



CONTENTS

Page

Agenda item 58:
Draft international covenants on human rights (*continued*) 147

Chairman: Mr. Jiř 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. EL-FARRA (Syria) hoped that, with the co-operation of the major Powers, the covenants would become instruments embodying clear and definite obligations. It was regrettable that the United States of America did not intend to ratify the covenants because it did not believe that respect for human rights could best be promoted by treaties in the current state of international relations. His delegation still hoped that the United States would reconsider its position, in view of its past contributions to the cause of human rights.

2. With regard to the comments of several representatives on article 18 of the draft covenant on civil and political rights (E/2573, annex I), much controversy could be avoided if the words "or to change" were omitted from the article. Freedom of religion and belief, which was guaranteed by the text, implied full freedom for the individual to practise any religion of his own choosing without hindrance. The phrase "or to change" therefore added nothing to the essential nature of religious freedom and conferred no additional rights.

3. The question of implementation obviously required further and detailed study. With regard to the admissibility of reservations, the Syrian delegation objected to any reservation which would create inequality among the obligations undertaken by sovereign States. If any State made a reservation which was incompatible with the purpose of the covenants, while others ratified the covenants without reservations and accepted full responsibility, the ratifications would be vitiated. Moreover, it could be argued that such ratifications were invalid because the obligations assumed were not mutual. On the other hand, if all States made similar reservations, the very purpose of the covenants would be defeated. The Syrian delegation believed that the amendment proposed in the Commission on Human Rights by China, Egypt, Lebanon and the Philippines (E/2573, annex II) provided a practical remedy for the situation, by excluding any reservations which would amount to giving a power of veto to the reserv-

ing State. The Yugoslav representative had also rightly pointed out that the draft covenants themselves embodied many reservations.

4. He felt obliged to comment on the article on the right of self-determination, despite the fact that its inclusion had already been decided, because attempts had been made to re-open the debate in the hope of defeating that decision. The United Kingdom representative had argued that self-determination was not a part of human rights. The fallacy of that argument was evident from the Charter of the United Nations, on which the whole movement for the promotion of human rights was based. The Preamble of the Charter reaffirmed faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and of nations large and small. Thus, the principle of the equal rights of men and women and the principle of self-determination were on the same footing. In Article 1, paragraph 2, of the Charter, reference was made to the single principle of "equal rights and self-determination". It could not be argued, therefore, that equal rights fell within the scope of human rights and that self-determination did not. It might even be said that human rights were a sub-division of a set of rights that fell under the principle of self-determination. In Article 55 of the Charter also the primary purpose of the Organization was stated as the promotion of friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples. Thus, the fundamental freedoms of the individual were placed side by side with the principle of the self-determination of peoples and it was the duty of the United Nations not only to promote equal rights for all persons, but also to preserve equal rights for all peoples.

5. No line could be drawn between the rights of peoples and the rights of individuals because, just as a human being acquired his personality from that of his people, a nation derived its personality from those of its members. All rights were exercised jointly and severally by nations and individuals. The draft covenants already included several articles, such as that on the right of association, on individual rights which were also collective.

6. The United Kingdom representative had argued that self-determination was based on a political principle and that its practical application was subordinate to that of other principles, the most important of which was the maintenance of peace. That argument drew an artificial distinction between various human rights; it could be contended that all the rights stated in the draft covenants had some political aspects. Moreover, the fact that self-determination was subordinate to the principle of the maintenance of peace was no reason to exclude it from the covenants. The Charter was entirely devoted to the ideal of peace, although it contained references to self-determination, and the whole pur-

pose of the covenants was to create the necessary conditions for friendly relations among nations. Unrest prevailed in Asia, Africa and the Middle East, where peoples were struggling for the human rights of which they had been deprived for generations by colonialism, imperialism and oppression. If the situation which had given rise to that international turmoil were not remedied, another danger might appear; it was very doubtful whether such a situation would be conducive to the maintenance of peace.

7. Current movements for the liberation of oppressed nations were caused by the refusal of some Powers to recognize the equal rights and privileges of all peoples. Stubborn resistance to liberation movements merely swelled the rising tide of nationalism. History had shown that peace could not be achieved or maintained by denying peoples any of the rights to which they were entitled. An outstanding recent example of the irreparable losses suffered by peoples as the result of the betrayal of the principle of self-determination was that of the partition of Palestine against the will of the large majority of its inhabitants. The tragic situation of one million Arab refugees, which could have been avoided if the right had been embodied in a covenant and faithfully observed, showed how denial of the principle of self-determination could entail the flagrant violation of human rights. It was not in the interest of any Power to suppress the principle of self-determination; its exclusion from the covenants would serve to alienate world public opinion and to aggravate national liberation movements.

8. Mrs. KRUTIKOVA (Ukrainian Soviet Socialist Republic) noted with satisfaction that the majority of the speakers in the general debate had, in principle, acknowledged the need for drafting the covenants and that many representatives had expressed their approval of the progressive provisions included in both of the draft covenants (E/2573, annex I). Nevertheless, her delegation felt obliged to comment on some of those provisions because the need for their insertion had been questioned by some delegations.

9. It had been averred that the meaning of the principle of self-determination had not been made sufficiently clear. That principle, however, was unequivocally stated in the Charter and constituted one of the fundamental purposes of the United Nations. Moreover, the realization of fundamental human rights was connected with the recognition and implementation of that principle. The statement that the right of self-determination was a collective, and not an individual, right and should not therefore have a place in the covenants had been refuted by the USSR representative, who had convincingly proved the artificiality of opposing the rights of an individual to the rights of a collectivity. It was to be hoped that attempts to exclude the article on the right of self-determination from the covenants on artificial and formalistic grounds would not be successful.

10. The Ukrainian delegation wished to stress the importance of the provisions in both draft covenants which were directed to the application of human rights without distinction of any kind and the provision prohibiting discrimination by law. The argument of the United Kingdom representative that legislative measures could not be taken in that respect, because it would take time to eradicate the prejudice on which discrimination was based, was unfounded. In many States, various types of discrimination were sanctioned

by existing legislation and the repeal of such legislation would contribute to the more rapid and more successful eradication of prejudice.

11. The delegation of the Ukrainian SSR also fully supported the progressive provisions of both covenants on the equal rights of men and women. The need for the provisions in the covenants on the equal rights of men and women was amply proved, for example, by the facts given in the Secretary-General's memorandum on the status of women (A/2692). According to that document, in seventeen countries women had no political rights, in three countries women's electoral rights were limited and in several countries women could elect representatives only to certain public bodies. It was important not only to recognize the principle of equal rights, but also to include measures for the elimination of inequality of rights in all spheres. The inclusion of an article on equal pay for equal work was therefore essential and the argument that the inadmissibility of discrimination on the ground of sex was covered by the introductory provisions of the covenants was unfounded. In any event, if the representatives who used that argument were prepared to recognize the principle, they should not object to its elaboration in individual articles. The question did not arise in the Ukrainian SSR, where equal rights were guaranteed by the Constitution and women played an active part in all spheres.

12. Article 10 of the draft covenant on economic, social and cultural rights should be supplemented by a provision that wage-earning women should be given leave before and after childbirth and that such leave should be paid for by the State or by the employer. That provision would serve to implement the principle stated in paragraph 1 of the article. The Ukrainian representative stated that maternity and child welfare was fully guaranteed and implemented in the Ukrainian SSR.

13. She endorsed the provisions of articles 13 and 14 of the draft covenant on economic, social and cultural rights, concerning the rights to care of health and to education and therefore could not agree with representatives who had asserted that those provisions should not be included in the covenants because those subjects fell within the competence of such specialized agencies as the World Health Organization and the United Nations Educational, Scientific and Cultural Organization. The existence of the specialized agencies merely stressed the importance of health and education; it could not be used as an argument that States were exempted from guaranteeing human rights. Moreover, the representatives of WHO and UNESCO had actively supported the inclusion of the articles in the covenant and had even submitted draft articles.

14. She agreed with the USSR representative that the proposed measures of implementation were contrary to the principle of the sovereignty of States. In order to achieve real implementation it was necessary that concrete measures, which should be taken by the States for the realization of the rights and freedoms declared in the covenants, be included in the articles of the covenants, and that the States undertake to put those measures into effect in accordance, of course, with the economic, social and national peculiarities of each country.

15. The covenants should also be supplemented by measures to prevent use of their provisions for war propaganda, incitement of hostility among nations, racial discrimination and the dissemination of slanderous propaganda.

16. Finally, article 16 of the draft covenant on economic, social and cultural rights should contain the additional provision that measures taken by the States for the development of science and culture should serve the interests of progress, democracy and the maintenance of peace and international co-operation.

17. The draft covenants submitted by the Commission could be taken as a basis for the discussion because they had a number of progressive provisions.

18. Mrs. TSALDARIS (Greece) pointed out that Greece had been among the first countries to recognize the need to supplement the Universal Declaration of Human Rights by binding covenants. As a member of the Commission on Human Rights, Greece had followed the Egyptian representative's suggestion that non-members of the Commission should first be given the opportunity of stating their views on the draft covenants as they stood. Apart from the United Kingdom Government's comments (A/C.3/574), the comments of Governments called for in the Secretary-General's letter of 11 August 1954 were not yet before the Committee.

19. Although the Afghan representative's point that it would be a waste of time for the Committee to reconsider matters which had already been approved merited serious consideration, it had not been taken up and most speakers had commented on rights which the General Assembly had approved. The Greek delegation proposed to do the same.

20. One of those matters was the question whether there should be two covenants or only one. The Greek delegation reaffirmed its belief that there should be two covenants, and gave two reasons: first, the draft covenants were the result of long and arduous work on the part of the Commission and could be put into their final form by the procedure suggested in paragraph 39 of the Commission's report (E/2573), while to return to the idea of a single covenant would entail starting again from the beginning, as well as reconsidering the relative General Assembly resolution (resolution 543 (VI)); secondly, separation of the covenants was convenient for the specialized agencies, which were deeply concerned with economic, social and cultural matters but less so with civil and political matters. It was noteworthy, however, that they could play an appreciable part in civic education for the exercise of those rights, especially for women who had recently obtained or would obtain their political rights owing to the effect of the Convention on the Political Rights of Women (General Assembly 640 (VII)) or the covenant. It should be noted, however, that except for the International Labour Organisation, the specialized agencies had no enforceable powers derived from treaties, so that the whole burden of implementing the covenants could not be passed on to them.

21. As several representatives had pointed out, a further argument for separating the covenants was that the covenant on economic, social and cultural rights was to be implemented gradually while the other would come into force immediately upon ratification. In that connexion, the doubts expressed by the French and Netherlands representatives as to the practicability of the immediate implementation of the covenant on civil and political rights and the deletion of the reference to the phrase "within a reasonable time" merited serious thought.

22. Despite the difficulties of some countries, in view of firmly established traditions and social conditions

and of different civilizations, beliefs and political systems, the aim was to secure the widest possible acceptance of the covenants by non-Members as well as by Members of the United Nations. The texts should be flexible enough to meet those difficulties without in any way sacrificing the fundamental principles of the Charter.

23. Greece, and other countries with similar constitutions, would have no difficulty in accepting articles 2 to 5 of the draft covenant on economic, social and cultural rights, concerning equal rights and non-discrimination. Her country's Constitution established equal rights before the law, and women had also enjoyed equal political rights since 1952. Greece had also ratified the Convention on the Political Rights of Women providing for the access of women to public office. But, as the United Kingdom representative had pointed out, some countries would find it difficult to relate the requirement in article 2 of no "distinction of any kind, such as . . . national . . . origin" to article 6, guaranteeing the right to work.

24. With regard to articles 7 to 9, Greece attached a very special importance to the right of association and the right to organize trade unions, a freedom which had been included in the Greek Constitution long before other countries had taken similar steps. It already guaranteed social security, healthy working conditions, fair wages and pay which would ensure a decent livelihood to workers and their families. The right of equal pay was established in many countries for government workers, but it was more difficult to apply it to workers under free or collective contracts. Moreover, the 1951 convention on equal pay for equal work¹ had not yet been signed. Article 2, paragraph 1, seemed, however, to meet such difficulties by providing for progressive realization of the rights recognized in the covenant.

25. The Commission on Human Rights was to be congratulated on having given an important place in the draft covenants to the institution of marriage and to the family, the basic unit of society.

26. The health measures provided for in articles 10 to 13 were easily acceptable, since they formed part of the legislation of most countries, and the valuable services of the specialized agencies and technical assistance could be solicited in case of difficulty. The Greek delegation would, however, have liked to see a clause on the welfare of the aged, a subject in which much progress had been made in many countries.

27. As a cradle of civilization and culture, Greece attached the greatest importance to education. In Greece, elementary education was free and general, and there was no discrimination. There had recently been some attempts to carry out the UNESCO recommendations on basic and adult education, but the Greek delegation did not agree with some speakers who had suggested that all educational matters should be dealt with by UNESCO. Such matters should be left to States, in view of the differing traditions which each State was anxious to conserve. With regard to article 14, Greece would find it difficult to apply progressively the principle of free secondary and higher education.

¹ Convention (No. 100) concerning Equal Remuneration for Men and Women Workers for Work of Equal Value. See Fifth report of the International Labour Organisation to the United Nations, Geneva, 1951.

28. Part IV, on implementation, seemed satisfactory, but care would have to be taken to ensure that the reporting procedure did not cause duplication. Document E/2621 contained some pertinent remarks on that point by the International Labour Office.

29. In the preamble to the draft covenant on civil and political rights, the fundamental democratic principles of liberty, justice and peace, the basis of the Charter of the United Nations and the Universal Declaration of Human Rights, were given conventional form. Respect for and application of those principles would in future be the criterion of true democracy in a régime. It should be pointed out, therefore, that as any democratic and liberal constitution could come into existence only in an atmosphere of absolute freedom, the purpose of that covenant was to ensure that climate of liberty, thus far the privilege of sovereign States, since those principles naturally could not be applied to non-sovereign, that is, non-self-governing, peoples except by the wish of the Power governing them. For that reason the Commission on Human Rights had considered it necessary to include an article on self-determination in both covenants. In reply to the colonial Powers which opposed the inclusion of those articles, the Greek delegation pointed out that the General Assembly had been resolutely in favour of the principle from the outset, and the Greek delegation had been among the leaders of a movement to ensure not only the recognition, but also the implementation of the principle, which had borne fruit in resolutions 545 (VI), 637 (VII) and 728 (VIII). Freedom for all was not only a good principle, but good practical politics.

30. Any discussion of the implementation of the right of self-determination presupposed general acceptance of the principle itself. Downright opposition was better than an attempt to undermine the principle by dubious arguments. It had been said that the covenants were concerned with individual rights and that therefore the right of self-determination had no place in them. The use of that argument could exclude many other rights of a collective nature, such as the right of free association. Self-determination meant the individual's right to determine freely his own political status. People did not live in isolation; if they did, there would be no need to protect their rights. They lived in communities, which were called peoples or nations. Accordingly, that right could only be expressed and implemented collectively. It was true, as the United Kingdom representative had said, that the principle of self-determination had originated as a rather vague political principle, but that had been over a century earlier. Since then the principle had been gradually more clearly defined and had been extended to colonial territories. The right of self-determination was more and more taking on the character of a legal concept, a legal obligation. The United Kingdom representative had quoted President Wilson in support of her assertion that self-determination could endanger world peace, yet the Wilsonian theory of world peace had been based on strict self-determination, especially for Europe. In the Charter of the United Nations peace and freedom were not incompatible but complementary, as could be seen from Article 1, paragraph 2, and Article 14; indeed, it was failure to apply the principle of self-determination that was likely to endanger world peace. It was unnecessary to enter into detailed discussion of article 48, on the application of the principle, for,

like the Egyptian delegation, the Greek delegation considered that the best possible conditions for the application of the principle had been laid down in article 48.

31. The United Kingdom representative had also had difficulty with the definition of such terms as "people" and "nation". It was true that that difficulty had cropped up in international law in the past, but there was no lack of eminent jurists in the Committee, and it would be inadmissible for a fundamental right to be sacrificed because of the difficulty of definition.

32. The Fourth Committee's work had clearly shown that self-determination was nowadays exclusively a problem of the Non-Self-Governing Territories. The question of minorities was quite a different matter, liable to arise in any State or territory. The minority in a community was entitled to the fullest possible safeguards, but was not entitled to obstruct the will of the majority. It would be superfluous to recall that majority rule governed democracy and minority rule dictatorship. The ambiguity could only be deliberate.

33. The Greek delegation was grateful to the Saudi Arabian representative for his mention of the Cyprus question,² which was a serious concern to her country. She did not intend to enter into the details of the matter, since the question was not before the Third Committee. When voting for its inclusion in the agenda, the General Committee had allocated it to the First Committee. She was convinced that the First Committee's discussion of that question would confirm the confidence of the peoples of the world in the principles declared by the United Nations.

34. With regard to article 18, on freedom of thought, conscience and religion, the Greek delegation was attached to the principle of the Greek Constitution under which every religion was free and could be freely exercised and proselytism and other forms of interference with freedom of religion were prohibited.

35. Mr. VALLADARES (Honduras) said that his country would find no difficulty in applying the covenants, since nearly all the provisions were already part of Honduran law. He was convinced of the need for the covenants to be drafted and adopted, but he appreciated the difficulties facing some countries and accordingly supported the Israel representative's suggestion that the text of the draft covenants and the records of the debate on them should be sent to Governments for thorough study and comments. The comments would supply a useful basis for the Third Committee's work at the tenth session of the General Assembly. His delegation still believed that a single covenant should have been prepared, as the purpose was single and indivisible, but it was probably better to work on two covenants in order to obtain general acceptance.

36. The covenants were being devised for the spiritual and material betterment of the human person. Accordingly, his delegation was strongly in favour of granting the right of petition to individuals. Although that might cause legal complications, justice ought to take precedence over strict legalism. Individual petitions would be the best means to redress if a State infringed a human right.

37. In order to make general acceptance of the covenants easier, reservations should be permitted, but not to substantive articles stating fundamental and universal rights.

² Item 62 on the agenda of the General Assembly.

38. Miss AGUILAR (Peru) said that the most striking and gratifying feature of the drafting of the covenants on human rights was the spirit in which the authors had worked. Despite the defects inevitable in any such endeavour, it was that spirit which should guide the Committee in its appraisal of the drafts.

39. Respect for human rights had developed greatly in recent years. In broad outline, it was characterized by a universal inclination towards a system of international organization as a result of positive action against aggression; by effective action on the part of the United Nations in applying the rules and principles upheld by the Security Council in cases of serious threats to international peace and security; by the perfecting of the International Court of Justice through the gradual adjustment of the structure of the United Nations to its Charter and by the greater concern of countries to ratify basic instruments; and by a progressive adaptation of the United Nations to its purposes and a better understanding by all peoples of what it stood for and what it could do. No human rights could be higher than those of avoiding aggression, of feeling secure within a country's borders, of being able to have recourse to a court of justice when a right was infringed, a freedom curbed or a belief prohibited, and of having available a free tribunal for the expression of all the desires and aspirations of all peoples.

40. The greatest guarantee of human rights was without doubt the effective and beneficent activity of the United Nations and its organs and agencies, in particular the technical assistance programmes of the Economic and Social Council and the popular education programmes of UNESCO, reference to which was implicit in the draft covenants.

41. Having reviewed at some length the part played by the United Nations in the establishment of modern international law, she turned to the analysis of certain of the articles in the draft covenants.

42. Some of the articles were confused and cluttered with definitions; in articles 1 to 16 of the draft covenant on economic, social and cultural rights, constitutional, civil and labour legislation, administrative regulations, social welfare provisions and so forth were often embodied in the same article. Article 17 provided that the States parties to the covenant should undertake to submit reports concerning the progress made in achieving the observance of those rights, but it might be asked who could ensure that the reports were accurate. It would be hard to decide, too, what steps should be taken against a State which failed to comply with one or more articles. If there were to be international intervention, it was difficult to see what form it would take. It was equally difficult to see what would happen if the reports submitted by the States differed substantially from the reports submitted by the specialized agencies under article 19. As the United States representative had indicated, treaties were not fruitful methods for enforcing the observance of human rights. Article 22 seemed to give the Economic and Social Council a right to take steps to guarantee general respect for human rights; but it was not clear what steps and whether they would be coercive or punitive. Article 24 referred to a whole gamut of international instruments for the achievement of the rights, but none of them would be of the slightest use unless Governments and peoples showed good faith in applying the covenants.

43. In the draft covenant on civil and political rights there seemed to have been some confusion between subjective and objective definitions. In article 4 it was stated that States parties to the covenant might in time of public emergency take measures derogating from their obligations to the extent strictly required by the exigencies of the situation; but the term "strictly" was extremely vague and seemed to leave to the State itself the power to decide what was strictly required.

44. Article 10, paragraph 2, referred to the separate treatment of unconvicted persons, but did not specify what treatment. Separate treatment seemed to be discriminatory and also inconsistent with the modern penal theory of social rehabilitation and of refraining from making a punitive distinction between convicted and accused persons.

45. Article 11 referred to failure to fulfil a contractual obligation, but that failure might be with intent to deceive. Provision was made for that in nearly all penal codes.

46. A committee was to be set up under article 27 for the implementation of the covenant. The establishment *ad infinitum* of commissions, committees and so forth to put into effect conventions and treaties between Governments merely caused that type of micro-organism to pullulate and become a burden on Governments, which in any case found some difficulty in budgeting for their international commitments.

47. Peru would have no difficulty in accepting the provisions of the covenants, since almost all the rights stated therein were already part of Peruvian law. The current Government had enacted a number of laws, decrees and resolutions designed to improve the lot of the less fortunate citizens and it was making every effort to meet the basic needs: clothing, housing and food.

48. Mr. KING (Liberia) said that States had become increasingly convinced of the need to conduct their affairs in accordance with the principles outlined in Articles 1 and 2 of the Charter. That conviction had led to the General Assembly's request to the Commission on Human Rights to draft the international covenants on human rights. If the United Nations really desired the covenants to be put into force, each Member State would have to make national sacrifices.

49. Some countries would undoubtedly find difficulties in bringing their legislation into consonance with every part of the covenants. Every effort should be made to define the scope of the rights embodied in them and to word the definition in the clearest possible terms.

50. He could not accept the argument that the article on the right of self-determination (article 1 of both draft covenants), should not be included on the grounds that it was inappropriate in covenants on human rights. Rather, he felt that it was the essential part of the covenants, for without it there would be no basis for the rights. The contention that the right was not the concern of the individual was untenable, for the individual was the nucleus of the State, and so individual rights were paramount, especially in States based on democratic principles. To consider self-determination as a political principle would be to give a quite different interpretation to article 1, paragraph 1, of the draft covenant on economic, social and cultural rights. The article was appropriate in the draft covenant on civil and political rights, as civil and political rights were certainly individual rights.

51. It had been argued that a federal State article might be interpreted by Powers administering Trust and Non-Self-Governing Territories as a denial of the full enjoyment of the rights to the people in such Territories. He failed to see the validity of such an argument. The local legislatures in those Territories were not supreme. The metropolitan countries were perfectly well able to apply the covenants in territories under their control, whereas in federal States such application could be thwarted by local legislatures, which were supreme. No comparison was possible.

52. It had been contended that the reports procedure contemplated in the draft covenant on economic, social and cultural rights could not be applied to the other

covenant and that the former should be implemented progressively, while the latter should become operative on signature. That might be so, but he could not see why implementation should be progressive when it was a matter of a people's will to determine and maintain its own permanent sovereignty over its natural wealth and resources.

53. Reservations would be necessary if the covenants were to be put into force, since no covenant could coincide with the many different legal systems. But such reservations should not on any account affect the substantive efficacy of the covenants.

The meeting rose at 12.50 p.m.