

United Nations  
GENERAL  
ASSEMBLY

EIGHTEENTH SESSION

Official Records



THIRD COMMITTEE, 1261st  
MEETING

Tuesday, 12 November 1963,  
at 3.45 p.m.

NEW YORK

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Chairman: Mr. Humberto DIAZ CASANUEVA  
(Chile).

AGENDA ITEM 48

Draft International Covenants on Human Rights (A/  
2907 and Add.1-2, A/2910 and Add.1-6, A/2929, A/  
5411 and Add.1-2, A/5462, A/5503, chap. X, sect.  
VI; E/2573, annexes I-III; E/3743, paras. 157-179;  
A/C.3/L.1062, A/C.3/L.1170-1171, A/C.3/L.1173)  
(continued)

ARTICLE 4 OF THE DRAFT COVENANT ON CIVIL  
AND POLITICAL RIGHTS (continued)

1. Miss OROZCO (Mexico) said that the amendments  
submitted by her delegation (A/C.3/L.1170) were in-  
tended to improve the text of article 4 by clarifying  
its objectives.

2. It was clearly necessary that in time of national  
emergency the State should be able to impose restric-  
tions on certain individual rights whose exercise  
might make it impossible for the State to cope with a  
serious crisis. Nevertheless, the proclamation of a  
state of emergency should be accompanied by every  
possible guarantee, if article 4 was not to become an  
escape clause which would nullify all the safeguards  
prescribed in the draft Covenant. The first limitation  
stated in article 4 seemed inadequate; it provided that  
the public emergency must be proclaimed "officially".  
However, everything done by the public authorities was  
done officially, even if done at the behest of a tyrannical  
Government which had usurped power. The Mexican  
Constitution provided safeguards in that respect  
by stipulating that the Head of the State could suspend  
the constitutional guarantees only with the prior ap-  
proval of the Council of Ministers, such approval being  
subject to subsequent confirmation by the legislature.  
Point 1 of her delegation's amendments had the pur-  
pose of guaranteeing that states of emergency would  
be proclaimed in accordance with the established  
legal procedures.

3. Point 2 of the amendments was intended to remove  
from the list of clauses from which no derogation was  
permitted, article 18, paragraph 3, which provided  
that a State could impose certain legal limitations on  
the freedom to manifest one's beliefs. Such limitations  
might be even more necessary in time of national  
emergency and her delegation therefore considered  
that the only provisions of article 18 which should be

sacrosanct were those contained in paragraphs 1, 2  
and 4, just as, in article 8, the only sacrosanct pro-  
visions were those in paragraphs 1 and 2.

4. Point 3 of the amendments would clarify para-  
graph 3 in the manner suggested by the Romanian  
representative (1259th meeting).

5. Mr. MORENO SALCEDO (Philippines) wished to  
clarify his delegation's position, not only in order to  
explain the way in which it would vote but also because  
of the considerable importance which the draft Coven-  
ant in question would have once it was adopted. The  
draft Covenant was intended to break new ground in the  
realm of international law, and it had a bearing not  
only on the principles of international law but also on  
the sovereignty of States. The draft Covenant was the  
product of a deep study carried out by an expert  
commission which had carefully weighed every word.  
Any alteration therefore ran the risk of destroying  
the document's delicate balance. His delegation would  
therefore support no amendment unless it was con-  
vinced that the amendment was absolutely essential  
and that it would not alter the intention of the authors  
of the draft, for, while his delegation recognized the  
right of the Committee's members to submit amend-  
ments, it was not certain that they had the appro-  
priate background to judge all the possible conse-  
quences thereof.

6. For those reasons he would be able to vote only  
for point 3 of the Mexican amendments, which made  
an unquestionably necessary improvement in article  
4, paragraph 3.

7. He would be forced to abstain on the other two  
points of the Mexican amendments. Point 1 might give  
rise to mistaken interpretations and, if the matter of  
ascertaining the legality of the proclamation of an  
emergency by one State were to be left to other States,  
it would open the way to foreign interference in the  
affairs of the State concerned; his delegation believed  
that it was exclusively for the authorities of that  
State to determine whether a situation threatened the  
life of the nation and, if those authorities acted il-  
legally in the matter, they must account for their  
actions before the national courts. Point 2 would ex-  
clude from the list in article 4, paragraph 2, the  
paragraph of article 18 which authorized limitations  
on the freedom to manifest one's religion or beliefs,  
on the condition that such limitations were prescribed  
by law and based on certain needs. The amendment  
might well obliterate the limitations laid down with  
respect to the restriction of freedom of religion.

8. As regards the Saudi Arabian amendment to para-  
graph 2 (A/C.3/L.1171), he had already (1259th meet-  
ing) stated his reservations concerning the inclusion  
of article 22 in that paragraph, but he wished to add  
that the articles now given in the list related basically  
to rights affecting the life or liberty of the individual,  
whereas the right stated in article 22 was not so basic;

the article was in fact simply a declaration of principles concerning the family. The inclusion of article 22 in paragraph 2 could therefore have dangerous implications for the future, and his delegation would abstain in the vote on the amendment.

9. He was also very wary of the introduction of new provisions into the draft Covenant, particularly an article on the rights of the child, since he thought those rights were better regulated by domestic legislation than by an international instrument. Moreover, inasmuch as the draft Covenant dealt with human rights, it guaranteed those rights to individuals of every age and status. If the rights of the child were specified, there would be equally good reason to spell out the rights of the wife, of the husband or of the parents. He emphasized that his delegation's position was general and did not relate specifically to the draft article proposed to the Committee.

10. Mr. YASSEEN (Iraq) unreservedly endorsed point 3 of the Mexican amendments which distinctly improved paragraph 3. Point 1, however, caused him some doubt since, as the Philippine representative had said, it might be difficult to determine the legality of a proclamation of a state of emergency.

11. Miss OROZCO (Mexico) explained that her delegation's intention was to guarantee that states of emergency were proclaimed in accordance with constitutional procedures.

12. Mr. YASSEEN (Iraq) remarked that the word "legally" did not exactly meet that intention, since a legal measure could be in keeping with the law without necessarily being in keeping with the constitution.

13. Mr. CAPOTORTI (Italy) questioned whether point 1 of the Mexican amendments was really necessary, although he understood the need to prevent the arbitrary proclamation of a state of emergency. As could be seen from the "Annotations on the text of the draft International Covenants on Human Rights" (see A/2929, chapter V, para. 41), the Commission on Human Rights had chosen the expression "officially proclaimed" with the very purpose of ensuring the legality of a declaration of a state of emergency, since in most countries the Government could declare a public emergency only under conditions defined by law. He wondered whether any officially performed act could be called illegal because, even if the act was performed by a Government which had seized power illegally, it was difficult for other States to pass on that Government's status. He therefore believed that the present text might be retained, the word "constaté" in the French text being possibly replaced by the word "proclamé".

14. Point 2 of the Mexican amendments also seemed unnecessary, since article 18, paragraph 3, was in itself a saving clause; such clauses also appeared in other articles, and they enabled the State to impose on individual freedoms certain limitations which were necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others. Of course, such a clause ceased to operate when the more general clause of article 4 applied, but it did not seem necessary to alter paragraph 2 for that reason.

15. Point 3 of the Mexican amendments answered a definite need, but the last sentence was not fully satisfactory since, when a State availed itself of the right of derogation, the Covenant would not cease to have effect; only some of its provisions would be sus-

pending. The Saudi Arabian amendments to paragraph 3 (A/C.3/L.1173), which had the same purpose as the Mexican proposal but retained the last words of the original text, did not present that difficulty, and he hoped that the two delegations would be able to agree on a joint text.

16. Regarding the Saudi Arabian amendment to paragraph 2 (A/C.3/L.1171), he had noted the arguments of the Philippine representative but considered that, even though the right stated in article 22 did not directly affect the life or liberty of the individual, it nevertheless concerned strictly private interests with respect to which no State interference could be tolerated. The purpose of article 22 was to guarantee protection of the family and the right to marry; those matters were not affected by an emergency situation and, being part of the private and not the public life of the individual, could not represent a danger for the State. In principle, therefore, his delegation was in favour of the insertion of article 22 in the list given in paragraph 2.

17. Mr. FRANCIS (Jamaica) said he would not comment on point 3 of the Mexican amendments nor on the Saudi Arabian amendments to paragraph 3, in the hope that the two delegations concerned would agree on a joint text.

18. As regards point 1 of the Mexican amendments, he felt that the words "officially" and "legally" must be interpreted in the light of each country's constitutional provisions. In Jamaica, a state of emergency could be proclaimed by the Prime Minister; that was an official act, but was it necessarily legal? Unquestionably, official duties could be discharged in an illegal manner and, for that reason point 1 of the Mexican amendments was worth while. At the same time, on the assumption that the provisions of the draft Covenants must be interpreted in good faith, the original text would be acceptable.

19. He shared the view of the Philippine representative on point 2 of the Mexican amendments, and also on the Saudi Arabian amendment to paragraph 2. The Jamaican Constitution expressly permitted restrictions of the freedom of marriage in emergencies and he would therefore have to abstain in the vote on that proposal.

20. Mr. MENESES (Colombia) emphasized that international legal instruments should be couched in sober and precise language, allowing the least possible latitude for tendentious interpretation by the signatory States. Article 4, paragraph 3, appeared to limit national sovereignty but, by signing the Covenant, States would freely accept such limitation, so that their sovereignty would in no way be impaired. The practical consequences of paragraph 3, however, were not clear to his delegation; would other States take measures, if necessary, against a State which availed itself of the right of derogation, and would their views be required? he hoped that the point would be clarified.

21. Where point 1 of the Mexican amendments was concerned, he would prefer the original text; the idea of legality was not of paramount importance, since any private person could perform a legal act. Moreover, in Colombia, as in most other countries, the conditions in which a state of siege or a public emergency could be proclaimed were clearly defined in the Constitution or in the laws, and the Government was accountable to the Parliament for any violation of those conditions. Thus the legality of the proclamation

was guaranteed by domestic law and it would suffice to require, in the draft Covenant, that the proclamation should be official. Point 3 of the Mexican amendments was more logical than the original text and his delegation would support it.

22. Mr. HAMID (Sudan) did not think it advisable to replace the word "officially" by the word "legally", as the substitution had the drawback of introducing a controversial element into a perfectly clear text. He had listened with interest to the Philippine representative's arguments, but he felt that international control over the legality of the measures taken by a Government in an emergency was not at issue. Indeed, point 1 of the Mexican amendments raised an internal problem: the executive proclaimed the existence of an emergency when the need arose, and the legality of the proclamation was verified subsequently. The executive power could not, in a critical situation which called for rapid measures, first make sure that the steps it deemed necessary to take were legal. The legality of those steps could be challenged before the competent authorities only after the event. His delegation therefore preferred the word "officially".

23. Mr. COMBAL (France) said he had some reservations about point 1 of the Mexican amendments. The word "legally" meant "in accordance with the law"; it was generally understood to mean "in accordance with constitutional law", but it could be interpreted differently and therefore opened the door to controversy and dispute. Moreover, there might be practical difficulties in applying the criteria proposed by the Mexican delegation; what authority would be called upon to ascertain whether the state of emergency had been legally proclaimed, and on what basis would it reach a decision? After some hesitation, the French delegation had decided to vote for the retention of the word "officially".

22. As regards point 2 of the Mexican amendments, it was perhaps not absolutely necessary to exclude paragraph 3 of article 18 from the provisions subject to derogation, since the paragraph itself dealt with limitations on freedom to manifest one's religion or beliefs.

25. He fully supported point 3 of the Mexican amendments, which had probably been inspired by the very cogent remark of the Romanian representative, but he hoped that the Mexican delegation would be able to agree on a joint text with the Saudi Arabian delegation, which had submitted a similar amendment to paragraph 3. He also agreed with the idea of the Saudi Arabian amendment to paragraph 2, for he failed to see what circumstances could compel a Government to restrict the freedom of marriage.

26. Mr. YASSEEN (Iraq) believed that the intention of the Saudi Arabian amendment to paragraph 2 was laudable, but he did not think it necessary to include article 22 in the list of articles from which no derogation was permitted, not because he felt that, in a public emergency, States should have the right to limit the freedom of marriage, but because it seemed obvious that article 4 related only to those freedoms the exercise of which might endanger the existence of the nation and State security. Hence there was no need to mention articles which had nothing to do with the preservation of the State. For example, the fact that article 25, dealing with the right of foreign minorities to use their own language, was not mentioned in article 4, paragraph 2, certainly did not mean that, in an emergency, States would have the right to prevent

such minorities living in their territory from speaking their own language. He therefore hoped that Saudi Arabia would not press its proposal.

27. While he understood the motive behind point 1 of the Mexican amendments, he wished to point out that it was not enough for a state of emergency to be proclaimed in accordance with domestic law; all the conditions laid down in article 4 must also be fulfilled. If the domestic law did not meet the requirements of article 4, the fact that the proclamation had been made legally would not matter, and those who had made it would nevertheless be held internationally accountable. Hence it was useless to require that a proclamation should be made "legally". If it met the standards laid down in article 4, it would be valid in international law, and its validity in domestic law was of no concern to the international community. All that mattered was which authority had issued the proclamation, since that authority would be held responsible if the provisions of article 4 had been violated. The word "officially" should therefore be retained.

28. Mr. BAROODY (Saudi Arabia) said he was happy to announce that, with the aid of the Romanian representative, the Mexican and Saudi Arabian delegations had prepared a joint amendment<sup>1/</sup> to article 4, paragraph 3, and would submit it to the Committee later.

29. In commenting on the Saudi Arabian amendment to paragraph 2, the Philippine representative had said that article 22 was more in the nature of a declaration of principles. He himself believed that, inasmuch as article 22 was an integral part of the draft Covenant, it had the same value as the other articles.

30. He wished to reply to the legal arguments, put forward in respect of the above-mentioned amendment, by advancing basically sociological considerations. No one denied that a family was the natural and basic unit of society; but a family could be founded only through marriage. Even in the event of a war between two States—that being the case most members of the Committee seem to think of in connexion with article 4—a man and a woman who were nationals of the two belligerent countries would surely not be prevented from marrying, since that would mean encouraging illicit relations. While it was normal for a State to take security measures with regard to foreigners in its territory in times of war, it would certainly be discriminatory to prevent such foreigners from contracting marriage.

31. When closer attention was paid to articles 7, 8 and 18 of the draft Covenant, from all of which paragraph 2 forbade derogation, it became clear that to prevent a person from marrying might constitute moral torture or degrading treatment within the meaning of article 7. Moreover, in an emergency a country's authorities sometimes required their nationals to render services which might be classed as compulsory labour within the meaning of article 8, from which, however, no derogation was permitted. It might also be truly stated that, for the individual and society alike, marriage was quite as important as the freedom of thought, conscience and religion to which article 18 applied.

32. He emphasized the sanctity of marriage. Persons condemned to death had been permitted to marry on the day before their execution, and he could not see why that permission should be refused to an individual

<sup>1/</sup> Subsequently circulated as document A/C.3/L.1176.

because he belonged to a country at war with his country of residence. It might even be that marriages contracted in time of war between nationals of a belligerent country and enemy nationals might mitigate the hatred of the one people for the other. Perhaps, even marriage between persons of different race or nationality might bring more unity and peace to the world.

33. The attitude of some delegations to the Saudi Arabian amendment seemed to reflect a desire to place the rights of the State first. It should not be forgotten that the draft Covenants were meant to guarantee freedoms for the individual, even in case of public emergency.

34. He appealed to all, who regarded the family as the cornerstone of society, to vote for the inclusion of article 22 in the list contained in article 4, paragraph 2.

35. Mr. CUEVAS CANCINO (Mexico) submitted the amendment to article 4, paragraph 3, drafted jointly by the delegations of Saudi Arabia and Mexico. The wording was the same as that in document A/C.3/L.1173, except that the words "as soon as it has terminated" were replaced by the words "on the date on which it terminates". The new form of words had the merit of clarity, and did not impose upon States the obligation proposed in the earlier text, that of point 3 of the Mexican amendments, to notify the date from which the provisions of the Covenant were again fully in force. That raised a troublesome question which the Mexican delegation had concluded that it had better not touch.

36. To understand the scope of point 1 of the Mexican amendments it was necessary to consider the case of a State which ratified the Covenant and thereby assumed new obligations, especially that of making the necessary amendments to its domestic law. That was a step on to new ground not yet covered by international law. It went even further than the Charter of the United Nations which, while admitting that respect for human rights was essential for the maintenance of peace, laid down in Article 2 (7) that the United Nations might not intervene in matters which were essentially within the domestic jurisdiction of any State. That provision had been interpreted by certain States—always wrongly, according to the General Assembly—to mean that the United Nations might not intervene where human rights were violated in a particular country. The Mexican delegation had had more particularly in mind, in presenting its amendment, the case of a State which had ratified the Covenant and had to take certain measures because its institutions were in danger. What happened in that State concerned the international community because human rights were at issue. The procedure prescribed by articles 40 *et seq.* of the draft Covenant therefore became applicable, and the word "legally" became highly relevant, for it referred no longer to the legality of the proclamation under the national law but to its validity in international law. The replacement of the word "officially" by "legally" would enable the international community to control what happened in a State in case of internal disturbance. That would certainly be a departure from traditional legal rules; but the effect of the draft Covenants was exactly proportionate to their supersession of traditional ideas. International control over the legality of domestic acts of States would have incalculable consequences.

37. The Mexican delegation acknowledged that its suggestion raised very serious problems and, in

deference to the Committee's general desire, would not press point 1 of its amendments. It also agreed to withdraw point 2.

38. The CHAIRMAN thanked the Mexican delegation for the conciliatory spirit in which it had withdrawn the first two points of its amendments. He congratulated both the Mexican and the Saudi Arabian delegations on drafting a joint amendment to article 4, paragraph 3.

39. Since the Saudi Arabian delegation's amendment to article 4, paragraph 2, seemed highly controversial, he wondered whether it would consider withdrawing that amendment so that the Committee could vote at once on the joint amendment to paragraph 3 and on article 4 as a whole.

40. Mr. BAROODY (Saudi Arabia) considered the issue of principle too important to concede. Moreover, no delegation opposed his amendment, and those which had expressed their opinions had seemed rather to mean to abstain. Unanimity did not therefore seem to be in danger.

41. Mr. FRANCIS (Jamaica) explained that he had said that his delegation would abstain on the Saudi Arabian amendment to paragraph 2 solely in order not to oppose words which other delegations might approve. He had, however, already plainly pointed out that the proposal conflicted with his country's Constitution. His delegation's position was in no way determined by a desire to subordinate individual rights to those of the State, nor by any lack of respect for marriage, an institution to which the Jamaican Government attached the highest importance.

42. His delegation was chiefly anxious about the effect which adoption of the Saudi Arabian amendment might have on the constitutions of some countries. Under the law of many States, including Jamaica, an alien who married a national automatically acquired nationality. A State was therefore perfectly entitled to reserve the right in exceptional circumstances, to forbid marriages which would oblige it to make nationals of aliens whom it considered undesirable. That was the reason why the Jamaican Constitution contained an article for that purpose, which did no harm to the institution of marriage itself.

43. Mr. BAROODY (Saudi Arabia) felt that the Jamaican representative had misunderstood some of his remarks. If every delegation tried to shape the provisions of the draft Covenant to the constitution of its country, the draft Covenant could never be adopted and ratified. On the contrary, every State ought to amend its constitution, as many had already done, to make it conform as closely as possible to the draft Covenants. Constitutional difficulties raised in various countries by the provisions of the draft Covenants could not be considered: all Governments ought to observe the rule of predominance of treaties.

44. Mr. FRANCIS (Jamaica) said he was fully aware that the law of every State signing the draft Covenants ought to conform to their provisions. He could not, however, vote for an amendment in conflict with the provisions of his country's constitution. The Jamaican delegation had not, by reserving its position, given preference to the Jamaican Constitution over the draft Covenant.

45. Mr. YASSEEN (Iraq) said that the Jamaican representative's remarks had focused his own delegation's doubts about the Saudi Arabian amendment. Where

marriage between an alien and a national gave the alien nationality, with all the protection it conferred, the State must obviously be able, in exceptional circumstances, to forbid such marriages if they might threaten its security. Moreover, no one could deny that, in exceptional circumstances, such a state of emergency, a distinction was made between nationals and aliens. It would therefore be unrealistic not to allow derogation from article 22 of the draft Covenant.

46. For all those reasons his delegation would vote against the Saudi Arabian amendment. He proposed that the vote on the amendment should be postponed until the 1162nd meeting.

47. The CHAIRMAN much regretted that the Saudi Arabian delegation had not seen its way to withdraw its amendment, in spite of the many objections the amendment had aroused and of the appeal made to it for the sake of unanimity. The Committee would then have been able to vote on article 4, to which it had already given more than two meetings. As matters stood, and bearing in mind the Iraqi representative's proposal, he felt bound to postpone the vote on article 4 until the 1162nd meeting.

The meeting rose at 6.15 p.m.