United Nations

GENERAL ASSEMBLY

NINTH SESSION
Official Records

THIRD COMMITTEE, 565th MEETING

Wednesday, 27 October 1954, at 3.10 p.m.

New York

CONTENTS

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) (*continued*)

GENERAL DEBATE (*continued*)

1. Mr. PAZHWAK (Afghanistan) said that he would have preferred to speak on specific articles rather than in the general debate. Representatives were in a somewhat embarrassing position because they should speak as individuals when discussing human rights, but they also had to speak as the representatives of States. Yet the whole point of the covenants was that they were intended to safeguard the rights of the individual as against the State. Furthermore, many peoples did not have representatives to express their wishes or had allowed themselves to be represented by others. The difficulties and responsibilities of representatives were obvious, but it should not be forgotten that considerations of humanity should take precedence of all others.

2. In dealing with the report of the Commission on Human Rights (E/2573) and the draft covenants incorporated therein (annex I) the Committee was dealing with the freedom of mankind, the dignity and worth of the human person and the promotion of and respect for human rights and fundamental freedoms.

3. It was to be regretted that, in the prevailing circumstances, it had become possible to assert that the covenants would suffice for a reaffirmation of human rights by the United Nations. Everyone agreed that they were not really a satisfactory response to the needs of worthy and dignified human beings, but experience had almost convinced him that in the circumstances the United Nations could not produce an ideal solution. The draft covenants as they stood should therefore be regarded as fairly satisfactory. They could be improved if there were no more attempts to make them out to be more unsatisfactory than they were. They should be kept as they were unless they could be improved solely in the interests of the members of the human family.

4. Certain points touched on in the general debate so far seemed to be irrelevant at the current stage and likely to reopen the debate on issues repeatedly discussed and settled, such as the question whether there should be one or two covenants and the merits of the inclusion of an article on self-determination or a colonial clause. Such points could not be raised again unless the Committee so decided by a two-thirds majority.

5. Certain points had not been settled by the General Assembly, the Commission on Human Rights or any other organ concerned. The principal issues were the question of the admissibility or non-admissibility of reservations, the right of petition and the measures of implementation, in particular the appointment of a United Nations High Commissioner or Attorney-General for Human Rights. In order that the Committee should be able to embark upon the first reading of the articles as soon as possible after the end of the general debate—which was, in fact, part of the first reading, according to the Committee's own decision—it should vote immediately after the close of the general debate to decide whether in principle it wished to include articles dealing with the subjects he had mentioned. The decision should be taken before delegations gave their views in detail on those subjects. If the Committee decided on their inclusion, they could be discussed during the remainder of the first reading; if not, much time would be saved and the work at the subsequent session would be much easier.

6. In dealing with the matter of reservations the Committee should discuss the question whether they should be admissible at all in instruments such as the covenants on human rights, and if they were, in what way they should be limited. The Committee should carefully consider how reservations would affect the measures of implementation. He himself was inclined to think reservations inadmissible, but he felt that there was not much support for that view. That was to be regretted, but it was essential that the covenants should receive the largest possible number of accessions, and perhaps those who thought reservations inadmissible could be patient until that idea gained general acceptance. The reservations would of course provide safeguards; but the Committee might well provide for a time limit for the termination of reservations.

7. The covenants would be valueless without measures of implementation. Those measures should be discussed fully at the current session. The competent organs of the United Nations might be asked to give their assistance in the light of the discussion and to produce recommendations reasonably far in advance of the Assembly's tenth session for the Governments' comments.

8. The texts of the drafts as they stood should be improved, but that could be done by careful reading at the current session, as the Committee had already decided, and then at the second reading. The Committee should, however, beware of reopening matters already

decided. Delegations could, of course, express their continuing disagreement with the majority decisions already taken, but should respect those decisions. Otherwise, the General Assembly would not be able to take any final decisions at all. The Afghan delegation was still opposed to the idea that two separate covenants should be drafted, but it had never protested, once the General Assembly had taken its decision, and it would not do so. It wished the Committee to embark on the more detailed part of the first reading without delay.

9. In principle, all the draft articles were acceptable to his delegation, but article 18 of the draft covenant on civil and political rights was unacceptable in the form in which it stood. He was wholly in accord with the principle embodied in that draft article, as it was consistent with Afghan law and tradition. The Afghan Constitution recognized Islamic law, the law of the religion of 99.8 per cent of the inhabitants of Afghanistan, while granting full freedom of worship to the 0.2 per cent of Jews and Hindus who comprised the remainder. Those religious communities had lived in amity and tolerance for centuries, and Afghanistan would do its utmost to maintain the stability of the joint community.

10. The Saudi Arabian representative had commented adversely on draft article 18. As the representative of a Moslem country, he himself felt bound to state that he had appreciated the Saudi Arabian representative's observations but did not share his misgivings. Draft article 18 affected the feelings of hundreds of millions of people. The attitude of a Moslem country towards it had to be made quite clear.

11. The main cause of the birth and success of Islam had been its origin as a protest against the violation of human rights. The Prophet Mohammed had proclaimed equality and brotherhood. Islam was not the religion of any one race or any one land, but of humanity. Man, owing to his human dignity, was the noblest creature of God. All the fundamental human rights were principles of the Islamic religion, so that no Moslem Government could vote against any fundamental human right embodied in the covenants. Accordingly, he wished to explain quite clearly why his delegation opposed the reference to change of religion in draft article 18.

12. The question had sometimes been asked why Moslems permitted non-Moslems to become Moslems but did not allow Moslems to leave Islam. Islam never repulsed any non-Moslem who expressed a sincere desire to become a Moslem; it received him. But there was a great difference, from the Islamic point of view, between repulsion and the failure to give permission to change a religion. Any religion that gave an individual permission to change his religion might, from that point of view, be considered to be interfering with his beliefs, whereas the right to hold beliefs without interference was a fundamental human right. The freedom of religious belief could be achieved if the individual was left free to maintain the belief that he had freely accepted. That was the positive approach.

13. Freedom to change religion was a negative approach. If an individual who had freely accepted a certain religion was told that he was free to change it, the idea was put into his mind that he was believing in something which he could change if given the right to do so. Doubt would be instilled and his belief damaged. That would be tantamount to interference with his freedom of thought and conscience.

14. The right to hold opinions without interference was stated in article 19, which became superfluous once the right to change religion had been stated. The Afghan delegation would be led to propose amendments which would make those draft articles generally acceptable, once the philosophy of the Moslem countries had been grasped.

15. The Saudi Arabian representative had rightly referred to the koranic precept that there was no compulsion in religion. The precept continued to the effect that right was clearly distinguished from wrong; those who believed in the right or in the wrong would never change their beliefs. That precept had been set down at a time when Islam had not been weaker than the non-Islamic world. It had been, therefore, a declaration that Islam would not compel others to change their beliefs. That historical fact should be borne in mind by delegations which based their arguments against the Moslem countries' position on the Pakistan delegation's koranic gloss. He would welcome a fuller explanation of that contention from the Pakistan delegation, since it represented a Moslem country.

16. As non-interference with the beliefs of others was a basic Islamic principle, Islam did not approve of missionaries; but that issue was somewhat irrelevant and, in any case, there were national and international measures to protect the individual, where necessary, against their activities.

17. Draft article 18 suffered from further defects. It placed freedom of thought, conscience and religion in the same category, despite the fact that they differed from the philosophical point of view. It guaranteed the freedom of thought and conscience; but there could be no interference with thought and conscience, only with their expression. Paragraphs 1 and 3 were contradictory. The limitations on the manifestation of religion or beliefs weakened the spirit of the article, and paragraph 3 omitted any reference to manifestation of thought. "Thought", in any case, was an extremely vague term in the context, as was "beliefs" in paragraph 3. The manifestation of beliefs was subjected to such limitations as were necessary to protect morals. That implied placing limitations on certain beliefs and not on others. It might be asked what criterion of morals would be applied and according to what system of thought, beliefs or religion. He would go into the matter in greater detail during the later stages of the first reading, should further explanation of his views be required. The Committee should be enabled to embark on those stages as speedily as possible.

18. The Australian representative had raised at the 564th meeting the possibility of again discussing the convening of a conference of plenipotentiaries as a procedural question. He should not have done so, since the Third Committee had already decided that the draft covenants should be discussed in the Third Committee and nowhere else. In submitting the Afghan procedural proposal he had made that interpretation quite clear. The Australian representative should not have again asked for a definition of the term "first reading"; it had been settled at the 560th meeting. The Committee was engaged in the first reading, of which the general debate was the first part. The Committee would be able to proceed more profitably to the more detailed discus-

sion if delegations commented during the general debate on the specific points he had raised.

19. Mr. FOMIN (Union of Soviet Socialist Republics) pointed out that the draft covenants related to a wide range of political, social, economic and juridical questions. For the first time, the United Nations was discussing the drafts of international instruments under which States Members of the United Nations were to be committed to achieving international co-operation by promoting and encouraging respect for human rights and fundamental freedoms for all, without distinction as to race, sex, language, or religion. The United Nations had adopted the Universal Declaration of Human Rights for that purpose in 1948 (General Assembly resolution 217 A (III)), but the USSR delegation had pointed out at the time that although the Declaration contained some positive provisions, it also had some shortcomings. It made no reference to certain fundamental rights, such as the right of peoples and nations to self-determination and was limited to the formal proclamation of certain human rights. It could not satisfy millions of people in all parts of the world and especially in countries where many people were still deprived of the most elementary rights. The draft covenants would impose a legal obligation on governments in the matter of human rights. They contained many progressive provisions, but also had some substantive defects.

20. Some important provisions that had been included in the drafts were the right of self-determination, the prohibition of discrimination and incitement to racial and national hostility, equality rights for men and women, the right to participate in public affairs, the right to freedom of opinion, of speech and of the Press, the right to work, the right to safe and healthy working conditions, the right of association, the right to enjoy the benefits of scientific progress, and so forth. It was obvious that the manifold approaches towards the solution of the important problems raised by those principles should not constitute insurmountable obstacles to the attainment of a common denominator of juridical obligations which would be acceptable to the great majority of States, if not to all.

21. The problem had been to find a criterion which, while being realistic would ensure that the draft covenants, touching as they did on many questions relating to the domestic competence of States, would not contravene the fundamental provisions of the United Nations Charter. Even the most progressive national constitutions, such as the Constitution of the USSR, which provided guarantees for all the rights enumerated in it, could not be proposed as such a criterion since any sense of reality would thus be lost.

22. On the other hand, no progress could be made by adopting the lowest common denominator, since the level adopted would be considerably lower than that achieved by many countries. It was therefore essential to base the criterion on the Charter, which was universally accepted. The two basic requirements which the covenants would meet, therefore, were, first, that the draft covenants should be so worded as to ensure respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, nationality, social status, or religion, in accordance with the principles of democracy, national sovereignty and the political independence of States, and, secondly, that the draft covenants should not only proclaim rights and fundamental freedoms for all, but should also contain definite obligations of States to ensure their implementation with due regard to the economic, social and national peculiarities of each.

23. The USSR delegation was glad that its original draft article on the right of peoples and nations to self-determination, as amended by other delegations, had been adopted and was now included in both the draft covenants (article 1). In spite of the clarity of its provisions, however, objections to the draft article had been raised in the general debate. The United Kingdom representative had said that the article had no place in the covenants because it did not relate to individual rights and because its application in practice was subordinate to other principles, the most important of which was the maintenance of peace. The Australian representative had made similar objections. In considering those arguments, it was important to remember that the draft article was based on the principle of the absolute equality of all nations and races, irrespective of colour, language, cultural level, political development, past or present status, strength or weakness; no such consideration could justify national subordination or any hindrance to the enjoyment of equal rights in economic, social, political or cultural life. The draft article also meant that only the nation itself had the right to determine its own future and that no one had the right to interfere forcibly with its development. It therefore followed that every person belonging to that nation was entitled to implement the right. Moreover, that was by no means the only case in which the individual rights enumerated in the draft covenants could be implemented only in conjunction with others. Such rights as the right of association, the right of assembly and the rights of minorities clearly showed that the draft covenants were not wholly devoted to rights which the individual could exercise by himself. Thus, the whole argument that the covenants should be devoted to individual rights only, as well as the distinction between the rights of the individual and the rights of the community, or society, was unfounded.

24. The assertion that exercise of the right of self-determination might run counter to the maintenance of peace was also incorrect, since the maintenance of international peace and security called for the strengthening of friendly relations among nations on the basis of respect for the principle of equal rights and self-determination proclaimed in the United Nations Charter. There could be no doubt that the implementation of the right was a prerequisite for the enjoyment of all the other rights enumerated in the draft covenants.

25. The Commission on Human Rights had rightly included in the draft covenant on civil and political rights the principles that all persons were equal before the law and that the law should prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination. The draft covenant also provided that any advocacy of national, racial or religious hostility that constituted an incitement to hatred and violence should be prohibited by the State. Furthermore, the provisions of both covenants were to extend to the Non-Self-Governing and Trust Territories administered by metropolitan signatory States and to all parts of federal signatory States. All those provisions constituted a premeditated and clearly formulated system for the implementation of the principles contained

in Article 1, paragraphs 2 and 3, and Article 76 of the United Nations Charter.

26. The USSR delegation had made proposals and had supported the initiative of other delegations with a view to the inclusion of provisions on those questions in the covenants, especially because of the experience of the Soviet Union in dealing with a multi-national population. In 1917, the Declaration of the Rights of the Peoples of Russia had provided for the equality and sovereignty of the peoples of Russia, for their right to self-determination, for the abolition of all national and religious privileges and limitations and for the free development of minorities. Article 123 of the USSR Constitution also laid down the absolute equality of rights of citizens of the USSR, without any distinction, and made discrimination and propaganda for racial or national exclusiveness, hatred and contempt an offence under the law. That policy had resulted in friendship among the peoples of the USSR and in their free development.

27. Some delegations, however, had objected to the inclusion in the draft covenants of provisions prohibiting discrimination. The United Kingdom representative, for example, had said that it was not realistic to combat the discrimination which existed in the modern world by legislative methods. The United Kingdom, Australian and Belgian representatives, among others, had objected to the territorial and federal State articles. Such objections were tantamount to a refusal to implement the recommendations adopted by the General Assembly on the right of self-determination and the inadmissibility of discrimination. In resolution 545 (VI) the General Assembly had instructed the Commission on Human Rights to include an article on self-determination in the covenant or covenants. Resolution 422 (V) provided for the inclusion of a territorial article and even included the text of the article. In its resolutions 103 (I) and 532 B (VI) the General Assembly had further given categorical instructions to governments and United Nations organs to combat discrimination.

28. The USSR delegation supported the inclusion of a number of other progressive provisions in the covenants, such as, for example, the right to take part in the conduct of public affairs, inviolability of the person and the home, the right to a fair trial, freedom of opinion, of speech and of the Press, equality of rights for men and women, the right to work and to safe and healthy working conditions, the right to enjoy the highest attainable standard of health and the right to education. It also approved of the provisions of article 2, paragraphs 2 and 3 (*a*), of the draft covenant on civil and political rights (E/2573, annex I) and the similar provisions in article 2 of the draft covenant on economic, social and cultural rights (E/2573, annex I). Those parts of the draft covenant, together with the concrete measures provided for in some of the individual articles, should ensure the observance by Governments of the obligations they would undertake, in accordance with their economic, social and national peculiarities. The methods provided for in that part of the covenants might successfully ensure respect for human rights in accordance with the paramount principles of democracy, sovereignty and the political independence of States.

29. The parts of the draft covenants which dealt with measures of implementation, however, were unsatisfactory. The draft covenant on civil and political rights provided for the establishment of a human rights committee, selected by the International Court of Justice, to examine complaints of the violation of human rights. The Court was to act as a kind of second instance to which States could appeal against the committee's decisions. In addition, States were to submit to the United Nations reports on their observance of their obligations. In the case of the draft covenant on economic, social and cultural rights, States would only submit reports to the Organization and there would be no resort to the human rights committee. The very fact that such a differentiation was made, to the detriment of economic, social and cultural rights, showed that the supporters of the system of implementation were aware that the procedure would inevitably lead to United Nations interference in matters relating exclusively to the domestic competence of States. Moreover, their attempts to justify that differentiation on the ground that the two groups of rights were essentially different ran counter to the General Assembly's decisions at its fifth and sixth sessions that the enjoyment of civic and political freedoms and of economic, social and cultural rights were interconnected and interdependent.

30. The USSR delegation therefore considered that the establishment of such a system for either group of rights would result in unlawful interference in the internal affairs of States, contrary to Article 2, paragraph 7, of the Charter of the United Nations, and could lead only to increased tension in international relations. That did not mean that the USSR delegation was against measures of implementation as such; on the contrary, it had noted with satisfaction that attempts were being made to provide for concrete steps for the realization of certain rights. Nevertheless, it should be borne in mind that the provisions of the draft covenants related to nearly all the possible spheres of national government. While the United Nations confined itself to discussing the obligations to be undertaken by States and the measures which they could take to carry out those obligations, it was acting in accordance with Article 1, paragraph 3, of the Charter. The Soviet Union had supported that work in all its stages because it considered that, under international law, covenants were made to be observed and that such observance was the duty and prerogative of a signatory State. Furthermore, unless human rights were protected by States, they were abstract and illusory. The proposed implementation system would not serve the cause of human rights, since it presupposed suspicion on the part of the signatories of the covenants and implied that a State was better qualified to protect the welfare of the nationals of other States than that of its own citizens. The adoption of the system might also make it difficult for many countries to sign the covenants.

31. In conclusion, the USSR delegation wished to make some remarks about the need to amplify the draft covenants. The draft covenant on civil and political rights should include a reference to the inadmissibility of using the rights enumerated therein against the interests of international co-operation, based on mutual respect for the rights of States. Article 19 of the draft covenant should therefore state that the right to free expression of opinion should not be used for war propaganda, incitement to hostility among nations, racial discrimination or the dissemination of slanderous information.

32. The provision in article 16 of the draft covenant on economic, social and cultural rights on the right of everyone to enjoy the benefits of scientific progress and its applications should be amplified to provide that State measures for the development and dissemination of science and culture should serve the interests of progress, democracy and the maintenance of peace and co-operation among nations. Experience had shown that rapid scientific and technical advance could, as in the case of atomic energy, either immeasurably increase the well-being of mankind, or, in the event of abuse, bring destruction and suffering.

33. It was not enough merely to proclaim the right of freedom of association, including the right to form national and international trade unions, as was done in both of the draft covenants. It was essential that the provisions of the covenants on such a vitally important subject as the right to form trade unions should provide that States should undertake to guarantee the unhampered activity of trade unions, which, as was known, was of primary importance in ensuring a real opportunity for the exercise of economic and social human rights. It was also important that the right of association should not be used to harm mankind by the establishment of anti-democratic and fascist societies and unions. The world had recently paid a terrible price for allowing the formation of such organizations. The covenant on civil and political rights should therefore include a provision that the establishment of such societies and unions should be prohibited by law.

34. Finally, the draft covenant on civil and political rights should contain an article on the right of asylum for people who were persecuted for their activities directed towards the defence of the interests of democracy and for participation in struggles for national liberation. That was an important guarantee for persons who had devoted their lives to the service of their countries, to general progress and to the principles proclaimed in the Charter of the United Nations and the covenants.

35. The USSR delegation would submit detailed amendments to those and other draft articles and certain other amendments at a later stage of the discussion of the draft covenants. It was prepared, however, to take the drafts prepared by the Commission on Human Rights as a basis for an article-by-article discussion, because they contained several of the aforementioned progressive provisions.

36. Mr. DE BARROS (Brazil) said that the draft covenants were the logical outcome of a movement that had started at the San Francisco Conference: the time had come to move on from statements of principle to the formulation of legal texts. Countries had to face clear-cut commitments that were in line with their own institutions and internal legislation.

37. The draft covenants should not have too wide a scope and it was better to avoid including articles that ran counter to the constitutions of States on fundamental points; it would then be easier to reach agreement on others. While feeling every sympathy with the principle embodied in article 2 of the draft covenant on civil and political rights, Brazil could not agree to make no distinction of language, for instance. It was important for immigrants to learn the language of a country since that facilitated their absorption. There were numerous difficulties to be faced as a result of the inevitable restrictions established by the legislation of the various countries. Nevertheless, the political Constitution of Brazil did not allow any distinction in the respect for human rights, except in specific cases of national security, as could be seen from chapter II of the Constitution. Article 2 of the draft covenant went far beyond the second half of Article 1, paragraph 3, of the Charter.

38. Brazil was also obliged to make some reservations with regard to both draft covenants, but it found them acceptable, on the whole, with a few alterations of form and substance. However, it was not only what was acceptable to Brazil that mattered; the important thing was to arrive at a common denominator.

39. Brazil had already adopted the principle of equal rights for men and women, set forth in article 3 of the draft covenant on civil and political rights, but article 6 had no meaning in Brazil, where the death penalty had not been applied for nearly a century. Article 7, on torture, seemed unnecessary, as the signatories of the covenants would be civilized States. The principles contained in articles 6, 7 and 8 called attention to the sad fact that forced labour still existed and reminded the Committee that it was called upon to deal with the matter as a separate item.

40. The Brazilian Constitution went beyond the provisions of article 9 of the draft covenant on civil and political rights. If all States adopted the same measures as Brazil to ensure the liberty and security of persons, there would be no need for a high commissioner for human rights, or for the dangerous machinery proposed by the Uruguayan representative. The proposal to establish a human rights committee, and in particular the procedure which it had been suggested the proposed committee should follow in dealing with complaints, seemed injudicious. He brought out the fact that even the General Assembly and the Security Council were not empowered to judge legal questions affecting the community of nations. Any sanctions the committee might propose could be vetoed and, even if they were not, it was difficult to see how they could be applied.

41. With regard to article 1, concerning the right of peoples to self-determination, he stressed his country's full support of the principle. However, Brazil could not agree to allow that legitimate right to be distorted by elements alien to the life of the peoples concerned. He agreed with President Coolidge's famous words that it was preferable to have people err by themselves rather than to have others err for them.

42. The international co-operation called for in article 2 was the only proper means of guaranteeing the rights recognized in the covenant.

43. The time had passed when weak peoples could be reduced to misery and hunger by the plundering of their natural resources by powerful nations.

44. The Brazilian Constitution of 1946 contained more liberal provisions for the protection of workers than those in article 7, and its educational system was fully in line with article 14. Education was the basis of democracy, and enlightened understanding was a guarantee of international co-operation. All war propaganda was prohibited by the Brazilian Constitution, as was also propaganda in favour of the violent overthrow of the political and social order, and in favour of racial and class prejudices.

45. The fact that some countries could not accept the federal State article might lead to a paradoxical situation because, if it were maintained, the countries best known for their defence of human rights would be unable to sign the covenant. There were provisions in both draft covenants which Brazil found unacceptable, in spite of its very liberal laws and Constitution. They should be studied in a spirit of compromise.

The meeting rose at 5.20 p.m.

Printed in U.S.A. S—42051—December 1954—1,850