



*Tuesday, 18 October 1955,
at 10.45 a.m.*

New York

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Chairman: Mr. Omar LOUTFI (Egypt).

AGENDA ITEM 28

Draft International Covenants on Human Rights (E/2573, annexes I, II and III, A/2907 and Add. 1 and 2, A/2910 and Add.1 to 5, A/2929, A/2943, chapter VI, section I, A/C.3/L.460 and Corr.1, A/C.3/L.466, A/C.3/L.472, A/C.3/L.473) (continued)

GENERAL DISCUSSION (continued)

Preamble (continued)

1. Mr. JEVREMOVIC (Yugoslavia) said that the Yugoslav delegation was in agreement with the replies given and the positions of principle taken by the delegations which had commented on the reservations made to the text of the preamble to the two draft International Covenants on Human Rights (E/2573, annex I). In the Commission on Human Rights, the Yugoslav delegation had been a co-author of the draft preamble now before the Third Committee. In its view, the text should be adopted as it appeared in the draft covenants. It contained certain fundamental ideas which had already been adopted by the United Nations and were included in its basic documents: the Charter and the Declaration of Human Rights.

2. Thus, the first paragraph of the preamble, by stating that recognition of human rights was the foundation of peace, recalled that — as stated in the Preamble of the Charter — the fundamental purpose of the United Nations was to save succeeding generations from the scourge of war and that a means to that end was to promote social progress. As to the question whether the “principles” laid down in that paragraph also embraced the “purposes” of the United Nations, that was a question on which the Committee need not spend much time, for if States were sincerely attached to the principle of respect for human rights, they would have no difficulty in attaining the purposes set forth in the Charter and in maintaining world peace.

3. With regard to the third paragraph of the preamble, the link which existed between political and civil rights on the one hand and economic, social and cultural rights on the other was already clearly recognized in the Charter of the United Nations and in the Universal Declaration of Human Rights.

4. Commenting on the fourth paragraph, which laid down that the States Members of the United Nations were under an obligation to promote respect for human rights, he pointed out that that idea was likewise expressed in the Preamble to the Charter, and that, in drawing up the draft covenants, Member States were merely performing one of the duties incumbent upon them.

5. With regard to the last paragraph, it seemed unlikely that it could give rise to controversy, as it was beyond doubt that individuals had obligations as well as rights, both towards other individuals and towards the community. In other words, in the exercise of their rights they could not endanger either the rights of other individuals or the rights of the community as a whole.

6. He thought that the present text of the preamble formed a well-balanced whole, and that care should be taken not to disturb that balance. In particular, it would be inappropriate to insert in it the new paragraphs relating to the right of peoples and nations to self-determination proposed by Brazil¹, since as they stood, their wording was almost identical with that of article 1 of the draft covenants. The preamble should contain nothing more than an exposition of general principles. It was regrettable also that the Brazilian amendments should give rise to doubt concerning the ultimate fate of article 1 of the two draft covenants. His delegation deplored that uncertainty all the more because it felt that the right of peoples to self-determination was of fundamental importance, and was most anxious that it should continue to appear in the operative part of the covenants. He would therefore not be able to vote in favour of the Brazilian amendments, if they were put to the vote.

7. In conclusion, he saw no reason why the Committee should not continue its consideration of the preamble and put it to the vote. By declaring its position on the preamble it would be taking a decision by which it could be guided in carrying out the remainder of its work. Although the Yugoslav delegation wished to see the text of the preamble adopted as it stood, it was prepared to consider any proposals for the completion of that text. It had no objection to having the preamble put to the vote, but was willing to consider any proposal likely to facilitate the vote of other delegations if they should want to postpone the voting or to come back to it at a later stage.

8. Mr. HIMIOB (Venezuela) observed that the Committee's discussions had rather the character of diplomatic negotiations; if the delegations sincerely desired to promote the signing of the covenants, they must abandon any rigid attitude and demonstrate the widest spirit of compromise, especially with regard to the

¹ *Official Records of the General Assembly, Ninth Session, Annexes, agenda item 58, document A/C.3/L.412 (incorporated in A/2808 and Corr.1, para. 41).*

preamble. That would be easier for them if they were thoroughly familiar with all the substantive provisions of the draft covenants. He again regretted that such was clearly not the case, since the Committee had decided to postpone the study of the operative parts. He nevertheless wished, at that stage of the discussion, to clarify his earlier comments on the preamble.

9. In connexion with the first paragraph, he would like to know whether the word "principles" in the expression "in accordance with the principles proclaimed in the Charter of the United Nations" referred exclusively to the principles set forth in Article 2 of the Charter, or also to the purposes enumerated in Article 1.

10. He would also like some clarification on the meaning of the fourth paragraph of the preamble and on the scope of the obligations incumbent upon the signatory States according as they were or were not Members of the United Nations. He raised the question whether, if the Committee adopted texts of narrower scope than the provisions of the United Nations Charter relating to human rights, especially those of Articles 55 and 56, a State which signed the covenants and was not a Member of the United Nations would be subject to the obligations which the Charter imposed on Member States with regard to human rights.

11. He hoped that the Committee would give its opinion on the two points he had just raised.

12. Mr. MASSOUD-ANSARI (Iran) regretted that the Brazilian representative had not clarified further the motives which had prompted his Government to propose amendments to the preamble and to part I of the two draft covenants. It might be concluded from the discussions which had taken place in the Committee that Brazil was asking for the deletion of article 1 from both drafts. The Brazilian delegation had stated, however, that it was not at all opposed to affirming in the draft covenants the right of peoples to self-determination. That being so, it would be advisable for all amendments to be presented and explained by their sponsors, so that the Committee would not lose precious time.

13. With regard to the substance of the Brazilian amendments, it seemed to him that the proposed changes were too long and too detailed. In his view it would be sufficient, in the preamble, to refer in general and brief terms to the right of peoples to self-determination.

14. Mr. FERREIRA de SOUZA (Brazil) recalled that, in drafting its amendments, his Government's intention had been to reconcile different trends of opinion. The compromise which it had attempted did not seem to be generally supported, although agreement had been reached on the insertion in the covenants of the right of peoples to self-determination. Accordingly, the time seemed to have come to reconsider the amendments in question; to that end he proposed that a working committee of three to five members should be set up to study the amendments and to report to the Committee within 24 hours.

15. Mr. HSUEH (China) said that the preamble satisfied the two conditions that could be required of such texts: it contained a statement of principles and was drafted in general terms. His delegation therefore considered the preamble perfectly acceptable as it stood.

16. In his opinion, the principles referred to in the first paragraph were not only those contained in Article 2 of the Charter of the United Nations, but also all

those set forth in the provisions of the Charter on human rights.

17. Turning to the amendments proposed by Brazil, he recalled that his Government strongly favoured recognition of the right of peoples to self-determination and would have no objection to the addition to the covenants of a protocol relating to all aspects of that right. It seemed to his delegation, therefore, that the new paragraphs which Brazil proposed should be added to the preamble could more appropriately be included in the protocol.

18. He reserved the right to speak on the subject again when the Committee discussed article 1 of the two drafts.

19. Mr. PAZHWAK (Afghanistan) said that his delegation played perhaps a more active part than other delegations in the Third Committee's discussions on the question of human rights because his country was not represented on the other bodies which had dealt with that subject. While the Afghan delegation's views were well known to all representatives, it might be well to re-state them in the particular case of the preamble in the light of the remarks which had just been made.

20. The preamble as it stood was the result of very careful work. It was the Third Committee itself that had drafted it, after long discussions. The preamble was complete and balanced in structure, it embodied all the elements which a preamble ought to contain, and it left out everything superfluous. It mentioned the Charter of the United Nations and the Universal Declaration of Human Rights, referred to human rights in general without enunciating any right in particular, stressed the obligation which rested on all States in regard to human rights, and recalled the duties of the individual to other individuals and to the community to which he belonged. Considered in that light, the preamble ought not to undergo any modification, and his delegation would be glad if it were adopted as it stood. All would have been well if it had not been for the Brazilian amendment, which constituted the crux of the problem before the Committee. The first question to be asked in connexion with that amendment was what its purpose was. Two answers were possible: either the purpose of the amendment was to state the right of peoples to self-determination not only in article 1 but also in the preamble; or else, its purpose in referring to that right in the preamble was to take it out of the covenants. As the Brazilian delegation proposed in effect not merely to introduce into the preamble a brief reference to the right of peoples to self-determination dealt with in article 1, but to incorporate in the preamble practically the whole of that article, and as the Brazilian representative had at one time formally proposed the deletion of article 1, the conclusion was inescapable that any vote in favour of the Brazilian amendment would be tantamount to a vote for the deletion pure and simple of article 1.

21. That aspect of the question was not a new one. Two schools of thought had always been apparent with regard to self-determination, in discussions in the Third Committee, the Economic and Social Council and the Commission on Human Rights. One school of thought considered self-determination as a principle, whereas the other regarded it as a right; those holding the first view wished the principle to be included in the preamble, while those holding the second view wished the right of self-determination to be stated in an article in the

actual body of the covenants. After prolonged discussions, the decisions adopted had been in favour of the latter view. The General Assembly's decision was particularly explicit in that respect: self-determination was a right, and that right had to be proclaimed in the operative part of the covenants (resolution 545 (VI)). The Charter itself, wherever it mentioned self-determination, referred to it as a right and not as a principle; even the Brazilian amendment considered it as a right since it stated that "all peoples and all nations have the right of self-determination".

22. If the Brazilian delegation and those other delegations which supported its view insisted that reference be made briefly and in general terms in the preamble to the right of peoples to self-determination, the Afghan delegation would perhaps see its way to accepting such a reference, provided it was stated that the right in question was particularly important because it was indispensable to the exercise of all fundamental human rights, and provided also that there was no question of not maintaining article 1.

23. If, however, the Brazilian delegation pressed for a vote on its amendment in its present form, the Afghan delegation would vote against that amendment and invite all those favouring article 1 to do likewise. In any case, he hoped that the Third Committee would not go back on the decisions taken in the matter both by itself and by other organs of the United Nations.

24. As to the proposal just made by the Brazilian representative that a small sub-committee should be set-up, he would abide by any decision of the Chairman or of the Committee, but he requested that his delegation's views should be taken into consideration if the question were to be discussed outside the Third Committee.

25. Mrs. TSALDARIS (Greece) said she had read again most carefully both the preamble of the draft covenants and paragraph 4 of General Assembly resolution 833 (IX). The preamble only contained general provisions, that is, the broad lines of the procedure to be followed in order to incorporate in a binding legal instrument the principles proclaimed both in the United Nations Charter and in the Universal Declaration of Human Rights. That preamble, which had been studied for several years on many occasions by various organs of the United Nations, contained all that could be expected of a preamble serving as an introduction to the articles in which the principles relating to human rights were to be embodied in their final legal form. On that point, the Greek delegation was in agreement with the representatives of Yugoslavia and Afghanistan, whose statements they had heard with great interest.

26. Certain delegations had suggested at the previous meeting that if any new articles were to be introduced in accordance with paragraph 4 of resolution 833 (IX), it would be difficult to insert them if the preamble had already been adopted. She did not believe that there was anything to be feared on that score. Indeed, any new articles could only be based on those fundamental principles which constituted the bases of the covenants and which were embodied in general terms in the preamble. In that connexion, the Uruguayan representative had been right in saying (637th meeting) that it was preferable not to include in the preamble concepts drawn from the various articles, for the simple reason that a given article might well not be adopted after the idea it embodied had already been mentioned

in the preamble; the difficulty, however, did not seem likely to arise with regard to article 1, even if the Brazilian amendment were adopted, for the Committee's position on the subject seemed to be quite clear.

27. As to the possibility of voting on the preamble and the articles of the draft covenants, she agreed with the Salvadorian representative's view that the terms of reference given to the Third Committee by the General Assembly did not preclude separate votes on the different parts of the draft covenants. She felt in any case that the most essential of those terms of reference was the one which invited the Committee to examine the draft covenants, with a view to their adoption, "at the earliest possible date" (General Assembly resolution 833 (IX)). The current debate concerning procedure should not therefore be prolonged any further.

28. The Committee had been invited to carry out a monumental task. Plans were available for the edifice and the Committee had to examine them; and the scaffolding was already in existence. She did not see how the task could be successfully completed if the corner-stone of the edifice were suddenly removed. Article 1, which acknowledged the right of self-determination of peoples and nations, constituted the corner-stone of the draft covenants; the right of self-determination had already been recognized as a fundamental principle both in the Charter of the United Nations and in the Universal Declaration of Human Rights. The Greek delegation felt that that right, upon which all the others were dependent, would not be safeguarded if it were only made the subject of a declaration of principle in the preamble to the covenants. The Greek delegation could therefore not accept the Brazilian amendment to the effect that article 1 should be deleted. Article 1 was indispensable in order to ensure to human beings their full development and to safeguard their dignity and status as free individuals fully conscious of their duties towards one another and towards the community to which they belonged.

29. Recalling the question raised at the previous meeting by the Egyptian representative, she noted that at the 582nd meeting of the Committee, at the ninth session of the General Assembly, twenty delegations, including the Greek delegation, had, following the presentation of the Brazilian amendment, put forward proposals² concerning those provisions which were common to both draft covenants, particularly article 1. Those delegations had asserted anew that the right of peoples to self-determination was a fundamental and inherent right of peoples and nations, and they had proposed that article 1 be maintained together with all the other articles dealing with the implementation of that right throughout the draft covenants. She felt sure that the delegations concerned had not altered their views.

30. The Greek delegation was pleased to note that the Brazilian delegation no longer pressed its proposal for the deletion of article 1; the Greek delegation could not, however, accept the Brazilian amendment as it stood in so far as the preamble was concerned.

31. With regard to the final Brazilian proposal concerning the setting up of a small sub-committee, she reserved the right to put forward her views on it later.

² *Ibid.*, document A/C.3/L.427 and Add.1 (incorporated in A/2808 and Add.1, para. 42).

32. Mr. BAROODY (Saudi Arabia) supported the Afghan representative's statement with regard to the Brazilian amendment and any other amendment of that kind. As he had said at the preceding meeting, the Brazilian amendment would destroy the balance of the preamble. As regards form, the amendment was almost as long as the preamble; and as regards substance, it would add nothing new. The preamble as it stood covered all the rights mentioned in the draft covenants. Lastly, it would be illogical and unjust to make special mention of one particular right, at the expense of all the others.

33. He wondered whether the Brazilian representative's real intention was not to throw a sop to those who were in favour of article 1; that might prompt him to propose grafting the essential points of article 1 onto the text of the preamble. But, apart from the fact that it was impossible to graft a big tree onto a small one, article 1, which was excellent as an article, would seem too wordy if it were introduced into the preamble. Many delegations, such as the delegation of Greece, thought it would be preferable to vote as soon as possible on the preamble and then proceed to the consideration of article 1, but the Saudi Arabian delegation would prefer the Brazilian representative to bow to the arguments against his amendment and withdraw it. However, if the Brazilian representative wished to have his amendment put to the vote, he himself would submit a conditional amendment so that there could be no possible doubt about the intentions of the delegations which were opposed to the Brazilian text. The text of his amendment would be taken from General Assembly resolution 637 (VII) and would read as follows: "Whereas the right of peoples and nations to self-determination is a prerequisite to the full enjoyment of all fundamental human rights". If the Brazilian amendment were rejected the Saudi Arabian representative would withdraw his own amendment.

34. At the preceding meeting, the representatives of Uruguay and the Dominican Republic had said that they would, if necessary, accept the insertion in the preamble of a brief and general reference to the right of peoples to self-determination. He would also accept an insertion of that kind as a lesser evil, if the Brazilian representative agreed to withdraw his amendment. In any event, the Saudi Arabian delegation felt that the Committee had already spent too much time on considering the preamble; if it continued at the same pace, it might well find itself unable to carry out the instructions it had been given at the ninth session of the General Assembly (resolution 833 (IX)).

35. Mr. RODRIGUEZ FABREGAT (Uruguay) regretted that the Committee was considering at the same time the preamble and the Brazilian representative's proposal that a working committee should be set up. In his opinion, it would be wiser to deal with the procedural question first. The setting up of a working committee seemed to be a sensible move and had two advantages: it would enable the Committee to continue its consideration of the preamble in its existing form without interruption, and then to consider the conclusions of the working committee.

36. The Uruguayan delegation reaffirmed in their entirety the views it had expressed with regard to the absolute necessity of keeping the article on the right of peoples to self-determination in the body of the covenants. It merely wondered whether it was advisable also to mention the right in the preamble.

37. The principles laid down in the first paragraph of the preamble were particularly noteworthy. The recognition of the equal and inalienable rights of all human beings was the very basis of the concept of democracy. It was surprising that some representatives still had doubts about the scope and exact meaning of the principles enunciated in the first paragraph of the preamble, when work of the draft covenants was in its final stage and the time had come to give human rights a juridical form which would make their recognition and application compulsory.

38. Equality and the different freedoms were not new principles; they had been consecrated by centuries of struggle, of which he gave a brief outline. Those principles had gradually triumphed on the American continent, thus contributing to world progress, and had then been given legal sanction. The Uruguayan Constitution proclaimed them and, what was more important still, they had become part and parcel of the Uruguayan people's thinking. No one should hesitate to support them.

39. Mr. URQUIA (El Salvador) emphasized that the drawing up of an international instrument which would have greater weight in law than the Universal Declaration of Human Rights was the final stage of the United Nations efforts to ensure universal respect for human rights and fundamental freedoms. The Committee was really carrying out diplomatic negotiations, which were very different from the ordinary work of United Nations bodies and from the task which normally devolved upon national parliaments. Careful note should therefore be taken of the views expressed by the different delegations, for it was essential that a large majority of the 60 nations represented on the Committee, as well as many other States, should support the covenants. That applied particularly to the preamble.

40. He associated himself with the views of those who had supported the Brazilian representative's proposal to set up a working committee.

41. In the opinion of his delegation, the preamble could be approved without amendment, provided that the Committee reserved the right to expand it, if necessary, in the event that new articles were adopted.

42. Referring to the Venezuelan representative's question concerning the first paragraph of the preamble, he pointed out that the Charter gave priority to the purposes of the United Nations, which were set out in Article 1, and that the principles were meant to serve those purposes, as they were laid down only in Article 2. It should be noted that one of the purposes, the respect for human rights and fundamental freedoms, appeared not only in Article 1 but in many other articles also. Although he felt that there could be no real doubt regarding the meaning of the first paragraph of the preamble, he proposed that, in order to avoid any ambiguity, the words "in accordance with the principles proclaimed in the Charter of the United Nations" should be replaced by the words "in accordance with the purposes and principles laid down in different provisions of the Charter of the United Nations".

43. With reference to the Venezuelan representative's questions regarding the fourth paragraph of the preamble, he felt it necessary to emphasize once again that the contracting parties would not be bound by the provisions of the preamble; it was the provisions of the different articles which would be compulsory. A State which was not a Member of the United Nations would

not, of course, be bound to respect the obligations imposed by the Charter merely because it had adhered to the covenants.

44. With regard to the joint amendment (A/C.3/L.473) he stated that his delegation would certainly be able to support it.

45. He suggested that the working committee proposed by the Brazilian representative should consider not only the Brazilian amendment but also the joint amendment and the amendment he had himself proposed to the first paragraph of the preamble.

46. Mr. BARODY (Saudi Arabia), speaking on a point of order, said he would not submit the amend-

ment he had intended to present. His delegation and the Afghan delegation would submit a joint amendment³ to the Brazilian amendment by which that text would be altered to read as follows:

"Considering that the right of self-determination is a prerequisite for the full enjoyment of all fundamental human rights."

The meeting rose at 1.10 p.m.

³ The amendment was subsequently issued as document A/C.3/L.474.