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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.570 to 572) (*continued*)

ARTICLE 10 OF THE DRAFT COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (E/2573, annex I A, A/C.3/L.570) (*continued*)

1. Mr. PAZHWAQ (Afghanistan), speaking as Chairman of the Working Party on Article 10, introduced the Working Party's report (A/C.3/L.570). The new text of article 10 contained in paragraph 4 of the report had been drafted with due regard to all the amendments and to the suggestions made in the Committee and in the Working Party, and had emerged from a thorough discussion of the points of form and substance involved. He expressed the hope that it would prove acceptable to the Committee.

2. The CHAIRMAN thanked the Chairman and members of the Working Party on behalf of the Committee.

3. Mrs. SHOHAM-SHARON (Israel) said that her delegation was in full agreement with the principles enunciated in article 10, which were merely the logical extension of article 25, paragraph 2, of the Universal Declaration on Human Rights. It was right that an article embodying those principles should be included in the Covenant, in the position it then occupied. The purpose of the proposed Covenants was to help to remove some of the evils and injustices of society; it was natural, therefore, that they should provide for the protection of women, who, in their special role as mothers, were often victimized and discriminated against. Mothers, in general, and working mothers in particular, needed protection. As the Swedish representative had pointed out (732nd meeting), the primary consideration should be the welfare of the children. The safeguards provided for should not be exaggerated: they should be such as to ensure reasonable protection for women over a specified period, and they should not impose such heavy costs on employers that the latter would be unwilling to employ married women.

4. In view of the fact that in various parts of the world children were employed, often in unsuitable occupations, it was essential that the Covenant should contain forceful and specific provisions concerning the use of child labour; and any infringement of those provisions should be punishable by law.

5. In Israel, women workers were accorded special protection under the Women Labour Law, which also made special provision for mothers, before and after childbirth. The National Insurance Law, as explained in detail during the discussion of article 9, covered both working and non-working mothers. The Apprentice Hiring Law and the Child Employment Laws regulated the employment of children and minors, and prohibited their employment in places which would be deleterious to their health or morals.

6. As article 10 dealt with mothers and children, it was logical that it should also mention the family. Some delegations had felt that any mention of the family was out of place in article 10, since marriage was dealt with in article 22 of the draft Covenant on Civil and Political Rights (E/2573, annex I B), where it rightly belonged. However, no one yet knew what the procedure would be when the two Covenants were opened for signature, and it was possible that one Covenant might be adopted long before the other, or that States might accede to one and not to the other. That being so, it would be wise to include a reference to the family in article 10, even though it might appear repetitious, in order to ensure that the principle of family protection should be safeguarded in all circumstances.

7. In Israel, where many cultures and traditions met, it had been necessary to enact a law to uphold the principle of the free consent of the spouses in marriage, and to prohibit child marriage. Since the enactment of the Age of Marriage Act, 1950, it had been unlawful in Israel to marry, celebrate the marriage of, or give in marriage, a woman under seventeen, and the consent of both spouses was required by law. Her delegation therefore supported the reference to free consent in both the new and the old texts of article 10.

8. She welcomed the change in the new text (A/C.3/L.570, para. 4) in the order of the paragraphs, which was now logical. She supported the Swedish amendment (A/C.3/L.571) to paragraph 2; the reference to the care and education of dependent children was better placed in paragraph 1, and did not need to be repeated in paragraph 2. Furthermore, under paragraph 1 a widower responsible for a dependent child, for instance, would also be entitled to some protection, which was logical as the interest and welfare of the child were the main considerations; but paragraph 2 referred to mothers only. She preferred the wording "for reasonable periods before and after childbirth", in paragraph 1 of the original text of article 10 (E/2573, annex IA), to the wording, "a reasonable period before and after childbirth in the new text". The or-

iginal wording, "children and young persons", was preferable to the word "minors" in paragraph 3 of the text prepared by the Working Party. The last part of the first sentence of paragraph 3, from the words "without any discrimination . . .", was unsatisfactory. She proposed that it should be replaced by the words "without any discrimination whatsoever", which would cover all dependent children, including destitute and illegitimate children.

9. Mr. DELHAYE (Belgium) said that his delegation had been prepared to accept the original text of article 10, (E/2573, annex I A), because experience had shown that amendments did not always improve a text. His country's record in the matters under discussion was fully in harmony with article 10. Under Belgian law, special protection was provided for women, particularly before and after childbirth, and for children and adolescents, whose conditions of employment were very strictly regulated. The fundamental aim of civil and penal law was to protect the family; and in Belgium, as in most of western Europe, marriage was contracted with the free consent of both spouses.

10. The order of the paragraphs in the new text (A/C.3/L.570, para. 4) was more logical, and was therefore preferable to the original order. He welcomed the incorporation of the Netherlands amendment (A/C.3/L.557) in paragraph 3; it was the duty of the United Nations to concern itself with the moral welfare as well as the physical health of children. The objection that the word "morals" was too vague for inclusion in the Covenant was not valid; it was a general term, but the ideas it covered were perfectly clear, quite independently of any religious interpretation.

11. The original paragraph 3, which had, in modified form, become paragraph 1 of the new text, had been based on a proposal which Belgium had submitted to the Commission on Human Rights. Some representatives had objected that the protection of the family was covered by article 22 of the draft Covenant on Civil and Political Rights (E/2573, annex I B), and doubted whether it should be included in article 10 of the draft Covenant under consideration. However, as the Israel representative had pointed out, it was not certain in what order the draft Covenants would be adopted, or whether one might not be adopted without the other. That being so, the question of repetition might not necessarily arise at all. Furthermore, the Third Committee had already decided in other instances that where a principle was of vital importance, repetition need not be feared. The family was accorded protection under the draft Covenant on Civil and Political Rights, but that Covenant did not cover economic, social and cultural needs; it was therefore entitled to protection under the Covenant on Economic, Social and Cultural Rights also. Article 9, which dealt with individual rights, was not enough; the family group as such was also entitled to protection, and should therefore be specifically mentioned in article 10. Marriage could be regarded as a specific social act, which might or might not be accompanied by a religious ceremony, or as a state having duration. Viewed from either angle, it was a social act of the highest importance. The best guarantee of its lastingness and success was that it should be entered into with the free consent of both spouses. It was regrettable that the Working Party had seen fit to delete the words "It is based on marriage", which had appeared in the original text. It was true that the family group was not always based

on marriage; but the principle was a sound and generally accepted one, which should have been stated in article 10, especially as marriage gave protection to the members of the family, particularly the women and children. Finally he wondered whether it was wise to include the words "particularly for its establishment and while it is responsible for the care and education of dependent children", which appeared in paragraph 1, of the new text as they might give the impression that the family was not entitled to protection in other circumstances. However, he would not complicate the situation by proposing an amendment, and would vote for the new paragraph 1 as it stood.

12. Mrs. GERLEIN DE FONNEGRA (Colombia) said that as the child was father to the man, all protection given to mothers and children would have considerable influence on the future of their countries. Women were subjected to great physical and emotional strain during pregnancy and after childbirth, and were therefore entitled to special protection at those times. The Colombian labour code contained provisions for the protection of mothers, children and minors. The Social Security Institute and the Ministry of Social Welfare provided pre-natal and post-natal care. Employers were bound to provide hygienic working conditions, and could not dismiss a pregnant woman. The regulations on child labour prohibited the employment of children in work harmful to their health or development.

13. The text proposed by the Working Party (A/C.3/L.570, para. 4) satisfactorily covered the protection of mothers, children and minors. Paragraph 2, however, was somewhat confusing. The words "while they are responsible for the care and education of dependent children" were rather vague, for it was difficult to say when such responsibility ended. She supported the Swedish amendment (A/C.3/L.571), which was a definite improvement. The second part of paragraph 2 was clearer and more satisfactory than the first part.

14. Mrs. AFNAN (Iraq) said that since social legislation in her country was still in process of enactment, she attached particular importance to the adoption and eventual implementation of the Covenants. During the discussion on earlier articles, she had abstained on many amendments which she had considered out of place but acceptable in principle. Since, however, the final texts of those articles had proved to be unsatisfactory in many respects, she would in future be guided by the principle that the Covenants must, above all, be characterized by unity of purpose, and would vote against any amendments that would detract from that unity, no matter how laudable the principles expressed in them.

15. She preferred the Working Party's text of article 10 (A/C.3/L.570, para. 4) to the original draft (E/2573, annex I A). Paragraph 1 of the new text very properly extended protection to dependent children through the family; but the reference to marriage was extraneous in that context, and she would therefore not hesitate to vote against it. She was not sure that the provision in paragraph 2 on paid leave for working mothers was adequate; mention of paid leave alone without any reference to other maternity benefits might not serve the Committee's purpose.

16. She was glad that in paragraph 3 the word "minors" had been introduced, and that the same para-

graph laid down that minors should enjoy special measures of protection without any discrimination. The text represented a happy compromise between the various views that had been expressed in the Committee.

17. Mr. MASSOUD-ANSARI (Iran) congratulated the Working Party, and in particular its Chairman, on having produced a text which was much clearer and better than the original. He hoped that the Committee would be able to adopt it without any difficulty.

18. Mrs. RÖSSEL (Sweden) observed that the Working Party had approached its task in a spirit of conciliation, thanks to which it had been able to produce a compromise text. For reasons connected with the order in which the paragraphs had been discussed, the phrase "responsible for the care and education of dependent children" in paragraph 2 of the new text (A/C.3/L.570, para. 4) had become repetitious. The phrase should be retained in paragraph 1, in order to emphasize the role of the family as the natural protector of young children, but should be deleted from paragraph 2, which would then simply extend protection to mothers during the period of maternity—a provision which would be in line with the International Labour Convention (No. 103) concerning Maternity Protection. She had therefore submitted an amendment (A/C.3/L.571) calling for the deletion of those words from paragraph 2. Moreover, if the words in question were permitted to remain in paragraph 2, the implication could be that mothers were regarded as the bread-winners of the family, which was not generally the case.

19. The reference in paragraph 1 to marriage was incomplete. A more explicit provision on that subject was appropriately included in article 22 of the draft Covenant on Civil and Political Rights (E/2573, annex I B), where it rightly belonged. In its present context moreover, the passage seemed to imply that the family must be based on marriage; but unmarried mothers with children and divorced or widowed persons with children should also be recognized as family units.

20. The reference in paragraph 2 to "paid leave" would be prejudicial to the very persons it was meant to protect, for if they were compelled to pay women's wages during maternity leave employers might be unwilling to engage married women. Such matters should be covered by maternity benefits under social insurance schemes, including working mothers as well as housewives.

21. She approved of the wording of paragraph 3, with the exception of the phrase "without any discrimination for reasons of parentage or other conditions". A general prohibition of discrimination on any grounds was contained in article 2; the point should therefore not be repeated in the substantive articles.

22. Miss SOUTER (New Zealand) said her delegation was in full agreement with the ideas contained in article 10 and with the form in which they had been rearranged by the Working Party. The new text (A/C.3/L.570, para. 4) embodied many improvements on the original version of article 10 (E/2573, annex I A), in particular the use of the word "mothers" in place of "motherhood" and "maternity", and the last sentence of paragraph 3, which remedied a serious drafting defect in the original text.

23. She questioned, however, the desirability of replacing the words "children and young persons" by

the word "minors", as was done in paragraph 3 of the new text. Since the age of majority differed from country to country, the term "minors" did not ensure uniformity of obligations as between signatory States. In some cases, moreover, young persons who had attained the age of majority might be in need of protection. Lastly, the term "minors" was generally used to denote young persons nearing the age of majority rather than infants and young children, whereas the primary purpose of the article was to emphasize the protection to be extended to children while they were still dependent on their families. She therefore hoped that her delegation would have the opportunity during the voting to express its preference for the original wording. The difficulty of translating "young persons" into Spanish could be overcome, as the Chilean representative had suggested (730th meeting), by using the word "*jóvenes*",

24. The only point of substance in the new draft which presented a major difficulty for her delegation was the provision in paragraph 2 regarding paid leave. Such an obligation, whether or not the entire financial burden rested on the employer, might severely prejudice the employment prospects of married women. She would therefore prefer that sentence to be deleted.

25. In drafting the various articles, the Committee must above all be careful to concentrate on basic principles, and should not hesitate to omit less essential details, however praiseworthy their intention might be. Such a process of selection would only strengthen the obligations contained in the various articles. In accordance with that principle, her delegation would have supported a much shorter article, omitting, in paragraph 1 of the Working Party's draft, the words "which is the natural and fundamental group unit of society, particularly for its establishment and", and the second sentence; and in paragraph 3, the words "without any discrimination for reasons of parentage or other conditions", and "economic and social", since the latter two phrases weakened rather than strengthened the statements in which they appeared. On the other hand, she did not regard as essential the deletion proposed by the Swedish delegation (A/C.3/L.571). Under the provision in question, much needed assistance could be given to women who had to bring up children without the help of a husband. Her delegation considered that paragraph 3 went perhaps further than was necessary in dealing with matters which were the special concern of the International Labour Organisation (ILO). It was, moreover, in agreement with the ideas contained in paragraph 3.

26. Mr. BRATANOV (Bulgaria) said that the Working Party's text (A/C.3/L.579, para. 4) represented a very considerable measure of compromise and agreement. In particular, the new text took in that part of the Bulgarian amendment (A/C.3/L.558) which had been intended to protect illegitimate children with at least one parent. However, another and very important part of his text had been defeated by a single vote; he therefore introduced an amendment (A/C.3/L.572) to the Working Party's draft. The purpose of the amendment was to avoid a great social injustice, by providing that needy children who had lost both parents should be taken care of by the State. Children who were already under the protection of private persons or voluntary organizations would not fall within that category; but illegitimate children who had neither mother nor father to take care of them would most cer-

tainly be covered. As that idea had been supported by most delegations, he hoped that the new Bulgarian amendment would be adopted by a large majority. The reference to discrimination in paragraph 3 had been included to meet his delegation's view that illegitimate children should receive the same protection as children born in wedlock. He had accepted the wording in a spirit of compromise, and he hoped that it would be retained.

27. Miss BRUUN (Denmark) congratulated the Working Party on the text it had produced (A/C.3/L.570, para. 4). She was in general agreement with the Working Party's draft, but supported the Swedish amendment (A/C.3/L.571), for the same reasons as those that had been given by the Swedish representative. She would be unable to vote for the retention of the second sentence in paragraph 2 unless the words "paid leave" were understood to mean not only salary and wages but also other maternity benefits, all of them payable under social security schemes and not directly by the individual employer.

28. Mr. BARODY (Saudi Arabia) said that while the Working Party's efforts to achieve a compromise were praiseworthy, the resulting article was drafted in the form of an essay, rather than a provision in a legal instrument. It was full of axiomatic and general statements lending themselves to broad interpretation. For example, the last sentence of paragraph 1 of the Working Party's text (A/C.3/L.570, para. 4) seemed to be out of place. The original purpose of the article had been to guarantee the protection of mothers and children. That concept had been expanded to include families in general and the broader aspects of motherhood; accordingly, the bald statement that marriage must be entered into with the free consent of the intending spouses, while unexceptionable in itself, was inappropriate in the context.

29. The reference to "protection and assistance" in paragraphs 1 and 3 seemed to be redundant. The word "assistance" implied particular emphasis on economic aid, while "protection", though it might include such aid, was usually mainly legal. The retention of the word "assistance" might lead to complications.

30. The provision in the first sentence of paragraph 2 that mothers should receive protection while they were responsible for the care and education of dependent children might have dangerous implications. If the years during which a woman could bear children and the years during which her youngest child might remain dependent were added together, it would be seen that a mother might continue to receive social security benefits until she was eligible for an old-age pension. It was doubtful whether many States were prepared to undertake such a responsibility. The Swedish amendment (A/C.3/L.571) would eliminate the risk of such an interpretation, and he would therefore vote in favour of it.

31. With regard to paragraph 3, he preferred the word "minors" to the expression "children and young persons". Nevertheless, it was still open to criticism, for majority was attained at different ages in different countries. The reference to exploitation was also dangerous. He considered that children should not work at all, but should apply themselves to education. In some countries, however, children were by law allowed to work. The word "exploitation" might be abused by the parents of working minors, who might institute legal proceedings if they did not think that

their children were being paid fair wages. The last sentence of the paragraph, however, was a great improvement on the original text, and, together with the provisions of article 7 of the draft Covenant, would serve to guarantee the rights of working children.

32. On the whole, the new text improved the classification of the rights concerned, but the lengthy enumeration and general statements it contained were out of place in the draft Covenant, which should be precise and lucid. Moreover, they made article 10 appear out of balance in comparison with other, more succinct articles.

33. While he agreed in principle with the purposes of the Bulgarian amendment (A/C.3/L.572), he pointed out that in some countries orphans were cared for by private associations, not by the State. Accordingly, he suggested that the words "directly or indirectly" might be inserted after the word "responsibility"; the State could then contribute to the private organizations concerned. It might also be desirable to include a reference to children abandoned by their parents; but a specific provision to that effect might be interpreted as encouraging the abandonment of children. He was therefore not sure whether it would be wise to add the Bulgarian amendment to a text which was already too long and involved.

34. Mrs. MIRONOVA (Union of Soviet Socialist Republics) said her delegation was gratified at the Committee's general support of the basic provisions of article 10, and thanked the delegations which had supported the USSR amendment to the original text. The Working Party's new text of the article (A/C.3/L.570, para. 4) was generally acceptable, but she regretted that the reference to the financing of paid maternity leave had not been retained. The principal argument against that provision had been that in many countries workers still participated in social security payments. Article 2 of the draft Covenant provided that the rights recognized in the Covenant were to be realized progressively; and it would be wrong not to introduce certain minimum provisions which were acceptable to most countries. Article 10 would be incomplete without a reference to the financing of social benefits, and the USSR delegation would therefore introduce an amendment on that point.

35. She did not think that the Saudi Arabian representative need fear that women and children might abuse the rights accorded them under article 10. Moreover, it was essential that the importance of motherhood should be reflected in the Covenant.

36. She would vote in favour of the Bulgarian amendment (A/C.3/L.572), which would make a valuable addition to paragraph 1. She would be unable to vote for the Swedish amendment (A/C.3/L.571), as she did not consider that it would improve the text.

37. Mr. MEZINCESCU (Romania) said his delegation approved in general of the new draft of article 10 submitted by the Working Party (A/C.3/L.579, para. 4). Paragraph 1 contained a number of more positive provisions than the original text. Paragraph 2 provided wider protection for mothers and children, and had the advantage of incorporating part of the USSR amendment concerning paid maternity leave. However, the article would be improved by the addition of a reference to the financing of paid leave as proposed by the USSR, and he would vote in favour of an amendment to that effect.

38. Although paragraph 3 had been improved in some respects, the original provision had been better in some ways. For example, the last sentence of the paragraph, while more lucidly worded in the new draft, was incomplete, and even somewhat retrogressive. The original text had rightly drawn a distinction between children and young persons with respect to protection in employment; moreover, the expression "minors" would be interpreted differently in various countries, owing to the real differences which existed in the ages at which physiological and juridical maturity were reached. His delegation had had some doubts concerning the original provision, but had refrained from submitting an amendment because it had considered that the provision would provide adequate safeguards in respect of child labour; however, it would now be obliged to introduce an amendment. Child labour was prohibited by law in most countries, for obvious reasons relating to health and education. Under article 14 of the draft Covenant, it was "understood" not only that primary education should be compulsory and available free to all, but that secondary education should be meaningless unless child labour was strictly limited.

39. The provision in paragraph 2 calling for special protection to mothers while they were responsible for the care and education of dependent children was an important one, and the idea was gradually being incorporated into the legislations of many countries. Mothers should be accorded special rights, to enable them to provide for the proper physical care, upbringing and education of their children. Great advances had been made in Romania towards those objectives; thus, working mothers were given special leave when their children were ill, and employers who failed to take the necessary measures in such cases were treated severely. The Swedish amendment (A/C.3/L.571) would restrict the period of special protection to pregnancy, confinement and early infancy, and was therefore a retrograde step. The Romanian delegation would vote against that amendment. However, it would vote in favour of the Bulgarian amendment (A/C.3/L.572), which was a valuable addition to the article.

40. In conclusion, he expressed the hope that, in future, working parties would not be set up so early as to interfere with the orderly conduct of the debates.

The meeting rose at 1.15 p.m.