the draft covenants as soon as possible, but adoption should be preceded by a discussion article by article and a vote on each article. The aim of the Committee's work, that is, the adoption of the draft covenants, should therefore be clearly stated in the draft resolution. If at its next session the Committee completed the examination of the draft covenants and adopted them, there was absolutely no reason why it should not take up other questions before the end of the session.

26. He therefore proposed the addition to the end of paragraph 3 of the operative part of the draft reso-

lution (A/C.3/L.410) of the words "with a view to their adoption, if possible, at that session".

27. Mr. DUNLOP (New Zealand) entirely approved of the realistic position taken by the French representative. It was obvious that the Committee was not yet prepared to establish a rigid procedure for its future work. As the Egyptian representative had rightly observed at the 571st meeting, the success of the covenants depended primarily on the extent to which world public opinion would be prepared to accept them; they should not, therefore, be hastily adopted before public opinion had been won over. Accordingly, Mr. Dunlop agreed to the words suggested by the French representative for paragraph 3 of the operative part. There should be no bar to the inclusion of questions other than those relating to the draft covenants in the agenda for the next session. He preferred the word "provisions" to the words "article by article", which he interpreted in the same way as the French representative. It might perhaps even be necessary, for example, to begin the discussion of the draft covenants with the question of reservations or that of petitions.

28. Mr. PAZHAWAK (Afghanistan) said that the members of the Committee had the choice between two alternatives: either to adopt an easy solution so as to obtain the greatest possible number of votes, or, on the contrary, to adhere to certain principles and endeavour to solve the problems involved, in the hope of ultimate success. He himself always took the second course. The sole purpose of his amendments had been to facilitate the Committee's work. In his opinion, the Committee should decide immediately on the precise nature of its work during its next session, so that the delegations might make their arrangements in good time. With regard to the observations of the Dominican representative, he wished to say that he was fully aware of the importance of the other social questions with which the Committee had to deal, but he thought that any delay in solving the fundamental problem of the draft covenants on human rights would be an obstacle to the settlement of those questions. The New Zealand representative had referred to world public opinion; Mr. Pazhwak had in no way overlooked that factor, to which he, too, attached great importance.

29. In reply to the French representative's objections to the expression "article by article", he pointed out that in proposing it, he had in no way rejected the possibility of discussing the various articles irrespective of their order in the draft covenants. He had proposed the addition of the words "article by article" to paragraph 3 of the operative part because he considered that the words "detailed discussion" were not sufficiently precise; besides, no one had yet tried to define them.

30. Mr. NUÑEZ (Costa Rica) said that the draft resolution he had submitted (A/C.3/L.410) was not his unaided work; it had been drafted on the basis of unofficial talks he had had with other representatives.

31. With regard to the comments made by the Dominican representative, he pointed out that the solution of the various questions that might be submitted to the Committee for consideration at its next session would in any case be contingent to a greater or lesser extent on the adoption of the draft covenants on human rights; for instance, the solution of the problem of forced labour would be facilitated if States were bound by the obligations laid down in the covenants.

The same applied to the problems connected with the status of women. Moreover, at the next session the General Assembly might appoint an *ad hoc* committee to consider the draft covenants; that would enable the Third Committee to take up the other items on its agenda. Such a committee could be set up under rule 98 of the rules of procedure, as the Israel representative had pointed out at the preceding meeting.

32. In conclusion, Mr. Nuñez proposed that the words "first and foremost" should be added to operative paragraph 3 of the draft resolution, which should also be amended to include the suggestions made by the French and Lebanese representatives. Paragraph 3 would then read:

"Decides that the meetings of the Third Committee at the tenth session shall be devoted first and foremost to a detailed discussion of the provisions of the draft international covenant on human rights with a view to their adoption, if possible, at that session."

33. Mr. MENDEZ (Philippines) pointed out that there had been a general discussion of the draft covenants in the Committee, but that they had never been given a first reading, that is, a reading article by article, according to normal parliamentary procedure. The Committee's main task was to consider the draft covenants and no more important question could be imagined in existing circumstances. In order to take those considerations into account, Mr. Méndez proposed that paragraph 3 of the operative part should be amended to read as follows:

"Decides that, at the meetings of the Third Committee during the tenth session, high priority should be given to the discussion of the draft international covenants on human rights article by article."

34. Miss BERNARDINO (Dominican Republic) said that the Costa Rican representative's argument was not valid. Even if the covenants were adopted at the tenth session of the General Assembly, they would not be ratified or come into force immediately. In any case, the Third Committee could not devote the entire tenth session to a consideration of the covenants, as it had to consider all the social questions raised in the Economic and Social Council's report. It could of course devote the greater part of its time to a consideration of the covenants, but it should not on that account neglect other items submitted to it, which were also very important.

35. Miss MAÑAS (Cuba) confirmed that, as she had repeatedly stated, her delegation took a deep interest in the draft international covenants on human rights.

36. The current discussion had been very useful; it had shown that the Costa Rican draft resolution would be generally acceptable if paragraph 3 of the operative part were amended slightly. She therefore proposed that delegations which had proposed amendments, whether in writing or orally, should meet unofficially to draft a combined text. The Costa Rican and other delegations—for example, those of Cuba and Ecuador, which had suggestions to make—could of course also take part in the unofficial consultations.

37. Mr. PAZHWAK (Afghanistan) pointed out that the new text the Costa Rican representative had proposed for paragraph 3 hardly altered the meaning of the original text. The expression "detailed consideration of the provisions of the draft covenants" was not any more specific than "detailed consideration of the

draft covenants"; all that was said in either case was that the content of the draft covenants would be considered. It should be clearly indicated that the draft covenants would be considered article by article; that did not mean, in spite of what some representatives had suggested, that the articles should be taken up in numerical order.

38. The Philippine representative's suggestion was not a solution, but a palliative. The expression "high priority" could be interpreted in various ways and had already been wrongly interpreted. The meaning should be clarified by saying for instance: "will give a high priority, by initiating its work . . . and devoting its meetings . . .".

39. With regard to the Dominican representative's comments, the Committee obviously could not devote all its time to consideration of the draft covenants. Consideration of the draft covenants should be the Committee's main task during the tenth session, but that would not prevent the Committee from taking up other questions that might be referred to it. The Committee would adopt the procedure it considered most appropriate in dealing with its agenda in due course, in the light of the time at its disposal. The essential point was that the Committee should respect its own decision and consider the draft covenants first of all.

40. None of the arguments he had heard had convinced him that he should withdraw his amendment, which consisted of adding the words "article by article" to paragraph 3 of the operative part. If the Committee was not to condemn itself to hearing the same statements of principle and the same general remarks over again, it would have to take a definite decision to consider the draft covenants article by article at its tenth session; unless it wanted to beat about the bush and retard the adoption of the covenants, there was no other solution.

41. Mr. NUÑEZ (Costa Rica), taking into account as far possible all the comments and suggestions that had been made during the discussion, proposed that operative paragraph 3 of his draft resolution should be replaced by the following text:

"Resolves that, at the meetings of the Third Committee during the tenth session, priority should be given to the detailed discussion of the draft international covenants on human rights, article by article, with a view to their adoption at that session if possible."

42. Mr. AZKOUL (Lebanon) thought that the purport of his proposal had not been understood by all delegations; in his opinion, it would provide all the guarantees required by those who wanted the draft covenants to be adopted as quickly as possible. The purpose of his proposal was to define the aim that the Committee should set itself, namely, if possible, to adopt the draft covenants during the tenth session of the General Assembly. Given that aim, it was hardly necessary to decide at once how the Committee should proceed in order to reach it.

43. He felt that at the tenth session the Committee should devote itself as far as possible to a consideration of the draft covenants, but some latitude should be left it to organize its work at the time in the light of the existing situation. He therefore formally proposed that paragraph 3 of the operative part of the Costa Rican draft resolution should be maintained, with the addition

of the words: "with a view to their adoption at that session, if possible".

44. Mr. MENDEZ (Philippines) thought that the text proposed by the Costa Rican representative should be generally acceptable, since it took account of the amendment submitted by the Lebanese representative and also of the amendments and suggestions proposed by other delegations.

45. Mr. PAZHWAQ (Afghanistan) thanked the Costa Rican representative for proposing a text which included all the proposed amendments and answered all the objections that had been made. He would vote for the new text.

46. Mrs. AFNAN (Iraq) pointed out that the second paragraph of the preamble enabled Governments to formulate further observations and amendments with regard to the draft covenants. She asked whether that meant that Governments in favour of combining the two covenants could still propose such a solution.

47. Mr. NUÑEZ (Costa Rica) said that in the observations they formulated, Governments could quite well raise the question of the number of draft covenants.

48. Mr. BAROODY (Saudi Arabia) was surprised that a further sub-division of the covenants was still being entertained. Although the majority agreed that the instruments should be adopted quickly, there were some who wished to complicate the situation. A single draft covenant had been prepared originally, and then it had been necessary to agree to a second; he asked whether an attempt was being made to arrange for a third covenant, which would, he supposed, be on the right of self-determination.

49. If that were so, the procedure for considering the draft covenants would be unduly complicated. Furthermore, there did not seem to be any reason to draft a separate covenant on the right of self-determination. It had been proved that the exercise of that right was a prerequisite to the exercise of the other human rights. He wondered whether the explanation of the manoeuvre did not lie in the fact that some delegations that were ardent supporters of the right of self-determination feared that the draft covenants as they stood would not be adopted if they included such a right.

50. Whatever the attitude of certain Powers, the United Nations could not draw up a separate covenant on the right of self-determination. He reserved the right to speak at greater length on the indivisibility of the draft covenants.

51. Mr. NUÑEZ (Costa Rica) pointed out that he had only replied very briefly to a question from the Iraqi representative and that he had said and suggested nothing with regard to a third draft covenant.

52. Mr. BAROODY (Saudi Arabia) agreed. He had only spoken because he had wanted to prevent the emergence of a situation that might be exploited in the future.

53. The CHAIRMAN suggested that the representatives of Lebanon and Costa Rica should agree on a final text for paragraph 3 of the operative part of the Costa Rican draft resolution (A/C.3/L.410).

54. Mr. AZKOUL (Lebanon) withdrew his amendment, since the last text proposed by the Costa Rican representative seemed likely to gain general support.

The meeting rose at 1.10 p.m.