



SUMMARY RECORD OF THE 55th MEETING

Chairman: Mr. FRANCIS (Jamaica)

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The meeting was called to order at 3.50 p.m.

AGENDA ITEM 136: 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 SECRETARY-GENERAL
(continued) (A/C.6/41/L.13/Rev.1)

1. Mr. VAN WULFFTEN PALTHE (Netherlands) introduced draft resolution A/C.6/41/L.13/Rev.1, of which Cape Verde, Peru, Philippines, Portugal, Qatar, Sweden, Uganda and Venezuela had become sponsors. He said that the draft Declaration had been considered by the General Assembly since 1979 and had been on the Sixth Committee's agenda since 1982. The urgent need to complete the work was clearly illustrated by a 1982 UNICEF report, which estimated that some 70 million children were living without families. In informal consultations held in 1986, under Netherlands chairmanship, the two remaining questions, namely, the term "the sole criterion" in article 5, (A/40/244, appendix I) and the proposal to include a principle on the problem of abduction of children for purposes of their illicit placement, had been solved. During those consultations, general agreement had also been reached on the manner in which the Islamic institution of kafalah would be incorporated into the draft. He noted that there was a minor printing error in the English and Spanish versions of article 24, which should be read as containing one paragraph, not two. He hoped that the draft resolution would be adopted without the need for a vote.
2. Mr. VOICU (Romania) said that the draft Declaration was the culmination of a sustained and exemplary effort. However, although he did not wish to initiate a discussion on the issue, he felt that the French version presented minor discrepancies with the English text, which was the original. As an example, he pointed out that in the fifth preambular paragraph the expression "the best interests of the child" appeared in French as "L'intérêt bien compris de l'enfant", and, in article 3, the English version read "own parents", while the French used "parents naturels". He therefore asked the Secretariat to try to improve the French text. He also supported the Netherlands' remarks with regard to article 24.
3. Mr. ROMPANI (Uruguay) said that the prevailing norms in Uruguay covered all the issues included in the draft resolution. He pointed out, in particular, that more than a century earlier the "Public Education Act", sponsored by the educator José Pedro Varela, who was following in the footsteps of William Penn and Domingo Faustino Sarmiento, had set the standards for the education of children. He drew attention, inter alia, to the Civil Status Register Acts of 1879 and 1912, the Civil Code of 1868, the Children's Code of 1934 and the Adoptive Legitimation Act of 1945. He also noted with satisfaction that a compromise had been reached with regard to article 21, although he believed that there would be no reason not to include the expression "religious interests", since the word "religion" appeared in Article 1, paragraph 3 of the United Nations Charter.
4. Draft resolution A/C.6/41/L.13/Rev.1 was adopted without a vote.

5. Mr. LOULICHKI (Morocco), speaking on behalf of the States members of the Islamic Conference, said that the draft Declaration on Social and Legal Principles Relating to the Protection and Welfare of Children should have reflected adequately the institutions of different legal systems, since the main concern was the protection and welfare of children, which depended primarily on the family's welfare.
6. The Islamic countries had always paid particular attention to the welfare of children for social, humanitarian and religious reasons and considered the family as the basic foundation of society.
7. Islam attached great importance to the plight of orphans and destitute children and made it a religious duty both for the State and individual Muslims to promote and protect the welfare of children.
8. According to the Koran, the care of children should be the concern of the biological parents. If the parents were unable to assume that responsibility, it would fall on members of the family on the basis of the degree of relationship. If that solution was not possible, the responsibility devolved on society as a whole.
9. The child cared for by a family other than his own could not bear the name of that family or be a legitimate heir, but that system did not prevent anyone from giving a portion of his property to a child by will, provided that it did not exceed one third of his total property.
10. Although the Declaration adopted did not properly reflect, in its substantive paragraphs, the institution of kafalah, the States members of the Islamic Conference had agreed to the adoption of the Declaration without a vote with the understanding that each nation and legal system would contribute to the humanitarian and social objective of child care in the framework of its own religious beliefs and legal principles.
11. In that connection, the States members of the Islamic Conference wished to state that the provisions of the Declaration relating to the family name and inheritance referred only to adoption and were incompatible with the principles of Islamic Shariah.
12. The States members of the Islamic Conference interpreted principles 23 and 24 as governing two different situations: article 23 contemplated the case of two countries which recognized the adoption as a rule but differed in the technical modalities thereof.
13. Article 24 concerned the situation where one of the legal systems involved did not recognize the validity of adoption. In such case, the article meant that if the national law of the State of the child and his religious, social and cultural background and interests were not duly taken into account, the adoption would have no validity.

14. Mr. BRING (Sweden) speaking on behalf of the delegations of Denmark, Finland, Iceland, Norway and Sweden, noted with satisfaction that the Sixth Committee had adopted without a vote the draft Declaration on Social and Legal Principles relating to the Protection and Welfare of Children. The Member States, representing different legal systems, had reached agreement on a text containing guidelines with regard to the rights of children.

15. The Commission on Human Rights had been working for some time on a convention on the rights of the child, and the present Declaration would be a valuable supplement to the future convention. The Declaration would promote the legal protection of the child and a satisfactory family life. It contained important guidelines on intercountry adoption. Policies should be established and laws enacted in order to, inter alia, prohibit the abduction of children. Also, the child's legal and social interests should always be protected. The positive impact of the Declaration would be considerable in practice. However, the Declaration, as a recommendatory instrument, was not suited to handle matters falling within the purview of the private international law rules of different States.

16. Mr. EDWARDS (United Kingdom) expressed his delegation's satisfaction at the adoption of the Declaration without a vote; it felt that the instrument would make a useful contribution to the process of international standard-setting and co-operation on that subject. His delegation wished, however, to explain the way in which it interpreted some of the provisions of the Declaration.

17. With regard to article 5, his delegation felt that the interests of the child should be paramount, although they should not be the only consideration.

18. While the requirements laid down in article 8 were most desirable, there were some occasions when they could not be strictly complied with. For example, on the death of a child's parents there might be a brief hiatus before a new legal representative was appointed. An opportunity should be available for a child to be given a name, a nationality and a legal representative.

19. With regard to article 18, the requirement that legislation should be established was not really appropriate for countries that had common-law systems, where there were other adequate sources of regulation. His delegation construed the word "protection" as meaning that the child's general welfare should be dealt with by such means, and that no extra entitlement - for example, in the field of immigration - was thereby intended.

20. His delegation interpreted articles 20 and 21 as meaning that there should be no adoption by a person or persons on behalf of adoptive parents without the adoptive parents being present and without their approval in person under the appropriate legal process. It also wished to point out that adoptions by a close relative did not need to be arranged by official authorities.

21. The United Kingdom construed article 22 as placing on the State from which the child travelled the onus of ensuring that he or she was legally free for adoption and that all the necessary procedures for the child's adoption in the receiving

(Mr. Edwards, United Kingdom)

State had been observed, without prejudice to the receiving State's discretionary powers. It did not construe articles 23 and 24 as implying any interference with the rights of each State to recognize as valid an adoption order of another State. It construed article 23 as meaning that, as a rule, where an adoption was not recognized as valid by the receiving State, the adoptive parents must apply for permission to adopt the child under the legal system of that State. It could not accept any construction that would interfere with the powers of the courts in the United Kingdom to make an adoption order in respect of the child because, for example, of his or her national origin.

22. Mr. BERNAL (Mexico) said that the Declaration that had been adopted would promote the protection of minors in cases where foster placement was necessary or where they were adopted and would prevent illicit placement and adoptions both nationally and internationally.

23. Under the relevant Mexican legislation, the adopted child had the same rights and duties vis-à-vis the person or persons who adopted him or her as in the case of a son or daughter. Mexico hoped that in cases where Mexican children were adopted abroad they would have the same rights and protection and receive the same assistance as children who were nationals of the country in question, without any discrimination.

24. The judge who approved the adoption must assess the situation in the light of the child's best moral and material interests, in addition to guaranteeing the legality of the juridical act.

25. In cases where the nationality of the minor who was to be adopted differed from that of the prospective adoptive parents, the situation must be dealt with in accordance with the law of the forum of the judge dealing with the adoption.

26. Mr. COLLARD (France) said that his delegation interpreted article 24 as indicating the factors to be taken into account by the competent authorities before they reached a decision on an adoption case. The child's cultural and religious background should be taken into account on an equal footing with other factors, thus facilitating consideration of the child's best interests. Cultural and religious background alone did not justify a negative decision. Article 24 did not apply retrospectively to adoption and did not result, from the cultural and religious point of view, in a special status for the adopted child in the family. The adopted child was integrated fully into the adoptive family, and there could be no question of stripping the parents of their authority.

27. Miss FORTON (Canada) said that she welcomed the fact that the Declaration had been adopted without a vote. In Canada, although the Federal Government co-ordinated adoption internationally, adoption was subject to the jurisdiction of the 10 provinces and 2 territories. Some provinces had expressed concern about the use in article 19 of the word "abduction". Her Government therefore wished to place on record its view that the phrase "any other act for illicit placement of children" included "abduction" and that article 19 covered "abduction" only in cases where a child was abducted for the purpose of foster placement or adoption.

(Miss Forton, Canada)

28. Her delegation was willing to accept article 24 of the Declaration in order to guarantee the broadest support possible for the Declaration.

29. Mr. TREVES (Italy) said that his delegation had supported the adoption of the Declaration, which it regarded as a positive achievement. However, no provision in the Declaration should be interpreted as entailing changes in the principles of private international law concerning adoption applicable in Italy, including the concept of public policy. Moreover, his delegation interpreted the second sentence of article 24 as not entailing any exception to the basic principle laid down in article 5, according to which the best interests of the child were the paramount consideration.

30. Mr. KAKOLECKI (Poland) said that his delegation noted with satisfaction the adoption by consensus of the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, as well as the good will displayed by delegations with different legal systems. Although it was not a legally binding document, the Declaration would be a valuable complement to the future convention on the rights of the child. The keystone of the Declaration was article 5, and no other provision should be implemented in any manner that was prejudicial to the content of that article.

31. Mr. ABDEL-RAHMAN (Sudan) said that his delegation welcomed the fact that the Declaration had been adopted without a vote. He wished to request that the important statement made by the representative of Morocco on behalf of the States members of the Islamic Conference should be reflected in the relevant documents as fully as possible.

32. Mr. QUERTON (Belgium) said that his delegation welcomed the adoption of the Declaration by consensus. However, it had had difficulty in accepting the principles laid down in articles 23 and 24.

33. The purpose of the articles in question was in fact to exclude from the rule generally accepted in the text of the Declaration legal régimes for adoption such as those forming part of the legislation of a number of countries, including Belgium.

34. His delegation recognized that the Committee had been in an awkward position in that it had been obliged to integrate into a single declaration different - and in some ways conflicting - juridical principles. It had joined the consensus in view of the willingness to reach a satisfactory compromise that had been displayed by delegations and because the wording of articles 23 and 24 did not prejudice implementation of the imperative provisions of Belgium's domestic legislation.

35. Mr. SCHARIOTH (Federal Republic of Germany), explaining his delegation's position, welcomed the adoption of the valuable Declaration, made possible by the important work undertaken by the representative of the Netherlands and by the spirit of moderation and compromise displayed by all delegations. With regard to the interpretation of article 23 on intercountry adoption, he considered that

(Mr. Scharioth, Federal Republic of Germany)

adoption should not be precluded in every case in which there was a divergence between the legislation of the countries in question; adoption should always be possible when it was in the interest of the child.

36. Ms. WILLSON (United States of America) welcomed the adoption of the Declaration, which emphasized family care for children, preferably in their own families, or if that were impossible in an adoptive family. Generally, foster-family care should be a temporary solution pending reunification with the biological family or adoption. Institutional care should be resorted to only when necessary for the short-term treatment of a particular child's special condition.

37. It was her delegation's understanding that the term "background" in article 9 included information relating to the child's medical, cultural or social history, but did not necessarily include information that would identify the child's biological parents. The article did not reflect a preference for the release of such identifying information. Moreover, the duty to recognize the need for the child to obtain such information was entrusted to the "persons responsible for the child's care". In the context of adoption, the duty to consider those needs would generally fall to the adoptive parents rather than to the State authorities. Based on its interpretation of the narrow scope of that provision, her delegation considered it to be acceptable.

38. Unfortunately, article 20 appeared to endorse intercountry adoption by proxy. That practice was unacceptable and her delegation was concerned that the special precautions contemplated would not be sufficient to protect the children in such cases.

39. The adoption of the Declaration was the main achievement of the Sixth Committee during the current session. The efforts of the representatives of the Netherlands, Poland and Cape Verde and of the representative of the Secretariat deserved special mention. Her delegation was pleased that all delegations had demonstrated the requisite good will to make a compromise solution possible.

40. Mr. JESUS (Cape Verde) welcomed the spirit of co-operation in which the various delegations had worked during the informal consultations and singled out in particular the contribution of the Islamic countries and the work of the representative of the Netherlands. The future work of the Sixth Committee would be very fruitful if the spirit that had prevailed in those informal consultations were to continue in the future.

41. Mr. KALINKIN (Secretary of the Committee), referring to the proposal of the representative of the Sudan to have the statement made by the representative of Morocco on behalf of the member States of the Islamic Conference reproduced as fully as possible, drew attention to paragraph 9 of the first report of the General Committee (A/41/250), adopted by the General Assembly at its 3rd meeting (A/41/PV.3), in accordance with which the decision not to reproduce in extenso statements made in the Main Committees should be maintained for the forty-first session.

42. The CHAIRMAN said that the Committee had concluded its consideration of agenda item 136.

AGENDA ITEM 138: VIENNA CONVENTION ON THE LAW OF TREATIES BETWEEN STATES AND INTERNATIONAL ORGANIZATIONS OR BETWEEN INTERNATIONAL ORGANIZATIONS (continued)
(A/C.6/41/L.24)

43. Mr. TUERK (Austria), introducing draft decision A/C.6/41/L.24 on behalf of the sponsors, who had been joined by Côte d'Ivoire, Greece, Japan, Jordan and Senegal, said that the preamble to the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations stated that the codification and progressive development of the rules relating to such treaties were a means of enhancing legal order in international relations and of serving the purposes of the United Nations. The importance of such treaties for developing international relations and ensuring conditions for peaceful co-operation among nations was also emphasized in the preamble to the Convention.

44. The Convention had already been signed by 13 States, several of which, including Austria, had announced their intention of ratifying it in the near future. The sponsors hoped that other States, and international organizations that had the capacity to conclude treaties, would follow that example as soon as possible. The Convention was open for signature until 31 December 1986 at the Federal Ministry of Foreign Affairs of Austria, and thereafter until 30 June 1987 at United Nations Headquarters.

45. Mr. CASTROVIEJO (Spain), Rapporteur, said that two technical corrections should be made to paragraph (c) in the Spanish version of draft decision A/C.6/41/L.24. The phrase "facultadas para concertar tratados" should be replaced by the phrase "con capacidad para concluir tratados", and the word "estudien" should be replaced by the word "consideren".

46. Mr. ORDZHONIKIDZE (Union of Soviet Socialist Republics), speaking in explanation of vote before the vote, said that the Soviet delegation could not support draft decision A/C.6/41/L.24 for the reasons he had already explained at greater length in his statement during the debate, in which he had pointed out the discrepancy between the draft decision and the opinions expressed in the note by the Secretary-General requesting the inclusion of that item in the agenda (A/41/142). The Vienna Convention had been adopted at the Conference by less than half of the States Members of the United Nations. At the current stage, the United Nations should refrain from signing it since it, was not clear how, if the majority of the States Members of the United Nations had not yet pronounced themselves in favour of the Convention, it could be signed by the Organization, which acted on behalf of all its Members. The question should not be considered until the majority of Member States had signed. If it was subsequently concluded that the United Nations should become a party to the Convention, it would be able to do so even after the time-limit for signature had expired. If the United Nations signed the Convention, it would be a bad precedent.

47. Mr. COLLARD (France) said that his delegation would vote against draft decision A/C.6/41/L.24 because of its general attitude towards the Vienna Convention expressed both at the Conference itself and during the debate in the Committee. For the reasons put forward on those occasions, his delegation was opposed, to the United Nations signing the Convention. If, nevertheless, the Organization did sign it, the signature should be subject to an express reservation with respect to the provisions referring to so-called jus cogens.

48. Mr. KOTSEV (Bulgaria) said that his delegation would abstain in the vote on draft decision A/C.6/41/L.24, which did not properly reflect the discussion on that item in the Sixth Committee.

49. Before any action was taken to make the United Nations become a party to the Vienna Convention, a number of issues should be studied: the mechanism for authorizing the Secretary-General to bind the United Nations by treaties; the financial obligations of the United Nations arising from paragraphs 9 and 14 of the annex to the Convention; the reservations which the United Nations should formulate when becoming a party to the Convention, and the establishment of a procedure for informing all Member States of United Nations practice regarding treaties in the context of such provisions as those contained in article 2, paragraph 1 (j), of the Convention.

50. As many delegations had said, the United Nations must not sign the Convention before the majority of its Member States had done so.

51. If the draft decision was nevertheless adopted, the person duly authorized to sign the Convention on behalf of the United Nations should make a declaration to the effect that the signing was without prejudice to the question of the financial obligations which would be imposed on the Organization under paragraphs 9 and 14 of the annex.

52. Furthermore, paragraph (c) of the draft decision would reflect the discussion more accurately if, when expressing the hope that international organizations with the capacity to conclude treaties would consider taking the steps necessary to become parties to the Convention, the expression "in due time" was used instead of "at an early date".

53. A vote was taken by roll-call on draft decision A/C.6/41/L.24.

54. The Ukrainian Soviet Socialist Republic, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Argentina, Austria, Bahamas, Bahrain, Bangladesh, Barbados, Belgium, Benin, Bhutan, Botswana, Brazil, Brunei Darussalam, Burkina Faso, Burma, Cameroon, Canada, Cape Verde, Central African Republic, Chad, Chile, Colombia, Côte d'Ivoire, Cyprus, Denmark, Ecuador, Egypt, Ethiopia, Finland, Germany, Federal Republic of, Ghana, Greece, Guinea, Iceland, India, Indonesia, Iraq, Ireland, Italy, Jamaica, Japan, Jordan, Kenya, Kuwait,

Lebanon, Liberia, Madagascar, Malaysia, Maldives, Mali, Mexico, Morocco, Nepal, Netherlands, New Zealand, Nicaragua, Niger, Nigeria, Oman, Pakistan, Panama, Paraguay, Peru, Philippines, Portugal, Qatar, Rwanda, Saudi Arabia, Senegal, Singapore, Somalia, Spain, Sri Lanka, Sudan, Swaziland, Sweden, Thailand, Togo, Trinidad and Tobago, Tunisia, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Venezuela, Yugoslavia, Zaïre, Zambia, Zimbabwe.

Against: France.

Abstaining: Algeria, Angola, Bulgaria, Byelorussian Soviet Socialist Republic, China, Cuba, Czechoslovakia, Democratic Yemen, German Democratic Republic, Hungary, Iran (Islamic Republic of), Israel, Lao People's Democratic Republic, Libyan Arab Jamahiriya, Malawi, Mongolia, Norway, Poland, Syrian Arab Republic, Turkey, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Viet Nam.

55. Draft decision A/C.6/41/L.24 was adopted by 87 votes to 1, with 23 abstentions.

56. Mr. ABADA (Algeria), speaking in explanation of vote, said that his delegation's abstention did not mean that it objected to the United Nations signing the Convention, which would clearly be an important instrument for the codification of international law. However, the text of the Convention did not take into account the position of various delegations on the problem of the settlement of disputes. In his opinion, a consensus in that regard would have been possible if there had been sufficient political will to achieve it.

57. Mr. BOUABID (Tunisia) said that the Convention strengthened existing provisions concerning the law of treaties and consolidated the work on the codification and development of international law. Tunisia had a particular interest in that work, which helped to implement the principles and purposes contained in the Charter of the United Nations. One of those principles related to the peaceful settlement of disputes, which was based in turn on the freedom of choice by the parties of the means of settlement of their disputes. States clearly had the right freely to choose the means, regardless of the nature of the dispute, and it was the understanding of Tunisia that that freedom also existed with regard to disputes arising from the application or interpretation of treaties. States must keep open the possibility of resorting to all the means of peaceful settlement, including arbitration, conciliation and judicial settlement, and their consent was essential for the initiation of any of those procedures.

58. Tunisia's vote in favour of draft decision L.24, like its vote in favour of the Convention, should be understood in the light of the above-mentioned factors.

59. Mr. ABDEL-RAHMAN (Sudan) said that his delegation had voted for the draft decision because it believed that the Convention would strengthen the legal régime applicable in treaties. In its opinion, the United Nations must adopt the necessary measures to sign the Convention.

60. Mr. BYE (Norway) said that Norway had participated in the Conference and had voted in favour of the Convention. However, it had abstained in the vote on draft decision L.24, because of a discrepancy between the provisions of article 46 of the Convention and certain provisions of the Norwegian Constitution preventing it for the time being from becoming a party to the Convention. Nevertheless, in its international relations, Norway applied the same legal principles as those in the Convention.

61. Mr. GÜNEY (Turkey) said that his delegation had abstained for the same reasons which had prevented it from endorsing the Convention.

62. The CHAIRMAN said that consideration of item 138 had thus been completed.

ORGANIZATION OF WORK

63. The CHAIRMAN said that the consultations had not yet been concluded on the meeting dates for the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization, the Special Committee on Enhancing the Effectiveness of the Principle of Non-Use of Force in International Relations and the Ad Hoc Committee on the Drafting of an International Convention against the Recruitment, Use, Financing and Training of Mercenaries. The consultations would continue until an agreement had been reached.

64. Mr. ROSENSTOCK (United States of America) said that the timing of the consultations should be determined by the efficient use of available time. In his opinion, the dates should be set not during the consultations but in the Advisory Committee on Administrative and Budgetary Questions and the Fifth Committee.

COMPLETION OF THE COMMITTEE'S WORK

65. After an exchange of courtesies in which the representatives of Nicaragua (on behalf of the Group of Latin American and Caribbean States), Czechoslovakia (on behalf of the Group of Eastern European States), Jordan (on behalf of the Group of Asian States), Cameroon (on behalf of the Group of African States) and Austria (on behalf of the Group of Western European and other States) took part, the CHAIRMAN thanked all the representatives for their co-operation, made some general remarks concerning the allocation of time and the approach which might suitably be adopted for the consideration of certain agenda items, and said that the Sixth Committee had completed its work for the forty-first session.

The meeting rose at 6 p.m.