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CONTENTS

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.557 to 559, A/C.3/L.561 to 565) (*continued*)

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

1. Mrs. LEIVO-LARSSON (Finland) said that her delegation, while it was not entirely satisfied with the wording of article 10 of the draft Covenant (E/2573, annex I A), fully endorsed the principles set forth in the article.

2. Finnish legislation provided extensive protection for mothers and children. Since 1938, a very comprehensive programme of maternity support had been in operation: all pregnant women, whether married or not, were entitled to assistance and had to undergo medical examination before the end of the fourth month of pregnancy. Roughly 98 per cent of all mothers were receiving benefits on childbirth under the programme. In 1943, Finland had instituted a family allowance scheme to assist the many families which were not in receipt of sufficient income. In 1948 a special law had been enacted providing for childhood allowances, which were payable in respect of all children under sixteen, including the children of foreigners resident in Finland. About half the necessary funds were supplied out of employers' contributions, amounting to 3 per cent of the aggregate wage bill, the balance being borne by the State. Provision was also made for aid in home management and for interest-free State loans to young couples intending to establish a home.

3. Of the amendments proposed, several were not acceptable to the Finnish delegation, which considered that even in its original form article 10 was too specific, and that each country should be left to settle the details in accordance with its laws. Many countries would be unable, for example, to implement the provisions of the Soviet amendment (A/C.3/L.559).

4. Miss AGUIRRE (Mexico) said that she fully endorsed the principles enunciated in article 10. The children of poor families were still very often compelled to work, and were shamefully exploited by their employers. It was therefore wise to provide, as was done in paragraph 2, that children and young persons should not be required to do work likely to hamper not only their physical but also their intellectual development and that the exploitation of children should be made legally actionable. Some delegations had said that paragraph 2 seemed to apply solely to children of families based on marriage. She could not share that view; it was merely the drafting of the paragraph which was at fault. Moreover, it should not be forgotten that under article 2, paragraph 2, each State undertook to guarantee the exercise of the rights without distinction of any kind, including distinction of birth; there could thus be no question of any discrimination against children born out of wedlock.

5. Her delegation fully endorsed the first sentence of paragraph 3, relating to the protection of the family as the basis of society. Although the reference to marriage, in the second half of that paragraph, might at first sight seem to be more in context in the Covenant on Civil and Political Rights, it was not out of place in the Covenant on Economic, Social and Cultural Rights, if the civil implications of those rights were taken into account.

6. While she would like to see the drafting of article 10 improved, she would be able to vote in favour of the article in its original form, since it provided an adequate minimum of protection for the family; moreover, it appeared from the report of the Commission on Human Rights that the text in question was the only one considered acceptable by the majority of States.

7. Mrs. RÖSSEL (Sweden) said she had taken part in the work of the Commission on Human Rights from 1951 to 1953, and wished to add a few remarks to what Mr. Humphrey had said. The Commission had begun the drafting of the articles of the draft Covenant on Economic, Social and Cultural Rights at its seventh session, in 1951. The discussion on article 10 had been based on article 25, paragraph 2, of the Universal Declaration of Human Rights. The text adopted had been very brief, and in certain respects better than the text currently before the Third Committee. It read:

> "The States Parties to the Covenant recognize that:
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> "1. Special protection should be accorded to maternity and motherhood; and
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> "2. Special measures of protection should be taken on behalf of children and young persons, and that in particular they should not be required to do work likely to hamper their normal development."[1]

At the previous meeting the Guatemalan representative had suggested a text based on the 1951 draft but also containing the best points of the draft currently

[1] *Official Records of the Economic and Social Council, Thirteenth Session, Supplement No. 9,* annex I, article 26.

regretted, however, that he could not accept the suggestion that the order of paragraphs 2 and 3 should be reversed. He thought it preferable for paragraph 3 to become paragraph 1, for it seemed logical to mention first the family and then the members of the family.

34. Mr. TSURUOKA (Japan) said that the principles embodied in article 10, which were in conformity with the legislation in force in his own country, met with his complete approval. In Japan, gainfully employed women were entitled to paid maternity leave and could not be dismissed during a certain period before and after childbirth. In addition, assistance was granted to pregnant women who were destitute. Under the child welfare laws, it was a punishable offence for any person to employ children under fifteen years of age, and persons under eighteen years of age could not be compelled to perform work that was harmful to health or welfare or dangerous to life.

35. While his delegation was entirely in accord with the spirit of article 10, he thought the wording of its provisions could be improved. In his opinion, the first sentence of paragraph 2 did not make it clear that the special measures of protection should apply equally to children without families. It also failed to take into account those cases where children might be better protected outside their families. Everyone recognized that in some families children suffered neglect or mistreatment that had an undesirable effect on their development. He agreed that the word "exploitation" in paragraph 2 added nothing and should be omitted. As the employment of children in work which might be harmful to their health was in itself exploitation, there was no need to express the same idea in two different ways.

36. In view of the foregoing, he suggested that paragraph 2 should be worded as follows:

> "Special measures of protection, to be applied in all appropriate cases and in so far as possible within and with the help of the family, should be taken on behalf of children and young persons to promote their normal development. The use of child labour and the employment of young persons in work harmful to health or morals or dangerous to life should be declared unlawful and be made legally actionable."

37. He was not submitting a formal proposal but hoped that the sponsors of amendments would take note of his suggestions.

38. He supported the Philippine proposal (730th meeting for rearranging the order of the paragraphs in article 10 so that paragraph 3 would become paragraph 1.

39. Miss MAÑAS (Cuba) considered article 10 acceptable as to its substance. The paragraphs might, however, be rearranged, as several representatives had suggested. It would be more logical for paragraph 3 to become paragraph 1. The article would in that case deal first with protection of the family and then with protection of the members of the family—the mother and the child.

40. After pointing out that the Spanish term *"maternidad"* implied a status (the status of being a mother) rather than an idea of time (the period preceding and following childbirth), she said that it was the responsibility of the State to determine the duration of the special protection to be accorded to the mother, particularly during confinement. In those circumstances, the text of paragraph 1 seemed to be well drafted, for it stated, as was entirely appropriate, that a woman should be accorded protection "during reasonable periods". That wording was, moreover, in conformity with article 68 of the Cuban Constitution, under which guarantees were provided for women, whether married or not, during pregnancy, before and after childbirth and in the nursing period. Thus, they could not be discharged or compelled to do heavy work and had to be given paid leave. The paragraph also conformed to the provisions of Convention No. 103 and Recommendation No. 95 concerning Maternity Protection, adopted by the International Labour Organisation, and it would be useful if the ILO representative could explain the scope and content of those instruments.

41. Article 10, paragraph 2, dealt with protection of minors and thus corresponded to Cuban law, under which apprenticeship and work by children under fourteen years of age was prohibited.

42. The first part of paragraph 3 was satisfactory, but the second part might be incorporated in another article or form an article by itself. In any event, the concept of free consent to marriage should not disappear from the Covenants because it was necessary to avoid the possibility of women being considered as mere objects that could be compelled to agree to a union which they did not desire.

43. She reserved the right to comment later on the amendments to article 10, but felt that the article should not be altered too drastically.

44. Mr. TOWNSEND EZCURRA (Peru) noted that few delegations appeared to favour article 10 in its original form. That was probably because it was poorly drafted and unwieldy and contained incongruous elements. While recognizing those defects, his delegation had not wished to propose any major changes because it did not want to delay the discussion. That did not mean, of course, that his delegation would not support the amendments which it considered desirable, such as that proposed by the Netherlands (A/C.3/L.557), the suggestion made by Guatemala (731st meeting) or the Uruguayan amendment (A/C.3/L.565).

45. Peru had joined with Chile in presenting an amendment (A/C.3/L.562) designed to improve one of the most controversial passages of article 10. With the existing wording, paragraph 2 stated that the measures of protection should be taken "within and with the help of the family". The conclusion might be drawn that the article did not apply to children without a family. Such children were, however, extremely numerous, particularly in the under-developed regions of the world. That was a sad but undeniable fact. The risk of denying protection to the minors who needed it most must be avoided. The proposal made by Chile and Peru aimed at eliminating any possible ambiguity on that point. It would also prevent any kind of distinction in the Covenant between children born in wedlock and children born out of wedlock. It was to "all" children "without any discrimination whatsoever" that measures of protection and assistance should apply. The joint amendment had the further advantage of eliminating the phrase "in all appropriate cases", which appeared to be ambiguous as well as superfluous.

46. The first sentence of paragraph 3 was satisfactory, but the last two sentences should be deleted. He said that, not because he did not appreciate the importance of marriage and of free consent in the choice of a

spouse, but rather because article 10 was intended to protect the family and its weakest members and not to establish the conditions for the validity of marriage, which was more a matter for artcle 22 of the Covenant on Civil and Political Rights. Furthermore, to say that the family was based on marriage implied that a family not constituted in due legal form could make no claim to protection. It should not, however, be forgotten that a family could perfectly well exist without marriage. A family could also exist even if the father did not fulfil his role. The modern trend of thought on that point was most interesting. In Peru, for instance, a law concerning abandonment of the family was currently under consideration, and a Spanish Catholic jurist had proposed that recognition should be given to the rights and duties arising from irregular unions.

47. Referring to the Spanish translation problems in regard to article 10, he said that, for his delegation, the term *"maternidad"* had a narrower meaning than the English word "motherhood". He thought that paragraph 1 should be worded as follows *"Que se debe conceder especial protección a la madre y en particular a la maternidad durante un período razonable antes y después del parto."* On the basis of definitions in the demographic dictionary[2] published by the United Nations, he explained why he preferred the term "young persons" to the term "adolescents". He felt that the word "minors", which would solve many difficulties, would probably be difficult to incorporate into the English text.

Mr. Massoud-Ansari (Iran), Vice-Chairman, took the Chair.

48. Miss BERNARDINO (Dominican Republic) noted that article 10, which dealt with the family, marriage, maternity and the protection of minors, stated principles that would ensure the well-being of the mother, the child and the adolescent. It therefore included all the necessary elements. It might, however, be given a form more suited to the legal character of the instrument in which it was to be incorporated.

49. She considered that, in Spanish, the term *"maternidad"* was the only one which could describe the condition of women before and after childbirth. Moreover, it was the term generally used in the countries of Latin America. The report submitted by the Inter-American Commission of Women to the Tenth Inter-American Conference at Caracas (1952) made it clear that in the legislative provisions designed to protect the mother, both before and after childbirth, that word was used. It was also used in the resolution on the economic status of working women (resolution XXIII) adopted by the Ninth International Conference of American States (Bogotá, 1948) and in the American Declaration of the Rights and Duties of Man adopted by that Conference (resolution XXX). The latter instrument was, incidentally, the source from which the Dominican Republic had taken the amendment which it had presented jointly with several other delegations and which had become article 25, paragraph 2, of the Universal Declaration of Human Rights.

50. She had no objection to paragraph 1 in its existing form, as it contained general principles on which the legislation of the various States had already been or should be based. In that connexion, she had always maintained in the Commission on the Status of Women that the protection accorded to motherhood should not be of too long duration. If the period of protection was excessively long, employers would hesitate to employ female labour. Too much protection for women would, in the long run, prejudice their possibilities of employment and lead to a resurgence of the discrimination which efforts were being made to eliminate. It had long been realized that the best way of improving the status of women was not to guarantee them complete protection but to ensure them equal rights with men. Work had obviously become a necessity for both sexes, and women had shown during the Second World War that they were fully capable of playing their part.

51. It was necessary to mention that marriage should be entered into with the free consent of the intending spouses. That was in accordance with General Assembly resolution 843 (IX) and the resolution adopted at the tenth session of the Commission on the Status of Women.[3] The wording of both resolutions constituted proof that there still existed customs, laws and practices prejudicial to the dignity of women. Women had obtained many rights, but much still remained to be done. It was therefore appropriate to include the principles stated in article 10, paragraph 3, in an instrument designed to improve the status of the individual.

52. She could not support the Soviet amendment (A/C.3/L.559), or the Bulgarian amendment (A/C.3/L.558), the wording of which had some defects. She had no objections to the amendment proposed by Chile and Peru (A/C.3/L.562) or to the Netherlands amendment (A/C.3/L.557). She preferred the original text of the article to that proposed for paragraph 1 by Saudi Arabia (A/C.3/L.561) and felt that the amendment proposed by Ecuador and Greece (A/C.3/L.563) was a realistic one.

The meeting rose at 1.15 p.m.

[2] *Multilingual Demographic Dictionary* (ST/SOA/Series A), Population Studies, No. 19 (provisional edition, June 1954).

[3] *Official Records of the Economic and Social Council, Twenty-second Session, Supplement No. 4*, para. 139.

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