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CONTENTS



***Chairman:*** Mr. Salvador P. LOPEZ (Philippines).

## AGENDA ITEM 35

**Draft International Covenants on Human Rights (E/2573, annexes I-III, A/2907 and Add.1-2, A/2910 and Add.1-6, A/2929, A/4789 and Corr.1, A/C.3/L.903, A/C.3/L.939/Rev.1, A/C.3/L.940/Rev.1) (continued)**

ARTICLE 22 OF THE DRAFT COVENANT ON CIVIL AND POLITICAL RIGHTS (E/2573, ANNEX I B) (concluded)

1. Mr. CHAKCHOUK (Tunisia) pointed out that the first three paragraphs of article 22 appeared to be acceptable to the majority of delegations.

2. With respect to paragraph 4, he thanked the sponsors of the fourteen-Power amendment (A/C.3/L.939) and the Philippine delegation for their spirit of compromise. Two different ideas had, in fact, been maintained with respect to the principle of equal rights for men and women, some delegations being in favour of a strong and unequivocal wording, while others advocated the progressive implementation of the principle because of the special difficulties which might arise in the matter as a result of national customs and traditions. In those circumstances, the fourteen-Power amendment as altered by the Philippine proposal (A/C.3/L.941) should command a strong majority.

3. For his part, he would have been willing to vote for a categorical text, since the Constitution of his country proclaimed the equal rights of men and women, but the Committee was preparing an international Covenant which should be ratified by as many countries as possible.

4. His delegation would vote in favour of the first three paragraphs of article 22 and would also support the fifteen-Power text (A/C.3/L.939/Rev.1). It would vote for the original text of the second sentence of paragraph 4 or for any other formula of the same tenor.

5. Lastly, it would give very favourable consideration to any suggestion to include a special article concerning the protection of children in the draft Covenant under discussion.

6. Mr. WAN MUSTAPHA (Federation of Malaya) said that he was in favour of the first three paragraphs of article 22.

7. With respect to paragraph 4, his delegation had first supported the original text, which was well drafted, and had opposed the fourteen-Power amendment, which was nearly meaningless, since it did not contain the word "legislation". In practice, all that States could be asked to do to implement the principles set forth in the draft Covenant was to adopt the necessary legislative measures; there was no point in asking the judicial authorities, the registry office or private individuals to enforce the principles in question. Moreover, if the word "legislation" in the first sentence was deleted, the words "the law shall lay down" in the second sentence of paragraph 4 would no longer have any antecedent. For legal reasons, therefore, and out of regard for logic, his delegation had opposed the fourteen-Power amendment.

8. The Philippine sub-amendment reintroduced into that text the idea that it was the responsibility of the State to take appropriate steps; it therefore had the twofold advantage of satisfying those delegations which favoured the progressive implementation of the principle of equal rights for men and women and of restoring its concrete meaning to paragraph 4.

9. His delegation would therefore vote for the fifteen-Power text, which included the Philippine sub-amendment.

10. With respect to the three-Power amendment (A/C.3/L.940/Rev.1), he first observed that there could be no question of making provision for the protection of children born out of wedlock in an article dealing specifically with marriage. Moreover, by making express mention of the dissolution of marriage, the case of separation was excluded, with the result that children whose parents were separated were denied the benefit of the proposed protection measures. Lastly, the word "any" was extremely vague: the three-Power text could be interpreted as meaning that a man whose wife already had children by a first union would have an obligation to protect those children when his marriage was dissolved. That was going a bit too far. For those reasons, his delegation would be unable to support the three-Power amendment.

11. Mr. ASIROGLU (Turkey) paid a tribute to the Commission on the Status of Women for its tireless struggle to do away with discrimination on the ground of sex and to secure the triumph of the principle of equal rights of men and women as was set forth in the Charter of the United Nations and the Universal Declaration of Human Rights (General Assembly resolution 217 (III)). He stressed that article 22 clearly recognized the principle of equality in civil law.

12. Regarding the implementation of that text, the Commission on Human Rights had decided in favour

of a progressive method of application, contrary to the wishes of the Commission on the Status of Women. In that connexion he recalled that article 49 of the draft Covenant expressly referred to article 22, paragraph 4: it invited States to submit reports indicating factors and difficulties affecting the progressive implementation of the provisions of that paragraph. His delegation thought the wording of article 49 was far from satisfactory and that the same could be said of article 22, paragraph 4.

13. The two divergent tendencies which had emerged in the Third Committee had already come to light in the Commission on Human Rights which, wishing to reach a compromise between the principles of progressive and immediate implementation, had been reduced to drafting vague and incomplete texts.

14. His delegation considered that article 49 could not be interpreted as meaning that the provisions of article 22, paragraph 4, had to be implemented progressively; all it did was to bind the States Parties to the Covenant to observe the provisions of General Assembly resolution 543 (VI) concerning the submission of reports on human rights. The progressive implementation of article 22, paragraph 4, was only an option which was left entirely to the discretion of States. The Commission on Human Rights had in any case not fixed a time-limit for the implementation of that paragraph, so that it would be possible for States to delay its application indefinitely, limiting themselves to the submission of reports of the kind envisaged in article 49.

15. The measures of implementation contained in part IV of the draft Covenant were not much help in that connexion: in article 40 the right of complaint was recognized in respect of States, not individuals, so that a woman who was a victim of discriminatory measures with regard to rights and responsibilities arising out of marriage would not be able to avail herself of it.

16. He also drew the Committee's attention to a paradoxical fact: article 2, paragraph 1, of the draft Covenant on Civil and Political Rights bound States to ensure to all individuals the rights recognized in the Covenant, and that without distinction as to sex, in other words, to observe the principle of equal rights of men and women. States were thus being asked to ensure, immediately upon signing or ratifying the Covenant, all the rights set forth in it without distinction as to sex, and they were at the same time invited to implement progressively the principle of equal rights of men and women. In attempting to satisfy everyone, the Commission had made the wording of the articles vague and equivocal.

17. His delegation was not opposed to the gradual application of the principle under discussion. It could even very well understand the difficulties which certain countries experienced in that regard. But it hoped that States would expressly undertake to implement —even if progressively—the provisions of article 22, paragraph 4, and not merely to submit reports on difficulties affecting the progressive implementation of those provisions. It considered that the status of women must be improved, and it would support any amendment likely to guarantee effectively the application of the principle of equal rights of men and women with regard to marriage.

18. Mrs. DE ARENAS (Guatemala) said she had not yet spoken on article 22, not because she regarded it as unimportant but because she entirely approved of its tenor. She had therefore preferred to wait until the Committee had before it amendments designed to give greater force and clarity to the text, the first three paragraphs of which were satisfactory but paragraph 4 of which seemed too vague.

19. Her delegation had been prepared to support the fourteen-Power amendment, because it regarded equality of rights and responsibilities, not only during marriage but also at its dissolution, as an essential principle in that it strengthened the stability of the family, the basis of society.

20. It would nevertheless vote for the revised text incorporating the Philippine proposal.

21. As the Belgian representative had said (1093rd meeting), many women expected positive assistance from article 22. They were prisoners, in the middle of the twentieth century, of oppressive, anachronistic customs which hampered their lives; they wanted to break their chains and to lead an existence compatible with human dignity. The clock could not be turned backward: women could no longer be placed in an absurd position in which they were humiliated and limited to a subordinate role. How could a mother, a wife, a woman who wished to improve her status through education and who encountered a barrier of incomprehension and intolerance, be denied the help which she sought? Why draft a vague article, narrow in scope? Some would say that the articles of the draft Covenant should be acceptable to the majority of States, but it did not necessarily follow that they should be drafted in vague terms.

22. In conclusion, she said that she would vote for the three-Power amendment and for article 22 as a whole.

23. Mrs. TSIMBOUKIS (Greece) said that she would vote for paragraph 1 of article 22, which, since it proclaimed a principle of paramount importance, had its place in the present draft Covenant even though it had already been incorporated in article 10 of the draft Covenant on Economic, Social and Cultural Rights (A/C.3/L.903).

24. She would also vote for paragraph 2, which she found satisfactory in every respect. In the debates of the Commission on Human Rights it had been acknowledged that the marriageable age was that established by each of the States Parties and that the principle of free and full consent did not exclude the possibility, in the case of minors, of requiring the consent of the parents or guardians. That was how her delegation interpreted paragraph 2 of article 22.

25. Paragraph 3 laid down a basic principle and her delegation would support it.

26. With regard to paragraph 4, her delegation had already said that it welcomed the fifteen-Power amendment, which was more precise than the original text while providing the necessary flexibility. In the sphere of private law there were extremely diverse and complex traditions and any change must be gradually accepted by the people if it was to give effective results. In that connexion education played a very important role.

27. With regard to the last sentence of paragraph 4, her delegation would support the three-Power text, which was broader in scope than the original.

28. Mr. MUNGUIA NOVOA (Nicaragua) remarked that the principles set forth in article 22 were nothing

new for most of the Latin American countries, being already embodied in their national legislation. As heirs of Christian civilization, those countries regarded women as human beings equal to men, and marriage both as a sacrament and as a contract—two features which made it a permanent institution. From the purely civil point of view it was the State's function to safeguard the stability of marriage, upon which social stability depended. For that reason his delegation fully supported paragraph 1 of article 22.

29. With regard to paragraph 2, he did not wish to present an amendment at that stage of the debate but he would have preferred, in the Spanish text, the expression "a partir de la edad núbil", which appeared in article 16 of the Universal Declaration of Human Rights and was much more precise than the expression "si tienen edad para ello". Article 10 of the draft Covenant on Economic, Social and Cultural Rights required States to establish a minimum age for paid child labour and he saw no reason why a similar provision should not be applicable to marriage.

30. Paragraph 3 was in line with Nicaragua's civil code, under which a marriage contracted under duress was not valid.

31. His delegation supported the fifteen-Power amendment, which strengthened the obligation of States to ensure equality of rights and responsibilities of spouses. However, he wished to draw attention to a very important point: the word "dissolution" presupposed the existence of a valid marriage which could be dissolved for various reasons, all of which could only arise after the marriage had been contracted; hence it did not apply to the case of an invalid marriage, the most typical example of which was a second marriage contracted while the first was still valid, thereby leaving without protection the children of the second marriage and a wife who had contracted that marriage in good faith. His delegation would therefore vote for the fifteen-Power amendment if the words "or its annulment" were added after the word "dissolution".

32. With regard to the protection of children born out of wedlock, he shared the view that the subject should be dealt with in a separate article.

33. Mr. KASLIWAL (India) believed that if the words "or its annulment" were added to the first sentence of paragraph 4, the second sentence would also have to be changed. In his own interpretation, the word "dissolution" applied to all circumstances in which a marriage ceased to exist. The difficulty could no doubt be overcome if it was indicated in the record of the meeting that the word "dissolution" covered the case of annulment. Lastly, he cautioned the Committee against deleting the second sentence at the present stage of debate; the Polish delegation, in presenting its proposal (A/C.3/L.943), had explicitly stated that it was in no way related to article 22, paragraph 4.

34. Mr. ZULOAGA (Venezuela) said that the Indian representative's observation regarding the second sentence of paragraph 4 was eminently logical.

35. He also recalled that the principle enunciated in the Polish proposal regarding the protection of children in general had already been endorsed by several delegations. If a draft article on that subject was formally presented it would probably not be rejected, and the second sentence of paragraph 4 could be deleted. The addition proposed by Nicaragua could then be applied to the fifteen-Power amendment.

36. Mr. COX (Peru) did not believe that the protection provided for children in article 22 should be abandoned in favour of a separate article, the text of which had not yet been established and the eventual adoption of which was, at the present stage, by no means a certainty.

37. He supported the Polish proposal and would be glad to help to draft the new article, but he believed that it was preferable to retain the second sentence of paragraph 4 for the time being.

38. Mr. TSAO (China) pointed out that "dissolution" could have a broad meaning covering all circumstances which could put an end to marriage, or the much narrower meaning of "divorce". If the latter interpretation was given to article 22 it would then be necessary to enumerate all the other cases, such as legal separation. As the word "dissolution" was clearly used in the text as the opposite of the word "marriage", there seemed to be no doubt that it should be interpreted in its broadest sense and he hoped that, in view of that fact, the Nicaraguan representative would not press his proposal.

39. The CHAIRMAN considered that from the legal point of view, marriage was dissolved only by the death of one of the spouses or by divorce. Legal separation did not imply the dissolution of marriage, and was therefore covered by the expression "during marriage". Annulment was quite a different matter; it presupposed that there had not been a real marriage.

40. Mr. ALCIVAR (Ecuador) fully shared the Nicaraguan representative's view. Dissolution was the termination, rather than the rescission of a marriage. In the case of annulment, the rights of the children and the spouse who had acted in good faith could be protected if there had been a putative marriage; unfortunately the latter concept did not exist in many national legislations.

41. Mr. BAROODY (Saudi Arabia) thought there was definite merit in the remarks of those who had spoken before him. Perhaps annulment of marriage should be mentioned in paragraph 4. He pointed out, moreover, that it could be the outcome not only of bigamy but of non-consummation of the marriage.

42. Mr. FERREIRA ALDUNATE (Uruguay) expressed the fear that the Committee might involve itself in an over-detailed legal discussion if it sought to bring the text of the article into line with the laws of all countries. It did not seem, for example, that consideration should be given to the case of non-consummation of marriage when the main object was to protect the rights of children. He recalled that the word "dissolution" had been selected precisely in order that the text of the article should be adapted to the legislation of the different countries and he considered that in the present context that word described a concrete fact rather than a legal notion.

43. Replying to a question from the CHAIRMAN, Mr. KARAPANDZA (Yugoslavia) thought he could state, on behalf of the sponsors of the fifteen-Power amendment, that the Nicaraguan proposal could not be regarded as a sub-amendment to the joint amendment, since it affected a different part of the first sentence of paragraph 4.

44. Mrs. BERNARDINO CAPPA (Dominican Republic) appealed to the Nicaraguan representative to withdraw his amendment, particularly in the light of various speakers' interpretation of the word "dissolution".

45. Mr. MUNGUIA NOVOA (Nicaragua) emphasized that the purpose of his proposal had been not only the protection of the children, but also the protection of the wife in the event of annulment of marriage. He agreed nevertheless to withdraw his amendment, on the understanding that the word "dissolution" would be officially interpreted as applying to every circumstance resulting in termination of the marriage.

46. Mr. BEAUFORT (Netherlands) shared the views of the Nicaraguan representative in regard to the substance of the discussion. There was an essential difference between dissolution, which comprised not only divorce but also the death of one of the spouses, and annulment, which involved a declaration by a competent authority that the marriage, owing to lack of consent or for any other reason, had never existed. The fifteen-Power amendment did not therefore, in his view, cover annulment of marriage.

47. Mr. WAN MUSTAPHA (Federation of Malaya) said that he agreed with the Nicaraguan representative that dissolution and annulment were two entirely different things. He himself had already expressed doubts about the use of the word "dissolution" (1092nd meeting), because the laws of some States did not recognize divorce but recognized only judicial separation. There were, moreover, many cases in which a marriage was dissolved without there being dissolution in the strict sense of the term. If mention was made of one such case—annulment—all the others should be mentioned.

48. In reply to a question by Mr. CHAMMAS (Lebanon), the CHAIRMAN explained that each delegation could interpret the expressions used in the Covenants as it desired, without such interpretation being binding upon anyone.

49. Mr. HENDRANINGRAT (Indonesia) recalled that paragraphs 1, 2 and 4 of the original text of article 22 were acceptable to his delegation, which considered, in particular, that paragraph 4 took due account of the present-day aspirations of women and the feasibility of giving practical effect to them. Although some delegations might be impatient to effect reforms in the field covered by article 22, it should not be forgotten that the Covenants were designed for States which were not all at the same stage of development. Paragraph 4 as drafted by the Commission on Human Rights provided the best means of progressing towards modern relationships between spouses in all countries, since it enabled Governments to enact the requisite measures at the pace which was best suited to their own countries.

50. The Indonesian delegation was glad that the fourteen Powers had accepted the amendment to their text proposed by the Philippine delegation. Although it preferred the original paragraph 4, it would not oppose that new wording, which recognized the principle of progressiveness.

51. It would also vote in favour of the three-Power amendment, which constituted an improvement to the second sentence of paragraph 4.

52. Although it had withdrawn its amendment (A/C.3/L.922) to paragraph 3 of the article under discussion, the Indonesian delegation had not changed its view with regard to that paragraph. It would vote in favour of it, on the understanding that the principle stated in that paragraph would be applied in the same spirit in which the provisions of paragraph 4 were applied.

53. Mr. MORRISSEY (Ireland) said that his country's Constitution guaranteed the equality of all citizens before the law, due regard being paid to differences of physical and moral capacity and of social functions. In Ireland, married women had the same rights and liabilities as their husbands, except in regard to such matters for example as inheritance on intestacy and the guardianship of infants.

54. The Irish delegation had no difficulty in accepting the first three paragraphs of article 22.

55. In regard to paragraph 4, it found itself in some difficulties with regard to the precise implications of the fifteen-Power amendment. Like many other delegations, it could not have subscribed to the original fourteen-Power amendment, which imposed on Governments far too peremptory an obligation. It did not think, however, that that obligation was radically altered by the replacement of the words "shall ensure" by the words "shall take appropriate steps to ensure". Even in a country like Ireland, where very few inequalities between men and women survived, such an obligation could not be assumed by the Government except after mature consideration; the nature of the onus was emphasized by the provisions of article 49, paragraph 2.

56. As it considered that Governments had not had sufficient time in which to consider the full implications of the fifteen-Power amendment, the Irish delegation would have no option but to oppose it.

57. If article 22 as drafted by the Commission on Human Rights was put to the vote, he would vote in its favour.

58. He would also support the three-Power amendment, on the understanding, however, that approval of that text did not imply for States any obligation to provide for divorce a vinculo.

59. The CHAIRMAN called upon the Committee to vote on each paragraph of article 22 and on the amendments thereto.

*Paragraph 1 was adopted unanimously.*

*Paragraph 2 was adopted unanimously.*

*Paragraph 3 was adopted by 82 votes to none, with 2 abstentions.*

60. In reply to a question from Mr. BOUQUIN (France), the CHAIRMAN said that, under rule 129 of the rules of procedure, no further representatives could speak because the Committee had already begun to vote.

61. The Chairman then invited members of the Committee to vote on the amendments to paragraph 4.

*The fifteen-Power amendment (A/C.3/L.939/Rev.1) was adopted by 76 votes to 1, with 7 abstentions.*

*The three-Power amendment (A/C.3/L.940/Rev.1) was adopted by 53 votes to 3, with 26 abstentions.*

*Paragraph 4, as amended, was adopted by 76 votes to 1, with 7 abstentions.*

*Article 22 as a whole, as amended, was adopted by 79 votes to 1, with 3 abstentions.*

62. Mr. KASLIWAL (India) said that he had voted in favour of paragraph 1, even though it was somewhat out of place in an article on marriage, because the majority of the Committee had seemed to be in favour of retaining it.

63. Mrs. SIVOMEY (Togo) said that she had not taken part in the debate on article 22 because her delegation had had an opportunity of clearly stating its interest in any problem connected with protection of the family when the Committee had taken up the first item of its agenda.

64. Her original misgivings concerning the expression "equality of responsibilities" had been dissipated by the remarks of several representatives who had warned the Committee against any action that would impair the notion of gradual progress which had been deliberately introduced in the original text of the article.

65. She had welcomed the decision of the fourteen Powers to incorporate the Philippine amendment into their text, for the result had been to make article 4 more vigorous in the enunciation of principles but more flexible from the point of view of its application and thus acceptable to all States.

66. Her delegation had voted in favour of the fifteen-Power amendment in the conviction that article 22 in that version would lessen the impact which the provisions of that article would inevitably have in any environment where parental authority was respected.

67. Mr. CHAMMAS (Lebanon) pointed out that the principles set forth in article 22 were applied in the sixteen communities that were legally recognized in Lebanon, each of which determined its own regulations in respect of marriage.

68. Referring to the Nicaraguan proposal, he said that every delegation was, of course, entitled to its own interpretation of the articles on which it voted. The fact remained, however, that every text was open to an objective interpretation. In the case of the word "dissolution", the Chairman had given an objective interpretation, which had excluded any other interpretation, by explaining that "dissolution" differed from "annulment".

69. That was why his delegation would have supported the Nicaraguan proposal but, as that proposal had been withdrawn, he had abstained in the vote on paragraph 4 but had voted in favour of article 22 as a whole.

70. Mr. COX (Peru) said that, having found the original text of paragraph 4 too weak, he had supported the fifteen-Power amendment as the best compromise formula that had been presented to the Committee. The Spanish version of that amendment had been completely satisfactory to his delegation, which hoped that if the final Spanish text of paragraph 4 did not contain the word "necesarias", some synonym more satisfactory than "apropiadas" would be used.

71. His delegation had voted against the three-Power amendment, which in its opinion was less satisfactory than the text to which it related. For that reason it had abstained in the vote on paragraph 4 as a whole.

72. In his opinion, the word "dissolution" had not the narrow meaning which the representative of Nicaragua had given it.

73. Begum Aziz AHMED (Pakistan) said that she had voted in favour of article 22 on the understanding that the rights of the religious minorities in Pakistan would be properly protected in conformity with the provisions of article 25.

## Organization of work

74. The CHAIRMAN reminded the Committee that at the end of the current meeting it would have used up the twenty-five meetings which it had reserved for the consideration of the draft Covenant. He asked the members whether they wanted to take up the following item of the agenda or to consider the last three substantive articles which had been transmitted to the Committee by the Commission on Human Rights and the two additional articles which had been proposed, respectively, by the USSR delegation (A/C.3/L.942) and the Polish delegation (A/C.3/L.943).

75. Mr. KASLIWAL (India) proposed that the Committee should decide that the meetings to be held during the remainder of that week should be devoted to the consideration of the draft Covenant on Civil and Political Rights.

76. Mr. TSAO (China) thought that the Committee would be better advised to abide by its original decision, on the understanding that it could return to the draft Covenant if it had sufficient time at the end of the session.

77. Mr. ALCIVAR (Ecuador), Mrs. CASSELMAN (Canada) and Lady TWEEDSMUIR (United Kingdom) supported the Indian representative's proposal.

78. Mrs. FEKINI (Libya) suggested that the Committee might devote the three meetings that it had reserved for the problem of "African educational development", which had now been referred to the Second Committee, to the consideration of the draft Covenant.

79. Mrs. SIVOMEY (Togo) thought that the Committee should pass on to the next item of its agenda.

80. The CHAIRMAN suggested that the Committee should continue its consideration of the draft Covenant on Civil and Political Rights during the remainder of the current week.

*It was so decided.*

The meeting rose at 6.5 p.m.

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