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COMMISSION ON HUMAN RIGHTS

Third Session

SUMMARY RECORD OF THE FIFTY-EIGHTH MEETING

Lake Success, New York
Thursday, 3 June 1948, at 2:30 p.m.

<u>Chairman:</u>	Mrs. Franklin D. ROOSEVELT	United States of America
<u>Rapporteur:</u>	Mr. C. MALIK	Lebanon
<u>Members:</u>	Mr. HOOD	Australia
	Mr. LEBEAU	Belgium
	Mr. STEPANENKO	Byelorussian Soviet Socialist Republic
	Mr. LARRAIN	Chile
	Mr. CHANG	China
	Mr. LOUTFI	Egypt
	Mr. R. CASSIN	France
	Mrs. MEHTA	India
	Mr. de QUILJANO	Panama
	Mr. LOPEZ	Philippines
	Mr. KLEKOVKIN	Ukrainian Soviet Socialist Republic
	Mr. PAVLOV	Union of Soviet Socialist Republics
	Mr. WILSON	United Kingdom
	Mr. FONTAINA	Uruguay
	Mr. VILFAN	Yugoslavia
<u>Also Present:</u>	Mrs. LEDON	Commission on the Status of Women
<u>Specialized Agency:</u>	Mr. COX	International Labour Organization

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Non-governmental Organizations:

Miss SENDER	American Federation of Labor
Mr. VANISTENDAELE	Refederation of Christian Trade Unions
Mr. BROTHMAN	Co-ordinating Board of Jewish Organizations
Miss STRAHLER	International Committee of the Red Cross
Miss BURGESS	International Federation of Business and Professional Women
Miss RCBB	Liaison Committee of Womens' International Organizations
Miss SCHAEFER	International Union of Catholic Womens' Leagues.

<u>Secretariat:</u> Mr. J. HUMPHREY	Director, Human Rights Division
Mr. E. LAWSON	Secretary of the Commission

CONTINUATION OF THE EXAMINATION OF THE REPORT OF THE DRAFTING COMMITTEE
TO THE COMMISSION ON HUMAN RIGHTS (Document E/CN.4/95)

Article 12

The CHAIRMAN read out the text of Article 12 proposed by the Drafting Committee (document E/CN.4/95) and the alternative version proposed by the French delegation (E/CN.4/82/Add.8). She recalled that the United Kingdom, Indian and Chinese delegations thought it better to omit any such provision from the Declaration.

Speaking as representative of the United States of America, the Chairman stated that her delegation would vote against Article 12 because its wording was ambiguous. The provisions of Article 3 were sufficient to ensure the enjoyment of the rights that Article 12 was intended to declare if Article 12 was designed to go beyond those provisions, its ambiguity became obvious, and it had no place in a Declaration which should set forth clearly determined rights.

Mr. CASSIN (France) recalled that the text adopted at the second session of the Commission had consisted of two parts: the first, which had been retained by the Drafting Committee, concerned juridical personality and was designed to supplement Article 5 on slavery; the second ensured the enjoyment of fundamental civil rights by every one.

/To affirm

To affirm that ^{an individual} was a person before the law, was to declare that he had rights and duties. Such a declaration might seem unnecessary if the most recent history did not offer an example of forms of slavery under which juridical personality had been withdrawn from certain individuals. He instanced the Hitler regime under which several hundred thousand human beings had been arbitrarily deprived of their juridical personality. The United Nations should not ignore such a state of affairs, a recurrence of which was to be feared by the whole civilized world; the Declaration on Human Rights must be based on reality.

Mr. Cassin pointed out the difficulty of translating the term "droits civils fondamentaux" into English. The corresponding expression in English meant human rights as a whole -- the fundamental liberties. In French law, and generally in all legislation based on Roman Law, "droits civils fondamentaux" were understood as all the rights protected by laws governing private relations. He therefore suggested that "droits civils fondamentaux" should be translated by "fundamental rights 'n domestic relations". Such a translation would not be literal, but it would be accurate.

In the present state of the world it was inevitable that States should distinguish between **their** own nationals and foreigners. A large proportion of such distinctions was of a permanent nature. There could be no question of issuing directives to sovereign States; but there were degrees between absolute equality and the denial of all rights, and it was the United Nations' duty to ensure not only that all human beings had juridical personality, but also that they should be guaranteed certain elementary rights indispensable to their well-being and to **their** dignity.

The recognition of every one as a person before the law was the first and most important step. Nevertheless, the French delegation favoured restoration of the second part of the text adopted at the second session of the Commission, since it established a general principle ensuring a minimum of indispensable fundamental rights to every one.

/Mr. PAVLOV

Mr. PAVLOV (Union of Soviet Socialist Republics) agreed with the French representative. He also pointed out that apart from attempts against whole groups, such as those against the Jews in Germany, account must be taken of the fact that some civil legislation still contained restrictive provisions regarding juridical personality of individuals. Thus, in certain cases, a wife had no juridical personality independent from that of her husband. It was the Commission's duty to combat all discrimination, including discrimination based on sex, which was still prevalent in several countries, and he did not see why it should reject an article that could not fail to be of value from that point of view. In his opinion Article 3 was not an adequate substitute for Article 12; the first established the equality of all before the law, the second would ensure the effective enjoyment of rights thus recognized. The difference was important; the two articles were complementary, not mutually exclusive.

Speaking as representative of the United States, the CHAIRMAN observed that in her country the practice of certain professions by foreigners was prohibited. She asked Mr. Cassin whether, under the terms of the article he advocated, such a prohibition would be equivalent to a denial of juridical personality.

Mr. CASSIN (France) repeated that "droits civils fondamentaux" meant the most elementary rights which could not be denied to any human being, the "jus gentium" or Roman Law. As early as the Middle Ages, canon law had recognized that all men possessed a minimum of rights. That was the minimum envisaged by Article 12, which could not impair the sovereignty of any State conscious of its responsibilities in respect of foreigners residing in its territory.

/Mr. HOOD

Mr. HOOD (Australia) remarked that Article 15 of the Covenant contained provisions similar to those of the article under consideration. Moreover, those provisions were not fully covered by Article 3 of the Declaration, which, in a way, was only the application of the general principle stated in Article 12. Hence the Australian delegation was not only in favour of the Drafting Committee's text, but in view of the importance it attached to those provisions, it felt that they should be given a more prominent place in the Declaration.

The CHAIRMAN recalled that despite the long discussions that had taken place on the subject when the Draft Covenant was being considered the Drafting Committee had not found a satisfactory translation of the term "personnalité juridique", for which there was no equivalent in Anglo-Saxon law. The Committee had therefore agreed on the term "juridical personality" subject to a better formula being found.

Mr. FONTAINA (Uruguay) confirmed that the concept of juridical personality was to be found in the Constitutions of several Latin American States. Moreover, the terms of Article 17 of the Declaration on Human Rights, drafted by the Inter-American Conference at Bogota, corresponded with the proposed text of Article 12.

The article should certainly be retained; the difficulty was how to express the idea in a way that would be clear to the English speaking countries. He thought that the Commission should not be afraid to make an innovation by employing a term that would certainly be established by usage if the legal concept it expressed was recognized.

Mr. WILSON (United Kingdom) announced that his delegation would vote against the retention of Article 12. The United Kingdom delegation considered that such significance as the proposed text of the article had in Anglo-Saxon law was already covered by the provisions of Article 3.

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However, if the Commission felt that Article 12 should be retained because of the corresponding Article 15 of the Covenant, it would be advisable to see that Article 12 of the Declaration was drafted in the same terms as Article 15 of the Covenant, in order to avoid any possible misunderstanding.

Mr. CASSIN (France) pointed out that there was no need to make Article 12 conform to the text of Article 15 of the Covenant, since the latter had been evolved from the Draft Article 12 of the Declaration submitted by the French delegation at Lake Success in June 1947, and adopted in its entirety after long discussion at the second session. It was a return to that original draft that the French delegation was proposing.

Without having taken part in the final drafting of the Covenant, he thought he was right in saying that Article 15 related to condemnation to civil death, which should have no further place in criminal law. Article 12 of the Declaration was designed to have a wider scope, proclaiming that every human being possessed juridical personality from the time of birth.

Article 12 was also intended to ensure to everyone the enjoyment of certain fundamental rights not expressly mentioned in other articles of the Declaration, such as contractual capacity. He urged the Commission to remember, when taking decisions, that its work should not be purely theoretical; it had to combat facts that were still fresh in every memory.

The CHAIRMAN, speaking as representative of the United States of America, said that the meaning of Article 12 in its present form was not sufficiently precise in Anglo-Saxon law for her delegation to accept it.

She asked the Commission to decide by vote whether the article should be retained.

It was decided to retain Article 12 by eleven votes to five.

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On the CHAIRMAN's suggestion, Mr. CASSIN (France) agreed to amend the term "droits civils fondamentaux" to read "droits privés fondamentaux", if "fundamental private rights" seemed more acceptable to the English-speaking delegations.

Mr. LEBEAU (Belgium) was unable to believe that Anglo-Saxon legal terminology could not express the Roman concept of "civil rights."

Mr. WILSON (United Kingdom) stated that Anglo-Saxon law distinguished between different rights but did not group them in separate categories.

Mr. CHANG (China) stated that the law of his country, too, did not clearly define the concept.

Mr. LOUTFI (Egypt) suggested that the Commission should refer to Article 17 of the Bogota Declaration.

Speaking as the representative of the United States of America, the CHAIRMAN observed that translation difficulties connected with the Bogota Declaration had not yet been completely overcome.

She asked Mr. Cassin to define what he considered to be the difference between juridical personality and the enjoyment of fundamental civil rights.

Mr. CASSIN (France) replied that it was possible to deprive an individual of some of his fundamental civil rights while recognizing his juridical personality; that had occurred at the beginning of the Nazi regime in Germany. Speaking figuratively, juridical personality was the vessel and fundamental civil rights were its contents. After the individual's right to recognition of his juridical personality had

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been affirmed he should be assured of full enjoyment of his fundamental civil rights. The Declaration defined some of these rights, but since it did not expressly establish certain others, such as contractual capacity, a separate article should state them in general terms.

However, in order not to delay the Commission's work on so important a matter, he would not press for retention of the second part of his proposal and he hoped that the Commission would be able to reach agreement on the first part. He reserved his Government's position.

The CHAIRMAN put to the vote the first part of the French proposal, which was as follows:

"Everyone has the right, everywhere in the world, to be recognized as a legal person".

The text was adopted by twelve votes, with four abstentions.

/Article 13

Article 13

The CHAIRMAN read out the text of Article 13 proposed by the Drafting Committee and the amendments submitted by the United Kingdom and Indian delegations (document E/CN.4/99), the Belgian delegation (document E/CN.4/103) and the Lebanese delegation (document E/CN.4/105). She recalled that the Chinese delegation would prefer not to include such a provision in the Declaration.

Speaking as representative of the United States of America, the Chairman stated that her delegation was strongly in favour of adopting the text submitted by the United Kingdom and Indian delegations, which she understood to cover not only the right to contract marriage but also the right to dissolve it.

However, if the Commission thought it necessary to supplement that text, the United States delegation suggested the following compromise based on both the Lebanese and Belgian proposals (documents E/CN.4/105 and E/CN.4/103) and corresponding with the text of the Bogota Declaration:

"Men and women are entitled to equal rights as to marriage.

The family deriving from marriage is the natural and fundamental group unit of society and is entitled to protection".

Mrs. LEDON, Vice-Chairman of the Commission on the Status of Women, recalled that, at its session in January 1948, that Commission had studied the article of the Declaration relating to marriage and had submitted the following amendment to the Commission on Human Rights, through the Economic and Social Council:

"Men and women shall have equal rights to contract or dissolve marriage in accordance with the law."

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The Commission on the Status of Women was aware that a certain section of public opinion had protested against that text on religious grounds, which the Commission understood and respected. But since the Commission had been appointed to safeguard the rights and protect the interests of women throughout the world, it had been obliged to take account not only of the views of groups that did not recognize divorce, but also of the existing situation in countries where, divorce being legally recognized, the relevant legislation usually placed women at a disadvantage.

The Commission on the Status of Women had not thought that the text it advocated would be against the religious principles of certain groups, since even religious doctrine provided for the dissolution of marriage in certain cases, although extensive restrictions were applied.

The Commission had been guided above all by concern at existing conditions, under which inequalities were too often sanctioned to the detriment of women and the family. In many countries grounds for divorce for men differed from those for women. In many cases the law denied a woman the most elementary right to express her opinion, to take her own decisions or sometimes even to receive alimony for herself and for her children. It was the duty of the Commission on Human Rights to examine every aspect of the problem and to find a just and humane solution. The Declaration must plainly state the principle of equality of men and women in marriage.

The Commission on the Status of Women would willingly accept any draft that was better than the one it had proposed, provided that it took account of women's moral and material interests, which had to be guaranteed and protected.

/Mr. LEBEAU

Mr. LEBEAU (Belgium) recalled that the purpose of his delegation's amendment was to state in the first paragraph of Article 13, that the object of marriage was to establish a family and, in the second paragraph, that the family was the fundamental unit of society and therefore had a right to be protected by society and the State.

The Belgian delegation had felt that the reference to the age and consent of intending spouses was unnecessary, since those matters were governed by civil law and were not basic principles that should be included in a Declaration on Human Rights.

He found the compromise text proposed by the United States delegation satisfactory and if it was acceptable to all, his delegation was prepared to withdraw its amendment.

Mr. MALIK (Lebanon), Rapporteur, also said that he would withdraw his amendment if the Commission reached agreement on the compromise text proposed by the United States representative. He pressed for retention of the words "the natural and fundamental group unit of society" which were the most essential part of his amendment.

Mr. STEPANENKO (Byelorussian Soviet Socialist Republic) stressed that the purpose of Article 13 should be to grant women rights equal to those of men and observed that all the texts suggested so far, including that proposed by the Drafting Committee, which his delegation preferred failed to answer that purpose.

The joint United Kingdom and Indian draft was incomplete, since it saw men and women had equal rights as to marriage, but did not specify that such equality of rights held good throughout the period of marriage. He recalled the efforts made by Mrs. Uralova

/Byelorussian

(Byelorussian SSR) and Mrs. Bergtrup (Denmark), the representatives of the Commission on the Status of Women to the Economic and Social Council, to guarantee to women the same rights as men not only to contract but also to dissolve the marriage ties.

In his country women enjoyed absolute equality of rights as to marriage. A more formal and explicit wording of Article 13 might lead all States to adopt an attitude towards women similar to that of the Byelorussian SSR.

Mr. WILSON (United Kingdom) pointed out an error in translation. It appeared that in the Russian text the words "as to marriage", which comprised all questions pertaining to marriage, such as the right to contract marriage, relations between spouses during marriage and the dissolution of marriage, had been translated by an expression signifying only the right to contract marriage. That error should be corrected.

Mr. LOUFTI (Egypt) said that the delicate nature of the question under discussion might make it preferable merely to state the principle without going into details. He would therefore vote for the Indian and United Kingdom proposal.

However, the Egyptian delegation would be prepared to accept the compromise text if the words "deriving from marriage" were deleted; it felt that protection should not be withheld from families not deriving from marriage.

Mr. LARRAIN (Chile) supported that suggestion.

Mr. MALIK (Lebanon), Rapporteur, regretted that he could not agree to the deletion suggested by the Egyptian representative. He pointed out that his amendment did not automatically withhold

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protection from children born out of wedlock. It must be recognized, however, that illegitimate births were the exception; the family usually derived from marriage and was entitled to protection for that reason.

Mr. LEBEAU (Belgium) agreed with the Lebanese representative. He emphasized that declaring the family deriving from marriage to be the natural and fundamental group unit of society did not make it impossible for certain countries to enact civil legislation favourable to children born out of wedlock.

He pointed out that the French text, in which the words "deriving from marriage" were placed between two commas, gave less cause than the English version for such fears as those expressed by the Egyptian and Chilean representatives. He therefore suggested that the same punctuation should be adopted for both texts.

Mr. FONTAINA (Uruguay) agreed with the Egyptian representative. He also proposed the deletion of the word "natural", since the essential point was to state that the family was the fundamental group unit of society and that it was the cell around which the State was formed ; the way in which the family was constituted was of secondary importance.

If the Commission made that change, and the one suggested by the Egyptian representative, the Uruguayan delegation would vote in favour of the compromise text.

Mrs. MEHTA (India) confirmed that the amendment proposed by her delegation and that of the United Kingdom embraced all questions pertaining to marriage. However, if there were any doubts regarding that interpretation, the Indian delegation would accept

the compromise text with the amendments suggested by the Egyptian and Uruguayan representatives.

She felt that the age and consent of intending spouses were details that should not be included in the Declaration on Human Rights. She also thought that the Declaration should give no definition of the family. However, if the Commission thought it necessary to adopt a provision for the protection of the family, the idea to be kept in view was that the family, whether deriving from marriage or not, was entitled to protection.

Mr. CASSIN (France) suggested the following wording, which took account of the various views expressed:

- 1) Every one of marriageable age shall have the right to marry, provided that it is with his or her full consent, and to establish a family.
- 2) Men and women shall have equal rights as to marriage.
- 3) The family is the natural and fundamental group unit of society and is entitled to protection.

Mr. PAVLOV (Union of Soviet Socialist Republics) favoured the text of the first paragraph proposed by the Drafting Committee. He felt that it was essential to retain the words "in accordance with law" in the first sentence, and to retain the second sentence relating to the consent of intending spouses; those were very important factors which must not be overlooked.

He recalled that the second paragraph of Article 13 had been discussed by the Drafting Committee at length, and that his delegation had given strong support to the just claims of the Commission on the Status of Women. Taking those claims into account, he proposed:

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1) to amend the wording of the paragraph as follows:

"The State and society must protect marriage and the family and ensure equality between men and women in marriage".

2) to add a third paragraph, as follows:

"Men and women shall have equal rights as to dissolution of marriage."

Regarding the reference to the Creator, which the Lebanese representative seemed willing to drop, he recalled that the Drafting Committee had decided, after a long debate, not to mention the Creator in a civil document, as in most cases the State was separated from the Church. That decision should be adhered to.

Lastly, he pointed out that both the compromise text and the various proposed amendments contained philosophical or legal definitions of the family, which were perhaps excellent, but would be more appropriate in a treatise on sociology than in a Declaration on Human Rights of wide practical scope. At all events, there could be no question of distinguishing between families that derived from marriage and those that did not. The Drafting Committee had rightly decided not to retain these points in Article 13, and there again its decision should be respected.

Mr. WILSON (United Kingdom) pointed out that while the Commission had seemed to be in full agreement on the text proposed by his delegation and that of India, disagreement had arisen as soon as they deviated from that text. That was because marriage was so closely bound to religion, traditions and culture that as soon as one tried to give a philosophical definition of marriage and the family, opinions were bound to differ. In such matters, the views of the majority could not be imposed on the minority.

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The United Kingdom delegation felt it was better to keep to a declaration of the equal rights of men and women as to marriage, without giving any definition of marriage and the family, especially as Article 9 provided for the protection of the family. His delegation would therefore vote against any amendment designed to provide any definition of those concepts. He wished to state that although he agreed on the principle of the full consent of intending spouses, his delegation considered that it should not be written into the Declaration.

Mr. FONTAINA (Uruguay) said that after the explanations given by the United Kingdom and Indian representatives he was prepared to accept the text proposed by their delegations.

Mr. VANISTENDAEL (International Federation of Christian Trade Unions) said that as the Declaration on Human Rights was a statement of general principles and should be a moral guide for the nations, it was imperative that it should contain no principle that might offend the conscience of a large number of people. If the Declaration proclaimed the right to dissolve marriage, it would be unacceptable to hundreds of millions of Christians in countries that were Members of the United Nations.

The equality of men and women before the law and before the Courts was already adequately stated in various articles of the Declaration. The International Federation of Christian Trade Unions asked the Commission to proclaim the equality of men and women as to marriage, without specially mentioning one aspect of that equality.

The Drafting Committee had recognized that it was necessary to state the right of the family to be protected. The rights of social, political and other groups had been repeatedly recognized; Article 14

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should proclaim the infeasible rights of the family, especially the right to protection by the State and by society.

Mrs. SCHAEFER (International Union of Catholic Women's Leagues) pointed out that her organization comprised 36 million women divided among 120 associations in 60 countries.

The Union of Catholic Women's Leagues thought that the purpose of Article 13 was to define the family and to guarantee freedom of consent and equality in marriage to intending spouses. The principle of the dissolution of marriage offended Christian conscience, and the Union of Catholic Women's Leagues protested against the mention in a Declaration on Human Rights which should establish an ideal acceptable to all, of a right which was repudiated by a large section of world opinion.

Mr. CHANG (China) stated his delegation would vote in favour of the most concise text, namely, that proposed by the delegations of India and the United Kingdom.

Mr. de QUIJANO (Panama) said that in his country men and women were absolutely equal in marriage. Consequently, the delegation of Panama would vote for the Indian and United Kingdom text, which established that principle most concisely.

Mr. KLEKOVKIN (Ukrainian Soviet Socialist Republic) proposed the appointment of a sub-committee to draft a single text on which the Commission could vote at its next meeting.

The CHAIRMAN put the Ukrainian proposal to the vote.

The Ukrainian proposal to appoint a sub-committee was rejected by nine votes to four, with three abstentions.

/Mr. VILFAN

Mr. VILFAN (Yugoslavia) said he could not express any opinion on a new proposal put forward at the present meeting. He asked that the examination of Article 13 should be postponed until the next meeting, so that the various proposals submitted during the debate could be more thoroughly considered.

Mr. PAVLOV (Union of Soviet Socialist Republics) reminded the Commission that under Article 52 of the Rules of Procedure of the Economic and Social Council's Functional Commissions, resolutions, motions and amendments of a substantive character should, if so requested by any member, be deferred until the next meeting on a following day. He supported the request of the Yugoslav representative.

Mr. CHANG (China) formally proposed the adjournment of the discussion.

The CHAIRMAN asked the Secretariat to submit suggestions in the order in which the various proposals and amendments relating to Article 13 should be put to the vote.

The meeting rose at 5.35 p.m.