

United Nations
**GENERAL
ASSEMBLY**

SEVENTEENTH SESSION

Official Records



**THIRD COMMITTEE, 1172nd
MEETING**

Monday, 5 November 1962,
at 10.45 a.m.

NEW YORK

CONTENTS

	Page
Agenda item 48: Manifestations of racial prejudice and national and religious intolerance (continued) Consideration of draft resolutions (con- tinued)	197
Agenda item 43: Draft International Covenants on Human Rights Proposals for additional substantive articles to the draft Covenant on Civil and Political Rights	197

Chairman: Mr. Nemi Chandra KASLIWAL
(India).

AGENDA ITEM 48

Manifestations of racial prejudice and national and religious
intolerance (A/C.3/L.1006/Rev.6, A/C.3/L.1012/Rev.1)
(continued)

CONSIDERATION OF DRAFT RESOLUTIONS
(continued)

1. Mr. KOCHMAN (Mauritania) suggested a half-hour's suspension of the meeting to allow the sponsors of the draft resolution calling for a convention on the elimination of racial discrimination (A/C.3/L.1006/Rev.6) and of the Liberian amendment thereto (A/C.3/L.1012/Rev.1) to consult with a view to reaching an agreement, as it had not yet been possible to produce the new revised text announced at the 1171st meeting.

2. The CHAIRMAN, while acknowledging that such consultation would be useful, said he would prefer the Committee to continue its work in the meantime and take up item 43 of the agenda of the General Assembly (Draft International Covenants on Human Rights).

It was so decided.

AGENDA ITEM 43

Draft International Covenants on Human Rights (A/2907 and
Add.1-2, A/2910 and Add.1-6, A/2929, A/5144, E/2573,
annexes I-III, A/C.3/L.978, A/C.3/L.1013-1015)

**PROPOSALS FOR ADDITIONAL SUBSTANTIVE ARTICLES
TO THE DRAFT COVENANT ON CIVIL
AND POLITICAL RIGHTS (A/C.3/L.1013-1014)**

3. The CHAIRMAN made some preliminary observations which, at the request of the representative of Venezuela, were to be issued as a Committee document. ^{1/}

^{1/} Subsequently circulated as document A/C.3/L.1017.

4. Mrs. DEMBINSKA (Poland) recalled that her delegation had already submitted, at the sixteenth session, the draft article which it proposed should be inserted after article 22 of the draft Covenant on Civil and Political Rights and which was now before the Committee (A/C.3/L.1014).

5. It was true that a number of the articles already adopted for the draft Covenant on Economic, Social and Cultural Rights (A/C.3/L.978) were designed to protect the younger generation. Reference might be made, in particular, to article 10, on the protection of the family, paragraph 3 of which provided for special measures of protection and assistance on behalf of all children young persons without any discrimination. Articles 11 and 12, concerning the right of everyone to an adequate standard of living for himself and his family, could also be regarded as ensuring protection for children, as could article 13 on the standard of physical and mental health, which provided, *inter alia*, for steps to reduce the still-birth rate and infant mortality and to ensure the healthy development of the child. Articles 14 and 15, relating to the right to education laid down that primary education should be compulsory and free to all, and that secondary education should be made generally available and free secondary education progressively introduced, while article 6 on the right to work mentioned technical and vocational guidance and training which, of course, also applied to young people. Thus, that draft Covenant enunciated the basic obligations which the modern State had towards youth, in the interest both of the individual and of society, the family being no longer able to meet such obligations unaided because of the increased demands made on the individual by society and because of scientific and technological advances.

6. The draft Covenant on Civil and Political Rights, however, contained few articles affecting youth; mention might be made of article 6, paragraph 5 of which prohibited the death sentence for persons below eighteen years of age, and articles 10 and 14, which prescribed special treatment and a special procedure for juvenile offenders. Article 26, which prohibited incitement to discrimination, and article 24, proclaiming that all were equal before the law without any discrimination, might serve to ensure that the rights of the child were protected, but in article 18, on freedom of thought, paragraph 4 safeguarded the liberty of parents and guardians rather than of the child. Article 22, on the protection of the family, mentioned children only in connexion with the steps to be taken in the case of dissolution of marriage.

7. Consequently, the Polish delegation wondered whether the provisions of the draft Convention on Economic, Social and Cultural Rights sufficed to protect children and young people from the abuses and inequities to which they might be exposed, and that was why it proposed the insertion of a new article. The child was normally brought up in the family and

enjoyed the increasingly generous assistance granted to the family by States everywhere, such as maternal welfare and leisure-time facilities for children. However, protection must be given to children and young people in cases where the family was shiftless or was unable to meet its obligations. That was the object of the special protection mentioned in paragraph 1 of the Polish delegation's draft article, and it was particularly essential at the present time in large cities, where children and young people were exposed to various pernicious influences. Such protection should include both special legal penalties and the establishment of institutions like the Children's Aid Society in Poland, which had started a broad benevolent movement and arranged recreational activities, particularly for city children.

8. Paragraph 2 of the draft article was designed to protect the child from discrimination of any kind for, while discrimination was to be condemned when exercised against an adult, it was all the more deplorable when aimed at a child, who could not appeal to justice or public opinion for protection. In addition, all children must be given equal opportunities for the future, and consequently there must be equality in education—as was not the case where, for instance, the curricula of urban and rural schools were different.

9. Again, children born out of wedlock were still exposed to discrimination which affected them psychologically and materially and was still countenanced by the law in some countries. The Sub-Commission on Prevention of Discrimination and Protection of Minorities was currently making a study of the question, but her delegation nevertheless considered it necessary to include in the Covenant the general provision set out in paragraph 3 of its draft article. The Polish constitution guaranteed equality of rights to all children, whether born in or out of wedlock, and two acts adopted in 1950 had rescinded all restrictive clauses affecting the legal status of children born out of wedlock and had prohibited the use of the words "born out of wedlock" or "father unknown" in birth certificates; in the latter case, a fictitious Christian name was given for the father. Unfortunately, that was not done everywhere, and the Committee, whose duty was to defend human rights, could not allow some children to continue to be classified as inferior. It was not true, as was sometimes stated, that the abolition of that inequality might affect the stability of the family; the best safeguard of such stability was justice for all children. Moreover, all societies, for various reasons, frowned on the abortion of children conceived out of wedlock and it would be particularly heartless to insist on the birth of a child who would later be exposed to discrimination.

10. Paragraph 4 was closely linked with paragraph 3, and related to the right of the child, whether born out of wedlock or abandoned by his parents, to a name. The Polish family code contained specific provisions on that score. Legislation on the acquisition or loss of nationality varied from one country to another and could result in the child being stateless if, for example, he was born of stateless parents in a country where the child took the father's nationality. Efforts should be made to eliminate cases of that nature, since nationality not only carried with it rights and privileges of which the child must not be deprived but also constituted a basic element in his education.

11. It was true that the draft article proposed by the Polish delegation contained provisions which already

appeared in the Declaration of the Rights of the Child (General Assembly resolution 1386 (XIV)), but then other articles in the draft Covenants also borrowed certain important provisions from other international instruments. The Polish delegation therefore believed that it would be appropriate to include in the draft Covenants provisions which were essential for the protection of children, because they were important and would fill a gap in the draft Covenants.

12. In reply to a question from Mr. ZULOAGA (Venezuela), the CHAIRMAN said that the Committee would not examine the Soviet text regarding the right of asylum (A/C.3/L.1013) until after it had considered the Polish proposal regarding the rights of the child.

13. Mr. ZULOAGA (Venezuela) thanked the Chairman for the details he had given at the beginning of the meeting on the item under discussion. He wished that delegations might be given similar information on each item and suggested that for that purpose the Secretariat should prepare a detailed note listing the relevant documents and stating briefly the background of the question.

14. The rights of the child were a matter which preoccupied all countries, regardless of their political or economic system or the religious convictions of their people as a whole. The problem covered in paragraph 3 of the Polish text was a particularly delicate one and the Venezuelan delegation wished to make a suggestion in that regard to which it reserved the right to revert subsequently if necessary. Instead of the over-general formula proposed, he would prefer the following text: "The legislation of States parties to the present Covenant shall extend wide recognition to the equality of rights of the child born out of wedlock". Second, it might be worth including in the proposed new article a clause relating to the establishment of paternity; that was a very ancient problem which had already been considered in Roman law, and which had given rise to controversy during the drafting of the Napoleonic Code. It was to be regretted that the Polish text said nothing on that point, for how could a child born out of wedlock be protected if he was not enabled to establish who his father was? Last, the Polish representative had mentioned provisions which in her country made it illegal to reveal the irregular birth of a child in any registration certificate. The Venezuelan constitution also contained provisions along those lines and he thought that it would be useful to include a clause on the matter in the Polish text, although care should be taken not to draft it in too categorical terms, since it was important that all States should be able to implement the proposed new article.

15. Mr. BAROODY (Saudi Arabia) said that he had three comments to make on the Polish proposal. First, paragraph 2 of that text, after the words "or discrimination", was based on the Universal Declaration of Human Rights. But in the case of children there were certain types of discrimination which need not be taken into account, for instance, that based on political opinion, unless the political opinion of the parents was meant. Moreover, what was "other opinion"? The form of words "political or other opinion" was meaningless unless the word "child" was to be taken as including adolescents as well; but was that interpretation in line with the intentions of the Polish delegation? He hoped that the Polish representative would find some means of resolving that question.

16. Second, the text of paragraph 3 of the new article had been largely borrowed from principle 1 of the Declaration of the Rights of the Child. His delegation was convinced that children born out of wedlock should enjoy the same rights as other children, since they ought not to suffer from a situation for which they were not responsible. However, society was obliged to respect certain legal precepts and the proposed text might give rise to various difficulties, as for example in matters of inheritance. Islamic law was very liberal with regard to so-called natural children; for instance, a child born out of wedlock who was recognized by his father enjoyed exactly the same rights as a legitimate child. But the Committee should not go so far as to harm the interests of legitimate children, lest it should appear to encourage illegitimate births. The suggestion made in that connexion by the representative of Venezuela might prove very useful and he was glad to see that it was to be reproduced in a working paper.

17. Finally, paragraph 4 called for some clarification. The right to a name occasioned no difficulty, but the same did not apply to the right to a nationality. In principle a child had the nationality of the country in which he was born; but when such was not the case and the parents were stateless, how could the right in question be implemented? He would like to know the opinion of other delegations, particularly the Polish delegation, on the legal aspects of that problem. He reserved the right to add to his preliminary remarks later, if necessary.

18. Mr. DIAZ CASANUEVA (Chile) said he wished to make a few preliminary remarks on the Polish proposal. The first problem which arose was whether to include in a draft covenant on civil and political rights an article concerning the rights of the child or whether it might not be better to draft a convention on the subject. The Chilean delegation agreed with the Polish delegation in thinking that there should be an article on children in the draft Covenant. But it wished to draw attention to several points.

19. First, it would be well to mention not only the child but also the adolescent. The period between childhood and adulthood deserved special attention in the anxiety-ridden and unstable world of today; proof of that could be found in the serious problems caused by juvenile delinquency in many countries. That being so, perhaps the words "and the adolescent" could be inserted in paragraph 1 of the proposed article.

20. Second, it was debatable as to whether there really were rights which belonged specifically to the child as such. Had not the rights of the child already been stated in the articles adopted at earlier sessions? In that connexion he drew attention to the provisions regarding the protection of the family, the protection of mothers before and after childbirth, the right to life, the right to education, the protection of health and the right to social security. Any number of human rights could be regarded as being the rights of the child as well and a re-reading of the Declaration of the Rights of the Child adopted by the Third Committee showed that it contained no rights belonging specifically to childhood. Possibly there were such rights, but he did not know what they were. Nevertheless, the Polish delegation had been right in wanting to include in the draft Covenant on Civil and Political Rights an article stating that the child was entitled to special protection. That principle had already been recog-

nized in article 10 of the draft Covenant on Economic, Social and Cultural Rights and rightly so, since the child did in fact need special protection because of his physical and mental immaturity.

21. The Polish delegation had also been right in expressing concern at the present lack of equality as between legitimate children and children born out of wedlock. But, with regard to the clause in paragraph 2 of the text under discussion, he wondered whether it would not be better to condemn discrimination once and for all in a specific article—article 24—rather than revert to the question in every article and in respect to every right. However, if it were desired to insert a non-discrimination clause in the article, he felt it would be better to include it in paragraph 1, which would read as follows: "The child shall be entitled to special protection by society and the State, without any discrimination".

22. Mrs. DELLA GHERARDESCA (Italy) drew attention to the fact that in the text submitted by Poland the principle of non-discrimination was not seen from the same angle as in the other articles of the draft Covenant, particularly article 24. It was not merely a question of the race, colour and language of the child himself, but also of his family. That was a new idea which nowhere in the other articles of the draft Covenant had been expressed so clearly.

23. Mr. BOUQUIN (France) said that his delegation, having in mind the general organization of the draft Covenants, doubted the need or advisability of inserting a new article regarding the rights of the child. The introduction of clauses referring specifically to children or to any other category of individuals—the aged, for instance—would imply *ipso facto* that the general clauses of the same order, which were the essential purpose of the draft Covenants, applied only to adults, which would be inadmissible. Moreover, wherever the need had been felt, reference had been made to the special protection of children. He mentioned in that regard articles 6, 10, 13, 14, 18 and 22 of the draft Covenant on Civil and Political Rights, and articles 10, 13 and 14 of the draft Covenant on Economic, Social and Cultural Rights. To go further would be detrimental to the structure of those texts, unless the rights belonging specifically to children were to be defined, and on that point he shared the view of the Chilean representative. The French delegation would not, however, oppose consideration of the Polish proposal.

24. Turning to the particular provisions of that proposal, he observed that paragraph 1 simply repeated a provision of article 10 of the draft Covenant on Economic, Social and Cultural Rights. Paragraph 2, which was drawn not from the Universal Declaration of Human Rights but from the Declaration of the Rights of the Child, was not in his opinion a useful contribution, since article 14 of the draft Covenant on Civil and Political Rights provided that all were equal before the law and since, in addition, both draft Covenants contained a general non-discrimination clause, namely article 2, paragraph 2 in the case of the draft Covenant on Economic, Social and Cultural Rights, and article 2, paragraph 1 in the case of the draft Covenant on Civil and Political Rights.

25. Paragraph 3 of the Polish proposal duplicated paragraph 2 since the latter provided that every child had equal rights without distinction or discrimination on account of birth in that highly controversial area,

account should be taken, moreover, of the difficulties which might arise in certain countries, and it should be borne in mind that the Committee was drafting not a declaration but a covenant—an international instrument which imposed legal obligations and which would have to be applied almost immediately. Recent developments showed that great progress had been made in the matter in many countries and his delegation, which had always been guided by the desire to ensure the widest adherence to the draft Covenants, believed that too rigid a stand should not be taken on matters involving family structures in different countries. That consideration had dictated its position on the question of the progressive application of article 22 of the draft Covenant on Civil and Political Rights, which had raised no difficulties for his own Government.

26. He recalled the misgivings of the Saudi Arabian representative concerning paragraph 4 of the Polish proposal. While he had listened with interest to the suggestion of the Venezuelan representative, he would not take a position on the question at the present stage and would reserve the right to present further comments later. He had merely wished to draw attention to the complexity of the problem.

27. Mr. SITA (Congo, Leopoldville) felt that the insertion in the draft Covenant of an article on children might impair the unity of the text. Moreover, the new article proposed by the Polish delegation served no useful purpose, since both draft Covenants contained provisions regarding the protection of children.

28. Paragraphs 3 and 4 of the Polish proposal seemed to him to present the greatest difficulties. He feared that by protecting the right of children born out of wedlock, the rights of legitimate children might be impaired. He asked the Polish delegation whether paragraph 4 was to be construed as meaning that an illegitimate child should bear the name of his father. Furthermore, a provision of that kind gave the State

a power over the family which was unacceptable to countries such as his own which were governed to a large extent by custom. He wondered whether, for instance, in a case where a husband and wife did not agree to accept an illegitimate child into their household, the State would force them to do so, at the risk of wrecking their marriage. His country, like others in which custom was as important as the written law, was anxious to safeguard the freedom of parents. In his view, the greatest account should be taken, in drafting the Covenants, of the situation existing in countries which were still young and which were developing slowly but surely, and greater caution should be shown in the present case than in the drafting of general declarations.

29. He reserved the right to speak again on the Polish proposal.

30. The CHAIRMAN asked the Polish representative whether she knew why the Commission on Human Rights, when it had discussed the question at issue had not decided to include in the draft Covenant on Civil and Political Rights an article similar to that submitted by the Polish delegation and had chosen to draft a declaration, rather than a convention, on the rights of the child.

31. Reverting to the observation of the Italian representative, he asked the Polish representative's opinion on the matter, and he wondered further what scope the last phrase of paragraph 2 of the Polish proposal would have if it appeared in a legal instrument such as a convention. He also hoped that the Polish representative would explain why, in her view, the Declaration of the Rights of the Child did not mention children born out of wedlock. Last, he wished to know why the Polish delegation had preferred the terms of its proposal to those of article 25 of the Universal Declaration of Human Rights.

The meeting rose at 12.50 p.m.