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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.570 to 577) (*continued*)**

ARTICLE 10 OF THE DRAFT COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (E/2573, annex I A, A/C.3/L.570) (*continued*)

1. The CHAIRMAN recalled that the Committee no longer had before it the amendments to article 10 of the draft Covenant (E/2573, annex I A) which had been submitted before the Working Party met. Delegations wishing to maintain their amendments should table them again before 3.30 p.m.

2. Mr. DIAZ CASANUEVA (Chile) pointed out that the Committee's discussion of article 10 had revealed two lines of thinking. Some delegations had felt that the protection accorded to mothers should be confined to the period before and just after childbirth and that it should apply primarily to the working mother. Other delegations, including that of Chile, had felt, on the contrary, that such protection should be broader in scope, that the mother should be protected because she was a mother. That second line of thinking was in conformity with the position adopted by the Commission on Human Rights, which had sought to make clear that the protection accorded to motherhood "should extend over the whole period of the mother's responsibility for the development of the child during its early years" (A/2929, chap. VIII, para. 23).

3. For those reasons, he could not vote in favour of the Swedish amendment (A/C.3/L.571) to the Working Party's text (A/C.3/L.570, para.4), which took into consideration only the biological aspect of the function of motherhood. The International Labour Convention (No. 103) concerning Maternity Protection and provisions in force in many countries provided a system of protection for mothers which extended well beyond the period of childbirth and was directed towards helping not only working mothers, but also widows, divorcees or unmarried mothers who brought up their children alone.

4. Although he did not agree with the Swedish delegation, he was submitting a sub-amendment (A/

C.3/L.573) to its amendment, in an attempt at conciliation. The more flexible and more general wording he was suggesting would have the merit of reconciling the two lines of thinking to which he had referred and, more particularly, would enable the under-developed countries to go ahead with the legislative work they had initiated on behalf of mothers. Moreover, it was in keeping with the spirit of the original text of article 10 (E/2573, annex I A).

5. Mr. LIMA (El Salvador) agreed with the substance of the text submitted by the Working Party (A/C.3/L.570, para.4) and would merely comment on matters of detail. With regard to paragraph 1, he felt that the provision to the effect that marriage must be entered into with the free consent of the intending spouses was out of place in the draft Covenant under discussion, but he would not press for its deletion.

6. He did not consider it appropriate to use the word "sueldo" in the Spanish text in the second sentence of paragraph 2. Jurists had not yet agreed in principle whether maternity leave represented an interruption in the labour contract and whether the money paid to mothers during that period was to be considered as wages. It would therefore be better not to use the word "sueldo".

7. His delegation fully supported the principle of paid maternity leave, which was recognized by law in El Salvador. Nevertheless, as it had stated with regard to the Soviet amendment (A/C.3/L.559) to the original text (E/2573, annex I A), it saw no need to mention the right to paid leave in preference to other rights which it considered equally important. It would abstain in the vote on the Soviet amendment (A/C.3/L.557) to the Working Party's text because he saw no point in specifying how maternity leave was to be paid.

8. With regard to the clause "Special protection should be accorded to mothers while they are responsible for the care and education of dependent children", he shared the view of other representatives that women should not receive an undue measure of protection. They should enjoy protection equal to but not greater to that accorded to men.

9. In connexion with paragraph 3, he pointed out that the word "minors" had different meanings within one and the same country depending on the field of legislation in which it was used (penal laws, labour laws etc.). That was true, for example, of El Salvador. The wording adopted should therefore be broad enough to cover all cases.

10. Mr. PECHOTA (Czechoslovakia) supported the principles on which article 10 of the draft Covenant was based. Those principles were reflected in the laws in force in his country, which recognized the legal and social equality of the sexes, the free consent of intending partners in marriage, the joint exercise of parental authority, the legal, economic and social pro-

tection of all children and the protection of minors whose parents were divorced. It was considered in Czechoslovakia that the mother's care of her child was as important socially as the father's professional activity. Women therefore received many social benefits, such as family allowances. The wife was also the joint owner of property acquired during marriage, even out of her husband's earnings, and when a mother who had not been working took a job, the time she had spent raising her children was taken into account in computing her retirement benefits. The Czechoslovak Government would have no difficulty in assuming wider obligations in that field if they would afford women, mothers and children even greater protection.

11. He found the text worked out by the Working Party (A/C.3/L.570, para. 4) generally satisfactory, but was sorry that certain basic points had not been included. Explicit reference should be made, in particular, to the case of orphans who had lost both parents. That category of children was most in need of State protection and assistance; on humanitarian grounds, it should be given special attention. He would therefore support the Bulgarian amendment (A/C.3/L.572).

12. In paragraph 2, it was not enough to proclaim the right of working mothers to paid leave; the means of guaranteeing the exercise of that right should also be laid down. He would therefore vote in favour of the USSR amendment (A/C.3/L.577) because it filled an obvious gap and was in line with Czechoslovak legislation. The Romanian amendment (A/C.3/L.575) was an improvement on the Working Party's text of paragraph 3, and he supported it. On the other hand, he could not support the Swedish amendment (A/C.3/L.571), adoption of which would result in the omission of one of the really valuable features of the new text of article 10.

13. Mr. TSURUOKA (Japan) generally supported the text prepared by the Working Party (A/C.3/L.570, para. 4). He would vote for paragraph 1 as it stood; its meaning had been admirably explained by the Belgian representative (735th meeting). He would support the Swedish amendment (A/C.3/L.571) and would not vote against the Chilean sub-amendment (A/C.3/L.573). With regard to paragraph 3, his delegation saw no objection to the use of the word "minors". However, it reserved the right to interpret it as it saw fit. The age at which majority was attained varied from one field of law to another and from one country to another, depending on the factors affecting physical and moral development, such as climatic conditions. The use of the word "children" in paragraph 2 might, he feared, limit the scope of the protection accorded.

14. Mr. TSAO (China) said that he appreciated the efforts of the Working Party but preferred the original text of article 10 as drafted by the Commission on Human Rights (E/2573, annex I A). In paragraph 1 of the new text (A/C.3/L.570, para. 4), the meaning of the phrase "for its establishment" was not very clear. The end of the first sentence might also be open to debate. It might be asked whether a family with no children was also entitled to protection by the State. Furthermore, the changes made in the text had destroyed the logical connexion between the beginning and the end of the paragraph.

15. He felt that the original text was drafted in more general terms and would therefore be acceptable to

more States. He would vote against most of the amendments proposed.

16. Mrs. QUAN (Guatemala) announced that the delegations of Guatemala and Peru had consulted the other Spanish-speaking delegations in order to decide on the drafting changes to be made in the Spanish text of the article drawn up by the Working Party. In paragraph 1, the words "*por ser el*" could be deleted, the words "*en su etapa inicial*" replaced by "*para su constitución*" and the words "*que sea posible*" by "*posibles*". In the second sentence of paragraph 2, the word "*pagada*" could be substituted for "*con goce de sueldo*". In paragraph 3, the words "*de edad*" should be deleted and the phrase "*sin distinciones por razones de paternidad*" replaced by "*sin discriminación alguna por razón de filiación*". Lastly, the beginning of the second sentence might be changed to read: "*Los menores deben ser protegidos*".<sup>1</sup>

17. She would vote against the final sentence of paragraph 1 not because she rejected the principle of free consent to marriage, but solely because such a provision would be more appropriately included in the Covenant on Civil and Political Rights. She would vote against the Bulgarian amendment (A/C.3/L.572) because she considered that even States with a rudimentary welfare system provided for orphans who had lost both parents. Moreover, paragraph 3 concerned "all minors without any discrimination", and that surely included the category of children to which the Bulgarian delegation sought to give special protection.

18. The Guatemalan delegation would support the Swedish amendment (A/C.3/L.571) which was based on the principle that mothers should be accorded special protection not because they were women, but because they bore children.

19. Mr. BRENA (Uruguay) thought that the text of article 10 prepared by the Working Party was much better than the original text, but it was still not quite perfect.

20. The wording of paragraph 1, for instance, was not entirely satisfactory. In the Spanish version at least, the text suggested that the family was entitled to protection because it was the natural and fundamental group unit of society. The least that could be said in that regard was that there was no need to include in a legal provision the reasons for its adoption. The accuracy of the term "group unit" might even be questioned. A more general word would be better; in its amendment (A/C.3/L.565) to the original text, Uruguay had proposed the term "basis of society". The words "*que sea posible*" seemed to be redundant. The phrase "*en su etapa inicial*" was also open to criticism, as the length of the period was not prescribed anywhere. It would be better to put "*para su constitución*"<sup>1</sup> as the representatives of Guatemala and Peru had suggested. Although the reference to free consent to marriage would be more appropriate in article 22 of the Covenant on Civil and Political Rights, his delegation would vote for the second sentence of paragraph 1, because it considered the principle in question one of primary importance.

21. He noted that paragraph 2 repeated the same phrase as was used in paragraph 1 with regard to the care and education of dependent children. Repetition should be avoided, and he thought the best course

<sup>1</sup> The changes proposed were incorporated in document A/C.3/L.570/Rev.1 (issued in Spanish only).

would be to use the phrase in paragraph 1 only. On the other hand, the words "and assistance", which appeared in paragraphs 1 and 3, should also be included in paragraph 2. It was hard to imagine that assistance could be granted to families in such matters but not to mothers. The form in which the term "paid leave" was translated in the Spanish text was open to objection, since it made too close a connexion between wages and leave.

22. With regard to paragraph 3, it seemed that some delegations found difficulty in accepting the term "minors", and their opposition to it should be taken into account in an attempt to reach general agreement. For his own part, he was prepared to accept the United Kingdom amendment (A/C.3/L.574), under which the term "minors" would be replaced by "children and young persons". He saw no point in the phrase "or likely to hamper their normal development"; the opening of the sentence referred in general terms to "work harmful to their . . . health". If the Committee wished to include the phrase, however, he would not oppose its retention.

23. He was in favour of the Swedish amendment (A/C.3/L.571), which reproduced part of an amendment previously proposed by his own delegation (A/C.3/L.565, point 1). The Bulgarian amendment (A/C.3/L.572) embodied an idea already endorsed by Uruguay, and supplemented the idea contained in paragraph 3 that protection should be accorded "without any discrimination".

24. The wording of article 10 should be clear and should not be open to undesirable interpretations. From that point of view, a text of the kind submitted by Uruguay (A/C.3/L.565) would be better, but, in a spirit of co-operation and in order to speed up the Committee's work, he was prepared to accept the version proposed by the Working Party, subject to the drafting changes suggested by Guatemala and Peru. He would vote for the amendments which improved the form of the article without disturbing its balance.

25. Mr. HOARE (United Kingdom) thought that in the form proposed by the Working Party (A/C.3/L.570, para. 4), article 10 was too long and needed shortening. It was for the Committee to decide on the points which it wished to retain.

26. In his view, the first sentence in paragraph 1 would be satisfactory if it went no further than the word "society"; it would then be more in keeping with article 22 of the draft Covenant on Civil and Political Rights (E/2573, annex I B). The remainder of the sentence was quite unnecessary. On that point, the Working Party did not seem to have confined itself to the task it had been given, that of bringing together, in a harmonized form, all the amendments and suggestions which had been put forward. It had introduced new elements. It was true that the question of dependent children had been mentioned, but that of the "establishment" of the family had not; and the advantage of referring to that specific point was not clear. The passage stating that the family was "responsible for the care and education of dependent children" was also open to criticism. It was not, in fact, accurate to say that that responsibility rested on the family, since the children were themselves members of the family: it rested on the head of the family, either the father or the mother. Furthermore, even if parents were responsible for the upbringing of their children, it was hardly correct to say that they were respons-

ible for their education. That was the task of educational institutions, as it was very rare for present-day families to have recourse to the services of private tutors. Under those circumstances, he thought that the text might be improved if the second part of the sentence was replaced by the phrase "while it includes dependent children". He had accordingly proposed an amendment to that effect (A/C.3/L.574), although he would prefer the more concise form which he had suggested at the beginning of his comments.

27. The second sentence of paragraph 1 bore no relation to the protection of the family. It referred to marriage, and was accordingly out of place in article 10. His delegation would vote against it.

28. Paragraph 2 was designed to grant special protection to mothers. It would seem sufficient, however, to mention the specific case of childbirth, as paragraph 1, within the wider framework of protection to the family, was designed to protect mothers in general. On that point, he agreed with the Swedish delegation. He could not support the amendment submitted by Chile (A/C.3/L.573). He agreed with the representative of El Salvador that the text should not refer to only one form—and that a very limited form—of maternity protection, namely paid leave. The USSR amendment (A/C.3/L.577) suffered from the same defect, and he would be unable to support it.

29. In connexion with paragraph 3, some representatives were apparently uneasy about the vagueness of the expression "children and young people". He, on the contrary, found it an advantage, since each country could interpret it in accordance with its own laws; the age-limits involved were not the same in all legislations, and often varied even within one and the same country, depending on the field of law concerned. In the United Kingdom, the term "minors" had a clearly defined meaning, and referred to persons under the age of twenty-one. If the Committee decided to retain that word, it was very probable that the United Kingdom would be unable to ratify the Covenant, unless it made a reservation on that point. His delegation had accordingly proposed that the Committee revert to the term "children and young persons" (A/C.3/L.574), but it would be prepared to agree to any other equally general formula which the Committee might consider acceptable. The drafting of paragraph 3 was open to criticism in other respects too. Under it, protection would have to be accorded to all children and young persons. But it went without saying that all children were not in the same situation, and therefore did not stand in need of the same protection. The wording used in the text of paragraph 2 of the article proposed by the Commission on Human Rights (E/2573, annex I A), seemed better on that point. There seemed to be a particularly good case for deleting the phrase: "without any discrimination for reasons of parentage or other conditions"; under article 2, States undertook to guarantee the exercise of the rights enunciated in the Covenant "without distinction of any kind". There was another passage in the new paragraph 3 which was not clear. The meaning of the expression "social exploitation" was obscure to him at least. The third sentence was a definite improvement, but it was not perhaps necessary to go into such detail. In any case, there again, the word "minors" should be replaced by a more general term.

30. Mr. CHAUDHURI (Pakistan) said that the text of paragraph 1 in the Working Party's draft (A/

C.3/L.570, para. 4) lacked conciseness. It introduced a new element—the idea of assistance—but retained the expression “the widest possible”, which was very vague. The word “adequate” or “reasonable” would be more satisfactory, and would be more in accordance with reality, since certain measures sometimes had to be forced on parents in the children’s interests. The second part of the first sentence, from “which is the natural and fundamental group unit of society” to the end, should not appear in paragraph 1, since it had no direct relation to the purpose of article 10, which was the protection of mothers, children and young persons. The same was true of the last sentence of paragraph 1. Marriage was a matter of civil law, and was dealt with in article 22 of the draft Covenant on Civil and Political Rights (E/2573, annex I B). If necessary, he would ask the Committee for a separate vote on that sentence.

31. The real point of paragraph 2, the main purpose of which was the protection of mothers before and after childbirth, was obscured by a number of details which, in the opinion of the Pakistan delegation, could only jeopardize the effectiveness of the protection provided for. The phrase “while they are responsible for the care and education of dependent children and particularly” was unnecessary. In any case, its meaning was ambiguous; it might be asked, for example, exactly what was meant by “dependent children”. The passage should in his view be deleted; he was prepared to vote for the Swedish amendment (A/C.3/L.571).

32. Paragraph 3 of the Working Party’s text was well drafted, and was an improvement on the original text (E/2573, annex I A). However, the exact meaning of the term “social exploitation” was open to some doubt. The word “minors” was satisfactory; the use of the words “children and young persons” would leave room for confusion, which would be undesirable.

33. While he appreciated the merits of the Bulgarian amendment (A/C.3/L.572), he felt that each State had the right to arrange in its own way for the protection of children who had lost both parents. In that connexion the important role played by private charitable organizations should be borne in mind.

34. The Romanian amendment (A/C.3/L.575) seemed unnecessary because its sense was implicit in paragraph 3 of the Working Party’s text. It was questionable whether the United Kingdom amendment (A/C.3/L.574, point 1) was really useful; the United Kingdom representative himself seemed to prefer a still shorter version of paragraph 1. He could not support the USSR proposal (A/C.3/L.577) because in his country the financing of maternity leave was carried out on a tripartite basis. Nor could he vote for the Chilean amendment (A/C.3/L.573).

35. Mr. PAZHAWAK (Afghanistan) said it might be useful to give some information on the origin of certain parts of the Working Party’s draft of article 10 (A/C.3/L.570, para. 4). The words “the widest possible protection” had appeared in paragraph 3 of the original text (E/2573, annex I A) and in the amendment submitted by Ecuador and Greece (A/C.3/L.563). The word “assistance” was to be found in the latter amendment and also in the amendment submitted by Chile and Peru (A/C.3/L.562). The word “establishment”, had its origin in a suggestion made by Sweden, and the reference to “social” exploitation originated in a Guatemalan suggestion.

36. The Working Party had complied strictly with its instructions: to try to bring together all the amendments and suggestions which had been put forward; it had not introduced anything new. Obviously, its draft could not give complete satisfaction to eighty delegations, but each delegation must show good will in order to enable the Committee to arrive at a wording that would be considered on the whole acceptable by all.

37. Mr. MUFTI (Syria) said he would vote for the Swedish amendment (A/C.3/L.571), which limited the special protection accorded to mothers to the period of confinement, and which eliminated a repetition, since the provisions of paragraph 1 relating to the family clearly referred to mothers. The Syrian delegation would not be able to support the Chilean sub-amendment (A/C.3/L.573), which distorted the sense of the Swedish amendment. It would abstain from voting on the Bulgarian amendment (A/C.3/L.572), which it considered redundant, since paragraph 3 of the Working Party’s text expressly barred any discrimination. Furthermore, it would be unwise to discourage private initiative, which was very active in some countries, by making the State directly and solely responsible for the protection of needy children who had lost both parents. He would not be able to support the United Kingdom amendment to paragraph 3 A/C.3/L.574, point 2) but would vote for the Romanian amendment (A/C.3/L.575), which aptly defined the scope of the article. He would not vote for the Soviet amendment (A/C.3/L.577), for the reasons he had already had the opportunity of stating.

38. He wished to make two observations on the Working Party’s draft (A/C.3/L.570, para 4). The word “*présent*”, which had been criticized by the French representative (731st meeting), was no longer included. In his view, it ought not to be deleted, if only because it appeared in some of the articles which the Committee had already adopted. In any event, it was obvious that the Covenant was not an immutable instrument, and that the words “*présent Pacte*” covered any subsequent amendment. If the Committee chose to omit the word “*présent*”, it would have to delete it from all the articles. His second observation related to the title of article 10 as it appeared in the annotations to the draft Covenants (A/2929, chap. VIII). The Working Party had changed the order of the paragraphs. If the proposed new order was adopted, the title of the article would have to be changed to read: “Rights relating to the family, to marriage, motherhood and childhood”.

39. Mr. PONCE (Ecuador) said his delegation had considered article 10 acceptable in its original form (E/2573, annex I A), but was not surprised, in view of the complexity of the questions the article dealt with, at the many amendments that had been submitted. The Ecuadorian delegation was glad to see that in its draft (A/C.3/L.570, para. 4) the Working Party had taken up the idea contained in the Bulgarian amendment (A/C.3/L.558), and that in order to avoid a specific reference to one category of children, it had used as a basis the formula proposed by Chile and Peru (A/C.3/L.562). It also noted with satisfaction that the Working Party had incorporated the Netherlands amendment (A/C.3/L.557) and had adopted some of the suggestions put forward by Greece and Ecuador. The delegations of those two countries, believing that the family should take first place, had sub-



mitted an amendment in that sense (A/C.3/L.563). For the sake of uniformity, they had also taken over the words employed in article 22 of the draft Covenant on Civil and Political Rights (E/2573, annex I B) to define the family, namely, "natural and fundamental group unit of society". Lastly, they had proposed the replacement of the second part of paragraph 3 by a simpler and broader formula: "Marriage requires the free consent of the intending spouses." Since many marriages were still contracted without the consent of the spouses, it was not redundant to include a specific reference to free consent in article 10. The arguments of those who had asserted that the question of marriage was dealt with in article 22 of the draft Covenant on Civil and Political Rights and was therefore out of place in the article under consideration had failed to convince him. In the first place, there were other matters that were dealt with in both draft Covenants; the right of association, for example. Secondly, it was very difficult to draw an absolutely clear line of demarcation between civil rights and social rights; for in the final analysis, there was no right that was devoid of any social aspect. Thirdly, it should be borne in mind that each Covenant was independent and should be legally complete; it would therefore be wrong not to mention an idea in one of them on the ground that it was dealt with in the other.

40. He conceded that some elements could be removed without detriment to the Working Party's draft. In particular, he thought it might be wise, as the United Kingdom representative had suggested, to delete the second part of the first sentence of paragraph 1, beginning with the word "particularly". He would be able to accept the United Kingdom amendment (A/C.3/L.574, point 2), replacing the word "minors" by the words "children and young persons". He would support the Swedish amendment (A/C.3/L.571), but would not be able to vote for the Chilean sub-amendment (A/C.3/L.573), which would revive the argument about the notions of "motherhood" and "maternity." He noted that Bulgaria had submitted an amendment (A/C.3/L.572) to the new text, under which special reference would be made to one category of children. He was not opposed in principle to such a reference, but he believed that the State should not be given exclusive responsibility for the maintenance and education of orphans. It would be preferable to use a more flexible formula, such as "special attention shall be given to the maintenance and educa-

tion ..". The manner in which such attention would be given would depend upon the systems in effect in the various countries. He did not consider the Romanian amendment (A/C.3/L.575) absolutely necessary; the idea it embodied was implicit in paragraph 3. The Ecuadorian delegation would not be able to vote for the Soviet amendment (A/C.3/L.577), because the practice followed in the matter varied in different States.

41. The CHAIRMAN declared the list of speakers closed.

42. Mr. BRENA (Uruguay) asked the Chairman whether it would not be possible for the Secretariat to work out a voting procedure whereby the text of each amendment would be followed by the text of the article as it would read on the adoption of the amendment. Delegations would then know exactly what text they were being required to vote on.

43. The CHAIRMAN said that a voting procedure had already been prepared, and that in any event the vote would be very simple, thanks to the Working Party's draft. If the Committee met with any special difficulties, it would follow the method suggested by the representative of Uruguay.

#### Organization of work

44. The CHAIRMAN pointed out that at its 709th meeting on 13 December 1956, the Committee had decided to devote a minimum of thirty-five meetings to the discussion of the draft International Covenants on Human Rights and the rest of its meetings to the consideration of the remainder of the items on its agenda, namely, items 32, 60 and 12. The manner in which the latter three items should be considered was to be decided by the Committee at an appropriate time towards the end of its consideration of item 31. The Committee had so far devoted twenty-eight meetings to the study of the draft Covenants, and in addition there had been four meetings of working parties. He suggested that the Committee should take a decision on Wednesday, 23 January, regarding the consideration of the three last items. Unless any delegation proposed that the consideration of one of those items should be postponed, he thought that the Committee should limit itself to deciding on the number of meetings it would devote to each item.

The meeting rose at 6 p.m.