

United Nations
**GENERAL
ASSEMBLY**

THIRTEENTH SESSION
Official Records



**THIRD COMMITTEE 862nd
MEETING**

Thursday, 23 October 1958,
at 3.15 p.m.

NEW YORK

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Chairman: Mrs. Lina P. TSALDARIS (Greece).

AGENDA ITEM 32

Draft International Covenants on Human Rights (E/2573, annexes I, II and III, A/2907 and Add.1-2, A/2910 and Add.1-6, A/2929, A/3077, A/3525, A/3764 and Add.1, A/3824, A/C.3/L.685) (continued)

ARTICLE 9 OF THE DRAFT COVENANT ON CIVIL AND POLITICAL RIGHTS (E/2573, ANNEX I B) (continued)

1. Mrs. LEFLEROVA (Czechoslovakia) stressed the importance of article 9 of the draft Covenant on Civil and Political Rights and expressed her readiness to support the text prepared by the Commission on Human Rights (E/2573, annex I B). The liberty and security of the person were fully guaranteed by the Czechoslovak Constitution and legislation, which emphasized the re-education of the offender, rather than his punishment. Punishable acts had to be satisfactorily proved, and that rule applied at every stage of the criminal proceedings. The preliminary examination was carried out as speedily as possible and the person charged was assured of due process.

2. Article 9 covered, successively, the liberty and security of persons in general, the guarantees enjoyed by persons arrested or detained, and, finally, the safeguards in favour of the accused. Paragraph 1 referred to the first of those three points. In the Commission on Human Rights, some representatives had expressed the view that there should be a detailed enumeration of the grounds which could afford a lawful basis for an infringement of the liberty or security of persons. The Czechoslovak delegation welcomed the fact that that solution had not been approved, as it doubted whether an enumeration of all the conceivable cases was in fact possible; even assuming that such a thing could be done, the resulting article would be poorly drafted, for the prohibitory clause "No one shall be deprived of his liberty..." would lose much of its emphasis. The Commission on Human Rights had rightly decided it was better to formulate a simple limitations clause than to prepare an inventory of limitations (A/2929, chap. II, para. 15). Moreover, the determination of the grounds in question was normally reserved to the jurisdiction of States.

3. With reference to the rights of arrested, detained or accused persons, which were the subject of paragraphs 2, 3, 4 and 5 of article 9, she stressed that

under the Czechoslovak code of criminal procedure a person could not be arrested except under clearly defined conditions. In particular, a proper warrant had to be issued for the arrest, expressly stating in writing the crime or offence with which the accused was charged. During the preliminary examination provisional release was the general rule, except in cases specified by law. Notice of the arrest was given to the family and place of work of the accused. And finally, the victim of an unlawful arrest was entitled to compensation.

4. She would not oppose changes designed merely to improve the text, but she reserved her right to speak again on any amendments which might be submitted.

5. Mr. COX (Peru) expressed the hope that the form of article 9 would be somewhat improved. In particular, having regard to the analysis of the notion of arbitrary action presented by the United Kingdom representative at the preceding meeting, it would be preferable, in the second sentence of paragraph 1, to speak of unlawful arrest or detention, as that was the form of arrest and detention which should be prohibited first and foremost. Furthermore, in the third sentence of the same paragraph, the word "law" should be preceded by the adjective "penal", for, as had already been stressed, article 9 referred essentially to penal measures.

6. The second sentence of paragraph 3 seemed to go into unnecessary detail. The conditions for granting provisional release were a matter for domestic legislation, and the Covenant could only state a general principle on the subject. Similarly, it was excessive to demand in a general manner that the accused should appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for the execution of the judgement. The rules of criminal procedure in most countries only required appearance on summons by the judge.

7. The Costa Rican representative had presented an amendment to paragraph 4 which seemed well conceived (A/C.3/L.685). The second sentence, however, should specify that the application would be for habeas corpus, or, as it was also known in certain Latin-American countries, amparo.

8. He stressed that he was in no way seeking to impose the juridical notions of his own country on other delegations. It was his desire that the Covenant on Civil and Political Rights should be a harmonious synthesis of different legal systems.

9. Mr. ZAMORA ELIZONDO (Costa Rica) explained, with reference to the Peruvian representative's suggestion, that he had avoided using the term "habeas corpus" in order to take into account paragraph 35 of the annotations concerning part III of the draft Covenant under discussion (A/2929, chap. VI). He would, however, have no objection to reintroducing the term if necessary.

10. His delegation's amendment (A/C.3/L.685) was intended to ensure that every arrested or detained person should have an opportunity of securing his release by means of a speedy and effective procedure. Paragraph 4, as drafted by the Commission on Human Rights, had two weaknesses; it did not specify the type of court qualified to deal with the application and the application could be made only by the person arrested or detained. It was essential that the court dealing with the application should be competent and impartial and the Costa Rican amendment therefore referred specifically to a "court of justice". The second sentence of the amendment specified that any person could lodge the appropriate application on behalf of the person detained. The possibility had to be borne in mind that the detained person might be held incommunicado or removed to a distant place where he would be unable to make the application himself.

11. He considered that his delegation's amendment strengthened article 9 and was thus a contribution to the work of the United Nations in proclaiming and safeguarding human rights in the most effective manner possible.

12. Mr. ROSSIDES (Greece) said that he would be prepared to support the Costa Rican amendment (A/C.3/L.685) if it merely supplemented article 9, paragraph 4, with the following sentence: "Such proceedings may be introduced by any person for and on behalf of the person detained". He asked the Costa Rican representative whether he would be prepared to agree to modify his amendment along those lines.

13. Mr. RIBEIRO DA CUNHA (Portugal) observed that the proceedings contemplated in the Costa Rican amendment were in the nature of habeas corpus proceedings. In that connexion it had to be remembered that article 9 dealt only with arrest and detention under penal law; imprisonment under civil law was the subject of article 11. In every judicial system criminal proceedings could be instituted only by a qualified person or authority. In that regard, offences could be divided into two main classes: crimes and offences in respect of which proceedings could be instituted by a public authority and crimes and offences which normally were brought before the courts only on the initiative of a private individual. In the second case the person applying to the court was required to prove a legitimate interest. In view of those considerations and although he agreed that the proposed amendment was well-founded, he had some misgivings with regard to the Costa Rican proposal, under which any person could lodge the application on behalf of the person detained, and considered that it should be stated that the person making the application must prove a legitimate interest.

14. The CHAIRMAN reminded the Committee that a time limit had to be set for the submission of amendments. In view of the importance of article 9, a reasonably long period should be allowed. She therefore suggested Monday, 27 October, at noon.

15. After an exchange of views in which Mr. KASLIWAL (India), Mr. YAPOU (Israel), Mr. SIMPSON (Liberia), Mr. SAPOZHNIKOV (Ukrainian Soviet Socialist Republic) and Mr. CALDERON PUIG (Mexico) took part, Mr. SHALIZI (Afghanistan), supported by Mr. BAROODY (Saudi Arabia), proposed that the time limit for the submission of amendments to article 9 should be 27 October at 10 a.m.

It was so agreed.

16. Mr. VAKIL (Secretary to the Committee) said that if the Committee was to be able to devote seventy-five meetings to the consideration of its agenda, it would have to hold all the meetings set down for it in the schedule agreed upon by the Chairmen of the various Committees.

17. Mr. YAPOU (Israel) asked whether the meeting scheduled for 24 October could be postponed to a later date to be fixed by the Chairman, possibly during the following week.

18. The CHAIRMAN said that as the schedule of meetings had been agreed upon by the Chairmen of all the Committees, she could not change it on her own authority.

19. Mr. BAROODY (Saudi Arabia) expressed the view that any meeting cancelled in the course of the discussion of the draft Covenants should be deducted from the number of meetings it had been intended to hold on that question. The cancellation of meetings should not reduce the time allotted for the last item on the agenda, freedom of information. The cancellation of the meeting on 24 October could do no harm to the draft Covenants and would enable representatives to examine article 9 carefully and thus make a constructive contribution at the meeting on Monday, 27 October.

20. Mr. ELMANDJRA (Morocco), commenting on the Greek representative's proposal at the preceding meeting that the Committee should consider ways and means of hastening the adoption of the Covenants, said that annex I of the rules of procedure of the General Assembly contained a number of suggestions which would serve that end. The meeting on 24 October might usefully be devoted to an exchange of views on that subject. His delegation was, for its part, ready to support any suggestions that would expedite the Committee's work on the draft Covenants. The Committee should give a practical demonstration of the importance it attached to the Covenants.

21. Miss FAROUK (Tunisia) supported the Moroccan proposal. The Committee might devote the remainder of the meeting to the subject and if necessary cancel its next meeting.

22. Mr. FOMIN (Union of Soviet Socialist Republics) expressed surprise at the procedure suggested by the representatives of Morocco and Tunisia. The question raised by the Greek representative required very careful study, with special reference to its financial implications. In any case members of the Third Committee could not be expected to take a decision on the subject without consulting their Governments. He hoped that the Moroccan representative would not press his proposal.

23. Mr. ELMANDJRA (Morocco) said that the Soviet representative appeared to have misunderstood his proposal. He did not think the Committee could take a decision at such short notice. Nevertheless, an exchange of ideas would be valuable in order to ascertain representatives' views on the establishment of an ad hoc committee to sit during or between General Assembly sessions for the purpose of completing the work on the draft Covenants.

24. Miss FAROUK (Tunisia) shared that view. A subject of such importance could not be covered in one meeting. If, however, the feeling of the majority of the Committee proved to be against the establishment of an ad hoc committee, it would be unnecessary for each representative to refer the matter to his Government.

25. Mr. ROSSIDES (Greece) also thought that the Committee might, without taking any final decisions, consider ways and means of completing the preparation of the draft Covenants as quickly as possible. It was a matter of great importance and it would be regrettable if mankind was deprived of the only instrument which could ensure the realization of the principles of human rights solely in order to save the few hundred or few thousand dollars that would be required to establish special arrangements to expedite the completion of the Covenants.

26. Mr. HOOD (Australia) observed that the Committee had already discussed at previous sessions what steps should be taken to complete the drafting of the Covenants. If such discussions were to lead anywhere, the matter should be placed on the Committee's agenda and be the subject of specific proposals.

27. Mr. BAROODY (Saudi Arabia) supported that view. The question raised by the Greek representative should be examined in an orderly manner. The Committee had already decided not to convene a conference of plenipotentiaries and there would appear to be no point, at the current stage, in reopening the lengthy discussion on the subject.

28. The establishment of an ad hoc committee would, apart from its financial implications—which were admittedly of secondary importance—raise various

questions. One question was whether it was the desire of Governments that the Covenants should be drafted by experts or by a political organ. He suggested that, in the first case, it might be better to refer such questions to the Commission on Human Rights rather than establish an ad hoc committee.

29. Some representatives had argued that the draft Covenants should be completed at the earliest possible date. In that connexion he pointed out that the entry into force of the Covenants would not automatically result in immediate respect for human rights throughout the world. The primary task was to educate world public opinion and make sure that it knew of the draft Covenants and understood their purpose. From that point of view further discussion of the Covenants would be useful as a means of continuing to draw the attention of public opinion to them.

30. Mr. ROSSIDES (Greece) reminded the Saudi Arabian representative that the Commission on Human Rights had completed its work on the draft Covenants. It was therefore for the General Assembly to decide how the work of drafting could best be completed.

31. The CHAIRMAN stressed the importance of the discussion which had just taken place. The Committee might, however, leave the subject for the time being and resume the discussion when more specific proposals had been put forward.

32. After consulting the members of the Committee, she proposed that the meeting arranged for the morning of Friday, 24 October, should be cancelled.

It was so decided.

The meeting rose at 5 p.m.