



**Tuesday, 15 January 1957
 at 10.45 a.m.**

New York

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Chairman: Mr. Hermod LANNUNG (Denmark).

AGENDA ITEM 31

Draft International Covenants on Human Rights (E/2573, annexes I, II and III, A/2907 and Add.1 and 2, A/2910 and Add.1 to 6, A/2929, A/3077, A/C.3/L.460, A/3149, A/C.3/L.528, A/C.3/L.532, A/C.3/L.557 to 559) (*continued*)

ARTICLE 10 OF THE DRAFT COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (E/2573, annex I A) (*continued*)

1. Mr. HUMPHREY (Secretariat) said that in accordance with the Chilean representative's request (730th meeting) the Secretariat had examined the records of the Commission on Human Rights relating to the drafting of article 10 of the draft Covenant.

2. At its fifth session, in 1950, the General Assembly had decided to include economic, social and cultural rights in the International Covenants on Human Rights, with an explicit recognition of equality of men and women in related rights (resolution 421 (V), section E).

3. At the seventh session of the Commission on Human Rights, in 1951, various delegations had submitted proposals designed to give effect to that decision. As the discussion developed, the majority of the Commission had felt that there should be a special article on the protection of mothers and children.

4. At that session the Commission had adopted a text¹ which provided that special protection should be accorded to maternity and motherhood. That text was preferred to one which would have given protection to women "during pregnancy and while nursing their offspring" (E/CN.4/586).

5. At the eighth session of the Commission on Human Rights in 1952 an amendment had been introduced which would have limited the special protection to maternity during reasonable periods before and after childbirth. The protection of motherhood was considered to be a matter which would be covered by the article on social security. The representative of the Commission on the Status of Women had pointed out that the word "motherhood" related to the early years of a child's development whereas the word "maternity"

referred to the shorter period immediately preceding and following childbirth. She had therefore suggested the retention of the word "motherhood" in the text. The Commission had accepted that suggestion and had adopted the present text of article 10, paragraph 1. The term "motherhood" had been translated into French as *la mère* and into Spanish as *la maternidad*. However, in article 25, paragraph 2, of the Universal Declaration of Human Rights the term had been translated into French as "*la maternité*".

6. With regard to article 10, paragraph 2, he could not usefully add to the commentary in paragraphs 24 and 25 of chapter VIII of the annotations on the text of the draft Covenants (A/2929).

7. Paragraph 3 had been adopted at the eighth session of the Commission on Human Rights in 1952 on the proposal of the Belgian representative, who had stated that it was intended to fill a serious gap in the article by providing for the protection of the family, which, in his view, was the very basis of society. Although there had been no discussion at the time regarding the meaning of the proposal, some delegations had considered that the proposal might be dealt with in a separate article, and others that the second sentence was more appropriate to the Covenant on Civil and Political Rights, which at that time contained no article on marriage and the family. Article 22 of the draft Covenant on Civil and Political Rights had been added at the Commission's ninth session, in 1953.

8. Representatives who wished to explore the question further could consult the records of the Commission on Human Rights, particularly the records of the 222nd, 224th, 296th, 297th and 298th meetings.²

9. Mr. AMATYAKUL (Thailand) would support the existing text of article 10 and any amendment that would improve it. In his opinion, the last sentence of paragraph 3 might have undesirable connotations by giving the impression that a marriage entered into without the free consent of the spouses was not entitled to the same protection as one where there had been free consent. Such an interpretation would adversely affect the position of the mother or the second wife in certain countries. He therefore requested that a separate vote should be taken on the last sentence of paragraph 3. The difficulty to which he had referred did not exist in Thailand, for a marriage there was regarded as legal only if entered into with the free consent of the spouses.

10. Mrs. QUAN (Guatemala) attributed the complexity of article 10 to the fact that some of the protective measures for which it provided were economic in nature whereas others were social. While it might be said that all economic questions had a social aspect, the reverse was not true. The protection which the State provided for the family was essentially social in nature; the same applied to the protection provided for

¹ Official Records of the Economic and Social Council, Thirteenth Session, Supplement No. 9, annex I, article 26.

² See E/CN.4/SR.222, 224, 296-298.

women before and after childbirth and to measures of protection applied within and with the help of the family on behalf of children and young persons. On the other hand, measures designed to protect working mothers and prevent child labour were economic in nature.

11. On the whole, her delegation endorsed the principles embodied in article 10 but wondered whether the inclusion of paragraph 3 in the Covenant really served any useful purpose. It was to be assumed that each State adopted measures designed to protect the unity of the family. While those measures, such, for example, as provisions favouring families in the matter of housing and taxation, were often economic in nature, they had a social aim since they were designed to maintain family unity, based as it was on marriage.

12. Referring to the remark made by the United Kingdom representative (730th meeting) concerning the insertion of the words "and with the help of", she assumed that the authors of the article had wished to say that a child had the best chance of developing under favourable conditions in a family environment, and preferably in his own family.

13. In view of the foregoing, the Guatemalan delegation believed that the wording of article 10 would be improved if it was more logically arranged.

14. She read out the new text which she proposed and which would provide a clearer statement of the provisions of article 10, without altering their substance. Her version would take account of the Soviet amendment (A/C.3/L.559) and the Netherlands amendment (A/C.3/L.557). With regard to the Bulgarian amendment (A/C.3/L.558), the laws of some countries did indeed make a distinction between legitimate and illegitimate children, but there was no need for article 10 to allude to that fact, for it was intended to protect all children, whether legitimate or not. Her delegation was not making a formal proposal, and it reserved the right to modify the text it had suggested.

15. Mr. LIMA (El Salvador) thanked the Secretary-General's representative for his statement on the drafting of article 10. The existing wording of that article was not satisfactory. Its defects were due to the excessive detail of its provisions and were further aggravated by translation difficulties. For the Covenant to be ratified by a large number of States, it would have to be drafted in as concise a form as possible. Moreover, an excessively detailed definition of rights would duplicate the functions of specialized agencies such as the International Labour Organisation (ILO). With regard to terminology difficulties such as the use of the word "motherhood", it would be useful to set up a sub-committee to decide upon the terms to be used in the various languages.

16. With regard to the Soviet amendment (A/C.3/L.559), he requested a separate vote on the expression "at the expense of the State or the employer". In addition, he would vote against the two parts of which, in fact, that amendment consisted. As had been pointed out by various delegations, the scope of the article should be as broad as possible, and thus there was no reason for proclaiming one of the many rights of working women to the exclusion of the others. In that connexion, he pointed out that maternity leave was provided for by his country's Constitution, in which all the rights proclaimed in article 10 were already recognized. In any case, the second part of the Soviet amendment was not appropriate, as the method of financing

maternity leave varied from country to country. The detailed provisions on the subject should therefore be drawn up by the various States, on condition, of course, that working women were accorded the right to paid leave before and after childbirth.

17. He could not see what purpose was served by the words "within and with the help of the family" in article 10, paragraph 2; they might imply that the State's protection did not extend to children and young persons who had no family. The deletion of those words would provide an indirect solution to the problem raised by the Bulgarian amendment (A/C.3/L.558). A provision making the State responsible for the education and the upbringing of illegitimate children and orphans would be out of place in article 10. The question of education was dealt with in article 14, which also provided that primary education should be compulsory and free for all children without exception.

18. He accepted the principle that the unlawful use of child labour should be made legally actionable, but did not believe that it should be stated in the Covenant. He agreed with the United Kingdom representative that that question was properly the concern of the ILO. However, if a majority of the Committee favoured the inclusion of that provision in article 10, he would not object. Not every instance of the unlawful use of child labour would, of course, necessarily call for criminal action. In many cases intervention by a government body, such as the labour inspection service, would suffice to prevent or put an end to the abuse. It would therefore be preferable to delete the phrase in question.

19. He would vote in favour of the Netherlands amendment (A/C.3/L.557), which he regarded as satisfactory. To protect children's morals was just as important as to protect their health. He shared the views of those representatives who had said in the Commission on Human Rights that article 10, paragraph 3, and more especially, the provision that marriage must be entered into with the free consent of the intending spouses, should preferably be embodied in the Covenant on Civil and Political Rights.

20. In conclusion, he stressed the desirability of setting up a sub-committee which would not only deal with questions of terminology but would also endeavour to redraft article 10 in a more concise form.

21. Mrs. KOWALIKOWA (Poland) pointed out that Poland had enacted some very important legislation concerning maternal and child welfare, in particular the Act of 28 April 1948. It was designed to dispel any anxiety which might be felt by working women for their own or their children's future. Working women now knew that they could not be dismissed during pregnancy or maternity leave, that they would be able to care personally for their children during the three months immediately following confinement and that they could quite confidently entrust them to a day nursery afterwards.

22. Delegations had divided into two groups during the debate. One group had thought that the Covenants should be couched in the most general terms possible, while the other had held the view that the articles should be specific and should impose obligations on States. The Polish delegation belonged to the second group. It accordingly considered article 10, as it stood, wholly acceptable. In any case, the article did not impose any obligations not already assumed by the State in Poland.

23. However, some further clarifications seemed to be desirable. The article certainly mentioned protection of motherhood but it omitted one essential woman's right, that of leave before and after confinement. The USSR amendment (A/C.3/L.559) sought to fill that gap. Admittedly, it recommended methods of financing which some delegations might not be prepared to accept, but it was based on a principle the correctness and importance of which could not be called in question. The Polish delegation would accordingly vote for it.

24. With regard to the amendment submitted by Bulgaria (A/C.3/L.558), she thought that the proposed addition would be quite appropriate in article 10. It seemed sensible to devote a separate paragraph to those categories of children most in need of protection and assistance, namely, orphans and illegitimate children whose parentage had not been established. It was hard to understand the reservations which some delegations had made with regard to that amendment. It would be wrong to assert that the text might provide camouflaged encouragement to the birth of natural children: it was possible to protect both the family and children born out of wedlock. There was no inconsistency in that, and Poland provided ample proof of the fact. The problem of illegitimate children and orphans was tragic, and it could not be solved by ignoring it; in the community's own interests a solution must speedily be found. For those reasons her delegation would vote in favour of the Bulgarian amendment (A/C.3/L.558). It would also vote for the Netherlands amendment (A/C.3/L.557), on the understanding that the meaning of the word "morals" for each individual State was related to economic, social and cultural conditions.

25. Mr. BRATANOV (Bulgaria) wished to make some comments arising out of the criticisms directed at article 10 and the Bulgarian amendment to it (A/C.3/L.558) at the previous meeting.

26. Some representatives had described the article as too vague. His delegation did not hold that view. Contrary to the view apparently held by the representative of Australia, the Bulgarian delegation thought that the expression "the unlawful use of child labour" had a specific meaning and embodied a clearly established principle. Moreover, it could not be held that article 10 should contain merely a general statement. If the Committee took that view, it would be laying no clearly defined obligations on States. Specific rights were involved and the text itself should accordingly be specific.

27. His delegation had proposed an amendment because it had considered article 10 incomplete. The provisions of the article should apply to all children, including those who for any reason had no families. The text as it stood was, indeed, designed to protect children and young persons, but only "within and with the help of the family". That phrase seemed to exclude orphans who had lost both parents and children born out of wedlock whose parentage had not been established. The scope of the text prepared by the Commission on Human Rights should accordingly be widened and that was the essential purpose of the Bulgarian amendment (A/C.3/L.558). That amendment was in no way designed, as the representative of Lebanon had suggested, to draw a distinction between legitimate children and others, as it did not seek to provide special protection for natural children. Its purpose was to ensure equal treatment for all children without distinction, in accordance with article 25 of the Universal

Declaration of Human Rights. The second part of the Bulgarian amendment referred to the State's obligation to provide the upbringing and education of certain groups of children. Although, in the Western countries in particular, that task frequently devolved upon private benevolent organizations, the State alone could assume international legal obligations in that connexion. It was accordingly the State which should be mentioned in the Covenant.

28. His delegation would vote for the Soviet amendment (A/C.3/L.559), as it provided for the practical application of the principle set forth in article 10, paragraph 1, that special protection should be accorded to motherhood and maternity. It took into account the obvious fact that a woman who was paid no wages during her maternity leave might be without means of subsistence. The addition would accordingly be extremely useful.

29. Miss VUKOTIC (Yugoslavia) pointed out that article 10 must be in keeping with the interests and needs of contemporary society and said that the existing wording did not appear to her entirely satisfactory. If paragraph 3 were retained, the order of the paragraphs should be changed, as the representative of the Philippines had suggested (730th meeting). Paragraphs 1 and 2, having a more specific character than paragraph 3, should come after it. Her delegation would be prepared to accept any proposal designed to improve the form of the text. As far as its substance was concerned, she thought article 10, although somewhat too vague, was acceptable and she would vote for it.

30. Commenting on paragraph 1, she pointed out that although the principle of equality between men and women was almost universally accepted, it should not be forgotten on that account that women had a very special part to play in society and in the home. Women, in fact, did not really have equal rights unless they could command special protection. In Yugoslavia, the State had fully understood the need to protect mothers and children; it accordingly endeavoured to provide them with the maximum amount of assistance possible in view of its current economic circumstances. Thus, women were guaranteed against dismissal during pregnancy, they enjoyed paid maternity leaves and many other advantages; furthermore, children were cared for free of charge until the age of three. In those circumstances, her delegation was in favour of the first part of the USSR amendment (A/C.3/L.559). But it could not accept the second part as, under Yugoslav law, the costs of maternity leave, hospitalization and such expenses were covered by social insurance. Besides, there seemed to be some inconsistency between the system recommended by the Soviet Union and the International Labour Convention (No. 103) concerning Maternity Protection under which benefits were to be "provided either by means of compulsory social insurance or by means of public funds."

31. Article 10, paragraph 2, expressed the views of the Yugoslav delegation. Her delegation was prepared to accept the Netherlands amendment (A/C.3/L.557).

32. She fully approved the content of the Bulgarian amendment (A/C.3/L.558), but doubted the wisdom of mentioning only certain categories of children. Paralytic or blind children, for example, might equally well be mentioned.

33. The Covenant should formulate provisions which would encourage States to progress, not to perpetuate

abnormal and unsatisfactory conditions. She accordingly wished to protest vigorously against the criticisms levelled at paragraph 3, which proclaimed the principle of free consent to marriage.

34. Mr. DIAZ CASANUEVA (Chile) pointed out that article 10 followed naturally on the previous articles relating to the right to work and the right to social security. It was a provision whose significance was due entirely to the fact that certain groups of people were still subject to discrimination in many countries of the world. Admittedly, the situation of mothers and pregnant women and minors had improved, as was brought out by various studies sponsored by the United Nations, but much still remained to be done.

35. From that point of view, article 10 was not entirely satisfactory to his delegation. It was not homogeneous. Further, it was detailed but might well be less complete than an ILO convention. Its most serious fault, however, was that it was more restrictive than article 25 of the Universal Declaration of Human Rights. There could be no doubt that it provided for special protection within the family. As the family, under paragraph 3 itself, was based on marriage, the article could only refer to children born in wedlock. Of course, the Commission on Human Rights could not be blamed for having acknowledged the importance of the family and emphasized the need to protect it. But there was no ignoring the fact that there were millions of illegitimate children in the world, and that in certain regions they outnumbered the legitimate children. The Third Committee should not forget that even if legislations were less strict than in the past, in only a very few cases did they at present provide equal treatment for all children. That only made it the more necessary to ensure the protection of those born out of wedlock.

36. The Bulgarian amendment (A/C.3/L.558) was intended to fill that gap, but its interpretation might give rise to difficulty. The same result might perhaps be achieved amending the first part of paragraph 2 to make it applicable to all children and young persons without distinction. The principle proclaimed in article 25 of the Declaration would thus be observed.

37. He thought that paragraph 2 as a whole was unevenly balanced. The paragraph should logically be divided after the words "young persons" and it would be preferable to replace the term "young persons" by the term "minors", which alone, at least in Spanish, had a specific legal connotation and was used in ILO conventions. He also wondered what sort of measures the State was intended to take. It was a question of protecting young persons against the dangers to which they were exposed, those dangers being moral and psychological as well as physical. Measures of "protection" did not seem sufficient; positive assistance was required. It would therefore be advisable to insert the word "assistance" in the first part of the paragraph. Thus, the text of that part of the paragraph might be redrafted to read: "Special measures of protection and assistance should be taken on behalf of all minors without distinction." It would be necessary to go on, as in the original text, to prohibit the exploitation of children and to specify that the unlawful use of child labour was legally actionable. The Netherlands amendment (A/C.3/L.557) seemed relevant in that connexion.

38. USSR proposal (A/C.3/L.559) attempted to go into details and was therefore inevitably incomplete.

For example, women wage-earners were not the only women who had to be considered. Nor were wages the only matter on which measures of protection were required. Women were entitled not merely to paid leave, but to the provision of services by the State. In that connexion, the Committee should bear in mind the International Labour Convention (No. 103) concerning Maternity Protection, the provisions of which were quite remarkable. The Soviet amendment also seemed to be opposed to a tripartite system, although that system was in wide use throughout the world. For all those reasons, Chile could not accept the USSR amendment.

39. The first part of paragraph 3 of article 10 should be retained. The second should, however, be deleted, as its appropriate place was in article 22 of the Covenant on Civil and Political Rights (E/2573, annex I B).

40. Mr. THIERRY (France) had some comments to make on article 10, the first three of which related to legal points.

41. In discussing an article of the Charter, Kelsen, in his work *Recent Trends in the Law of the United Nations*, took exception to the use of the word "present" in the phrase "the present Charter".⁸ That observation was applicable to article 10 of the draft Covenant, the word "présent" being out of place in an instrument which contained an article—article 29—dealing with subsequent amendments. Secondly, the text of the second part of paragraph 2 was contrary to the legal principle of *nulla poena sine lege*. Lastly, he agreed with the Chilean representative that it would be preferable to delete the second part of paragraph 3. The right to contract a marriage was a civil right and, as such, had no place in the draft Covenant under consideration.

42. He also had two comments on drafting. The text of paragraph 2 was the result of the successive adoption of a French and a USSR amendment, a procedure which often led to overlapping, not to say contradictions; in the case in point, there was overlapping in regard to child labour. If a reference to morals was to be introduced, the end of the paragraph would have to be redrafted to read "... in work dangerous to life or harmful to health or morals".

43. The latter proposal affected the actual substance of the article, as the words "with the help of" in paragraph 2 might conflict with legislation protecting children against unfit parents.

44. Mrs. NOVIKOVA (Byelorussian Soviet Socialist Republic) attached great importance to article 10. It was essential to protect those whose function it was to perpetuate the human race and who were playing an increasingly important part in economic and social life. Some representatives had asked what the words "special protection" in paragraph 1 meant. For Byelorussia, those words meant paid maternity leave, the prohibition of night work, provision for lighter work at the same pay, nursing breaks, free medical attention before and after confinement, and so forth. The paragraph was indispensable because in many countries mothers were not entitled to any protection from the State with the result that children were conceived in fear and many of them failed to survive. The article was also intended to protect children, who, in many countries, were still compelled to work from an early age and were shamefully exploited.

⁸ Hans Kelsen, *Recent Trends in the Law of the United Nations* (New York, Fred A. Praeger Inc., 1951), p. 914.

45. The article was therefore vitally important and it would be usefully supplemented by the amendments submitted by the Soviet Union (A/C.3/L.559) and Bulgaria (A/C.3/L.558), for which the Byelorussian SSR would vote. The Bulgarian amendment had been criticized on the ground that it applied to a limited category of children only. However, as the Chilean representative had rightly pointed out, it was necessary to bear in mind that in some countries illegitimate children outnumbered legitimate children; it was therefore only fair to make specific provision for State protection of illegitimate children.

46. Mr. MACCHIA (Italy) pointed out that article 10 was more comprehensive than the preceding articles and congratulated the Commission on Human Rights on having prepared so complete a text, which dealt with the economic, social and cultural aspects of the matter and provided for the protection of mothers, children and the family. So far as a reference to the family was concerned, he did not agree with the views expressed by some delegations and considered such a reference quite appropriate to article 10.

47. He was glad that no representatives had objected to the principles stated in the article; such criticism as had been made had related solely to drafting.

48. It had been asserted that "motherhood" was an abstract idea and not a subject of law and it had been suggested that the word "mothers" would perhaps be preferable. He thought, on the contrary, that the word "motherhood" was well-chosen, describing as it did the function of the mother, particularly during the child's first years of life. There was no need to use a legal term in article 10, since its purpose was not to confer rights on individuals directly, but to impose on States an obligation to enact legislation to protect the mother during the early years of the child's life. Furthermore, the word "motherhood" appeared side by side with the word "childhood" in article 25 of the Universal Declaration of Human Rights. Such drafting problems should be capable of solution; he would suggest that the term "*la fonction de la mère*" should be used in the French text and a corresponding term in the Spanish.

49. The phrase "within and with the help of the family" near the beginning of paragraph 2 had also been criticized. He thought that omission of the reference to the family would conflict with the purposes stated in paragraphs 1 and 3. Obviously, there would be instances in which measures could not be taken within the family; that was why the article specified "in all appropriate cases".

50. The last sentence of paragraph 2 had been justly criticized by the United Kingdom representative, who

had pointed out that the English text was tautological and that the words "legally actionable" were inappropriate, because they applied to a civil action only. Those were purely drafting defects, which could and should be corrected in view of the exceptional importance of the idea involved. He wondered whether the difficulty could not be met by replacing the word "unlawful" by the word "illicit" and by redrafting the end of the sentence to read: "should constitute a penal offence". It should be emphasized that article 10 merely stated the principle of criminal liability in the event of infringement, but did not define such infringement; there was, therefore, no reason to fear that the Covenant would encroach upon the province of the specialized agencies. He did not find the drafting of the last sentence of paragraph 2 entirely satisfactory and suggested that it should be amended to read: "Child labour, when licit, and the employment of young persons should be regulated by law, and exploitation of children, illicit use of child labour and employment of young persons in work harmful to health or morals or dangerous to life should be made punishable by law."

51. As regards paragraph 3, the Italian delegation thought that the family played an extremely important role in economic, social and cultural life; in its opinion, marriage should be encouraged, since it alone enabled parents to give children the protection they needed. He was not altogether in favour of deleting the last sentence of paragraph 3, since the free consent of the intending spouses was the basis of marriage.

52. He reserved the right to comment later on the amendments submitted; he had already indicated, however, that he was in complete agreement with the Netherlands amendment (A/C.3/L.557), inasmuch as he had incorporated it in the text he had just suggested.

53. Mr. BAROODY (Saudi Arabia) asked how long a period the term "maternity" was intended to cover.

54. The CHAIRMAN suggested that the time limit for the submission of amendments to article 10 should be fixed at 5 p.m. on 15 January.

55. Mr. MEZINCESCU (Romania) thought that some delegations intended to redraft the article altogether, in which case a longer time limit might be preferable so that delegations who wished to do so could submit amendments to the new texts.

56. Mr. PONCE (Ecuador) supported the Romanian representative.

57. The CHAIRMAN announced that no time limit would be fixed, but asked delegations to do their best to submit their amendments by 5 p.m.

The meeting rose at 1.10 p.m.