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QUESTION OF A CONVENTION ON THE RIGHTS OF THE CHILD

Written statement submitted by the International
Right to Life Federation, a non-governmental
organization on the Roster

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

(8 February 1989)

The unborn child is currently not protected as far as the draft convention on the rights of the child is concerned. The insertion of a reference to the child "before as well as after birth" in the sixth preambular paragraph is in fact negated by a statement which was placed in the record of the meeting (travaux préparatoires), indicating the intention of the working group which drafted the present text of the convention. That statement reads as follows:

"In adopting this preambular paragraph, the working group does not intend to prejudice the interpretation of article 1 or any other provision of the convention by States parties."

Following the discussion of this preambular paragraph at the November/December 1988 meeting of the working group, the representative of the United Kingdom sought confirmation from United Nations legal experts that the statement which was read into the record of the meeting by the Chairman of the working group "would be taken into account if, in the future, doubts were raised as to the method of interpreting article 1". Article 1 defines the child in terms of the convention as "every human being below the age of 18 years".

The response to the United Kingdom request by the Legal Counsel states in part:

"It is at first sight strange that a text is sought to be included in the travaux préparatoires for the purpose of depriving a particular preambular paragraph of its usual purpose, i.e. to form part of the basis for the interpretation of the treaty."

The legal opinion goes on to state that travaux préparatoires constitute a "supplementary means of interpretation" and that recourse to them may be had "if the relevant treaty provisions are in fact found by those interpreting the treaty to be unclear." The Legal Counsel opinion concludes by stating that there is no "prohibition in law or practice from making an interpretative statement, in the negative sense, intended here as part of the travaux préparatoires".

The only conclusion which can reasonably be drawn from the above legal opinion is that the statement in the travaux préparatoires can have the effect of negating the influence of the sixth preambular paragraph - in the event that the interpretation of article 1 or any other article of the convention is unclear.

During the discussion of article 1 (at the same working group meeting at which the statement was agreed), the representatives of two countries which had put forward proposals to include the words "from conception" in article 1 withdrew their proposals "in the light of the text of the sixth preambular paragraph". What these countries' representatives did not realize, obviously, is that they were giving up the rights of the child before birth in the articles of the convention, on the basis of a reference in the preamble which was already negated by the statement inserted in the travaux préparatoires. They obviously felt or were persuaded that the statement would not have the effect of negating the influence of the sixth preambular paragraph in the interpretation of article 1. However, the legal opinion would appear to suggest that they were not justified in making such an assumption.

The end result is that article 1 "or any other provision of the convention" can now be interpreted to mean what each State ratifying the convention intends it to mean - in relation to the age of the child from which the convention begins to apply. This would appear to negate the very purpose of any convention which seeks to set objective standards by which signatory States agree to be bound.

In effect, the reference in the sixth preambular paragraph to the child "before as well as after birth" (deprived of its effect by the agreed statement) was obviously designed as a smoke-screen which would allow each State to decide at what point the protection afforded by the convention should begin to apply - even if that were to be from birth.

Far from the present text of the convention being an advance in the protection of all children, the child before birth is in fact worse off than before. The present draft is an obvious attempt to legitimize the current legal situation in many countries which allows children before birth to be killed at will - even up to the moment of birth, as is the case in some countries.

Conclusion

If the child before birth is to be protected in any way by the proposed convention:

(a) The first and basic requirement is that this statement in the travaux préparatoires negating the effect of the sixth preambular paragraph be removed;

(b) The second and equally essential requirement is that article 1 be discussed again in the light of the sixth preambular paragraph performing "its usual purpose, i.e. to form part of the basis for the interpretation of the treaty".
