

United Nations
**GENERAL
ASSEMBLY**

EIGHTEENTH SESSION

Official Records



**THIRD COMMITTEE, 1265th
MEETING**

*Friday, 15 November 1963,
at 3.20 p.m.*

NEW YORK

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*Chairman: Mr. Humberto DIAZ CASANUEVA
(Chile).*

AGENDA ITEM 48

Draft International Covenants on Human Rights (A/2907 and Add.1-2, A/2910 and Add.1-6, A/2929, A/5411 and Add.1-2, A/5462, A/5503, chap. X, sect. VI; E/2573, annexes I-III; E/3743, paras. 157-179; A/C.3/L.1062, A/C.3/L.1174/Rev.1) (continued)

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

1. Mr. GHORBAL (United Arab Republic) introduced the revised text of the article on the rights of the child (A/C.3/L.1174/Rev.1). He emphasized that one of the changes made in paragraph 1 defined the extent of protection by specifying that every child should have such measures of protection as well required by his status, while another consisted in listing the various grounds for discrimination to which the child as such might be subject.

2. The addition of a provision regarding the registration of the child immediately after birth seemed to fill a gap.

3. The last change, relating to the exceedingly complex question of nationality, was intended to make the provision applicable under all legal systems.

4. While the new text had not commanded the unqualified support of all members of the working group, some of whom had even questioned the advisability of including an article on the rights of the child in the draft Covenant on Civil and Political Rights, he nevertheless hoped that the Committee would adopt it.

5. Mrs. SUMARI (Indonesia) stressed that her delegation was fully convinced of the need to protect the rights of the child and therefore of the appropriateness of including a special provision on those rights in the draft Covenant on Civil and Political Rights. The difficulty her delegation had experienced with regard to the original draft submitted during the seventeenth session by Poland and Yugoslavia (A/C.3/L.1014) had related to the provision dealing with the status of children born out of wedlock. Her Government, anxious as it was to protect public morals, was, like many

other Governments, unable to accept a provision giving equal rights to legitimate and illegitimate children and undermining the sacred institution of the family. She was therefore pleased to see that the sponsors of the proposed article and the members of the working group has arrived at a compromise on a text which had already been a compromise as compared with the original draft. Unfortunately, the wording was rather vague, but those who had opposed the inclusion of the article in the draft Covenant should no longer have any objection to it, and her delegation was ready to endorse it.

6. Mr. MONOD (France) remarked that his delegation like many others, felt that a convention of the type the Committee was concerned with should deal with man, not at any given moment of his existence, but abstractly, as a subject of law. His delegation had none the less taken account of the proposal to include in the draft Covenant a separate article on the rights of the child. As the Indonesian representative had said, the compromise text was deliberately vague. Paragraph 2 was unexceptionable, but that could not be said of the others.

7. Referring to the mention of the family, society and the State, he remarked that the last two cases were relatively simple, since it was the duty of the public authorities to protect minors, but that the first case presented certain difficulties. Although the laws of all countries imposed on the family the general obligation of ensuring the welfare of minors, the moral treatment of minors within the family was a human problem over which the law had no control. Moreover, the wording used towards the end of paragraph 1, "such measures of protection as required by his status", while ingenious, might result in the very discrimination which all members sought to eliminate since, as soon as the protection of a right was qualified, it became relative. He also wondered whether the term "national origin" was used in its broader or in its legal sense; if the latter were the case, the revised text would present the same difficulties as the earlier draft.

8. Commenting on paragraph 3, which stated that every child had a right to acquire a nationality, he stressed that difficulties arose where there was a conflict of laws. Because of such a conflict in the laws of two countries, a child could have double nationality, but he could also have none and thus become stateless.

9. The relevant obligations of the State should therefore be spelled out. Where a child was born in a given territory, the problem was relatively simple, in that he could opt for the nationality of his country or birth or, if he was stateless, he could apply for naturalization—although that did not settle the matter, since each State was free to grant or to refuse naturalization. He drew attention to the problem of the child born in the territory of one State and residing in the territory of another, who might lose his nationality of origin

without acquiring that of the second State. Paragraph 3 of the revised article raised a special problem in the case of the stateless child, since the right of every child to acquire a nationality was not recognized in all legal systems.

10. Unless the Committee attached great importance to paragraph 3, therefore, he thought that the article and the draft Covenant itself would be clearer if that paragraph were deleted.

11. The CHAIRMAN asked the chairman of the working group on the article on the rights of the child to explain the word "status" in paragraph 1. Did it simply refer to the child as a developing human being or did it also have a legal meaning?

12. Mr. GHORBAL (United Arab Republic) replied that the term had been chosen to replace the words "special protection" in the original text, which had been criticized as being too vague. It might have been better to expatiate on the word "status" by listing all possible cases, such as, for example, status as a minor, a citizen, an alien or a physically or mentally handicapped child, but there might well have been omissions, and the members of the working group had agreed that the term "status" applied both to the child's legal status and to his physical immaturity. While the text was perhaps somewhat loose, it was nevertheless of positive value and it certainly did not endanger the rights of the child.

13. Mr. HERNDL (Austria) said that, like the sponsors of the proposed article, his delegation wanted the child to enjoy special protection. For over a century Austrian legislation had been concerned with improving the lot of children. He wondered, however, whether the draft Covenant on Civil and Political Rights was an appropriate instrument since, as the Commission on Human Rights had emphasized at its nineteenth session, the inclusion of an article on the child might raise legal difficulties by drawing distinctions among human beings (see E/3743, para. 164). Nevertheless, if the inclusion of such an article was agreed to in principle, he would not oppose it, but he would then propose that the words "the society" in paragraph 1 of the revised text should be replaced by "appropriate social institutions", as the Italian representative had suggested. Only social institutions could be held to a legal obligation.

14. The question of nationality, which was highly controversial from the legal point of view, was not mentioned in any other article of the draft Covenant. In his view, the right of the child to a nationality went beyond the special protection which the child should enjoy; it was an aspect of the problem of nationality which was governed by national law and could not be solved in an instrument such as the draft Covenant. Nevertheless, his delegation found the present wording of paragraph 3 far more acceptable than the original draft.

15. Mr. CAPOTORTI (Italy), who had been one of the working group, acknowledged that its text was, like most compromise formulae, not entirely satisfactory.

16. The main difficulty encountered by the group consisted in defining the meaning of "special protection", for, although no one could deny on commonsense grounds that the child was entitled to special protection, yet, when an article for that purpose had to be written into the Covenant—a legal task—it became essential to define what such protection implied at civil law. Some members of the group had proposed a

list of the rights of the child corresponding to his family's duties with regard to him at civil law. Those rights, however, were all economic and social. At civil law—as the group's discussions had brought out—there was no such thing as a child as such, but only a minor, by reason of his state of disability. The word "status", in the original English text, expressed that concept better than the word "condition" in the French text, which should perhaps be replaced by the word "état". The "measures of protection" referred to in paragraph 1 therefore corresponded to the definite civil law concept of measures for the protection of persons under legal disability, meaning the protection of minors by their parents, adopted children by their adoptive parents, wards by their guardians, and abandoned children by the public assistance institutions. It had proved impossible, in the working group's debate, to go beyond that strictly legal notion of protection, since any attempts to widen it led straight back to economic and social rights.

17. On paragraph 3 he shared the doubts expressed by the French representative, for the statement that every child had the right to acquire a nationality meant that every State owed the duty to grant its nationality to any child in any circumstances, and it seemed difficult to insert a provision of that kind, concerning such a delicate problem, in an instrument intended to establish new rules in the internal law of States.

18. To sum up, the working group could do no more than endeavour, in difficult conditions, to draft a compromise text associating the humanitarian motive of the sponsors of the draft article with the concepts of civil law.

19. Mr. MONOD (France) thanked the Italian representative for so clearly stating the difficulties encountered by the working group and its reasons for drafting the text before the Committee. However, he considered that the ambiguity of, at any rate, the French phrase "qu'exige sa condition" could not be allowed to remain in paragraph 1 of the draft article. As the Italian representative had stated, the word "état" would be a more exact translation of the word "status", but unfortunately that word had, in addition to its legal sense, a general meaning which would create fresh confusion.

20. He felt that the last words in the paragraph added nothing to the obligations imposed by its provisions on the family, society and the State. Consequently he considered that the last two lines of the paragraph might be modified to read: "the right to adequate protection by his family, society and the State"; or else paragraph 1 could be modified to read: "Every child shall have, without any discrimination..., the right to protection by his family, society and the State". Admittedly that was a self-evident statement, but for the great majority of States it applied to most of the rights set forth in the Covenant.

21. U MYAT TUN (Burma) stated that he wished first of all to express his regret that, on such important subjects as covenants concerning human rights, the Committee should proceed with its work so rapidly that delegations were obliged to decide on proposals which sometimes they did not have before them until a few hours before the vote.

22. Burma, because of its Buddhist traditions, which were full of kindness and indulgence, completely sympathized with the very praiseworthy intentions of the

sponsors of the draft article on the rights of the child. The provision entitling the child to a name presented no difficulty to the Burmese delegation, for every Burmese child, born in or out of wedlock received at birth a name which was not necessarily that of his father or of his mother and which he could change at will by mere public announcement. On the other hand, for registration of the child immediately after birth, Burma had not yet, and probably would not have for a long time to come, the necessary civil registry services, which would cost a great deal to set up. The same doubtless applied to many other countries. Moreover, if paragraph 3 meant that the State must grant its nationality to every child born on its territory, it raised difficulties for the Burmese delegation, for Burmese nationality was never conferred automatically, even by reason of marriage; it was granted only on application, which the State reserved the right to accept or to reject.

23. For those various reasons he would be compelled to abstain from voting on the draft article.

24. Mr. DOE (Liberia), while not wishing to enter into legal considerations, felt that the word "status", in paragraph 1 of the English text, meant the inherent quality of the child, which made him a person and conferred upon him from birth the right to protection by his family, society and the State. He therefore suggested that paragraph 1 be reworded as follows:

"Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, equal rights and the protection of his family, society and the State".

25. Paragraph 3, which referred to the right of the child to acquire a nationality, suggested the need for a procedure; but in his view the right to nationality was inherent in the child from birth. Consequently he felt that the paragraph would be strengthened if it read: "The right of every child to a nationality shall not be violated".

26. The CHAIRMAN did not think that the suggestions by the Liberian representative could be accepted, for they would necessitate a complete rewording of the text prepared by the working group after thorough study. The word "condition", in French, or "condición" in Spanish, was too vague and the meaning might perhaps be made clearer by adding the words "as a minor"; or the word "might" be deleted, the end of the article then being altered to read: "to such measures of protection as he may need."

27. Miss TABBARA (Lebanon) said that she was in favour of inserting the draft article in the Covenant. However, she had misgivings about some of its provisions, especially the expression "national origin"; for the State which should protect the child was the State of which he was a national, even if he were born on the territory of another State. Furthermore, if the word "birth" referred to social rank, the Lebanese delegation could accept it, but then it was synonymous with the expression "social origin"; if on the other hand it also referred to the status of legitimate or illegitimate child, her delegation could not accept it. She would therefore be compelled to request a separate vote on each of those two expressions, unless the sponsors of the draft defined their meaning to her delegation's satisfaction.

28. Adopting the Chairman's suggestion, she formally proposed the addition of the words "as a minor" after the word "status".

29. Her delegation had the same objections as many others to paragraph 3, and she proposed that it be deleted.

30. At the request of the CHAIRMAN, Mr. CAPOTORTI (Italy) agreed to reply to the Lebanese representative as a member of the working group, although his delegation was not a co-sponsor of the draft article. He assured the sponsors, especially the Polish delegation, that the criticisms which he felt obliged to make in the interest of legal clarity in no way diminished the respect which he felt for the intentions underlying the submission of the draft.

31. The Lebanese proposal in favour of adopting the Chairman's suggestion, to add the words "as a minor" after the word "status", seemed to him a felicitous clarification, for, although there were various categories of minors, the object of the article was of course to protect the child as a minor in general.

32. The deletion of the words "national or" likewise also seemed desirable. "National origin" could be interpreted to mean nationality, and that interpretation would create difficulties of implementation, for the law relating to the protection of alien children differed from one State to another. Similarly, the word "birth" could be interpreted to mean not only the child's social rank but also his status as a legitimate or an illegitimate child, and that would make the provision unacceptable to many delegations.

33. Consequently the Italian delegation considered that the three proposals made by the Lebanese representative would make the article easier to adopt.

34. The CHAIRMAN asked the sponsors of the draft article whether they agreed to the addition of the words "as a minor" after the word "status".

35. Mr. MELOVSKY (Yugoslavia) requested a short recess to enable the co-sponsors of the draft to confer on that point.

36. Mr. Antonio BELAUNDE (Peru) said that, since the word "child" occurred at the beginning of the paragraph, the words "as a minor" would be redundant. He would greatly prefer the working group's suggestion that the words "as required by his status" should be replaced by "as required by his complete and normal development". Those would be much clearer, for they would specify the purpose of the protection the child should enjoy.

37. Mrs. DEMBINSKA (Poland) explained, for the benefit of the Lebanese representative, that the list in the first paragraph was taken from the Universal Declaration of Human Rights, except only that the words "political or other opinion", which did not apply to children, were omitted. The expression "national origin" referred exclusively to the various ethnic groups of which certain countries were composed. Instead of the word "birth", if the authors had wished to speak of the distinction between legitimate and illegitimate children, they would have used the word "filiation".

38. Mr. GHORBAL (United Arab Republic) felt that the adjournment requested by the Yugoslav representative would be a waste of time. After all, the text before the Committee, though not perfect, represented the lowest common denominator of the opinions expressed in the working group. After only a short consultation, its authors could not possibly produce a text that would command unanimity. He therefore appealed to the Chairman to put to the vote forthwith

the draft article and the Lebanese delegation's amendments, with due regard to the separate votes it had requested.

39. The CHAIRMAN agreed with the representative of the United Arab Republic that the Committee could define its position with regard to the draft article only by voting; it would take the separate votes requested by the Lebanese delegation, and vote on the amendments proposed by Austria and Lebanon.

40. He therefore put to the vote the words "national or" in paragraph 1.

41. Miss TABBARA (Lebanon), speaking on a point of order, said that the Polish representative's explanation of the words "national origin" had dispelled the Lebanese delegation's doubts. If that interpretation was to be included in the Committee's report, there was no need for a separate vote and she withdrew her proposal.

42. Mr. MONOD (France) drew attention to the ambiguity of the word "national" in the context of paragraph 1 of the new article. Since it might raise many difficulties, and to shorten the discussion, his delegation asked for a separate vote on the words "national or", and also on the words "or birth".

43. Mr. UNG MUNG (Cambodia) wondered whether the word "national" might not be replaced by the word "ethnic".

44. The CHAIRMAN considered that, coming after references to race and colour, the word "ethnic" would be redundant.

45. Mr. Antonio BELAUNDE (Peru) asked for a separate vote on the words "as to race, colour, sex, language, religion, national or social origin, property or birth".

46. Mr. MELOVSKY (Yugoslavia) drew the attention of the French and Peruvian representatives to the wording of the first paragraph of article 2 of the draft Covenant which had recently been adopted by the Committee (1259th meeting). If they read it, they might perhaps not press for separate votes.

47. Mr. CAMPBELL (Ireland) and Mr. MEVIK (Norway) said that, as document A/C.3/L.1174/Rev.1 had only been circulated at the beginning of the meeting they were hardly in a position to take an immediate decision in the absence of instructions from their Governments regarding the revised text. They would therefore prefer the vote to be postponed until the 1266th meeting.

48. Mr. CUEVAS CANCINO (Mexico) felt that the proposed article should be carefully considered before being put to the vote. He asked that the vote should be postponed until the 1266th meeting, under rule 121 of the rules of procedure.

49. The CHAIRMAN told the Mexican representative that rule 121 was not applicable.

50. Mr. OSTROVSKY (Union of Soviet Socialist Republics) thought that delegations had had enough time to decide their attitude to the proposed new article. Documents A/C.3/L.1174 and A/C.3/L.1174/Rev.1 were so similar that the voting should not raise any special difficulty. Moreover, the Committee was already considerably behindhand with its programme of work.

51. Mr. GHORBAL (United Arab Republic) pointed out that the Chairman had already announced the

beginning of voting, and that the Mexican representative's suggestion was therefore out of order, under rule 129 of the rules of procedure.

52. The CHAIRMAN decided that rule 129 was applicable. He therefore put to the vote the Lebanese proposal that, in paragraph 1 of the proposed article on the rights of the child, the words "as a minor" should be added after the words "his status".

The Lebanese proposal that the words "as a minor" should be added after the words "his status," in paragraph 1 (A/C.3/L.1174/Rev.1), was adopted by 38 votes to one, with 38 abstentions.

53. The CHAIRMAN put to the vote the Austrian proposal that the word "society" should be replaced by the words "appropriate social institutions".

The Austrian proposal that the word "society" should be replaced by the words "appropriate social institutions" was rejected by 27 votes to 22 with 23 abstentions.

54. Mr. GHORBAL (United Arab Republic) raised a point of order regarding the order of voting. He maintained that the separate vote requested by the Peruvian delegation should be taken before those requested by the French representative.

55. Mr. DAS (Secretary of the Committee) pointed out that if, as a result of the separate vote requested by the Peruvian representative, the words "as to race, colour, sex, language, religion, national or social origin, property or birth" were retained, separate votes could not be taken on the words "national or" and "or birth".

56. Mr. Antonio BELAUNDE (Peru) suggested, as an easier course, that the Committee should first vote on the proposal to delete the words "as to race, colour, sex, language, religion, national or social origin, property or birth".

57. The CHAIRMAN put the Peruvian proposal to the vote.

The Peruvian proposal was rejected by 38 votes to one, with 34 abstentions.

58. The CHAIRMAN proposed that the Committee should vote separately on the words "national or" and on the words "or birth".

The words "national or" were retained in the text of paragraph 1 by 33 votes to 6, with 32 abstentions.

The words "or birth" were retained in the text of paragraph 1 by 32 votes to 13, with 22 abstentions.

59. The CHAIRMAN put to the vote paragraph 1 of the proposed article on the rights of the child, as amended.

Paragraph 1 of the proposed article on the rights of the child (A/C.3/L.1174/Rev.1), as amended, was adopted by 60 votes to one, with 14 abstentions.

Paragraph 2 was adopted by 62 votes to none, with 9 abstentions.

60. Mr. ACOSTA (Colombia) proposed the deletion of the word "acquire" in paragraph 3. The text would then read: "Every child has the right to a nationality."

61. Miss TABBARA (Lebanon) recalled that she had proposed the entire deletion of paragraph 3.

62. Mrs. MANTZOUKINOS (Greece) and Mr. YASSEEN (Iraq) remarked that, since the Committee's vote on

paragraph 3 would indicate whether it wished to retain that paragraph or not, the Lebanese representative's proposal was superfluous.

63. In reply to a question put by Mr. BAROODY (Saudi Arabia), Mr. DAS (Secretary of the Committee) explained that, under rule 131 of the rules of procedure, the Lebanese proposal had priority.

64. Miss TABBARA (Lebanon) announced that, in view of what had just been said, the Colombian and Lebanese delegations withdrew their proposals.

Paragraph 3 was adopted by 51 votes to 4, with 16 abstentions.

The proposed article on the rights of the child (A/C.3/L.1174/Rev.1), as amended, was adopted by 57 votes to one, with 14 abstentions.

65. The CHAIRMAN expressed his satisfaction at the Committee's adoption of the proposed new article. He explained that he had pressed for the completion of the voting at the present meeting in order to expedite the Committee's examination of the items on its agenda. Delegations would be able to explain their votes at the 1266th meeting.

The meeting rose at 6.25 p.m.