



CONTENTS

	Page
<i>Agenda item 43:</i>	
<i>Draft International Covenants on Human Rights (continued)</i>	
<i>Proposals for additional substantive articles to the draft Covenant on Civil and Political Rights (continued)</i>	205

Chairman: Mr. Nemi Chandra KASLIWAL
 (India).

AGENDA ITEM 43

Draft International Covenants on Human Rights (A/2907 and Add.1-2, A/2910 and Add.1-6, A/2929, A/5144, E/2573, annexes I-III, A/C.3/L.978, A/C.3/L.1013-1015, A/C.3/L.1017) (continued)

PROPOSALS FOR ADDITIONAL SUBSTANTIVE ARTICLES TO THE DRAFT COVENANT ON CIVIL AND POLITICAL RIGHTS (continued)

1. Mrs. MANTZOULINOS (Greece) said that the Polish proposal (A/C.3/L.1014) in itself was unexceptionable but there was no justification for it in relation to a draft Covenant the substantive articles of which had already been adopted. In the first place, it added nothing new. Second, while the question with which it dealt was admittedly an important one, it had already been given the prominence it deserved in the Universal Declaration of Human Rights (General Assembly resolution 217 (III)) and the Declaration of the Rights of the Child (General Assembly resolution 1386 (XIV)). Third, it must be remembered that the provisions of the draft Covenants on Human Rights applied to children except, of course, in respect of rights, such as political rights and rights relating to marriage, which could be exercised only by adults. Moreover, both draft Covenants dealt very fully with the question of the special protection to be accorded to children.

2. The answer to those who might ask why, in that case, it had been felt necessary to draft a Declaration of the Rights of the Child was that work on the Covenants had been proceeding slowly. Pending their entry into force, it had been necessary to set forth in detail in a declaration a number of principles relating to the rights of children. That Declaration ought to be given the widest possible publicity through Governments, non-governmental organizations, educational services and all persons concerned, as had been recommended by the General Assembly in its resolution 1387 (XIV).

3. Turning to the details of the Polish proposal, she pointed out that the provision contained in paragraph 1 already appeared in article 10, paragraph 3, of the

draft Covenant on Economic, Social and Cultural Rights (A/C.3/L.978) which also spelt out, in simple and clear terms, the principle of non-discrimination that was the subject of paragraph 2 of the Polish proposal. With regard to paragraph 3 of the latter, she recalled that article 25, paragraph 2 of the Universal Declaration of Human Rights stipulated that all children, whether born in or out of wedlock, should enjoy the same social protection. In the Declaration of the Rights of the Child, however, no mention was made of children born out of wedlock, because the Third Committee itself had considered such terms pejorative and had taken the view that, by enunciating the principle of equal rights for all children, it had covered the needs of illegitimate children. Furthermore, the concept of the equality of rights of children was not excluded from the provisions of article 10, paragraph 3, of the draft Covenant on Economic, Social and Cultural Rights, since it was stipulated there that special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions.

4. Lastly, paragraph 4 of the Polish proposal raised a very delicate question, namely, the nationality of children. That had already been a subject of debate at a number of international conferences, which had resulted in the conclusion of conventions such as the Convention relating to the Status of Stateless Persons (1954), the Convention on the Nationality of Married Women (1957) and the Convention on the Reduction of Statelessness (1961). The question was so complex that, although the right to a nationality was enunciated in article 15 of the Universal Declaration of Human Rights, it was not mentioned in the two draft Covenants. It seemed to her that it would not be advisable for the Committee to adopt an article embodying a concept which the drafters of the Covenants had thought should not be incorporated in their texts because of the complex problems of legal interpretation involved.

5. Mr. GHORBAL (United Arab Republic) said that the question of including articles dealing with the rights of the child in the Covenants on Human Rights had already been the subject of lengthy debate and lively controversy in the subsidiary organs of the General Assembly and in the Economic and Social Council. The Commission on Human Rights had concluded that it would be wiser to formulate a set of principles reflecting the views of the General Assembly on the steps to be taken to safeguard the status of the child and to prepare him to play a constructive part in society. Thus, the outcome of the work of the various organs had been the Declaration of the Rights of the Child, the drafters of which had endeavoured to take into account the desires of all those who were interested in the welfare of children, the needs of the child, and the laws in force in the various societies.

6. Where the details of the Polish draft were concerned, paragraph 1 raised no great difficulty, since it was generally recognized that, whatever differences there might be between the laws of the various countries, the child was entitled to special protection by the family, by society and by the State.

7. The text of paragraph 2, however, required some clarification, for it did not explicitly state what those rights were. It was obvious that the child could not exercise some of the rights, such as the right to vote and the right to have a profession, enunciated in the draft Covenants. Principle 1 of the Declaration of the Rights of the Child was more explicit, since it stated: "The child shall enjoy all the rights set forth in this Declaration".

8. Paragraph 3 of the Polish proposal suffered from the same lack of precision. In addition, it was incompatible with the personal status laws—particularly inheritance laws—in force in some countries. Since such laws were usually based on fundamental religious convictions, there could be no question of amending them.

9. Lastly, paragraph 4 merely reproduced the terms of Principle 3 of the Declaration of the Rights of the Child: "The child shall be entitled from his birth to a name and a nationality".

10. Thus, the substance of the Polish proposal was to be found in two principles of the Declaration of the Rights of the Child. Moreover, the proposal had no place in a binding instrument and, by its excessively vague drafting, it would not do justice to the cause of children which its sponsor wished to promote.

11. Mr. ALBUQUERQUE MELLO (Brazil) said that he shared some of the doubts expressed by the representatives of Chile and France concerning the Polish proposal (1172nd meeting). For instance, it might seem to be going too far to include in the draft Covenants on Human Rights special articles devoted to the rights of the child, when a strict interpretation of a number of articles of the Covenants led to the conclusion that they unquestionably applied to every person, whatever his age. In particular, the articles on discrimination left no room for doubt as to their scope of application. There might also be reason to fear that a provision of the kind proposed by Poland would justify the inclusion in the draft Covenants of other articles to protect, for instance, young persons or the aged.

12. Nevertheless, account must be taken of the fact that the problem of children had expanded beyond the strict confines of the family and had become a State problem. No one could deny that the child had a place of his own in present-day societies and that special provisions had been devoted to him in recent legislation. The problem was of equal importance internationally, and the Committee could not leave out of the Covenants under preparation safeguards for the protection of the rights of the child. Moreover, there were specific rights of the child which were not enunciated or protected in other articles of the Covenants on Human Rights. A number of delegations had said that the article proposed by Poland was unnecessary in view of the existence of the Declaration of the Rights of the Child, but in his own view, the very fact that that Declaration had been approved by the General Assembly of the United Nations was a recognition that some particular aspects of the problems of children called for special treatment.

13. Accordingly, he believed that the Third Committee, when drafting covenants designed to convert the principles of the Universal Declaration of Human Rights into legal obligations, was perfectly entitled to adopt an article imparting the same binding legal force to the rights enunciated in the Declaration of the Rights of the Child, which supplemented the Universal Declaration of Human Rights. If the Third Committee did not decide to do so, it would later be faced with the question of preparing a special covenant on the rights of the child, and that seemed inexpedient to his delegation.

14. The Polish proposal had the merit of being simple and restrained. Paragraph 1 established the basis for the protection of the child within the international order. Paragraph 2, to some extent, repeated what was already expressed in general terms in other articles of the Covenants, but it was nevertheless essential to the proper structure and unity of the article. It also contained something new, namely, a reference to the family, and that was an essential factor, without which the protection of the child would be illusory.

15. Paragraph 3 also met a vital need, because the position of children born out of wedlock was one of those aspects of community life where the facts and the law were frequently in opposition. In that connexion, it was worth noting that the rulings of the Brazilian courts and, later, Brazilian labour legislation had eliminated the discrimination against natural and adulterine children contained in the Brazilian civil code. He was aware that the problem presented difficulties for certain States, but the covenants were educational by nature and represented the objective to be aimed at by the different national legislations.

16. As far as concerned paragraph 4 of the Polish proposal, the first part—the right to a name—would make it possible to resolve one of the problems which had been raised by the representative of Venezuela, namely the establishment of paternity, which would, to some extent, be a consequence of that right. The establishment of paternity not only affected the question of inheritance under modern legislation, but also had the effect of giving the child a legal and social position, a status of which the name was an integral part. As for the second part—the right to a nationality—it was consistent with the provisions of the Convention on the Reduction of Statelessness.

17. For all those reasons the Brazilian delegation supported the Polish proposal. However, he would speak again on the subject if he considered it necessary.

18. Mrs. RAMAHOLIMIHASO (Madagascar) endorsed the Polish delegation's initiative in principle but shared the doubts already expressed by other representatives with regard to the proposal text.

19. The purely formal difficulties occasioned by paragraph 2 could be resolved by adopting the following wording: "Every child, without any exception whatsoever, shall be entitled to equal rights, without distinction or discrimination on account of either race, colour, sex, language, religion, national or social origin, property or the political opinion or other status of the child's family". Such wording, which was offered purely as a suggestion, distinguished between the causes of discrimination which particularly affected the child from those which concerned his family.

20. However, the Malagasy delegation had more serious reservations regarding the actual substance of the proposed article. While the first two paragraphs—like article 10 of the draft Covenant on Economic, Social and Cultural Rights—merely aimed at giving special protection to children in general, the last two paragraphs called for special protection for children born out of wedlock. Indeed, it would be superfluous to speak of the right of a legitimate child to a name and a nationality, since on his birth he received the name of his parents and took either their nationality or that of the country in which he was born. The Malagasy delegation recognized that a child born out of wedlock was entitled not merely to the same protection as any other child but to special protection in order to offset the unfavourable situation in which he might find himself through no fault of his own. However, it could not agree that the rights of a child born out of wedlock should be exercised, within the family, at the expense of the traditional rights of the legitimate child, such as the right to be the sole heir of his parents. That was what could well happen if an article inserted immediately after the article relating to the family and to marriage (article 22) were to contain a clause drafted on the lines of paragraph 3 of the Polish proposal. For that clause would treat as normal a situation which in fact was an anomaly within the framework of marriage and, within the family, would place the child born out of wedlock on the same level as the legitimate child, thereby infringing the latter's rights. Such a clause could also lead to the breaking up of the family, which was the basic cell of society.

21. For that matter, the same could be said about paragraph 1 of the proposal article, which appeared to overlook the rights and duties of the family towards the child. Before he belonged to society—a concept which in any case needed clarifying—and to the State, the child belonged to his family and it was the latter above all which should be admonished to protect him.

22. For all those reasons the Malagasy delegation would be unable to support the proposed Polish article in its present form, but earnestly hoped that the article could be improved through the co-operation of all.

23. Mr. NEDBAILO (Ukrainian Soviet Socialist Republic) felt that the representative of Brazil, through the logic of his arguments and the clarity of his thought, had confirmed the necessity for including in the draft Covenant on Civil and Political Rights an article on the rights of the child. Despite the doubts which had been expressed on that score, he considered that such an article had a logical place in the Covenant and would fill a gap.

24. The Covenants, together with the Universal Declaration of Human Rights and the other declarations and conventions already adopted, would form part of what might be called an international charter of human rights and would constitute the practical and juridical element of that charter. They could therefore perfectly well repeat the principles set forth in the various declarations, since they were designed to make possible the practical application of those principles by defining more accurately the scope and content of each of the rights proclaimed and by establishing juridical obligations for States. It was from that point of view that the Polish proposal must be examined.

25. It had been said that if provisions relating to the child were to be included in the Covenant, it would also be necessary to include provisions relating to old people or other categories of individuals, with a consequent risk of losing sight of human rights in general. But the rights of old people and children, as human beings, were already protected by the Covenants and it was merely a question of taking into account the special juridical protection necessary for children within the framework of the general protection of human rights. Far from weakening the Covenants, the article proposed by the Polish delegation would in fact strengthen them and enhance the juridical status of the principle set forth in article 25, paragraph 2 of the Universal Declaration of Human Rights.

26. The principles of the Declaration of the Rights of the Child found specific expression in articles 10 and 14 of the draft Covenant of Economic, Social and Cultural Rights, but that was not so in the case of the draft Covenant on Civil and Political Rights, which was of a quite different nature and which, without excluding the principle of special protection for the child, took account of it in one article only and solely with regard to the dissolution of marriage. The Polish proposal, which was much broader in scope, would fill that gap.

27. Paragraph 1 of the proposal would guarantee protection of the child within the framework of civil rights. As the representative of Brazil had rightly said, childhood involved specific problems which were the responsibility not only of the family but also of society and the State. That should be taken into account in the draft Covenant as it was already in the Declaration of the Rights of the Child.

28. Paragraph 2 repeated the first principle of that Declaration and would help to reinforce it.

29. Paragraph 3 stated clearly that the child must be protected and that it was entitled to a father regardless of the circumstances of its birth. Such a provision was entirely logical in a covenant on civil rights, as were the provisions of paragraph 4, which reiterated Principle 3 of the Declaration of the Rights of the Child.

30. Finally, an article on the rights of the child—which were not yet guaranteed by any convention—was quite in place in the covenants on human rights, which were designed to ensure that the principles set forth in various declarations were implemented. The draft article proposed by the Polish delegation might be amended slightly in form, but its substance was essential and the Ukrainian delegation would support it without reservation.

31. Mrs. DEMBINSKA (Poland) stated that the Yugoslav delegation had chosen to join her delegation in sponsoring the text before the Committee. She then thanked members of the Committee for the favourable comments—and constructive criticisms—which they had made about that text, and expressed the hope that the answers she would give to the numerous questions put to her would convince the Committee of the importance of the problem under consideration.

32. First, it had been asked whether the articles adopted at previous sessions did not already sufficiently protect the rights of the child, considering that the provisions contained therein applied to all persons and, consequently, to children. In reality, many articles in the draft Covenant—as the representatives of the

United Arab Republic and Brazil had rightly pointed out—did not concern children: as examples, the right to vote and the right of access to public office had been cited; there was also the right to freedom of movement which could also be exercised only by adults. But whereas certain rights were restricted to persons who had reached a certain age, children enjoyed special rights vis-à-vis both the family and the State. The rights of the child where the family was concerned were so obvious that her delegation had not thought it necessary to mention them: they were defined either in the civil or in the family codes and were concerned in particular with food, maintenance and education. The family courts which existed in some countries saw to it that a family carried out its obligations and they could, if they deemed it necessary, withdraw from the parents all or some of their rights over their children. Some of the rights of the child with regard to the State—such as health protection and the right to social security—were mentioned in the draft Covenant on Economic, Social and Cultural Rights. Furthermore, the State had special obligations towards the child: thus the Polish penal code punished certain crimes more severely when the victim was a child, and certain acts—such as the sale of alcoholic drinks—were not considered offences unless children were involved. The child therefore definitely had specific rights, which were the more clearly defined the more up to date the national legislation was and the more progressive the State.

33. Some representatives had asked if it was really necessary for an article on the rights of the child to be included in the draft Covenant, since the Third Committee had already adopted a Declaration of the Rights of the Child. She did not claim that the text she had proposed was ideal but, regarding the actual principle of inserting a special article, she wanted to stress, as the representatives of Brazil and the Ukrainian SSR had done, that a declaration did not have the same legal force as the articles of a convention. The problem of children was one which must be attacked energetically. All sociologists stressed that ancient societies had not had sufficient regard for children and adolescents and some went so far as to say that many of the difficulties which arose in adolescence were caused by the child not being sufficiently protected or respected. National laws must therefore be improved and the progressive attitude to children which was becoming more and more general in the modern world must continue to be translated into practical action.

34. If paragraph 3 of the Polish proposal had threatened the stability of the family in any way, she would not hesitate to withdraw it. But the real aim of that paragraph was to strengthen the family. In fact, when children born out of wedlock were refused rights equal to those of children born in marriage, the husband was allowed complete freedom outside the family, a fact which certainly did not contribute to its stability. It was therefore important that the man should not be able to dissociate himself from his children and that the law should oblige him to provide for their needs. No doubt the wife might put up some opposition, but she must be brought to change her attitude, because any child coming into the world had the right to happiness and well-being. Some delegations had expressed the opinion that the problem of children born out of wedlock had already been settled by the second sentence of paragraph 2 of ar-

ticle 25 of the Universal Declaration of Human Rights, but that text mentioned only social protection; therefore it guaranteed all children identical rights in such matters as family allowances or education. However, in certain countries laws existed which, in some fields, applied less favorable treatment to children born out of wedlock than to legitimate children; it was precisely those laws that her delegation would like to see abolished.

35. The representative of Saudi Arabia had said that the problem of discrimination because of political opinions could hardly arise in the case of children. But, apart from the fact that a child could be the victim of discriminatory measures because of the political opinions of his parents, it had already happened that children had been imprisoned for having, for example, distributed printed matter or taken part in a political activity.

36. Some representatives had thought that paragraph 2 as a whole was useless, because the principle of non-discrimination had already been affirmed elsewhere in the draft Covenant. She would merely repeat that, having adopted a draft resolution on the elimination of racial discrimination (1173rd meeting) the Third Committee should attack the evil at its roots, and give the child particular protection against discrimination, which was always criminal but was doubly so when a child was the victim.

37. Where paragraph 4 was concerned, the question it dealt with was not as complex as had been suggested. It was not, moreover, of capital importance, but it should be settled by national legislation, particularly for children whose parents were stateless.

38. In conclusion, she recalled that the French representative had asked whether the Polish proposal did not deal with a special category of persons rather than with special rights. She agreed that special rights should be recognized for every special category, and if her delegation did not propose, for example, inserting an article on the rights of the aged in the draft Covenant on Civil and Political Rights, that was because it felt that such an article belonged rather in the draft Covenant on Economic, Social and Cultural Rights; the aged had no need for special protection in the matter of civil and political rights, and it was only where their welfare was concerned that they should enjoy special treatment.

39. Mr. GHORBAL (United Arab Republic) said that he had listened with much interest to the representative of Madagascar, who had rightly stressed that the child belonged first to his family and only then to society and the State. He had also taken note of the Polish representative's explanations regarding paragraphs 2 and 3 of her proposal. Taking those statements into account, he considered that the proposed new article could be formulated as follows: "Every child shall be entitled to special protection by the family, society and the State". Such a text would enable all discrimination against children to be prevented, while avoiding the difficulties raised by the enumeration of the various types of discrimination. Paragraph 4 could also be kept, on the understanding that it too would begin with the words "Every child". Numerous articles in the draft Covenants began with "Every person" or "Everyone" and, in the case in point, it seemed that the words "Every child" would make it possible to avoid the problems arising from paragraphs 2 and 3 of the Polish proposal.

The meeting rose at 12.30 p.m.