UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1989/NGO/77
23 March 1989

ENGLISH
Original: FRENCH

COMMISSION ON HUMAN RIGHTS
Forty-fifth session
Agenda item 13

QUESTION OF A CONVENTION ON THE RIGHTS OF THE CHILD

Written statement submitted by the International Council of Jewish Women, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following communication, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[23 March 1989]

The International Council of Jewish Women would first like to congratulate the Commission's Working Group on the draft Convention on the Rights of the Child on having successfully completed its work and finally adopted a text that remains to be approved by the Commission as a whole and subsequently by the General Assembly.

Notwithstanding this fact, which is in itself positive, the International Council of Jewish Women can only express its very great disappointment concerning in particular the latest version of article 7 (b), now article 14, pertaining to freedom of religion and belief. That article, as adopted, has been reduced to its simplest expression. As it stands it merely stipulates, in paragraph 1, that "States parties shall respect the right of the child to freedom of thought, conscience and religion". Paragraph 2 provides that "States parties shall respect the rights and duties of the parents and, when applicable, legal guardians to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child". Finally, paragraph 3 - the last paragraph - simply affirms that "Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others".

As Mr. d'Almeida Ribeiro, Special Rapporteur, very rightly said in his report (E/CN.4/1989/44), the existence of provisions guaranteeing the principle of freedom of religion or belief does not in itself represent an absolute guarantee of respect for that principle. And article 14 of the Convention on the Rights of the Child is, to put it mildly, a trifle short. In a few lines it tries to encapsulate one of the most fundamental indefeasible rights, that of freedom of conscience, not even granting the child even at adolescence, the right to choose his or her religion or belief. Article 18 of the Universal Declaration of Human Rights says much more on the subject in a single chapter: it stipulates that "Everyone has the right to freedom of thought, conscience and religion", but adds that "this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance".

That same formulation overlaps with article 18 of the International Covenant on Civil and Political Rights. It is therefore surprising that none of those provisions is to be found in the Convention on the Rights of the Child. Furthermore, the 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief not only takes over for its own use, as is normal, the provisions of the above-mentioned Universal Declaration and the Covenant on Civil and Political Rights, but adds seven more articles with the aim of providing a solid foundation and better guarantees for the right to freedom of conscience. Article 6 mentions, in particular, certain rights among others to which the child should have a fully legitimate claim, all the more so in that he or she is more vulnerable and should be more particularly protected. Those rights are: the right of having access to, or adequate use of, the articles and materials required for the rites or customs of a particular religion or belief, the right to be able to observe days of rest, and the right to be able to celebrate holidays and ceremonies in accordance with the precepts of one's religion or belief.

Mention may also be made of the Concluding Document which was recently adopted in Vienna by the Conference on Security and Co-operation in Europe. This Document stipulates that the States parties must respect the right of everyone to give and receive religious education in the language of his choice, whether individually or in association with others. Now in our draft there is not a word on the right to religious education or belief! Nor is there any mention of legal guarantees against any discrimination linked to religion or belief.

In the second preambular paragraph of the 1959 Declaration of the Rights of the Child it is nevertheless specified that everyone without exception is entitled to all the rights and freedoms set forth in the Universal Declaration of Human Rights. Why then exclude the young from such an important category of rights when nothing in their condition, or at any rate as from a certain - variable - age, is incompatible with the application of those rights? For the youngest, the right is transmitted through that of the parents or legal guardians. And, finally, does a child not have by definition the right to education, religious or otherwise? His right to information is nevertheless firmly established in article 17 of the draft before us! Between 16 and 18 years of age, for example, is he not qualified to make choices of conscience, when in many countries he is deemed fit to go to war in full knowledge of the facts? It is significant, moreover, that the Governments which draft children of 15 are generally the same ones that refuse them autonomy of thought in matters of religion or belief. And what, in truth, does the term freedom of conscience mean if one does not have the right to adopt the religion or belief of one's choice or if one does not have the right to change it? A strange kind of freedom this would be.

Article 14 of the draft Convention, as submitted to the Working Group at second reading as article 7 bis, was, all things considered, more satisfactory and closer to the international instruments than the text now submitted to the Commission. We have often been told that the role of the United Nations is to maintain, and indeed raise, existing standards in the area of human rights. Instead of that, today we see some of the most fundamental rights and freedoms being restricted, so that guarantees heretofore generally accepted in all the universal normative texts are being silently ignored.

It might be argued that article 41 of our draft constitutes a safeguard clause, since it states that "Nothing in this Convention shall affect any provisions that are more conducive to the realization of the rights of the child and that may be contained in: (a) the law of a State party; or (b) international law in force for that State". But in that case why not clearly formulate the provisions and safeguards indispensable to the practical exercise and enjoyment of those completely elementary rights? Are we going to practise more and more the system of artistic fuzziness, which can derive only from a deliberate intention to protect certain national legislations which are disinclined to grant the individual the full use of those freedoms which they elsewhere proclaim? By thus going back on what has been achieved in human rights, it is greatly to be feared that the ideals of the Universal Declaration and the Covenants will suffer a further loss of credibility which, in the present state of the world, they could well do without.

These comments on just one aspect - albeit an important one - of the new Convention on the Rights of the Child, do not mean, however, that the International Council of Jewish Women regrets its adoption. Quite the

contrary, they only prove the keen interest that we take in this document, which we consider indispensable in the light of the present situaton of the world's children: children who are suffering, exploited, ill-treated, insufficiently protected, etc.

We hope that many countries will ratify the Convention in the very near future. But we also dare to hope that, before its final adoption by the General Assembly, the improvements that would make it a really effective legal instrument will, as far as possible, be added to it.
