



Kristel Urke

*Head of International Law  
Ministry of Defence*

# A Comparative Approach to Amendments to Constitutional Preambles:

Questions of Amendability, Substance, and Reasons<sup>\*1</sup>

**Abstract.** Preambles of constitutions tend to express general principles, overarching values, and aspirational ideas that underpin the whole constitution. Whether they are deemed legally binding or not, their special character seems to suggest that constitutional preambles should be difficult to amend and that amendment of them should occur only rarely. Attention seldom extends beyond this, however: there is a distinct lack of comprehensive comparative analysis of amendments to constitutional preambles, with these preambles remaining the least researched part of constitutions. The paper represents an effort to fill this void by presenting a comparative empirical analysis of amendments to constitutional preambles around the world. After providing an overview of what sets constitutional preambles apart from the main body of constitutions and analysing their overall amendability, it reports specific results from empirical research into amendments to constitutional preambles, which identified 55 constitutional events occurring since 1949 that have resulted in some change in a constitutional preamble. The paper offers a typology of those amendments, from 42 countries, which involves 20 general characteristic elements of preambles, of which amendments related to political movements, ideology, or ideologues / political leaders were identified as most frequent. Lastly, it directs focus to the socio-political and other factors that lead to amendments in constitutional preambles.

**Keywords:** comparative constitutional law, constitutional preamble, amendment to a constitutional preamble, justiciability of a constitution's preamble, empirical research

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# 1. Introduction to the setting

Preambles of constitutions tend to articulate general principles, supreme values, and aspirational ideas<sup>2</sup> that underpin the entire constitution. This would suggest that preambles should be difficult to amend and be rarely amended in practice. Yet a lack of comprehensive comparative analysis of amendments to constitutional preambles is clearly evident, and preambles remain the least researched part of constitutions to this day. The paper presents a comparative empirical study of amendments to preambles of constitutions, from around the world, informed by data from the Comparative Constitutions Project<sup>3</sup> (CCP).

The study reported upon analysed all amendments occurring; importantly, it was not limited to those constitutions currently in force or to a specific span of time, apart from that for which records are available. The aim behind this paper is a fourfold one:

- 1) to ascertain whether preambles are legitimately amendable;
- 2) to provide an overview of amendments made to constitutions' preambles;
- 3) to explain the similarities and differences among the amendments made;
- 4) to undertake to identify the reasons for adopting amendments to constitutional preambles.

For the purposes of the study, a preamble, whether separated out specifically as a preamble or not, is understood as a preface or introductory part of a constitution that follows the title of the constitution and precedes the constitution's first substantive paragraph. In essence, the paper focuses on preambles of constitutions, which are deemed to be integral to a constitution, not merely preambles to constitutions, elements that cannot be regarded as fundamental parts of a constitution, e.g. mere general introductory words or statements preceding the main body of a constitution are not taken into account. The delimitation of focus confines the scope also to the preambles of main constitutional documents – that is, the work did not include analysis of preambles of other constitutional acts or of acts amending a constitution. All amendments analysed were made to constitutions through a formal amendment procedure; in contrast, instances wherein adjustment to a preamble or the addition/repeal of one occurred in the process of a constitutional replacement and cases of a supreme court publishing a novel interpretation to certain provisions of the preamble are not considered here. It is worth mentioning, however, that in the course of conducting the study it was evident that states in quite a few cases have adopted a new constitution while applying the preamble from a previous constitution verbatim<sup>4</sup>. This phenomenon and the reasons behind it could be an interesting topic for future studies.

The first major section of this paper provides a framework for understanding the distinguishing character of constitutional preambles and examining their amendability. In pursuit of this aim, the discussion considers prior studies and analyses of constitutional preambles, just as much as supreme courts' and constitutional courts' decisions, from around the globe. Then, Section 3 provides an overview and analysis of the empirical data covering amendments to preambles as collected for the purposes of this paper. That discussion is followed by an effort to explain what brings about these amendments: the reasons behind amending a constitutional preamble. Finally, the conclusion provides the key 'take-aways' from the paper.

## 2. The role of constitutional preambles

### 2.1. The importance and common elements of constitutional preambles

Although the preambles of constitutions remain the least analysed part of constitutions, there do exist some reports on in-depth comparative studies conducted to classify constitutional preambles into distinct types and to identify common elements of preambles and their significance in constitutions. Some of the more comprehensive comparative research into the nature and elements of preambles has been undertaken

<sup>2</sup> Wim Voermans, Maarten Stremmer, and Paul Cliteur, *Constitutional Preambles: A Comparative Analysis* (Edward Elgar 2017) 80. – DOI: <https://doi.org/10.4337/9781785368158.00010>.

<sup>3</sup> Comparative Constitutions Project, 'Informing Constitutional Design' <<https://comparativeconstitutionsproject.org/>> accessed on 30 June 2024.

<sup>4</sup> This phenomenon has received brief analysis from Heino Nyssönen and Jussi Metsälä, 'Highlights of National History? Constitutional Memory and the Preambles of Post-Communist Constitutions' (2020) 21(3) *European Politics and Society* 323, with regard to some Eastern European countries that adopted a new constitution after the collapse of the Soviet Union but used the preamble of the constitution that was in force before the occupation verbatim. – DOI: <https://doi.org/10.1080/023745118.2019.1645425>.

by Voermans, Stremmer, and Cliteur<sup>5</sup>; Justin Frosini<sup>6</sup>; Ginsburg, Foti, and Rockmore<sup>7</sup>; Ummareddy and Alam<sup>8</sup>; and Liav Orgad<sup>9</sup>. A look at their studies helps illustrate the special character of constitutional preambles, what distinguishes them from the body of constitutions.

The study by Voermans et al., which analysed 190 constitutions, identified 158 that have preambles<sup>10</sup>, which suggests that it is quite common for constitutions to feature a preamble. Per the report on these scholars' study, the likelihood of a constitution having a preamble is connected to the year in which the constitution was enacted. Most constitutions that have a preamble were put in place in the time since the beginning of the 20th century, and the highest number of constitutions with preambles comes from the period between 1990 and 1999<sup>11</sup>. Frosini has pointed out that one of the justifications for having preambles is to isolate the main body of the constitution from expression of certain – often overarching – political, philosophical, and social principles<sup>12</sup>. Relative to the body of the constitution, preambles indeed tend to articulate broader principles, values, philosophical ideas, ideologies, etc. This sense was confirmed in the study by Voermans et al., who found that preambles usually set out the values of the state considered supreme and refer to aspirations that typically lack precision<sup>13</sup>. In further characterisation, Frosini and Lapa pointed out that 'the constitutional preamble is an essential part of the Constitution which establishes the historical moment of [the] Constitution's adoption and serves as a tool for interpretation for key issues related to the nation itself'<sup>14</sup>.

Scholars of comparative constitutional studies have endeavoured to classify constitutions by type through distinct characteristics of preambles. One of the most commonly employed approaches is to consider the length of the preamble – i.e., to group preambles into long and short ones (and sometimes also preambles of 'in-between' extent).<sup>15</sup> This manner of distinction does not allow any ready conclusions with regard to the actual substance of the preamble, though.

The most typical substantive elements of preambles have been found to be references to the constituent power, national sovereignty, the rule of law, democracy, human dignity, fundamental rights and freedoms, equality, national history, ideology, and religion or secularism<sup>16</sup>. Sometimes, constitutional preambles refer to historical or religious figures also (as in the cases of Brunei, China, Fiji, and Greece) or make foreign-policy statements (with Brunei's and Iraq's exemplifying this)<sup>17</sup>, with the latter often including promises of resolving conflicts by peaceful means<sup>18</sup>. Other countries refer to instruments of international law (specifically, human-rights instruments) (e.g., Cameroon and Congo), declarations of independence (e.g., Armenia, Haiti, Ukraine, and Vietnam), other domestic law (e.g., Bahrain), territorial identity/integrity (e.g., Estonia), and/or the form of the state and form of government<sup>19</sup>. Some of the most fascinating declarations present in preambles, however, are the ones involving explanations of some national creed; aspirations for the future; and the society's supreme goals, which might be related to justice, fraternity, economic aims, or

<sup>5</sup> Voermans, Stremmer, and Cliteur (n 2).

<sup>6</sup> Justin Orlando Frosini, *Constitutional Preambles: At a Crossroads between Politics and Law* (Maggioli 2012) (*At a Crossroads*); Justin Orlando Frosini, 'Constitutional Preambles: More Than Just a Narration of History' (2017) 2 *University of Illinois L Rev* 603. – DOI: <https://doi.org/10.2139/ssrn.3516805>.

<sup>7</sup> Tom Ginsburg, Nick Foti, and Daniel Rockmore, '“We the Peoples”: The Global Origins of Constitutional Preambles' (2014) 46 *George Washington Intl L Rev* 305. – DOI: <https://doi.org/10.2139/ssrn.2360725>.

<sup>8</sup> Neha Ummareddy and Aliket Alam, 'What Do Preambles Do? A Study of Constitutional Intent and Reality' (2021) 9 *Studies in Indian Politics* 221. – DOI: <https://doi.org/10.1177/232102302111042990>.

<sup>9</sup> Liav Orgad, 'The Preamble in Constitutional Interpretation' (2010) 8 *Intl J of Constitutional L* 714. – DOI: <https://doi.org/10.1093/icon/mor010>.

<sup>10</sup> Voermans, Stremmer, and Cliteur (n 2) 13.

<sup>11</sup> *Ibid* 17–19.

<sup>12</sup> *At a Crossroads* (n 6) 23.

<sup>13</sup> Voermans, Stremmer, and Cliteur (n 2) 80.

<sup>14</sup> Justin Orlando Frosini and Viktoriia Lapa, 'The Historical and Legal Significance of Constitutional Preambles: A Case Study on the Ukrainian Constitution of 1996' in Francesco Biagi, Justin O Frosini, and Jason Mazzone (eds), *Comparative Constitutional History, Volume 1: Principles, Developments, Challenges* (Brill 2020) 85. – DOI: [https://doi.org/10.1163/9789004435315\\_005](https://doi.org/10.1163/9789004435315_005).

<sup>15</sup> See, for example, Voermans, Stremmer, and Cliteur (n 2) 22–24; *At a Crossroads* (n 6) 29–31; Ginsburg, Foti, and Rockmore (n 7) 314–15.

<sup>16</sup> Voermans, Stremmer, and Cliteur (n 2) 26–29.

<sup>17</sup> Ginsburg, Foti, and Rockmore (n 7) 315, 317.

<sup>18</sup> Orgad (n 9) 717.

<sup>19</sup> *At a Crossroads* (n 6) 31–33.

even objectives related to happiness and well-being<sup>\*20</sup>. These can convey great insight revealing something of the core philosophy of the country. When compared to the main body of a constitution, preambles manifest a plain, solemn, ceremonial, and timeless character<sup>\*21</sup> that is oftentimes intended to inspire the country's subjects<sup>\*22</sup>. Sometimes preambles point to or recount extraordinary circumstances in which the constitution came into being (Cambodia, Congo, and Portugal offer examples)<sup>\*23</sup>.

Considering what a preamble of a constitution does, Orgad identified four key functions: educational (and, indeed, preambles frequently get cited in educational and public arenas), explanatory (setting forth reasons for the constitution's enactment), formative (both explanation and formation of national identity), and legal purpose<sup>\*24</sup>. Orgad also offered a classification of preambles into the ceremonial-symbolic (preambles that are persuasive, symbolic, and general rather than holding legal force), interpretative (those designed for guiding interpretation of the body of the constitution whenever doubts arise), and substantive (legally binding sources of rights and obligations)<sup>\*25</sup>. According to the report on Orgad's study, a preamble might exert either integrative or disintegrative force – i.e., it could hold power to unite a society or could drive it apart<sup>\*26</sup>.

In the realm of ceremonial-symbolic constitutions, the Constitution of the United States (U.S.) is commonly cited for its example of unenforceable declarative constitutional preambles. Joseph Story<sup>\*27</sup> has observed with regard to the U.S. Constitution that the preamble was adopted not as a mere formulary but for solemn promulgation of a fundamental fact, vital to the character and operations of the government. Its aim, accordingly, is to expound the nature, extent, and application of the powers conferred by the body of the Constitution but not substantially to create such powers<sup>\*28</sup>. For examples of substantive constitutional preambles, in contrast, one can turn to the French and Estonian constitutions. The classification into enforceable and unenforceable constitutional preambles is further examined below.

## 2.2. Justiciability of constitutional preambles

Probably the most clear-cut distinction among types of preambles entails classifying them by their justiciability or independent legal value. While the legal value of the 'main body' of a constitution is indisputable, the question of the legal value of a constitutional preamble is nowhere near as self-evident.

Sanford Levinson has pointed out that 'the easiest way to demonstrate the difference between preambles and the main bodies of constitutions, at least in the United States, is by reference to their very different legal statuses'.<sup>\*29</sup> It has additionally been suggested that preambles presumably lack 'the same kind of point that would be attributed to the main body of a written constitution'.<sup>\*30</sup> Although this is true with respect to the Constitution of the U.S. (along with several other countries), some of the world's supreme courts have referred to preambles to national constitutions as sources of law. Among these are the French<sup>\*31</sup> and the Estonian Constitution. One of the reasons for which the preamble of the French Constitution is regarded as justiciable might be that it makes a reference to the Declaration of the Rights of Man and of the Citizen of 1789<sup>\*32</sup> and to the preamble of the French Constitution of 1946<sup>\*33</sup>, both of which feature lists of civil rights

<sup>20</sup> Orgad (n 9) 717.

<sup>21</sup> Voermans, Stremmer, and Cliteur (n 2) 83–84.

<sup>22</sup> Ginsburg, Foti, and Rockmore (n 7) 318.

<sup>23</sup> Voermans, Stremmer, and Cliteur (n 2) 84.

<sup>24</sup> Orgad (n 9) 722.

<sup>25</sup> Ibid 722–31.

<sup>26</sup> Ibid 731.

<sup>27</sup> Joseph L Story, *Commentaries on the Constitution of the United States, Volume I* (Hilliard, Gray, and Company 1833).

<sup>28</sup> Ibid 445.

<sup>29</sup> Sanford Levinson, *Framed: America's 51 Constitutions and the Crisis of Governance* (OUP 2012) 57. – DOI: <https://doi.org/10.1093/acprof:osobl/9780199890750.001.0001>.

<sup>30</sup> Ibid.

<sup>31</sup> Ibid 61.

<sup>32</sup> 'La Déclaration des Droits de l'Homme et du Citoyen' <<https://www.elysee.fr/la-presidence/la-declaration-des-droits-de-l-homme-et-du-citoyen>> accessed on 3 July 2024.

<sup>33</sup> 'Préambule de la Constitution du 27 octobre 1946' <<https://www.conseil-constitutionnel.fr/le-bloc-de-constitutionnalite/preambule-de-la-constitution-du-27-octobre-1946>> accessed on 30 June 2024.

and liberties, alongside some social rights. As rights-related provisions are by nature more justiciable, perhaps it should not come as a surprise that the preamble of the French Constitution is among those preambles deemed justiciable. The justiciability of the preamble of the French Constitution has formed the subject for several in-depth studies by legal scholars<sup>34</sup>. Complementing their work, this paper presents more detailed analysis of the justiciability of the preamble of the Estonian Constitution.

Though quite short, the preamble of the Estonian Constitution<sup>35</sup> makes mention of several substantial principles and aspirational notions, among them the principles of sovereignty, liberty, and the rule of law; aims connected with ensuring peace; and the importance of preservation of Estonian culture and of contributing to the welfare of both present and future generations. What is more, the preamble of the Estonian Constitution is of interest in that it is one of the preambles that have been amended<sup>36</sup>. This history shows us how the Estonian Supreme Court has – on several occasions – applied the constitutional preamble when deciding on the constitutionality of legal acts enacted by Parliament.

The provision of the preamble most commonly appealed to by the Supreme Court of Estonia has been the state's duty to ensure preservation of the Estonian nation and culture. The most frequent context for the Supreme Court's analysis of the duty to preserve these has been *vis-à-vis* the Aliens Act. In this connection, the court found with regard to various fundamental rights arising from the Aliens Act (the right to immigrate to Estonia, a right to permanent residence, etc.) that interference may be justified by the legitimate aim of protecting the values expressed in the preamble of the Constitution.<sup>37</sup> In addition, the Supreme Court has stated that the protection of national identity may serve as justification for interfering with a right to choose a 'foreign-sounding' name<sup>38</sup>.

Furthermore, the Supreme Court employed the preamble of the Constitution for underpinnings when analysing the constitutionality of the European Stability Mechanism in 2012. In that instance, the court paid special attention to the principle of sovereignty and the duty to protect fundamental rights as provided for in the preamble, stating that the obligations arising from the preamble are highly significant<sup>39</sup>.

One of the most unique situations of resorting to that preamble arose in 2020 when the Supreme Court adjudicated a constitutional-review case cohering around the constitutionality of mandatory pension-scheme reform<sup>40</sup>. In that case, the court interpreted future generations' right to social progress and general welfare provided for in the preamble. This marked the first time that the Supreme Court declared explicitly that

the preamble to the Constitution, similarly to other parts of the Constitution, is legally binding and may give rise to direct duties of public authority. One of the functions of the preamble to the Constitution is to determine the main goals of the state.<sup>41</sup>

It is noteworthy that, although the Supreme Court has thus acknowledged that the preamble sets forth the goals of the state and that the preamble is legally binding, the country's highest court is yet to decide a case on the basis of solely the preamble. The preamble of the Constitution has always been applied in conjunction with other articulations of rights, obligations, or principles from the Constitution, although there seems to be nothing to prevent the Supreme Court from basing a judgement on the preamble alone. That said, the preamble as a source of law appears to be taken so far as a complementary and overarching source, rather than a stand-alone legal act. This would seem to run counter to the general statement made by Edmund Randolph (when arguing in support of the position that the preamble to the U.S. Constitution should not be deemed legally binding) that 'the Preamble if it be operative is a full constitution of itself; and the body of the

<sup>34</sup> For instance, see Frosini's *At a Crossroads* (n 6).

<sup>35</sup> That is, the Constitution of the Republic of Estonia (*Eesti Vabariigi põhiseadus*) as adopted on 28 June 1992 (RT I, 15.05.2015, 2).

<sup>36</sup> See annexes 1 and 3 to this article.

<sup>37</sup> RKÜKo 5-18-5, 21.6.2019, para 67, with a translation into English available at <<https://www.riigikohus.ee/en/constitutional-judgment-5-18-5>> accessed on 29 March 2024; RKPJK 5-21-4, 28.9.2021, para 44.

<sup>38</sup> RKPJKo 3-4-1-6-01, 3.5.2001, para 18. Version in English available at <<https://www.riigikohus.ee/en/constitutional-judgment-3-4-1-6-01>> accessed on 29 March 2024.

<sup>39</sup> RKÜKo 3-4-1-6-12, 12.7.2012, para 198. An English-language translation is available at <<https://www.riigikohus.ee/en/constitutional-judgment-3-4-1-6-12>> accessed on 29 March 2024.

<sup>40</sup> RKÜKo 5-20-3, 20.10.2020, available in English translation at <<https://www.riigikohus.ee/en/constitutional-judgment-5-20-3>> accessed on 29 March 2024.

<sup>41</sup> *Ibid* para 60.



Constitution is useless’.<sup>42</sup> Indeed, if the example of Estonia is anything to go by, a preamble being legally binding should only strengthen the body of the constitution, grant greater legitimacy to court judgments, and render it easier for the courts to ensure that the aims behind the constitution truly get protected.

The U.S. Constitution is usually cited as an example of countries whose preamble has no independent legal value. Throughout its existence, the Supreme Court of the U.S. has referred to the preamble to the Constitution in its decisions, as have the supreme courts of several U.S. states.<sup>43</sup> The only U.S. Supreme Court case wherein the preamble was deemed to constitute grounds for establishing that an individual’s rights had been violated was *Jacobson v. Commonwealth of Massachusetts*<sup>44</sup>. From more detail-oriented analysis of court judgements that refer to the preamble of the U.S. Constitution, Frosini found that the U.S. Supreme Court ‘appears to use the “cherry-on-the cake” technique’, wherein ‘the substance of the decision is handed down on the bases of other provisions of the constitution (the “cake”), but then to render its reasoning more convincing it makes reference to the preamble’. He concluded that the preamble ‘is never used by the Federal Supreme Court as a parameter in judicial review of the constitutionality of statute law’ though ‘it often uses the preamble as a way of reinforcing its decisions’.<sup>45</sup>

The Supreme Court of India has undergone an interesting development in the way it understands the role and enforceability of the preamble of the national constitution. In 1960, the Supreme Court of India stated in the *Berubari* case<sup>46</sup> that the preamble is not actually integral to the Constitution and hence is not enforceable in a court of law<sup>47</sup>. Later, however, the Supreme Court of India overruled the *Berubari*-case conclusion, finding in 1973 in the *Kesavananda* case<sup>48</sup> that the preamble may be used for interpretation of ambiguous facets to the Constitution where differing interpretations present themselves. In 1995, that court reaffirmed that the preamble of the Constitution is an integral component of the Constitution, in the case *Union Government vs LIC of India*<sup>49</sup>.

It appears from the foregoing considerations that, while countries differ in the legal value they accord to their constitutional preambles, both legally binding constitutional preambles and preambles not regarded as legally binding get used to strengthen the reasoning of court decisions. Also, as is visible from the example of India, it is possible that a supreme court might change course in this regard as needs dictate, deeming a constitutional preamble non-binding but subsequently altering its view and applying the preamble as binding law.

### 2.3. Amendability of constitutional preambles

On account of the special role of constitutional preambles and their elements identified by legal scholars, the question of whether preambles are or should be amendable arises naturally. Analysis of constitutional provisions that regulate the procedure for amending the constitution (whether as a whole or individual provisions of it) indicates that constitutions can, all in all, be classified into three categories with regard to how they approach the matter of amending the preamble of the constitution.

Firstly, a constitution may be silent on the question of whether the preamble is amendable or what the amendment procedure might be. The corresponding category covers most of the world’s constitutions that have a preamble (e.g., those of Estonia, Germany, India, and the U.S.). If a constitution does not speak to the issue of the amendment procedure connected with the preamble, the procedure accepted is usually the same as that for the main body of the constitution, unless the supreme court of the relevant country has concluded that the preamble of the constitution is non-amendable<sup>50</sup>. Secondly, a constitution might explicitly prohibit amendment of the preamble of the constitution. The only known example of this kind of constitution is the Constitution of Bangladesh, which provides the following:

<sup>42</sup> Levinson (n 29) 60.

<sup>43</sup> See, for example, *Oxley v Department of Military Affairs*, 460 Mich 536, 597 NW2d 89 (1999).

<sup>44</sup> *Jacobson v Commonwealth of Massachusetts*, 197 US 11 (1905).

<sup>45</sup> *At a Crossroads* (n 6) 64.

<sup>46</sup> *The Berubari Union & Exchange of Enclaves v Unknown* (1960) 3 SCR 250.

<sup>47</sup> *Ibid* para 31.

<sup>48</sup> *Kesavananda Bharati Sripadagalvaru & Ors v State of Kerala & Anr* (1973) 4 SCC 225.

<sup>49</sup> *LIC of India v Consumer Education and Research Centre* (1995) 5 SCC 482.

<sup>50</sup> This was the case with India in 1960–73, as discussed further on in the paper.

Notwithstanding anything contained in article 142 of the Constitution, the preamble [...] and the provisions of articles relating to the basic structures of the Constitution [...] shall not be amendable by way of insertion, modification, substitution, repeal or [...] any other means.<sup>\*51</sup>

Curiously, the preamble of the Bangladeshi Constitution was amended in 1976 by the administrator of martial law, with the country's parliament later validating this change as the fifth amendment to the Constitution<sup>\*52</sup>. The third option is for a constitution to include a special provision regulating the details of the amendment procedure applicable to the preamble. Examples from this group of constitutions are the constitutions of Gabon and North Macedonia. The Constitution of North Macedonia is especially interesting in this regard for several reasons. Firstly, the provision pertaining to the procedure for amending the preamble was itself added to the Constitution via a constitutional amendment. Also, said provision was incorporated into the Constitution at the same time as the changes to its preamble. Thirdly, that provision sets forth rules whereby an amendment to the preamble requires the support of a two-thirds majority of the total number of representatives, where the majority of those voting in favour must be representatives who belong to communities not corresponding with most of the population of North Macedonia.<sup>\*53</sup> Hence, the North Macedonian Constitution gives a special role to minority groups in conditions of potentially amending the preamble. That said, this is perhaps a less surprising phenomenon when one factors in the background to the concomitant amending of the preamble of the Constitution of North Macedonia, discussed in more detail in Section 4 of the paper.

While case law addressing the amendability of preambles is scarce, there are supreme courts that have quite prominently analysed the question of amendability of a given constitutional preamble. The Supreme Court of India is one of these. When that court ruled in 1960 that the preamble of the Constitution is not part of the Constitution<sup>\*54</sup> (as discussed above), it produced an interpretation whereby the preamble of the Constitution of India was not amendable. In the follow-up case 13 years later, the Supreme Court noted initially that

[t]he stand taken up on behalf of the respondents that even the preamble can be varied, altered or repealed, is an extraordinary one. It may be true about ordinary statutes but it cannot possibly be sustained in the light of the historical background, the Objectives Resolution which formed the basis of the preamble and the fundamental position which the preamble occupies in our Constitution. It constitutes a landmark in India's history and sets out as a matter of historical fact what the people of India resolved to do for moulding their future destiny. It is unthinkable that the Constitution makers ever conceived of a stage when it would be claimed that even the preamble could be abrogated or wiped out.<sup>\*55</sup>

However, the Supreme Court's opinion in the *Kesavananda* case goes on to examine the possibilities for amendment of the preamble, then presents the conclusion that it all boils down to whether 'by virtue of the amending power the Constitution can be made to suffer a complete loss of identity or the basic elements on which the Constitutional structure has been erected [...] can be eroded or taken away'.<sup>\*56</sup> The Supreme Court thus eloquently articulated the central question that can be deemed to underlie any proposed amendment of a preamble of a constitution: taking into account the special role of preambles in constitutions. It brings to the fore the question of whether it is possible or even allowed to amend the preamble substantively in a way that changes the very fundamentals of the state as set forth in the preamble. The Supreme Court of India stated:

The first thing [...] the people of India resolved to do was to constitute their country into a Sovereign Democratic Republic [...]. The question which immediately arises is whether [...] the amending body [has the power] to take away any of these three fundamental and basic characteristics of our polity. Can it be said or even suggested that the amending body can make institutions created by our Constitution undemocratic as opposed to democratic; or abolish the office of the President and,

<sup>51</sup> Constitution of Bangladesh (*Bangladesher Sambidhāna*) adopted on 16 December 1972, art 7B.

<sup>52</sup> A. Z. M. Arman Habib, 'Primacy and Efficacy of Preamble Propositions in India and Bangladesh: A Comparative Understanding of Interpretative Constitutionalism' (2016) 58 Intl Journal of Law and Management 660, 665. See also Annex 1 to this article. – DOI: <https://doi.org/10.1108/ijlma-08-2015-0047>.

<sup>53</sup> Constitution of North Macedonia (*Устав на Република Северна Македонија*) adopted on 17 November 1991, amendment XVIII.

<sup>54</sup> *Berubari* (n 46) para 31.

<sup>55</sup> In the *Kesavananda* case (n 48) para 553.

<sup>56</sup> *Ibid* para 554.

instead, have some other head of the State who would not fit into the conception of a “Republic”? The breadth to the power claimed on behalf of the respondents has such large dimension that even the above part of the preamble can be wiped out[,] from which it would follow that India can cease to be a Sovereign Democratic Republic and can have a polity denuded of sovereignty, democracy and Republican character.\*<sup>57</sup>

Indian jurist Nani Palkhivala presented an opinion in this case that the preamble should be treated as permanent and unamendable. This would be justified by the fact that the preamble sets out the objectives behind the Constitution and, therefore, any tampering with that expression of objectives would destroy the identity of the Constitution\*<sup>58</sup>.

In the end, the Supreme Court of India found that the parliament holds the power to amend the Constitution but not in such a way as to cause damaging or destruction of the structure and identity of the Constitution. In ruling thus, the Supreme Court indicated that Parliament has an implicitly limited amendment power whereby it is precluded from undermining the identity of the Constitution or any of its basic structure, inclusive of that provided for in the preamble – in fact, especially the latter. That view was further confirmed in the *Minerva Mills* case\*<sup>59</sup>.

As is explicated below\*<sup>60</sup>, the preamble of the Constitution of India was amended three years after handing down of the above-mentioned ruling. That amendment, which added the words ‘socialist’, ‘secular’, and ‘integrity’ to the preamble, was highly controversial, as some jurists found these changes to alter the Constitution’s basic structure, which had been declared non-amendable in the *Kesavananda* case.\*<sup>61</sup> However, the Indian Supreme Court has not judged the constitutionality of this adjustment to the preamble, and it has remained in force.

Similarly to the Supreme Court of India, the Supreme Court of Ukraine addressed the question of amendability of the preamble when analysing the constitutionality of amending the preamble of the Ukrainian Constitution in 2018. The Supreme Court deemed the main question to be about whether the amendments proposed compass abolition or restriction of human and citizens’ rights and freedoms, are oriented toward the liquidation of Ukraine’s independence, or violate the territorial indivisibility of Ukraine.\*<sup>62</sup> The court found no such violations, and Parliament adopted the amendment at issue. However, six judges did pen opinions separate from the majority judgement, with Judge Oleksandr Lytvynov stating:

Since the preamble also mentions the main values of the constitutional order of Ukraine, it could be considered [...] an element of the constitutional order. [C]hange of the constitutional order of Ukraine could be done only by the people of Ukraine and cannot be usurped by its state bodies. Moreover, [...] amendments to the parts of the Constitution which change the constitutional order should be approved by [...] Ukrainian referendum. Therefore, the constitutional preamble could be changed only following [...] approval by [...] all-Ukrainian referendum.\*<sup>63</sup>

Judge Mykola Melnyk, in turn, stated in his separate opinion that the preamble of the Constitution fixed a particular historical moment at its adoption and that Parliament by amending the preamble would be meddling with history. He also concluded that amendment inherently reduces the preamble’s role and influence, in that the preamble is employed in Constitution-interpretation work, particularly for understanding the originally intended meaning of the Constitution\*<sup>64</sup>. Amongst the Supreme Court judges of Ukraine, views on whether the preamble is part of the Constitution and by which means, if any, its

<sup>57</sup> Ibid para 555.

<sup>58</sup> Ibid para 1351.

<sup>59</sup> *Minerva Mills Ltd & Ors v Union of India & Ors* (1980) 1 SCR 206.

<sup>60</sup> See Section 3 and also Annex 1 to this article.

<sup>61</sup> Kakoli Nath, ‘42nd Amendment of Indian Constitution’ (*Finology Blog*, 3 January 2023) <<https://blog.finology.in/Legal-news/42nd-amendment-of-indian-constituion>> accessed on 29 March 2024.

<sup>62</sup> Opinion of the Constitutional Court of Ukraine in a Case Initiated by the Verkhovna Rada of Ukraine As to Providing an Opinion with Regard to the Compliance of the Bill on Amendments to the Constitution of Ukraine (As to the Strategic Course of the State in Acquiring Full-Time Membership of Ukraine in the European Union and NATO) with Articles 157 and 158 of the Constitution of Ukraine’ no 3-v/2018 (22 November 2018) <[http://www.ccu.gov.ua/sites/default/files/docs/3\\_v\\_2018.pdf](http://www.ccu.gov.ua/sites/default/files/docs/3_v_2018.pdf)> accessed on 29 March 2024.

<sup>63</sup> In case 3-v/2018, separate opinion of Constitutional Court Judge OM Lytvynov, para 1 <<https://zakon.rada.gov.ua/laws/show/nf03d710-18/print>> accessed on 29 March 2024.

<sup>64</sup> In case 3-v/2018, separate opinion of Constitutional Court Judge MI Melnyk, para 2 <[http://www.ccu.gov.ua/sites/default/files/docs/3\\_v\\_2018\\_2.pdf](http://www.ccu.gov.ua/sites/default/files/docs/3_v_2018_2.pdf)> accessed on 29 March 2024.



emendation should be permitted clearly diverged<sup>65</sup>. Most did, however, find the preamble of the country's Constitution to be amendable, though on condition of several limitations, mentioned above.

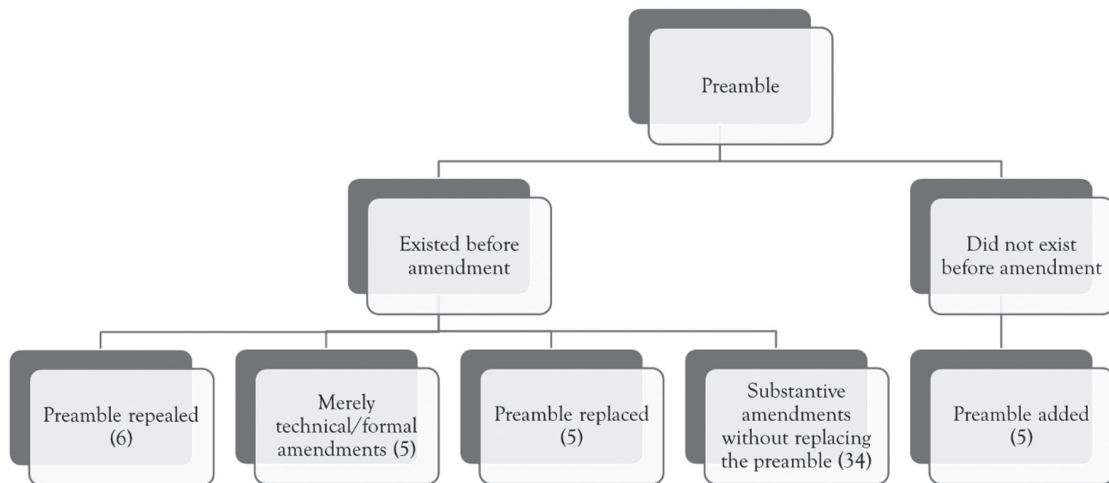
### 3. Data on amendments to constitutional preambles

#### 3.1. The data collected, in a nutshell

The CCP data provided a solid starting point for examining distinct elements of amendments to constitutional preambles. Still, it must be noted that these data might not offer a complete picture of all amendments made to preambles, throughout history in all the countries of the world.

Pulling data by using the variables used by the CCP to track elements of constitutions yielded an overview of instances wherein a particular variable was detected in one year but, after amendment to a constitution took place, not in another. According to the dataset analysed, 55 constitutional events since 1949, in 42 countries, have resulted in some sort of change in a constitutional preamble. As Figure 1, below, illustrates, the analysis identified five ways in which a constitutional amendment might bring about a change in the preamble:

- 1) an existing preamble may be repealed;
- 2) the pre-existing preamble may be replaced;
- 3) merely formal or technical amendments are made to an existing preamble;
- 4) there are substantive amendments to an existing preamble; or
- 5) a preamble is added to a constitution that had none prior to the amendment.



**Figure 1.** Means of amending a constitutional preamble (the typology and the numbers come from the author's analysis of preambles)

From taking into account that there are 195 sovereign countries recognised by the United Nations (UN) at the moment<sup>66</sup> and only 42 of these have ever amended their constitutional preambles (in total, 55 times), it can be concluded that amendments to preambles are rare. The rarity of such amendments is cast into even sharper relief by comparison with changes to the larger constitution – e.g., Brazil experienced 105 amendments to its Constitution between 1988 and 2018<sup>67</sup>, and India's Constitution was amended 105 times between 1951 and 2021<sup>68</sup>, with only one of the latter constitution's amendments including any adjustment to the preamble.<sup>69</sup>

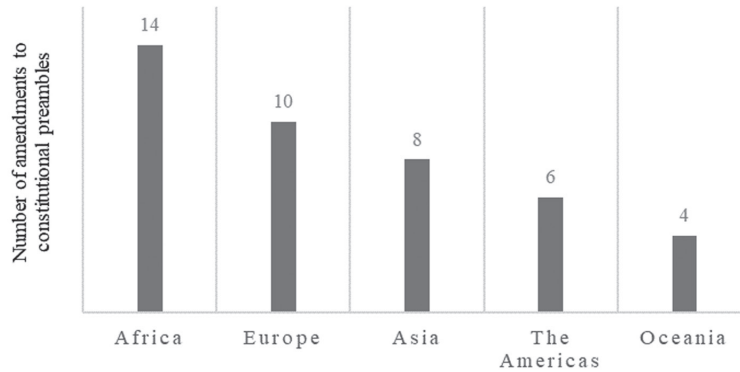
<sup>65</sup> See also Frosini and Lapa (n 14) 83.

<sup>66</sup> There are 193 UN member states and are two entities with Observer State status (Palestine and Vatican City). See United Nations, 'Member States' <<https://www.un.org/en/about-us/member-states>> and 'Non-Member-States' <<https://www.un.org/en/about-us/non-member-states>> both accessed on 29 March 2024.

<sup>67</sup> Juliano Zaiden Benvindo, 'Brazil's Frenetic Pace of Constitutional Change under Bolsonaro: Why and What Next?' (ConstitutionNet, 26 August 2022) <<https://constitutionnet.org/news/brazils-frenetic-pace-constitutional-change-under-bolsonaro-why-and-what-next>> accessed on 29 March 2024.

<sup>68</sup> Wikipedia, 'List of Amendments of the Constitution of India' <[https://en.wikipedia.org/wiki/List\\_of\\_amendments\\_of\\_the\\_Constitution\\_of\\_India](https://en.wikipedia.org/wiki/List_of_amendments_of_the_Constitution_of_India)> accessed on 29 March 2024.

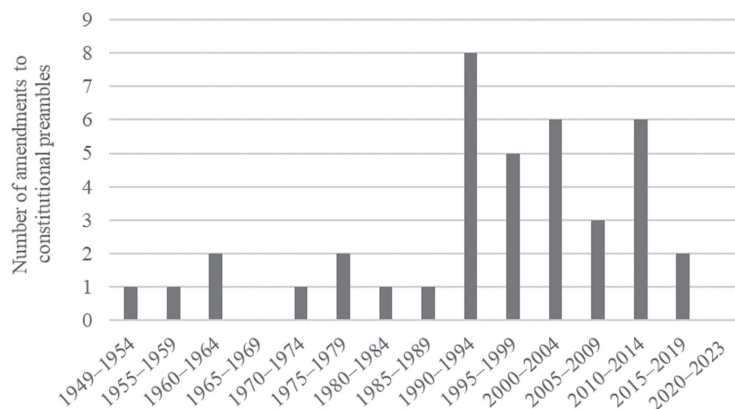
<sup>69</sup> See Annex 1 to this article.



**Figure 2.** Amendments to constitutional preambles from 1949–2023, broken down by region, from data retrieved from the CCP’s repository

Figure 2 shows that most of the amendments to preambles have been carried out in Africa, where 14 countries have amended their constitutional preambles (namely, Burkina Faso, Burundi, Cameroon, Cape Verde, the Central African Republic, Côte d’Ivoire, the Democratic Republic of Congo, Djibouti, Egypt, Gabon, Madagascar, Mozambique, Tanzania, and Togo), followed by Europe, with 10 countries (Bulgaria, Estonia, Finland, France, the German Democratic Republic, Germany, Latvia, North Macedonia, Turkey, and Ukraine); Asia, with eight (Bangladesh, China, India, Iran, Lebanon, Nepal, North Korea, and Pakistan); the Americas, with six countries (Argentina, Belize, Cuba, Haiti, Nicaragua, and Panama); and Oceania, with four (the Marshall Islands, New Zealand, Samoa, and Tonga).

Annex 1 to this paper provides the full table of data on substantive amendments to constitutional preambles. The table in Annex 1 (and subsequently tables in Annexes 2 and 3) does not include data on cases of amendments by which the preamble was simply repealed, a preamble was added for the first time, or merely technical or formal alterations were made (such as a change in the name of the state, an example of which would be the amendment made to the preamble of the Constitution of Samoa in 1997). It does, however, consider instances in which the preamble was replaced in its entirety (from Burundi, Cape Verde, Latvia, Tanzania, and Turkey in 1987)<sup>70</sup>: analysis of preamble replacements attests that, even when the preamble was completely replaced, some elements remained the same as in the previous preamble. These cases hence provide room for comparisons between the superseded and new preambles.



**Figure 3.** A temporal breakdown of substantive amendments to constitutional preambles and preamble replacements from 1949–2023, using source data from the CCP’s repository

In all, 29 states have amended the preamble to their constitution substantively or completely replaced it, in connection with 38 constitutional events. When one excludes replacement of preambles from consideration, 25 states have implemented substantive amendments to their constitutional preamble, in 33 instances.

<sup>70</sup> See this paper’s Table 1.

According to the data available, the first substantive amendment to a constitution's preamble was adopted in 1949, in Argentina. As Figure 3 shows graphically, there were relatively few substantive preamble amendments or replacements – only nine – to preambles prior to the 1990s. The years since 1990 have seen a total of 29 substantive preamble amendments or replacements. Most of those occurred between 1990 and 1994. These statistics are consistent with the trends identified by Voermans et al., according to whom there were relatively few constitutions with preambles prior to 1940 and most constitutions with preambles were enacted between 1990 and 1999<sup>71</sup>. The latest preamble amendment identified from the data took place in 2019 in Ukraine.

The analysis revealed that those states having amended their constitutional preamble are more likely to amend it again. This conclusion is supported by the fact that, out of the 42 countries that have amended the preamble to their constitution, eight have done so repeatedly (namely, Argentina, Burkina Faso, China, Gabon, Germany, Panama, Turkey, and Ukraine).<sup>72</sup> The state manifesting the most amendments to its constitutional preamble is China, with a total of four amendments, followed by Burkina Faso with three.

**Table 1.** Instances of non-substantive amendments to constitutional preambles in the data

Country	Preamble repealed (6)	Preamble added (6)	Preamble replaced (5)	Merely technical/formal changes made (5)
Bulgaria, 1990	+			
Burundi, 1996			+	
Cape Verde, 1992			+	
Djibouti, 2010		+		
Egypt, 1980		+		
Finland*	+			
Iran, 1989	+			
German Democratic Republic, 1974	+			
Germany, 1976				+
Latvia, 2014			+	
Lebanon, 1990		+		
Mozambique, 1980		+		
Nicaragua, 1995				+
North Korea, 1998		+		
Panama, 1978				+
Panama, 1983	+			
Panama, 1994		+		
Samoa, 1997				+
Tanzania, 1984			+	
Tonga, 1988				+
Turkey, 1987			+	
Ukraine, 1991	+			

\* The preamble was repealed between 1933 and 1991 but the exact year could not be identified based on the available data

Table 1 presents data on constitutional events in conjunction with which the preamble was repealed or one was added to the constitution, along with clarification of constitutional events in the course of which the preamble was replaced or amendments of a merely technical or formal nature were made. In six instances, the preamble was repealed while the rest of the constitution (either amended or not) remained in force

<sup>71</sup> Voermans, Stremmer, and Cliteur (n 2) 18.

<sup>72</sup> See both Table 1 and Annex 1 to this article.

(these occurred in Bulgaria, Finland, the German Democratic Republic, Iran, Panama, and Ukraine); a preamble was added to the constitution in six cases (in Djibouti, Egypt, Lebanon, Mozambique, North Korea, and Panama); there were five instances wherein a preamble was replaced (in Burundi, Cape Verde, Latvia, Tanzania, and Turkey); and five instances of implementing technical or formal amendments were found (affecting Germany, Nicaragua, Panama, Samoa, and Tonga). The last of these phenomena (technical/formal amendments) occurs in, for instance, scenarios of the preamble getting restructured (e.g., in Germany in 1976), dates of constitutional amendments being added to the preamble (as in Tonga), or a change in the country's name meriting amendments to the preamble (seen in Samoa).

There are no clearly identifiable characteristics shared by the constitutional preambles that have experienced amendments. In some cases, a short preamble was replaced by a long or intermediate-length preamble (one could cite Latvia as an example), while in others a substantive preamble was replaced by a purely descriptive preamble focusing mainly on the history of the state or the circumstances that led to the adoption of the constitution (visible in Cape Verde's case). In some instances, the preamble amended was part of a relatively new constitution; for example, the Constitution of Burkina Faso was adopted in 1991 and its preamble was amended in 1997, in what was the first amendment to that country's constitution. In other instances, it was part of an older constitution (the preamble of the 1987 Constitution of Haiti was amended in 2012, a preamble was added to the 1926 Constitution of Lebanon in 1990, etc.). There have been cases wherein replacement of the entire constitution followed swiftly on the heels of amendments to the preamble (e.g., the preamble of the Constitution of Madagascar was amended in 1970, an interim constitution entered force in 1972, and in 1975 a new Constitution of Madagascar was adopted). In one country – Panama – the preamble of the Constitution was repealed (in 1983) but a preamble was later made part of the Constitution once again (in 1993)<sup>73</sup>. There was also a case of amendments to the constitutional preamble not 'sticking': because of political changes from 1940s–1950s Argentina, the earlier Constitution, with the corresponding preamble, was reinstated seven years after changes were implemented. This illustrates well that, even in the context of a single constitution, repealing or amending the preamble need not have a 'permanent' effect.

## 3.2. Elements subject to substantive amendments

Annex 1 provides a detailed picture of substantive amendments to constitutional preambles. Since every preamble has a wording and style all its own, translations from languages different from the language of the constitutional analysis differ, and further factors preclude set phrasings, the study clustered amendments to preambles into 20 categories with broad wording. As the annex illustrates, the element most frequently subject to amendment is text related to political movements, ideologies, or ideologists / political leaders. Most amendments of these elements involve references to certain liberation movements, socialism, liberalism, or specific ideologues or leaders (such as Marx or Mao Zedong). The research pinpointed 13 such amendments to constitutional preambles. Examples of this class of amendment are an amendment made to the preamble of the Indian Constitution in 1976 whereby a reference to socialism was added and all of the amendments to the Chinese Constitution, the most recent of which was in 2018, when the following phrase was added to the preamble: 'Scientific Outlook on Development, and the Xi Jinping Thought on Socialism with Chinese Characteristics for a New Era.' Amendments of this sort are usually closely related to amendments regarding past events that contributed to the shaping of the nation or that led to the adoption of its constitution. Amendments connected with past events of such a nature are rather frequent, with the analysis identifying nine of them (e.g., by Burundi, Latvia, and Turkey).

Annex 2 gives a breakdown of amendments related to customs, culture, and values. Language pertaining to these has been subject to amendment in connection with 11 constitutional events. This class of elements exhibits several noteworthy aspects. Most of the amendments entail only references to general cultural and spiritual values (e.g., in Belize, Côte d'Ivoire, and North Macedonia) or general moral values and ethics (e.g., in Burkina Faso and Turkey), but the amendment to the Estonian Constitution in 2007 and the 2014 preamble replacement for the Latvian Constitution featured more specific references to protection of the national language. Latvia is especially noteworthy with regard to references to cultural and other such values, in that Latvia's single replacement of the preamble, in 2014, managed to add distinguishable references to

<sup>73</sup> See Table 1.

no fewer than five distinct aspects of culture or values to the preamble. Also, as Annex 2 clarifies, with two constitutional events, Argentina added a reference to the protection of culture and later decided to remove that reference.

The data showed also that amendments to constitutional preambles frequently add or remove mention of specific rights, liberties, obligations, or guarantees. Analysis identified 10 such instances. As is evident from Annex 3 to this paper, which presents a breakdown of these rights, most instances of a preamble amendment pertaining to rights, liberties, or other guarantees consisted of amendments made with regard to a right to life, identity, dignity, integrity, or humane treatment (as witnessed in the cases of Belize, Burkina Faso, Cameroon, Côte d'Ivoire, and Tanzania). In only one instance was an element of this type removed from the preamble; in all other cases, it was added to the preamble.

With the same frequency, amendments to statements about rights and liberties made in the preamble have dealt with non-discrimination and equality of treatment, usually giving special emphasis to gender equality and protection of women. The study identified five such instances. An example is visible in the 2012 amendment to the preamble of the Constitution of Haiti, which added a reference to gender equality while also amending said preamble and the rest of the Constitution such that references in the third person employ both the pronoun 'he' and 'she'. Similarly, Burkina Faso added the following to the preamble of its constitution in 2012: 'RECOGNIZING that the promotion of gender is a factor for realization of the equality of law between men and women of Burkina Faso' (capitalisation in the original). It is noteworthy also that nearly all of the 11 states that have made rights-related amendments to their preamble are African countries. This is most likely indicative of the state of developing democracies in that region. Other amendments connected with rights and liberties have been centred on issues such as indigenous and other minority rights (visible in Belize, Cameroon, and Latvia), the right to education (explicated in Belize and Cameroon), and the right to gainful employment (articulated in Belize, Madagascar, and Tanzania), but mentions of newly recognised rights such as a right to a healthy environment have emerged too (at least in Cameroon).

In a parallel with rights and liberties, there have been 10 instances wherein an amendment to a constitutional preamble has involved some reference to specific nationalities living in the territory of the state; a list of the territories held by the state; or integration of regions, territorial integrity, or unity. A good example from this group of amendments is the amendments implemented for the preamble of the German Constitution in 1990 and 1992, when the unification of Germany required changes to the list of *Länder* set forth in the preamble of the Constitution.

References to independence, Independence Day, sovereignty, self-determination, and the like have been subject to amendment nine times. An example is the Central African Republic's adjustment of its constitutional preamble in 1960, with which the only amendment consisted of adding the date of independence to the preamble. References to liberty, justice, and equality of the specific nation and other peoples of the world have also been the stuff of amendments to constitutional preambles, on nine occasions.

Several other elements have been addressed in amendments of constitutional preambles over the years: references to the peaceful resolution of conflict and international co-operation, national defence, the environment, liberal democracy, pluralism, general welfare and the social welfare state, separation of powers, the rule of law, religious affiliations/denominations or secularism, future generations, further development of the state, and the authority with competence to adopt the constitution.

## 4. How to explain the phenomenon – a look behind the scenes

It is apparent from the analysis conducted that amendments to constitutional preambles are not commonplace. Where amendments to preambles do get made, they tend to be brought about for reasons that – when the amendments to constitutional preambles analysed in this study are situated in a broader historical context – can be classified into four categories:

- 1) political (leadership) change in the relevant country;
- 2) a transformative event having occurred that has shaken the society's foundations;
- 3) emergence of a value that merits affording of special protection;
- 4) technical/legal requirements necessitating an amendment to the preamble.



## 4.1. Political change – new directions to leadership

Probably the most frequent reason for amending a constitutional preamble is change in the political leadership of a country that results in broader ideological and/or organisational changes in that country. This is consistent with the fact that most amendments to preambles have referred to ideology, mentions of political leaders, etc.

Often, amendments to preambles are adopted in order to promote democracy. A good example of this is the 1992 amendment to the 1980 Constitution of Cape Verde. That year witnessed amendment to the preamble of the Constitution as part of the country's transition from a one-party autocracy to a multi-party democracy<sup>74</sup>. This amendment changed the preamble from a substantive one into a completely descriptive preamble that explains the need for and background to implementing a multi-party system in Cape Verde. Another example comes from the change made in 1996 to the preamble of the Constitution of Cameroon, which was adopted at a time when the country appeared to be transitioning from autocracy to embracing constitutional democracy<sup>75</sup>. The amendment entailed various references to democratic principles, from the protection of minority rights, due process, and equality to the right to a healthy environment.

Amendments to preambles have functioned for an alternative purpose too: stirring a country from democracy toward autocracy. In 2002, Togo amended its constitution to abolish presidential term limits and alter the presidential-election process<sup>76</sup>. One of the various changes was removal of a paragraph from the preamble that referred to the country's past struggles with a monolithic, totalitarian regime, replacing this with a reference to creating a path toward progress.

In 1976, Indira Gandhi's majority approved a controversial amendment to the preamble of the Constitution of India so as to insert, alongside the notions of the 'secular' and 'unity', the expression 'socialist' into the preamble, thereby providing a legal basis for the pursuance of the leader's left-wing economic reforms<sup>77</sup>. The explanatory memorandum to the act of amendment explained that the addition was to 'spell out expressly the high ideals of socialism, secularism and the integrity of the nation, to make the directive principles more comprehensive and give them precedence over those fundamental rights which have been allowed to be relied upon to frustrate socio-economic reforms for implementing the directive principles'.<sup>78</sup> This amendment sparked debate because it was implemented in a time of emergency, extended also to the main body of the Constitution to such an extent that it has been called a mini-constitution, and was argued to have touched the basic structures of the Constitution<sup>79</sup> – which were deemed non-amendable per the Supreme Court decision in the *Kesavananda* case (as discussed above). Some scholars, on the other hand, have found that the amendment was focused merely on 'playing politics'; after all, the Constitution was socialist and secular already, before the amendments<sup>80</sup>.

Among the other cases one could cite as examples of constitutional preamble amendments due to political change are the alterations brought to the preamble of the Constitution of Argentina in 1949 and 1956. Early in his first presidential term, Juan Perón strongly advocated constitutional change, a goal he ultimately reached in 1949<sup>81</sup>. The Constitution of Argentina was substantially amended then, with amendments to the preamble being among the alterations implemented. These amendments incorporated references to national defence and to protection of culture but also to a 'socially just' and 'economically free'

<sup>74</sup> Princeton Constitution Writing & Conflict Resolution project, 'Country Reports, Cape Verde' <<https://pcwcr.princeton.edu/reports/capeverde1992.html>> accessed on 29 March 2024.

<sup>75</sup> Laura-Stella Enonchong, 'The Paradox of Constitutional Transformation under the 1996 Constitution of Cameroon' (IACL-AIDC Blog, 4 October 2021) <<https://blog-iacl-aidc.org/2021-posts/2021/10/4/the-paradox-of-constitutional-transformation-under-the-1996-constitution-of-cameroon>> accessed on 29 March 2024.

<sup>76</sup> Kangnikoé Bado, 'Togo's Popular Protests and Demands for Constitutional Reform' (*ConstitutionNet*, 25 September 2017) <<https://constitutionnet.org/news/togos-popular-protests-and-demands-constitutional-reform>> accessed on 29 March 2024.

<sup>77</sup> *At a Crossroads* (n 6) 139.

<sup>78</sup> 'A Needless Controversy' (*The Hindu*, 2 February 2015, updated 16 November 2021) <<https://www.thehindu.com/opinion/editorial/Editorial-A-needless-controversy/article59784410.ece>> accessed on 29 March 2024.

<sup>79</sup> Nath (n 61).

<sup>80</sup> Krishnadas Rajagopal, 'Debates Show Why the Preamble's Original Text Left Out the Two Words' (*The Hindu*, 29 January 2015, updated 16 November 2021) <<https://www.thehindu.com/news/national/Debates-show-why-Preamble%E2%80%99s-original-text-left-out-the-two-words/article60332943.ece>> accessed on 29 March 2024.

<sup>81</sup> Lucretia L Ilsley, 'The Argentine Constitutional Revision of 1949' (1952) 14 *The Journal of Politics* 224, 225. – DOI: <https://doi.org/10.2307/2126520>.

country<sup>\*82</sup>. However, the Constitution of 1853 was re-established by the military after the ousting of Perón in 1955<sup>\*83</sup>. Hence, in 1956 the preamble, with the prior wording, was reinstated.

From taking those examples into account, it can be concluded that those amendments to preambles that are brought about in connection with political changes in the country are generally applied to start transforming the nation-state and steer people's behaviours in a certain direction. Amendments of this type seldom codify a new social reality brought into being; rather, they articulate aspirations for the new reality sought.

## 4.2. Transformative events

The second driving force behind amendments to constitutional preambles, transformative events, could arise in association with the end of a civil war or insurgency, the total collapse of some previous regime, accession to an influential international organisation, etc. One finds examples of this in the 1990 and 1992 amendments to the German Constitution due to the reunification of Germany from 1989–1991. These amendments were ushered in through the need to modify the above-mentioned list of German federal states, or *Länder*, each of which was named in the preamble. Similarly, once Ukraine had regained independence after the collapse of the Soviet Union, it repealed the preamble of its 1978 Constitution, at the heart of which was exclusively the idea of Ukraine being part of the Soviet Union. This change came swiftly in 1991.

In more recent years, the 2019 amendment to the preamble of the 1996 Ukrainian Constitution was drafted and adopted in light of the aim of the country's president, who was near the end of his tenure, to form a constitutional framework that should allow Ukraine to join the EU and NATO<sup>\*84</sup>. Becoming a member of such large-scale, influential international organisations can definitely be deemed transformative events in the process of a country's development and history. For creation of a constitutional framework that decisively enabled Ukraine to join the two organisations, it was deemed necessary to express the European identity of Ukrainians and the 'irreversibility of the European and Euro-Atlantic course of Ukraine'<sup>\*85</sup>. Although the proposed amendments to the preamble were indeed adopted, Ukraine has not yet become a member of those organisations. Therefore, the preamble changes carried out can be viewed as preparation for a transformative event, laying the groundwork for steering the country in a desired direction.

Among other instances of constitutional preamble amendments clearly stemming from transformative events are North Macedonia and Lebanon. The former amended the preamble of its Constitution in 2001 after the conclusion of the Ohrid Agreement<sup>\*86</sup>, which brought an end to an armed conflict between the Albanian National Liberation Army and the security forces of North Macedonia. The aim for this amendment was to grant, in compliance with the Ohrid Agreement, greater constitutional recognition and protection to Albanian minorities living in North Macedonia. Lebanon's addition of a preamble to its constitution in 1990 had a similar purpose. Prepared in the wake of the end to the Lebanese civil war and conclusion of the Taif Accords<sup>\*87</sup>, the preamble set in place then emphasised democratic principles and non-segregation among people.

All in all, amendments of constitutional preambles that have their roots in transformative events seem generally to be prompted by a need to form constitutional underpinnings to frame a certain change in society: one that has already taken place or is clearly desired as the course for the future.

<sup>82</sup> Ibid.

<sup>83</sup> Mugambi Jouet, 'The Failed Invigoration of Argentina's Constitution: Presidential Omnipotence, Repression, Instability, and Lawlessness in Argentine History' (2008) 39(3) *University of Miami Inter-American Law Review* 409, 434.

<sup>84</sup> Frosini and Lapa (n 14) 81–82.

<sup>85</sup> Constitution of Ukraine (*Конституція України*) as adopted on 28 June 1996, preamble.

<sup>86</sup> Framework Agreement (Ohrid Agreement) (13 August 2001) <<https://peacemaker.un.org/fyrom-ohridagreement2001>> accessed on 29 March 2024.

<sup>87</sup> Taif Accords (22 October 1989) available via <<https://peacemaker.un.org/lebanon-taifaccords89>> accessed on 29 March 2024.

### 4.3. Values that merit greater constitutional protection

In other cases, amendments to constitutional preambles represent an outgrowth of the aim to give a particular value stronger legal protection. Good examples are evident in amendments made to the preamble of the Estonian and the French Constitution. These amendments, made in 2007 and 2005, respectively, both added only one specific thing to the preamble. In the case of Estonia, it was a reference to the protection of the Estonian language. The explanatory memorandum linked to the legal act amending the Estonian Constitution explains the need for the amendment in the following words:

The importance of the Estonian language as a manifestor of Estonian culture and national identity is invaluable [...]. Our care for our beautiful language needs a considerably stronger symbolic and legal guarantee. The constitutional appreciation for the Estonian language would significantly increase the prestige of learning the national language and of its daily use among Estonian residents whose mother tongue is another language.<sup>\*88</sup>

Before the amendment, Section 6 of the Constitution of Estonia already provided for Estonian being the official language of Estonia. However, for the above-mentioned reasons it was considered necessary to afford the language even more constitutional protection. Jurists concluded that enshrining this in the preamble of the Constitution should afford Estonian the greatest protection in that sense.

As for the amendment to the preamble of the Constitution of France, it added a reference to the French Charter for the Environment of 2004. The objective with this amendment, implemented in 2005, was to give that charter constitutional status<sup>\*89</sup>. The specificity of preamble amendments anchored in the aim of granting a particular value constitutional protection is highlighted even more strongly by the fact that, three years later, a special committee analysing the French Constitution's preamble found it advisable not to amend the preamble but to exploit the richness of the existing preamble text<sup>\*90</sup>. It could be argued in this light that a country approaching its constitutional preamble in such a manner would amend the preamble only in those truly exceptional cases wherein the current preamble does not address a specific right, value, etc. that absolutely needs constitutional protection.

Both of these amendments were guided by a decision to, as the country paves the way forward, pay greater attention to and better protect something vital – the official language of the country in one case and the environment in the other. Accordingly, those amendments established the legal basis for future policy decisions and were necessary for influencing the actions of people living in the respective country.

### 4.4. Technical–legal reasons

In some instances, constitutional preambles have been amended for what seem to be merely technical legal reasons. For example, in 1997 Samoa amended the preamble of its national constitution (and the main body of the Constitution) in response to the fact that the country had borne the official name 'Western Samoa'; the Constitution needed to be amended in such a way as to omit the word 'Western' preceding 'Samoa', throughout the document. Similarly, the Central African Republic amended the preamble of its Constitution in 1960 simply to add a reference to the national Independence Day there.

In some cases, such as those of Gabon in 1997 and Germany in 1976, preambles of constitutions have been amended for what seem to be entirely structural reasons. There are no substantive changes, and the alterations apparently involve purely rearranging textual elements. That is, paragraphs are restructured, some elements of the preamble are rephrased, etc. There is no clearly identifiable broader need for such amendments.

<sup>88</sup> Amending Act of the Constitution of the Republic of Estonia (*Eesti Vabariigi põhiseaduse muutmise seadus*) 974 SE, 1.

<sup>89</sup> Voermans, Stremmer, and Cliteur (n 2) 115.

<sup>90</sup> Ibid.

## 5. Conclusions

Previous research into constitutional preambles shows that those consisting of more than declarative or technical prefaces express supreme values and guiding principles for the Constitution and for the country. Therefore, it is far from surprising that the data analysed in the course of this study revealed that amendments to constitutional preambles are infrequent. The study pinpointed, in all, only 55 constitutional events in which some element(s) of the preamble of a constitution experienced change, of whatever sort.

Classifying amendment of preambles into five categories – cases in which a preamble was repealed, one was added to the Constitution, an existing preamble was replaced, merely technical or formal changes to the preamble were made, and cases wherein substantive amendments were made – enabled finer-grained analysis. So did temporal analysis, which revealed that most of the amendments to preambles have been made since the 1990s (which is consistent with the fact that most constitutions with a preamble have been adopted since 1990) and – interestingly – that if a state has amended its constitutional preamble, it is more likely to perform such amendment in future than other countries are.

Another key finding from the analysis is that the element most commonly subject to change in constitutional preambles is related to ideology, political movements, and political leaders or ideologists, while the class of element subject to amendment second most frequently is linked to customs, traditions, culture, and values, followed by elements related to rights, guarantees, and obligations. Also frequently changed are elements related to specific/other nationalities living in the territory of the country, specification of the country's territories or regions, and its integrity.

As for more overarching patterns, on the basis of the preambles analysed in the course of this research, no clearly identifiable common characteristics of the constitutional preambles that have been subject to amendments were distinguishable. Analysis of amendments to constitutional preambles did reveal several general patterns, though. Firstly, many amendments are closely related to changes in the society and its leadership: most commonly, amendments to preambles of constitutions are brought about by a leadership change intended to rouse the country politically and/or ideologically for new directions.

Some countries' history has brought large-scale transformative events into play that have culminated in a need to amend the constitutional preamble. Sometimes, a very specific amendment is made to the preamble of a constitution, when this is deemed necessary for giving more protection or attention to a singular value (as in the example of the national language of Estonia and of France's attention to the environment). The study found that it is possible also for an amendment to a preamble to arise from some technically related legal factor.

Among the most important findings is that in the instances of transformative events and amendments anchored in technical-legal reasons, amendments to constitutional preambles tend to codify the socio-political changes already wrought in the society. In contrast, in circumstances wherein amendments are brought about by leadership change or newly recognised values that merit greater constitutional protection, the aim for the amendment is usually to inspire actions by the society and guide political decisions in a particular direction.





### Annex 2. Amendments pertaining to customs, culture, and values

Country	Morality and ethics (2)	Customs and traditions (1)	Cultural and/or spiritual values (3)	Protection of culture (3)	Protection of language (2)	Harmony (2)	The nation-state (1)	Christian values (1)	European culture (1)	European identity (1)
Argentina, 1949				+						
Argentina, 1956			-							
Belize, 2001			+							
Burkina Faso, 2012	+	+								
China, 2018					+					
Côte d'Ivoire, 2012			+							
Estonia, 2007					+					
Latvia, 2014				+	+		+	+		
North Macedonia, 2001			-							
Turkey, 1987	+									
Ukraine, 2019						+				+

The table is based on the author's analysis of preambles retrieved from the CCP's repository.

### Annex 3. Amendments related to rights

Country	Protection of minorities and indigenous peoples (3)	The right to life, integrity, identity, dignity, and humane treatment (5)	Presumption of innocence, fair-trial / due process rights (4)	Equality of treatment, incl. women's protection and non-discrimination (5)	A right to education (2)	Reference to a set of revolutionary rights (1)	General reference to liberties, and guarantees (3)	The right to vote (1)	A right or obligation to work (3)	Freedom of worship (2)	Freedom of opinion (1)	Freedom of assembly (1)	Freedom of travel (1)	A right to a healthy environment (1)
Belize, 2001	+	+		+	+			+	+					
Burkina Faso, 1997		+			-									
Burkina Faso, 2012				+										
Cameroon, 1996	+		+	+	+					+				+
Cape Verde, 1992							+							
Côte d'Ivoire, 2012							+							
Haiti, 2012				+										
Latvia, 2014	+	+					+							
Madagascar, 1970									+					
Tanzania, 1984		-		-					-					-

The table presents analysis based on preambles retrieved from the CCP's repository.