United Nations

GENERAL ASSEMBLY

ELEVENTH SESSION

Official Records

THIRD COMMITTEE, 733rd MEETING

Wednesday, 16 January 1957, at 3.15 p.m.

New York

CONTENTS

Page

Agenda item 31:

Draft International Covenants on Human Rights (*continued*)

Article 10 of the draft Covenant on Economic, Social and Cultural Right (*continued*) 265

Chairman: **Mr. Hermod LANNUNG (Denmark).**

AGENDA ITEM 31

Draft International Covenants on Human Rights (E/2573, annexes I, II and III, A/2907 and Add.1 and 2, A/2910 and Add.1 to 6, A/2929, A/3077, A/C.3/L.460, A/3149, A/C.3/L.528, A/C.3/L.532, A/C.3/L.577 to 559, A/C.3/L.561 to 569) (*continued*)

ARTICLE 10 OF THE DRAFT COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (E/2573, annex I A) (*continued*)

1. Mr. VARGAS (Brazil) said that since his country's liberal legislation afforded ample protection to motherhood and childhood, he had no difficulty in accepting the substance of article 10 of the draft covenant (E/2573, annex IA). There was no doubt, however, that the wording should be improved, and that some of the amendments before the Committee would achieve that purpose. He warmly supported the Netherlands amendment (A/C.3/L.557), which was both opportune and wise. He would also be able to vote for the first part of the USSR amendment (A/C.3/L.559), up to and including the words "to employed women", but not for the second part, as the article should not require States to alter their existing social security systems. Since destitute illegitimate children needed special protection which was not extended by the text of article 10 as it stood, he would vote for the first part of the Bulgarian amendment (A/C.3/L.558), up to and including the words "whose parentage has not been established"; but he was unable to accept the rest of the amendment.

2. The second sentence in paragraph 3 of the text should be deleted. In so far as it referred to child marriage, that subject was adequately covered by domestic legislation in all countries; and it would be unwise to make specific reference to one element of a valid marriage while omitting all the other essential conditions.

3. Mr. PAYRO (International Labour Organisation) said, in reply to questions raised by the Cuban and Swedish representatives at the preceding meeting, that the International Labour Convention (No. 103) concerning Maternity Protection, which had been adopted by the ILO in 1952, applied to both married and unmarried mothers employed in a wide variety of fields. Under the Convention such women were entitled to not less than twelve weeks of maternity leave, at least six weeks of the leave to be taken after confinement, and to additional leave in the case of illness preceding or following childbirth. During that time, they were entitled to pay amounting to not less than two-thirds of their regular pay and to extensive medical services; either of those benefits could be granted by Governments either directly or through a compulsory social security system. Women could not be dismissed during their maternity leave, and nursing mothers, when they returned to work, were entitled to nursing periods, to be paid for as working hours.

4. The Recommendation (No. 95) adopted by the ILO on the same subject suggested that maternity leave should be extended to fourteen weeks, with full pay, that at least one and a half hours should be allowed for nursing during each working day, that medical benefits should be considerably broadened and that night work or work dangerous to the health of mother or child should be prohibited in the case of pregnant women and nursing mothers.

5. As representatives of Governments and the workers themselves had felt that the burden of maternity benefits should not rest on the employers alone, since the latter would in that case be unwilling to employ women, especially married women, Convention No. 103 recognized the principle that the employer should not be personally responsible for such benefits.

6. Mrs. SHIPLEY (Canada) said that, while the ideas contained in article 10 were in the main acceptable, the difficulties which the words "motherhood" and "maternity" presented for some delegations might be avoided if paragraph 1 were redrafted as follows:

> "Special protection should be accorded to mothers during reasonable periods before and after childbirth and while they are responsible for the care of dependent children".

She thought that text would cover the point dealt with in the USSR amendment (A/C.3/L.559) since it called for appropriate measures of protection to be given to all mothers; those measures might in some cases include paid leave to employed mothers before and after childbirth, without excluding other measures which might be appropriate for the problems of working mothers. She hoped that the USSR representative would agree that the solution of the problem of working mothers should be left to be determined in the manner appropriate to the circumstances existing in each State.

7. Paragraph 2 of the article might be reworded as follows:

> "Special measures of protection should be taken on behalf of children and young persons, in particular to protect them from exploitation and from employment in work that is harmful to health or morals, dangerous to life or likely to hamper their normal development".

She thought that text would meet the United Kingdom representative's objections (730th meeting), to the second sentence of paragraph 2 of the text as it stood, while adequately expressing all the basic ideas contained in it. Her delegation could support the original text only if the words "legally actionable" were interpreted to denote criminal proceedings.

8. The text she had suggested for paragraph 2 incorporated the Netherlands amendment (A/C.3/L.557), and would take care of the omission which the Bulgarian amendment (A/C.3/L.558) was designed to meet, since it made no distinction between legitimate and illegitimate children, extending equal protection to both. The second part of the Bulgarian amendment was unacceptable because the word "upbringing" was so general that States would not know exactly what obligations they were incurring, and because there was no need to refer to education, which was dealt with extensively in article 14 of the draft covenant. Furthermore, it was desirable to leave some flexibility for the making of arrangements which would be suitable to the circumstances of each State and which would not prevent private organizations from assisting destitute children.

9. Turning to paragraph 3, she said that while there was no objection in principle to the statement that marriage must be entered into with the consent of the intending spouses, she considered that it was not necessary for that to be mentioned in article 10, especially since the draft Covenant on Civil and Political Rights (E/2573, annex I B) contained a specific provision concerning marriage.

10. Her delegation was not convinced that it was necessary to make any reference in article 10 to the protection of the family but if the Committee thought such reference should be made, she was of the opinion that it would be better placed at the beginning of the text. She therefore presented a reformulation of the whole article which would begin as follows:

> "The States Parties to the Covenant recognize that the family is entitled to the widest possible protection and that special measures of protection should be accorded to:"

That text would be followed by the substance of the wording she had suggested earlier for paragraphs 1 and 2. She was not submitting that text formally but put it forward only to provide the Committee with a possible solution if it should find it difficult to come to agreement on the many amendments to the original text.

11. Mr. BRENA (Uruguay) remarked that in general he was in favour of working groups being set up to correlate the numerous amendments with which the Committee was so often faced. Every legal text should be unified, harmonious and clear, and there was considerable risk that if the Committee proceeded to vote on the various amendments before it one by one, the resulting draft would not meet those requirements. He had therefore made an individual effort, in a constructive spirit, to correlate some of the views and texts which had been put forward, and had submitted some amendments to article 10 (A/C.3/L.565). Points 1 and 2 of the amendments were designed to eliminate the much-discussed terms "motherhood" and "maternity", which were open to misinterpretation, and to provide a clear text ensuring special protection to mothers, such protection to be accorded to both mother and child at least during the early years of the child's life, and to be particularly extensive for a reasonable period before and after confinement. Point 3 of the amendments reproduced that part of the USSR amendment (A/C.3/L.559) which appeared to be generally acceptable, with the difference that it used the word "working", a broader term than "employed". He had omitted the second part of the USSR amendment because it was at variance with the principle embodied in International Labour Convention No. 103. Points 4 and 5 of his amendments re-drafted paragraph 2 of the original text to eliminate several defects. For example, the proposed text would not give the family absolute rights with respect to the protection offered to children, for it could not be asserted that all families without exception were fit to enjoy such rights. While article 10 as it stood seemed to offer no protection to illegitimate children, the Uruguayan text would protect all children without distinction, in equal measure. The word "minors" had a generally recognized legal meaning, and was more precise than the words "children and young persons" used in the original. He had also introduced a special reference to orphans, to meet a point raised by the Bulgarian representative (A/C.3/L.558), had incorporated the Netherlands amendment (A/C.3/L.557), and had eliminated the tautology pointed out by the United Kingdom representative (730th meeting).

12. Point 6 of his amendments was intended to clarify the scope of the original provision, and to differentiate it from a somewhat similar provision in article 22 of the draft Covenant on Civil and Political Rights (E/2573, annex I B). He had left out the reference to marriage, for reasons already given by other speakers. It was his hope that the Committee would find his effort helpful.

13. Mrs. MARZUKI (Indonesia) said that her delegation warmly supported article 10 because it would give full effect to the principles set forth in article 25 of the Universal Declaration of Human Rights. No substantive objection could be raised to the principle involved; despite the many United Nations directives regarding the treatment of men and women, certain distinctions must be made, on grounds of biological differences. While, however, the Indonesian delegation generally endorsed the content of article 10, it would support the suggestion made by the representatives of the Philippines (730th meeting) and Guatemala (731st meeting) that the paragraphs should be rearranged.

14. With regard to paragraph 1, her delegation did not agree that the terms "motherhood" and "maternity" were open to a variety of interpretations, as had been asserted. The word "motherhood" was used in the Universal Declaration of Human Rights; as usually understood, it covered only the period of pregnancy and nursing, not the general state of being the mother of a family.

15. Under Indonesian legislation, women who had served one year in the civil service were entitled to paid maternity leave of six weeks before and six weeks after confinement; that perhaps answered the question raised by the Saudi Arabian representative at the 731st meeting. Furthermore, extensions of leave could be granted when necessary, on the sole condition that the woman returned to work after leave. There were other labour regulations governing the employment of women before or after childbirth. The Indonesian delegation would vote on the amendments submitted by the USSR

(A/C.3/L.559) and Saudi Arabia (A/C.3/L.561) in the light of those considerations.

16. The prospects of the general enjoyment of human rights would be more favourable if the provisions of paragraph 2 were unnecessary; however, it was well known that in some countries children were still required to work, and the Indonesian delegation would support any provisions designed to prevent the exploitation of such work. It also welcomed the Netherlands amendment (A/C.3/L.557) calling for the insertion of the words "or morals". On the other hand, it had no strong feelings concerning the reversal of the order of the phrases concerned, as suggested by the French representative (731st meeting). Those general views would guide her delegation in its vote on the Italian amendment (A/C.3/L.564).

17. She preferred the expression "children and young persons" in the original text of the article (E/2573, annex I A) to the words "minors" or "adolescents", which was a more specific legal term.

18. With regard to the references that had been made to the protection of illegitimate children, the Indonesian delegation considered that article 10 was intended to apply to all children, without any qualification, and that in view of the clear opinion on the matter expressed in various United Nations texts, there should not be so much as a suggestion of prejudice against illegitimate children in the Covenants. However, it might be wise to include the words "without any discrimination whatsoever", proposed in the amendment submitted by Chile and Peru (A/C.3/L.562), in order to take into account the existing situation in countries where illegitimate children were placed at a disadvantage.

19. The Indonesian delegation whole-heartedly endorsed the first sentence of paragraph 3, which was consistent with the relevant article of the Provisional Constitution of Indonesia. However, it could not support the second sentence, which represented a strict application of the principle of equal rights for men and women. That principle was better covered by article 22 of the draft Covenant on Civil and Political Rights (E/2573, annex I B). She would abstain in the vote on point 2 of the amendment submitted by Ecuador and Greece (A/C.3/L.563), as her delegation considered it unnecessary.

20. With regard to the Bulgarian amendment (A/C.3/L.558), her delegation thought that the special protection intended was already provided under paragraph 2 of the original text of the article. The purpose of the amendment was praiseworthy, but it could be met by omitting the phrase "within and with the help of the family", or by inserting the words "and wherever possible" before that phrase. Moreover, the amendment submitted by Chile and Peru (A/C.3/L.562) left no doubt as to the categories of children to whom special protection was to be given. If the Bulgarian amendment was put to the vote, however, the Indonesian delegation would vote for the first part. It would be unable to vote for the second part, since private organizations had been active in Indonesia in the field to which it related.

21. The Indonesian delegation was fully aware that the purpose of the Covenants was to improve the lot of mankind, and that if delegations voted strictly in accordance with the provisions of national legislations the outcome might not always represent a step forward. The Covenants should strike a happy medium between the realities of existing conditions and the principles proclaimed in the Universal Declaration of Human Rights.

22. Mrs. BILAI (Ukrainian Soviet Socialist Republic) said that her delegation attached great importance to article 10 because it reflected the progress that had been made to achieve equal rights for men and women. One of the finest achievements of the twentieth century was the emancipation of women from the position of inferiority to which they had been consigned for many hundreds of years. The substance of the original text of the article (E/2573, annex I A) was satisfactory, but its drafting and the order of the provisions could be improved. Some amendments had been opposed on the ground that they introduced an undue degree of particularization. The Ukrainian delegation could not agree with that view. The Salvadorian representative, for example, had said (731st meeting) that the article should be drafted on very general lines, and had objected to the reference in the USSR amendment (A/C.3/L.559) to paid maternity leave. But the noble task of motherhood was a difficult one, and unless working mothers were guaranteed special protection, including the right of returning to work after confinement and, in particular, paid maternity leave, their social and economic position was bound to suffer. She would therefore support the USSR amendment.

23. She would also vote in favour of the Bulgarian amendment (A/C.3/L.558). She could not agree with the representatives who had said that it would be harmful to single out two special categories of destitute children; it would surely be more harmful to omit provisions for their protection. There was no denying that illegitimate children and orphans existed in the world; there was therefore no justification for not guaranteeing them State aid.

24. She would support the Netherlands amendment (A/C.3/L.557); however, while her delegation had no substantive objection to the Italian amendment (A/C.3/L.564), it preferred the original text, in which the provision was worded more strongly. She had some doubts concerning the Uruguayan amendments (A/C.3/L.565); point 5 seemed to leave the door open to the exploitation of child labour, and points 1 and 2 inadequately reflected the USSR and Bulgarian amendments.

25. In conclusion, she gave a brief account of the great advances that had been made in her country since 1913 with regard to maternity and child welfare. Although the situation in that respect might differ from one country to another, certain basic measures must be set forth in article 10.

26. Mr. PEREZ MATOS (Venezuela) agreed with the Uruguayan representative that a working group should be set up to study the many amendments that had been submitted.

27. His delegation was in general agreement with the original text of the article (E/2573, annex I A), but would vote in favour of the more constructive amendments. Thus, it would support the Netherlands amendment (A/C.3/L.557); but while it appreciated the purpose of the Bulgarian amendment (A/C.3/L.558), it did not consider that the categories concerned should be mentioned specifically. The insertion of detailed provisions would not provide a text which would be universal in its scope. He would vote for the

first part of the USSR amendment (A/C.3/L.559), as mothers were entitled under the Venezuelan social security law to six weeks' leave before and after childbirth; but he could not vote for the second part, since the method of financing such leave was already fixed under the same law. The objective of the Saudi Arabian amendment (A/C.3/L.561) was covered in the original article and in the Uruguayan amendments (A/C.3/L.565); however, the doubts that had been voiced as to the meaning of the words "motherhood" and "maternity" should be disposed of before a vote was taken on the article. The amendments submitted by Chile and Peru (A/C.3/L.562) seemed to be an improvement, but he would prefer it to be amended in accordance with the Afghan proposal (A/C.3/L.566); the word "minors" was clearer than the expression "young persons". He approved of paragraph 1 of the text as amended by the Uruguayan delegation (A/C.3/L.565), but saw no reason for the emphasis in paragraph 2 on orphans; the words "all minors" seemed to meet the case. Moreover, total orphans were sometimes placed under the legal guardianship of relatives, in which case the State was not responsible for their care. Paragraph 3 of the Uruguayan text was more precise than the original; the phrase "severe penalties" was clearer than "legally actionable", and had the advantage of covering administrative penalties as well as penal sanctions. His delegation found the first sentence of the text proposed in point 1 of the amendments submitted by Ecuador and Greece (A/C.3/L.563) acceptable, but it preferred the provisions of the original article with regard to the family and marriage. Children must be protected whether born in or out of wedlock, and the relevant Venezuelan laws prohibited any distinction on grounds of illegitimacy. However, the moral obligation of marriage must be stressed.

28. Mr. BRILLANTES (Philippines) said that his suggestion at an earlier meeting (730th meeting) that the order of the paragraphs of article 10 should be changed was based on the same considerations as the French representative's suggestion (731st meeting) in connexion with the Netherlands amendment (A/C.3/L.557), for the rearrangement of phrases according to their importance. The Philippine suggestion had been incorporated in point 2 of the amendments submitted by Ecuador and Greece (A/C.3/L.563); he would therefore vote in favour of that point of the amendments.

29. He associated himself with the remarks made by the United Kingdom representative at the 730th meeting concerning the difficulties raised by the specific nature of the Bulgarian amendment (A/C.3/L.558). Moreover, the reference to children born out of wedlock whose parentage had not been established was not clear. Where the parents could not be traced, the question whether a child had been born out of wedlock could not be determined; it would seem, furthermore, that the fact of birth eliminated the need to establish the fact of parentage. The amendment was probably meant to refer to illegitimate children, the identity of whose parents had not been established; however, it was difficult to determine when such identity had been satisfactorily established. Accordingly, he would be unable to vote in favour of the amendment, despite its sponsor's praiseworthy objectives. The amendment submitted by Chile and Peru (A/C.3/L.562) met the case more effectively.

30. The purposes of the USSR amendment (A/C.3/L.599) were covered by paragraph 1 of the original article. The Saudi Arabian amendment (A/C.3/L.561) was an improvement on that paragraph, however, and had stimulated a valuable discussion on the meaning of the terms "motherhood", "maternity" and "mothers". The Uruguayan and Cuban representatives had contributed sound definitions; he agreed with the Uruguayan representative that "maternity" referred to the periods before and after childbirth and with the Cuban representative that "motherhood" was the state of having borne a child or children. However, some problems still remained unsolved, and hypothetical cases could be cited which were not covered by the definitions given.

31. He reserved his right to comment later on the other amendments and sub-amendments, or on any unified text which might be drawn up by a working group.

32. Mr. MASSOUD-ANSARI (Iran) proposed that in order to save time, the Committee should set up a working group to draft a revised text of article 10. He suggested that the group might be composed of representatives who had had experience of drafting, preferably in the Commission on Human Rights, but that it should not include any of the sponsors of amendments.

33. Mr. MACCHIA (Italy) supported the Iranian proposal, and suggested that the group's terms of reference might be to attempt to bring together in a harmonized form all the amendments and suggestions which had been put forward.

34. Mr. MEZINCESCU (Romania) thought it would be simpler to request the sponsors of such amendments as were similar in content to meet unofficially and agree on combined texts.

35. After some discussion, the CHAIRMAN suggested that the Iranian-Italian proposal should be put to the vote and the composition of the working group discussed afterwards.

The proposal was adopted by 30 votes to 12, with 21 abstentions.

36. Mrs. MIRONOVA (Union of Soviet Socialist Republics) said it was essential that the working group should include the sponsors of amendments.

37. Mr. MUFTI (Syria) supported the USSR representative.

38. After some discussion, Mr. MACCHIA (Italy) proposed that the Chairman should be asked to designate the members of the working group, which should be composed of an even number of members, so that no decision should be taken by a casting vote.

39. The CHAIRMAN suggested that the working group should be composed of one of the sponsors of each amendment together with representatives of Sweden, Canada and Guatemala.

It was so decided.

The meeting rose at 6.20 p.m.

Printed in U.S.A. M—77301—March 1957—2,150