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CONTENTS

Page

Agenda item 48:
Draft International Covenants on Human Rights (continued)
Proposal to include an article on the rights of the child in the draft Covenant on Civil and Political Rights (continued) 267

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.1174) (continued)

PROPOSAL TO INCLUDE AN ARTICLE ON THE RIGHTS OF THE CHILD IN THE DRAFT COVENANT ON CIVIL AND POLITICAL RIGHTS (continued)

1. Mr. RAZGALLAH (Tunisia) said that his delegation did not share the doubts expressed by others on the advisability of a new article on the rights of the child, as proposed in the eight-Power text (A/C.3/L.1174). The article would be a valuable addition, both to the Declaration of the Rights of the Child (General Assembly resolution 1386 (XIV)) and to the draft Covenants themselves. In the sphere of civil and political rights, it would match the provisions of article 10, paragraph 3 of the draft Covenant on Economic, Social and Cultural Rights, which called for special measures to protect children against economic exploitation, and its article 14, paragraph 2, which defined the right to education. The need for special safeguards and care, including appropriate legal protection, was also referred to in the third preambular paragraph of the Declaration of the Rights of the Child.

2. His delegation appreciated the humanitarian motives underlying the proposal for the additional article and fully supported the modern idea that the care of children was not the sole responsibility of their parents, but should be among the foremost concerns of society. Since the attainment of independence, the Tunisian Government had taken charge of large numbers of abandoned, destitute and delinquent children. Certain legal problems relating to the protection of children had been settled by the institution of public guardianship and by a law regulating adoption.

3. While approving of the substance of the eight-Power proposal, his delegation favoured the removal of all ambiguity in the text. Thus the words "without any discrimination" in paragraph 1 were quite acceptable, in so far as they related to sex, race, language and religion, but they might give rise to difficulty where the rights of children born out of wedlock were concerned. Natural children were entitled to full social protection, but their right to membership in the family, and above all to inheritance could not be treated in the vague general framework of "special protection ... without any discrimination". In that matter, each country's traditions, religion and legal system had to be taken into account.

4. Similarly, the question of nationality was complex and controversial. Although the intention, which was to overcome the disadvantages of statelessness, was commendable, the provision, in paragraph 2, of the right to nationality would be very difficult to apply, in view of the great diversity of national laws on that mattter. Unlike the problem of the legal status of children born out of wedlock, the question of statelessness was one of international private law and might therefore be settled by international agreement, provided that a sufficiently flexible formula could be found. Subject to the reservations he had made concerning the lack of clarity in the text, he was prepared to vote in favour of the proposed new article.

5. Mrs. MANTZOULINOS (Greece) fully agreed on the need to protect children against the many dangers referred to in the Polish representative's statement (1262nd meeting). Most of those matters, however, were not covered by the general formula employed in paragraph 1 of the proposed new article. Moreover, if they were to be spelt out, it would be found that they did not concern civil and political rights. Juvenile delinquency, for example, required special measures under the heads of education, mental health, social defence and special judicial procedures. Unlike certain other matters, such as the minimum age of workers and night work by young persons, which had been dealt with by ILO conventions, the control of juvenile delinquency hardly lent itself to regulation by international agreement. Another problem, the abuse of parental authority, was adequately covered by the law in her own country, which provided for judicial intervention, if necessary, and she was sure that similar laws existed in other countries. With regard to welfare services for children, few Governments would require an international convention to tell them how to protect orphans and abandoned children. The question of children born out of wedlock might well be the subject of an international convention, under which States would provide special social services for such children and facilitate parental recognition by suitable legislation.

6. The proposed new article, however, could not be said to serve the cause of children's rights, since it failed to specify what measures States were required to adopt in order to provide the "special protection" to which paragraph 1 referred. The human rights

set forth in the draft Covenant on Civil and Political Rights had been capable of precise definition, and the obligations undertaken by States to safeguard those rights should be spelt out with equal clarity. When the Third Committee had discussed the inclusion of an article on the rights of the child at the seventeenth session, her delegation had argued (1174th meeting) that adequate provision for the protection of children was made in the draft Covenant on Economic, Social and Cultural Rights, and more particularly in article 10, where the necessary measures were set forth in great detail. Paragraph 1 of the proposed new article added nothing of value to those provisions. As regards paragraph 2, the question of the right to a name was one of domestic procedure, while the right to a nationality would require the elaboration of an international convention. Her delegation accordingly did not regard the new article as suitable for inclusion in the draft Covenant on Civil and Political Rights.

7. Mr. CAPOTORTI (Italy) thought there was general agreement on the need to protect the rights of children with regard to maintenance, labour and education, which were covered by the draft Covenant on Economic, Social and Cultural Rights. Presumably, therefore, the sponsors of the eight-Power proposal were not thinking of any further measures in the economic and cultural sphere, but of protection, under private law, in matters such as recognition of paternity, guardianship and succession. Those problems, and more particularly, the right to succession, although arising at birth, did not end with childhood. The question of affiliation had been discussed in previous debates and had proved so difficult that it had not been taken up again. The new article did not make it clear what legislative measures States were called upon to take in order to provide the protection required. The words "without any discrimination" were perhaps intended as a reference to affiliation, and the "protection" to be provided by the family perhaps included the right to succession. If so, detailed provisions suitable for incorporation in the private law of States should have been included.

8. The question of the right to a name, referred to in paragraph 2 of the proposed new article, had not so far caused much difficulty. Perhaps the sponsors had intended to refer to registration formalities. In that case, they should have said clearly: "Every child shall be registered at birth". The question of nationality—which, again, did not apply only to the child—would give rise to considerable difficulty. He very much doubted whether all States would be prepared to alter their national laws in that matter. It was significant that no country had yet ratified the Convention on the Reduction of Statelessness (A/CONF.9/15).

9. Although the humanitarian motives underlying the eight-Power proposal were highly commendable, he feared that the text as now drafted would serve no useful purpose.

10. The CHAIRMAN suggested that the Committee might wish to vote on the general question whether a new article on the rights of the child should be included in the draft Covenant on Civil and Political Rights.

11. Mrs. RAMAHOLIMIHASO (Madagascar) congratulated the sponsors of the eight-Power proposal on the efforts to prepare a more acceptable text than that considered at the seventeenth session (A/C.3/L.1014 and Rev.1). She was particularly grateful that her delegation's suggestion for the inclusion of a reference to the family had been adopted. Since the new article was to be inserted before article 22, which described the family as "the natural and fundamental group unit of society", it was logical for it to call first and foremost for the protection of the child by the family. Her Government's conviction that the family rather than society was primarily concerned with the care of children had recently been re-affirmed by an ordinance, the first article of which specified that children occupied a privileged place in the family. As originally drafted at the seventeenth session, the new article had set forth various forms of discrimination against children in great detail. Her delegation had suggested a more condensed version, which had, however, been considerably less brief than the final formula, "without any discrimination", adopted by the sponsors in order to meet the objections of some delegations. She did not wish to upset that compromise by formally proposing an amendment to paragraph 1, but she pointed out that legislative measures to safeguard the integrity of the family should not be regarded as discrimination within the meaning of that paragraph. Her country's legislation provided for the special protection of children born out of wedlock, but the relevant provisions were so framed that they did not disrupt family unity.

12. The rights referred to in paragraph 2 of the proposed new article were of great importance. In the past, some children born in certain special circumstances had not been given a name, but merely a number. It was essential to specify the right of every child to a name. The sponsors had done well, too, to include the right to a nationality in the article. In order to avoid possible conflicts of jurisdiction, it might be advisable to provide expressly that children, on reaching maturity, should have the right to confirm or to change their nationality in accordance with the principles set forth in the Universal Declaration of Human Rights.

13. The proposed new article supplemented the measures for the protection of children set forth in the draft Covenant on Economic, Social and Cultural Rights and would fill a gap in the present draft Covenant, which contained no other provisions relating specifically to children. It set forth new civil rights likely to improve the psychological conditions which were so essential for the harmonious development of personality. Subject to the reservations she had outlined, her delegation was prepared to support the eight-Power proposal.

14. Mrs. PESIC-GOLUBOVIC (Yugoslavia) stated that her delegation was again co-sponsoring the proposal to insert a supplementary article on the rights of children in the draft Covenant on Civil and Political Rights, because children could not be identified with adults whose rights were covered by the Universal Declaration of Human Rights and by the draft Covenants. If the younger generation were given conditions for development, which were based on respect for the child's personality and from which all discrimination was excluded, it would be easier to implement the draft Covenant now under discussion. It was increasingly imperative to define the commitments of society with regard to children, since the family was no longer capable of meeting their growing needs. Because both parents were frequently employed, society had to be more concerned with the care and protection of children. Although the family

remained the basic unit in which the foundations were laid for the child's future development, there was a greater need for society and the State to give the family the maximum assistance. Consequently, her delegation considered that the present draft Covenant should contain a special article on the rights and protection of children. By presenting a compromise text, the co-sponsors had tried to find common ground for agreement.

15. Mr. UNG MUNG (Cambodia) said he had no objection to the proposed new article on the rights of the child. The private law and civil code of Cambodia protected legitimate and illegitimate children alike, and there was no discrimination against the latter. Both parents were obliged to maintain children born out of wedlock, and in the matter of succession the law was even more explicit: all children were entitled to an equal share of the estate. The intention was to protect the equal rights of all children from their birth. Where the child's right to assume a name and a nationality was concerned, the laws of Cambodia contained specific provisions.

16. His delegation would vote for the eight-Power proposal, for the problem of protecting the child had not yet been solved adequately in all countries.

17. Mr. DAYRELL DE LIMA (Brazil) stated that even the most cautious delegations should not raise objections to the proposed text, which was less ambitious than the original draft presented by the Polish delegation (A/C.3/L.1014) at the seventeenth session. The lack of any reference in the draft Covenant to nationality and name was an omission and therefore the new article should be approved. It might be argued that its provisions affected the rights of the family; yet Brazil, a country of traditional cultural influences, did not find any contradiction in supporting the rights of children born out of wedlock. The child was the hope of the future and should be specially protected. The Third Committee was endeavouring to lay the foundations of a social order free from the prejudices which had caused so much suffering in the past. History had shown that to err on the side of generosity was the right course.

18. Mr. OSTROVSKY (Union of Soviet Socialist Republics) strongly supported the proposed new article. Most delegations considered that the article was important and that it should be included. Last year's draft had admittedly been more detailed and perhaps stronger, but it had caused difficulties. The article was now formulated in a more general form and, although from the strictly legal point of view there might be some gaps, they were of minor importance.

19. With reference to the Chairman's suggestion that the Committee should first decide on the desirability of including an article on the rights of the child, he felt that delegations could express their view on the matter by voting on the text before them.

20. Miss OROZCO (Mexico) remarked that it was natural that there should be controversy on the proposed new article, because domestic laws differed from country to country, but it was for the Committee to overcome those differences. Her delegation felt that special mention of the protection of children was justified in the draft Covenant, because childhood was the time when the greatest attention should be paid to family, social and educational aspects, and future development in all fields of human activity depended upon the protection which States gave to children. An example of the protection of children in Mexico was the care taken to avoid any indication of illegitimacy in the birth certificate, thus ensuring that all children started life on an equal footing, from the legal point of view. She supported the eight-Power proposal.

21. Mr. ELUCHANS (Chile) considered that it would be advisable to produce a convention on the rights of the child and Chile would co-sponsor a proposal to that effect. While recognizing the need for a specific provision on the subject in the draft Covenant, he was not in agreement with the form and substance of the proposed new article. It was not suitably worded for a convention, having been copied literally from the Declaration of the Rights of the Child. How was a rhetorical statement to be translated into legal action? He also had serious reservations about the substantive aspects of the article. The expression "special protection", in paragraph 1, had no precise legal meaning, while the phrase "without any discrimination" was capable of two interpretations. It might mean that protection was to be given to all, or it might also mean that identical and equal protection was to be given, for instance, to legitimate and illegitimate children. The second interpretation would imply identical civil and other rights, and would cause immense difficulties for many of the Member States. If that was indeed the meaning of the phrase, his delegation would vote against the proposal.

22. With reference to paragraph 2, he agreed with the Italian representative that the right to a nationality did not belong to children alone. Even if a reference to that right was particularly appropriate in the proposed context because, ideally, a person should be granted a nationality from his birth, the conclusion might be drawn that the text in question was an exhaustive statement of the rights of the child, whereas in fact children possessed other equally important rights.

23. If the Chairman's suggestion was followed, he would vote for the inclusion of an article on the rights of the child; if there was general support for the inclusion of such an article, his delegation would then suggest that a working group should be established for the purpose of drafting a text more representative of the views expressed during the debate. It would be unwise to proceed immediately to the vote on the eight-Power text, since many delegations, including his own, would have to vote against it.

24. Mr. BEAUFORT (Netherlands) considered the eight-Power proposal to be a great improvement on the much more comprehensive and over-ambitious text submitted by Poland in the Commission on Human Rights (see E/3743, para. 167). However, his delegation did not favour the inclusion of any article on the rights of the child in the draft Covenant, the purpose of which was to guarantee the rights set forth therein to all members of the human family without exception. Although children undoubtedly needed special safeguards because of their physical and mental immaturity, it would be inconsistent for the General Assembly to insert a special article concerning their rights, while omitting any reference to other groups in need of special protection, such as the aged or the mentally handicapped. Adoption of such an article would be prejudicial to the general character and structure of the draft Covenants.

25. As regards the specific proposal before the Committee, his delegation agreed with the broad sentiment expressed in paragraph 1, but the drafting was not sufficiently precise for inclusion in an international convention, and the term "society", for instance, had no specific legal meaning. Paragraph 2, by restricting the right mentioned therein to children, detracted from the right of all persons to a name and a nationality.

26. Mr. BAROODY (Saudi Arabia) said that the suggestion, that the Committee should vote on the question whether an article on the rights of the child should be included in the draft Covenant, might lead to a lengthy procedural debate, as had occurred in the case of the draft Declaration on the Elimination of All Forms of Racial Discrimination. Furthermore, Member States would be deprived of their right to submit proposals on matters which they considered should be included in a multilateral treaty. It would be better to decide the issue by voting in due course on the particular text which might emerge as the result of amendments to the eight-Power proposal.

27. He agreed with some earlier speakers that, if the rights of a special category of persons were singled out for mention in the draft Covenant, there were many such categories which might claim similar treatment. He would not oppose the inclusion of an article on the rights of the child on that ground, however, because children needed special protection simply in order to survive. He would prefer to regard paragraph 1 of the eight-Power text as an affirmation of duties and obligations towards children. The words "without any discrimination" caused some difficulty to his delegation; they obviously referred, not to discrimination on grounds of sex, colour or ethnic origin, but to differences in the treatment of legitimate and illegitimate children, and in an international agreement the intention of the authors should be clearly spelt out. Some countries feared any specific reference to equality of rights as between legitimate and illegitimate children, lest their laws on inheritance should be affected; but the cruellest hurt suffered by children born out of wedlock was the mere fact of being called illegitimate, with the implication that they did not belong either to the family or to society.

28. He would not submit a formal amendment, but suggested that the Committee might make it clear that it was concerned with the inherent dignity of the human person, and not with inheritance laws, by deleting the words "without any discrimination" and inserting a new paragraph 2, reading:

> "The State shall ensure that the child born out of wedlock shall be treated with the dignity which is his due as a human being."

The existing paragraph 2 might be amended to read:

> "Every child shall have the right from his birth to a name and the right to apply for a nationality if he lacks one"

in order to overcome the difficulties of States which did not grant their nationality to children born of stateless parents.

29. Mr. OSTROVSKY (Union of Soviet Socialist Republics) strongly urged the Chairman not to press his suggestion for a preliminary vote, which was contrary to United Nations principles and practice, to his own ruling at the 1221st meeting of the Committee, and to the ruling of the President of the General Assembly at the seventeenth session (1167th plenary meeting) in connexion with the draft Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages. His delegation did not wish to precipitate a long procedural discussion, but it could not yield on a matter of principle.

30. He proposed that a working group should be established, as suggested by the Chilean representative, in order to prepare a text which would take into account all the views expressed; pending submission of the working group's draft, the Committee could proceed to discuss the proposals for an article on freedom from hunger.

31. The CHAIRMAN said that the only reason for his suggestion had been that some delegations, while supporting the idea of including an article on the rights of the child in the draft Covenant, had not been satisfied with the eight-Power text, and a negative vote by those delegations might have given the impression that they were opposed to the inclusion of any article on the subject. There was no rule requiring the Committee to vote on a proposal; at the seventeenth session, for instance, it had merely transmitted the proposals on the subject now under discussion to the Commission on Human Rights, without voting on them. In the circumstances, however, he suggested that an informal working group, consisting of the sponsors of the proposal in document A/C.3/L.1174 and other interested delegations, should endeavour to produce a text which might be generally acceptable, and that, if the revised text was not ready in time for the 1264th meeting, the Committee should meanwhile take up proposals concerning an article on freedom from hunger.

It was so decided.

The meeting rose at 1.25 p.m.

Litho in U.N. 77301—March 1964—2,225