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Fortieth session
Agenda item 148**DRAFT DECLARATION ON SOCIAL AND LEGAL PRINCIPLES RELATING TO THE
PROTECTION AND WELFARE OF CHILDREN, WITH SPECIAL REFERENCE TO
FOSTER PLACEMENT AND ADOPTION, NATIONALLY AND INTERNATIONALLY**Report of the Sixth CommitteeRapporteur: Mr. Molefi PHOLO (Lesotho)

I. INTRODUCTION

1. By a letter dated 10 October 1985 (A/40/244), the representatives of the Netherlands, the Philippines, Sweden and Venezuela requested the inclusion in the agenda of the fortieth session of the General Assembly of an additional item entitled "Draft Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption, Nationally and Internationally". An explanatory memorandum accompanied the request.
2. At its 53rd plenary meeting, on 29 October 1985, the General Assembly, on the recommendation of the General Committee, decided to include the item in its agenda and to allocate it to the Sixth Committee.
3. The Committee considered this item at its 30th, 48th, 49th and 50th meetings, on 6 and 27 November and 2 December 1985. The summary records of those meetings (see A/C.6/40/SR.30, 48, 49 and 50) reflect the views expressed by the representatives who participated in the debate on the item.
4. The Committee had before it a draft resolution (A/C.6/40/L.8) sponsored by Chile, Finland, the Netherlands, the Philippines, Spain, Sweden and Venezuela, later joined by the Federal Republic of Germany and Paraguay. The draft resolution read as follows:

"The General Assembly,

"Recalling its resolutions 36/167 of 16 December 1981, 37/115 of 16 December 1982, 38/142 of 19 December 1983 and 39/89 of 13 December 1984,

"Having taken note of the draft Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption, Nationally and Internationally, as submitted to it by the Economic and Social Council by its resolution 1979/28 of 9 May 1979,

"Appreciating the work done on this question in its Third and Sixth Committees, as well as the efforts made by Member States representing different legal systems, during the consultations held at Headquarters from 16 to 27 September 1985, to join in the common endeavour of completing the work on the draft Declaration,

"Recalling the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Elimination of All Forms of Discrimination against Women,

"Recalling also the Declaration on the Rights of the Child, which it proclaimed by its resolution 1386 (XIV) of 20 November 1959,

"Reaffirming principle 6 of that Declaration, which states that the child shall, wherever possible, grow up in the care and under the responsibility of his parents, and, in any case, in an atmosphere of affection and of moral and material security,

"Concerned at the large number of children who are abandoned or become orphans due to violence, internal disturbance, war, warlike situations, social crises or natural disasters,

"Bearing in mind that in all foster placement and adoption procedures the best interests of the child should be the sole criterion,

"Conscious of the need to proclaim universal principles to be taken into account in cases where procedures are instituted relating to foster placement or adoption of a child, either nationally or internationally,

"Bearing in mind, however, that the principles set forth hereunder do not impose on States such legal institutions as foster placement or adoption,

"Proclaims the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption, Nationally and Internationally, the text of which is annexed to the present resolution.

"ANNEX

"Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption, Nationally and Internationally

"A. GENERAL FAMILY AND CHILD WELFARE

"Article 1

"Every State should give a high priority to family and child welfare.

"Article 2

"Child welfare depends upon good family welfare.

"Article 3

"The first priority for a child is to be cared for by his or her own parents.

"Article 4

"When care by the child's own parents is unavailable or inappropriate, care by relatives of the child's parents, by another substitute - foster or adoptive - family or, if necessary, by an appropriate institution should be considered.

"Article 5

"In all matters relating to the placement of a child outside the care of the child's own parents, the best interests of the child, particularly his or her need for affection and right to security and continuing care, should be the sole criterion.

"Article 6

"Persons responsible for foster placement or adoption procedures should have professional or other appropriate training.

"Article 7

"Governments should determine the adequacy of their national child welfare services and consider appropriate actions.

/...

"Article 8

"The child should at all times have a name, a nationality and a legal representative. The child should not, as a result of foster placement, adoption or any alternative régime, be deprived of his or her name, nationality or legal representative unless the child thereby acquires a new name, nationality or legal representative.

"Article 9

"The need of a foster or an adopted child to know about his or her background should be recognized by persons responsible for the child's care, unless this is contrary to the child's best interests.

"B. FOSTER PLACEMENT

"Article 10

"Foster placement of children should be regulated by law.

"Article 11

"Foster family care, though temporary in nature, may continue, if necessary, until adulthood but should not preclude either prior return to the child's own parents or adoption.

"Article 12

"In all matters of foster family care the prospective foster parents and, as appropriate, the child and his or her own parents should be properly involved. A competent authority or agency should be responsible for supervision to ensure the welfare of the child.

"C. ADOPTION

"Article 13

"The primary aim of adoption is to provide the child who cannot be cared for by his or her own parents with a permanent family.

"Article 14

"In considering possible adoption placements, persons responsible for them should select the most appropriate environment for the child.

"Article 15

"Sufficient time and adequate counselling should be given to the child's own parents, the prospective adoptive parents and, as appropriate, the child in order to reach a decision on the child's future as early as possible.

"Article 16

"The relationship between the child to be adopted and the prospective adoptive parents should be observed by child welfare agencies or services prior to the adoption. Legislation should ensure that the child is recognized in law as a member of the adoptive family and enjoys all the rights pertinent thereto.

"Article 17

"If a child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the country of origin, intercountry adoption may be considered as an alternative means of providing the child with a family.

"Article 18

"Governments should establish policy, legislation and effective supervision for the protection of children involved in intercountry adoption. Intercountry adoption should, wherever possible, only be undertaken when such measures have been established in the States concerned.

"Article 19

In intercountry adoption, placements should, as a rule, be made through competent authorities or agencies with application of safeguards and standards equivalent to those existing in respect of national adoption. In no case should the placement result in improper financial gain for those involved in it.

"Article 20

"In intercountry adoption through persons acting as agents for prospective adoptive parents special precautions should be taken in order to protect the child's legal and social interests.

"Article 21

"No intercountry adoption should be considered before it has been established that the child is legally free for adoption and that any pertinent documents necessary to complete the adoption, such as the consent of competent authorities, will become available. It must also be established that the child will be able to migrate and to join the prospective adoptive parents and may obtain their nationality.

"Article 22

"In intercountry adoption, as a rule, the legal validity of the adoption should be assured in each of the countries involved."

5. At the 49th meeting, on 2 December, the representative of the Federal Republic of Germany indicated that, as a result of informal consultations, the co-sponsors of draft resolution A/C.6/40/L.8 did not insist on submitting the draft resolution to a vote. He also introduced on behalf of his delegation a draft decision (A/C.6/40/L.26), which he orally revised by replacing the word "Welcoming" in the second paragraph by the words "Takes note of".

6. At the 50th meeting, on 2 December, he orally revised the draft decision by replacing in the third paragraph the words "achieve agreement on the remaining questions and to adopt the draft Declaration at that session" by "consider the remaining questions with a view to achieving agreement and adopting the draft Declaration at that session".

7. At the same meeting, the Committee adopted draft decision A/C.6/40/L.26, as orally revised, without a vote (see para. 9).

8. Statements in explanation of position were made, before the decision, by the representatives of Madagascar and Sweden.

II. RECOMMENDATION OF THE SIXTH COMMITTEE

9. The Sixth Committee recommends to the General Assembly the adoption of the following draft decision:

The General Assembly

(a) Expresses its appreciation at the work done in its Third and Sixth Committees in the common endeavour of elaborating a Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption, Nationally and Internationally,

(b) Takes note of the report, 1/ including the draft Declaration, of the open-ended informal consultations held at United Nations Headquarters from 16 to 27 September 1985 between Member States representing different legal systems,

(c) Decides that the Sixth Committee should hold informal consultations of limited duration early in the forty-first session of the General Assembly in order to consider the remaining questions with a view to achieving agreement and adopting the draft Declaration at that session.

1/ A/40/244, annex.