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QUESTION OF A CONVENTION ON THE RIGHTS OF THE CHILD

Written statement by the World Association of Children's Friends, 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).

[4 January 1989]

Our Association ventures to express its fears to you, the persons who will be representing your Governments in the Commission on Human Rights:

By your positions on the text of a preliminary draft for an international convention elaborated by the Working Group chaired by Professor Lopatka, you will be establishing the status of children for many decades to come. However, the binding provisions of this draft gloss over the situation of a child who has been conceived but has not yet been born. Hence, if you go no further, 30 years after the United Nations Declaration in 1959 (resolution 1386 (XIV)), the convention will take no account of all the consequences of the scientific discoveries that have taken place in genetics in the meanwhile.

Admittedly, the Working Group finally agreed to reproduce in the preamble the formulation contained in preambular paragraph 3 of the 1959 Declaration, namely legal protection for the child, before as well as after birth. Our Association cannot fail to welcome this, since it was compelled for five years to press for this point to be restored in the draft. However, such an addition will be of no value unless it is reflected in the main body of the international instrument itself.

A preamble simply helps to explain the premises for the operative part of a text, but is itself devoid of any binding force. Thirty years ago, your predecessors fully realized this, since they stated in principle 4 that the child was entitled to "adequate pre-natal ... care". Indeed, at that time, it was enough to keep the embryo, then the foetus, in good health. This is no longer true, for increasingly audacious scientific discoveries have drastically altered the basic rules set out in civil codes (the legal order of generations, for example) and thus, for relatively few results, they seriously undermine the family, the fundamental institution in human organization.

One argument we encounter is that, after the present convention, another one could be adopted so that such a serious problem as genetic engineering will be suitably regulated. But how many years will it take to work out a convention? And by that time, so many of the manipulations of genetic engineering will already have become commonplace. Unfortunately, they could include many which are extremely regrettable yet, by that time, impossible to reject at the political level because the public will regard them as established rights.

However, it is our intention to ask you today only to introduce into the text a small number of prohibitions, minimum rules so to speak, simply for reasons of common sense.

We have not devised them ourselves: they are, word for word, those which the members of the Parliamentary Assembly of the Council of Europe regarded as fundamental in Recommendation 1046, of September 1986. We feel that reading them will be enough to convince you that none of these prohibitions is excessive, but together they clearly mark the proper bounds.

Article 1 of the draft

"According to the present Convention a child is every human being who has not attained his majority, which is established under the law of his State".

ADDITION PROPOSED BY THE ASSOCIATION

"The present Convention also ensures, pursuant to article 21 quater (or any other), protection of a child, conceived but not yet born, against genetic experiments or engineering contrary to his physical, moral or mental integrity, or his health".

Article 21 quater (or any other)

"The States Parties to the present Convention shall take all measures to forbid:

The creation of identical human beings by cloning or any other method, whether for race selection purposes or not;

The implantation of a human embryo in the uterus of another animal or the reverse;

The fusion of human gametes with those of another animal;

The creation of embryos from the sperm of different individuals;

The fusion of embryos or any other operation which might produce chimeras;

Ectogenesis;

The creation of children from people of the same sex;

Choice of sex by genetic manipulation for non-therapeutic purposes;

The creation of identical twins;

Research and experimentation on embryos, whether viable or not".
