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**THIRD COMMITTEE, 924th
MEETING**

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Chairman: Mrs. Georgette CISELET (Belgium).

Organization of work

1. The CHAIRMAN recalled that at its 826th plenary meeting, the General Assembly had decided to include in its agenda the item entitled: "International encouragement of scientific research into the control of cancerous diseases" and to allocate it to the Third Committee for consideration and report. She drew attention to the explanatory memorandum and a draft resolution submitted by the Byelorussian delegation (A/4233). The Committee would have to decide when it would take up the item, once it had completed consideration of the draft Declaration of the Rights of the Child.

AGENDA ITEM 64

Draft Declaration of the Rights of the Child (A/4185, E/3229, chap. VII, A/4143, chap. VII, sect. V, A/C.3/L.712 and Corr.1-3, A/C.3/L.716, A/C.3/L.719, A/C.3/L.727-728, A/C.3/L.731-733, A/C.3/L.749, A/C.3/L.754) (continued)

PRINCIPLE 9

2. Mrs. MANTZOULINOS (Greece) and Lady PETRIE (United Kingdom) accepted the Chairman's suggestion that their proposal (A/C.3/L.731) concerning principle 9 of the draft Declaration of the Rights of the Child submitted by the Commission on Human Rights (E/3229, para. 197, resolution 5 (XV)) should be considered when the Committee reverted to the discussion of the draft Declaration as a whole.

3. Mr. COLUCCI (Italy) said he had proposed the addition to principle 7 of a sentence concerning maladjusted children (A/C.3/L.732) because in Italy such children were treated through rehabilitation. However, to meet the wishes of a number of delegations, he had agreed to convert his proposal into an amendment to principle 9. He did not agree that the proposed additional sentence was superfluous or that it was a measure of implementation which had no place in a declaration. More than any other, the maladjusted child needed "special safeguards" and severe punishment was not the best treatment. Moreover, at a time when juvenile delinquency was assuming alarming proportions, it was essential to cover the case of maladjusted children. As the representative of the United Arab Republic had

said, the family was often responsible for that situation and the maladjusted child should be protected against parents who had proved themselves unfit.

4. Some representatives had criticized the last phrase of the amendment which referred to the need for judicial intervention. Yet, if there was a conflict between the family and society in the case of children referred to in the Italian amendment, it was quite obvious that only a judge could settle it impartially. The representative of Afghanistan had suggested the deletion of the adjective "specialized"; a specialized judicial authority would, however, be likely to give greater consideration to the interests of the child than an ordinary court of law, which would tend to give precedence to the immediate interests of society.

5. In his country, children's courts had been established following the proclamation of the Declaration of Geneva in 1924^{1/} and he hoped that, by recognizing the value of such specialized courts, the Declaration of the Rights of the Child would encourage other countries to take similar action.

6. Lady PETRIE (United Kingdom) said that the Italian amendment was entirely in keeping with the practice of the United Kingdom, where the maladjusted child enjoyed special protection of the kind set forth. She thought, however, that principles 2, 6 and 10, together with principle 9 as now drafted, afforded children adequate protection and that it was wrong to specify such detailed procedures in a declaration. She could not, therefore, vote for the Italian amendment.

7. Mr. ALWAN (Iraq) said that he could not support the Italian amendment for the same reasons as those given by the United Kingdom representative.

8. Mr. BAROODY (Saudi Arabia) pointed out that juvenile delinquency was no longer specifically a problem of highly industrialized countries; as a result of the war and social upheavals, it was making its appearance in all countries. Consequently, the Declaration should provide for the protection of maladjusted children, but in less specific terms than the text proposed by Italy. The expression "the child who is ... socially handicapped" might be considered to include the maladjusted child, but in order to reconcile the various views in the Committee, the Italian delegation might perhaps alter its proposal to read as follows: "The maladjusted child should be accorded humane treatment and may not be separated arbitrarily from his parents." The family environment was often responsible for a child's maladjustment. He appreciated, however, that the Italian delegation's objective was to prevent the child from being arbitrarily separated from his family as a result, say, of a decision by the police or a social worker. That danger would be averted by inserting the word "arbitrarily".

^{1/} See *Official Records of the Economic and Social Council, Second Session*, annex 6, p. 299.

9. Mr. RIBEIRO DA CUNHA (Portugal) said he was prepared to support the Italian amendment either as it stood (A/C.3/L.732) or in the form suggested by the representative of Saudi Arabia.

10. Everyone was entitled to a judicial hearing and since the preamble proclaimed the right of the child to special legal protection, the decision should be given by specialized judicial authorities.

11. Mr. FARHADI (Afghanistan) said he was in favour of the Italian amendment, which served a useful purpose. The number of maladjusted children was steadily increasing and the Declaration should afford them the protection they needed.

12. It should not, however, be forgotten that judicial systems varied from country to country and that the problem of juvenile delinquency was particularly grave in the highly developed countries. Therefore, although he was in favour of the amendment as it stood, he thought it would be better either to delete the adjective "specialized" or to adopt the suggestions of the representative of Saudi Arabia.

13. Mr. LIMA (Brazil) said he was quite prepared to support principle 9 as drafted by the Commission on Human Rights and the proposal submitted by Greece and the United Kingdom, as well as the Italian amendment. The ideas expressed in the two texts were in keeping with Brazilian legislation and might usefully be inserted in the Declaration with a view to their adoption by other countries.

14. Mr. YOLGA (Turkey) thought that it would be difficult to improve the text of the Commission on Human Rights; it met the requirements of conciseness and universality stipulated by many delegations.

15. The Italian amendment reflected a definite position on specific problems and would extend to all countries a solution which was suitable only to a few. Principle 6, in very general terms, safeguarded the interests of the family in various circumstances. In its amendment, the Italian delegation had singled out one particular circumstance and laid down a specific solution. When there was a question of separating a child from his family, the interests of the child, the family and society might come into conflict and it was the interests of the family, which the Italian amendment was primarily intended to safeguard. It also gave the family the right to decide in the first instance whether or not the child should be separated from it. As a general rule, the legislation of all countries provided that any measures restricting the freedom of the individual were a matter for the courts. Moreover, most codes of penal procedure sanctioned direct intervention by the police in certain exceptional circumstances. In view of the variety of circumstances in which it might be necessary to separate a child from his family and the complexity of the problems to which such a separation might give rise, the Turkish delegation considered that the Committee should not opt for any particular solution and should leave the question to be dealt with by the laws of each country. The idea contained in the Italian amendment was not unsound in itself, but adoption of the amendment would detract from the universal character of the declaration.

16. Mr. MEHTA (India) said he could not but support the reasons which had led to the submission of the Italian amendment. Application of the principles it stated was undoubtedly essential to a healthy society.

17. The Indian delegation considered, however, that the three basic ideas expressed in the amendment were already embodied in principles 6 and 9. Moreover, the maladjusted child might require the assistance of various specialists: psychologist, psychiatrist, teacher, doctor and lawyer. Since the term "specialized judicial authority" was not defined, it was difficult to know what type of specialization was intended.

18. The purpose of the Italian amendment was highly commendable but, in the view of the Indian delegation, the Committee should concentrate on drafting a text, the provisions of which would be applicable in all countries. In India, for example, the State governments responsible for dealing with maladjusted children would have great difficulty in strictly applying the terms of the Italian amendment.

19. Mr. BOUQUIN (France) took exception to the suggestion that the Italian amendment dealt with matters of detail. On the contrary, it stated a very important principle. If it was conceded that in certain cases it was essential to separate a child from his family, it was necessary to specify what those cases were. Principle 6 dealt with young children and could not therefore be applied to delinquent children. All members of the Committee had recognized that there was no problem when the family consented to separation from a child. Thus, the first part of the Italian amendment presented no difficulty. Where the family did not consent to the separation, the matter had to be settled by a judicial authority. The only way to safeguard the interests of the child in such circumstances was to include a provision to that effect in the Declaration. In France, as in Italy, there were children's judges, but since those specialized judicial authorities had no equivalent in many countries, the Italian delegation might perhaps agree to replace the word "specialized" by the word "competent" in order to meet the objection raised by several representatives.

20. Mr. OSEGUEDA (El Salvador) said that the principle stated in the Italian amendment was extremely relevant at the current time. In his view, however, the amendment referred only to maladjusted children whose behaviour constituted a danger to the environment in which they lived or to society as a whole. In the absence of any such danger, it would be contrary to the law to separate children from their families. In order to take account of that point, to meet the objections raised by some delegations and to state the principle as concisely as possible, the Italian delegation might perhaps consider replacing its amendment by a text along the following lines: "The dangerously maladjusted child may be separated from his family by judicial decision."

21. Mrs. MIRONOVA (Union of Soviet Socialist Republics) said that she could not agree to any restriction of the scope of principle 9, which was far wider than that of the corresponding clause of the Declaration of Geneva of 1924; it referred not only to "delinquent" children but to all physically, mentally or socially handicapped children. In the USSR there were children's courts but they ordered separation only in exceptional cases. The laws provided that every effort should be made to ensure that the child should lead a normal life within his family. The municipal authorities had special commissions which were responsible for drawing the family's attention to a child's handicaps and for seeking a method of treatment which did not involve separation. Only in the exceptional case of

children who, owing to a handicap, had a harmful influence on their brothers and sisters or on their companions, was provision made for the intervention of a judicial authority. She agreed with the representative of El Salvador that it was those children that the Italian amendment had in view. She realized that the text enunciated a humanitarian principle but since it ran counter to the practice followed in the USSR, her delegation would have to abstain from voting on it.

22. Mr. ALWAN (Iraq) pointed out that the Committee's task was to draft a Declaration which was universal in character and that it should avoid going into details. In a desire to facilitate the Committee's work, however, his delegation was willing to support the text suggested by the Saudi Arabian representative, which might be simplified and reworded to read: "The maladjusted child shall not be separated arbitrarily from his parents."

23. Mr. MAHMUD (Ceylon) pointed out that the idea contained in the Italian amendment had already been incorporated in principle 3 and that, according to principle 6, the young child should not, save in exceptional circumstances, be separated from his mother. The amendment specified in very precise terms the course to be followed in one such exceptional circumstance and, if a provision to that effect were inserted, the draft under discussion might not obtain the unanimous support of the Committee. The principle was valid in itself, but the text should be reworded in the light of the suggestions made by Saudi Arabia and the word "maladjusted" should be replaced by the word "delinquent".

24. Mr. RIMMERFORS (Sweden) felt that the principle embodied in the Italian amendment was defined too precisely to be compatible with the legislation of all countries represented in the Third Committee. In Sweden, for instance, while the courts in principle tried cases of juvenile delinquency, all other maladjusted children were dealt with by local child welfare committees, which did not include a magistrate. If such a committee decided that a maladjusted child should be separated from its parents and they did not consent to the separation, the decision was referred to the provincial government. In those circumstances, the question arose whether the provincial government could be considered a judicial authority within the meaning of the Italian amendment. It amounted to a judicial authority in view of its composition and the duty with which it was charged, but it could not be referred to as a court in a narrow sense. He welcomed the Saudi Arabian suggestion, which preserved the essence of the amendment, but avoided going into details.

25. Miss DOBSON (Australia) thought that, as the draft Declaration was intended to be universal in scope, it should not include provisions applicable to only one category of children. Moreover, judicial systems varied considerably from country to country and the words "specialized judicial authority" could not be accepted by all members of the Committee.

26. Mr. FARHADI (Afghanistan) agreed with the representative of Ceylon that it would be advisable to use the word "delinquent" in place of the word "maladjusted", which had no precise meaning except for psychologists and psychiatrists.

27. Princess PINGPEANG YUKANTHOR (Cambodia) shared the view of the representative of Afghanistan. She would be glad if the representative of Italy would not insist on the word "specialized", since in some

countries cases involving juveniles were dealt with by the ordinary courts.

28. Mr. COLUCCI (Italy) said that, to an Italian jurist influenced by positivism, the suggestion made by the representative of El Salvador was quite acceptable. The maladjusted child was certainly a danger to society just as society was a danger to the child. In reply to the representative of Turkey, he explained that the Italian amendment referred primarily to the child and not to his family and that if the position of the family was safeguarded, it was solely because it was in the interest of the child to live with its parents. He was willing to accept the suggestions of Saudi Arabia and Ceylon, although the word "delinquent" was too restrictive. Preventive measures had to be taken with regard to a maladjusted child even before he had committed a serious offence, and juveniles appearing before a court were tried much more as maladjusted children than as delinquents. As for the word "arbitrarily", it had the disadvantage of being vague and the Italian delegation had proposed the words "through the intervention of a specialized judicial authority" because the idea of judicial control seemed to have a fairly precise connotation in all constitutional systems. He was willing to accept the French representative's suggestion, although the word "specialized", as used in the Italian amendment, had a very broad meaning and referred to any competent body. A text which took into account the suggestions made by various delegations might be drafted if the meeting could be suspended briefly.

The meeting was suspended at 12.25 p.m. and resumed at 12.40 p.m.

29. Mr. COLUCCI (Italy), introducing the revised Italian amendment (A/C.3/L.754) to principle 9, said that he hoped that the wording was sufficiently broad to satisfy all delegations.

30. Mr. FARHADI (Afghanistan) thanked the Italian delegation for the spirit of compromise it had shown and expressed the hope that the revised amendment would be acceptable to all members of the Committee. The word "arbitrarily" had a very broad meaning but none the less conveyed the idea of judicial control. The Italian delegation had been wise not to use the words "specialized judicial authority" or even the notion of the intervention of a "specialized authority".

31. Mr. OSEGUEDA (El Salvador) said that he was prepared to support the Italian amendment if the words "his parents" were replaced by the words "his family environment".

32. Mr. CUEVAS CANCINO (Mexico) pointed out that the use of the words "humane treatment" in connexion with maladjusted children implied that the special treatment provided for physically, mentally or socially maladjusted children was not necessarily humane. It was also unwise to confuse the case of the maladjusted child with that of the delinquent child, because if a minor committed a crime, it hardly seemed reasonable to make police intervention subject to the parents' consent. He would accordingly ask for a separate vote first on the phrase "including the delinquent child", then on the text as a whole up to the word "treatment" and, finally, on the last part of the sentence.

33. Mr. RIMMERFORS (Sweden) supported the revised Italian amendment.

34. Miss MacENTEE (Ireland) asked for a separate vote on the words "shall be accorded humane treatment."

35. Mr. COX (Peru) said that he had hoped that the Committee could have agreed on a very broad text for principle 9, worded for example as follows: "The child who is physically, mentally or socially handicapped, as well as the maladjusted child, shall be given the special treatment, education and care required by his particular condition." To meet the wishes of some delegations, a reference to the judicial authorities might have been included at the end of the text. Fur-

thermore, he considered that the word "arbitrarily" was not sufficiently clear.

36. Lady PETRIE (United Kingdom) said that she could not vote for the revised amendment: nothing of the original idea, which concerned a point of substance, whatever its merits or demerits, had been left, and the text now merely restated an idea already embodied in principle 6; it also came close to being a measure of implementation. Furthermore, the word "arbitrarily" was an unattractive one from her delegation's point of view.

The meeting rose at 1.5 p.m.