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COMMISSION ON THE STATUS OF WOMEN

Ninth Session

SUMMARY RECORD OF THE HUNDRED AND EIGHTY-FIFTH MEETING

Held at Headquarters, New York,
on Monday, 21 March 1955, at 11 a.m.

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PRESENT:

<u>Chairman:</u>	Miss BERNARDINO	Dominican Republic
<u>Rapporteur:</u>	Mrs. RÖSSEL	Sweden
<u>Members:</u>	Mrs. CHAMORRO ALAMAN	Argentina
	Mrs. DALY	Australia
	Mrs. NOVIKOVA	Byelorussian Soviet Socialist Republic
	Miss POA SWEN TSENG	China
	Miss MAÑAS	Cuba
	Mrs. LEFAUCHEUX	France
	Mrs. GUERY	Haiti
	Miss ROESAD	Indonesia
	Mrs. TABET	Lebanon
	The Begum ANWAR AHMED	Pakistan
	Mrs. DEMBINSKA	Poland
	Mrs. FOMINA	Union of Soviet Socialist Republics
	Mrs. SAYERS	United Kingdom of Great Britain and Northern Ireland
	Mrs. HAHN	United States of America
	Mrs. de URDANETA	Venezuela
	Mrs. MITROVIC	Yugoslavia
<u>Also present:</u>	Mrs. LOPEZ	Colombia
	Miss FUJITA	Japan
	Mrs. de TEJEIRA	Panama

Representatives of specialized agencies:

Mrs. FIGUEROA	International Labour Organisation
Miss SALAS	United Nations Educational, Scientific and Cultural Organization

PRESENT (cont'd):Representatives of an inter-governmental organization:

Mrs. LEYES de CHAVES)	Inter-American Commission of Women
Mrs. de CALVO)	

Representatives of non-governmental organizations:Category A:

Mr. THORMANN	International Federation of Christian Trade Unions
Miss KAHN	World Federation of Trade Unions
Mrs. FOX	World Federation of United Nations Associations

Category B and register:

Miss GUTHRIE	International Alliance of Women
Miss SMITH	International Council of Nurses
Mrs. CARTER)	International Council of Women
Mrs. REGISTER)	
Mrs. HYMER)	International Federation of Business and Professional Women
Mrs. MEINANDER)	
Miss POLLITZ)	
Miss LAGEMANN	International Federation of Friends of Young Women
Miss ROBB	International Federation of University Women
Mrs. ROBERTS	Liaison Committee of Women's International Organizations; Associated Country Women of the World
Mrs. ANDRAS	Nouvelles Equipes Internationales
Mrs. EVANS	Pan-Pacific Women's Association

PRESENT (cont'd):

Representatives of non-governmental organizations (cont'd):

Category B and register (cont'd):

Mrs. WALSER	Women's International League for Peace and Freedom
Mrs. RICHMAN	World Jewish Congress
Mrs. POLSTEIN	World Union for Progressive Judaism
Miss FORSYTH	World's Young Women's Christian Association
Miss PEZZULLO	Young Christian Workers
<u>Secretariat:</u> Mrs. TENISON-WOODS	Chief of the Status of Women Section
Mrs. GRINBERG-VINAVER	Secretary of the Commission

STATUS OF WOMEN IN PRIVATE LAW: (a) FAMILY LAW (i) REPORT ON PARENTAL RIGHTS AND DUTIES (E/CN.6/230/Rev.1; E/CN.6/L.157 and Add.1) (ii) REPORT ON DOMICILE AND RESIDENCE OF MARRIED WOMEN (E/CN.6/229/Rev.1; E/CN.6/L.159) (iii) SUPPLEMENTARY REPORT ON FAMILY LAW (E/CN.6/185/Add.14; E/CN.6/L.158); (b) SUPPLEMENTARY REPORT ON PROPERTY RIGHTS (E/CN.6/208/Add.2); (c) REPORTS ON THE STATUS OF WOMEN IN TRUST AND NON-SELF-GOVERNING TERRITORIES (E/CN.6/255, E/CN.6/260 and Add.1 and Corr.1 and Add.2)

The CHAIRMAN said that among the material before the Commission documents E/CN.6/230/Rev.1 and E/CN.6/229/Rev.1 dealt, respectively, with parental rights and duties and with domicile and residence of married women, matters which the Commission had decided in 1954 to consider in greater detail at its ninth session, in the hope that it would then have fuller information.

Miss ROESAD (Indonesia) said that the Commission would be better able to make suggestions and recommendations if it was fully informed about the status of women in private law. She would therefore support the draft resolution submitted by Australia (E/CN.6/L.158). A full documentation would have an added value, inasmuch as the example of some countries might act as an encouragement and incentive to others.

She described the position of women in private law in her own country. Article 7 of Indonesia's provisional Constitution laid down the principle that all persons were equal before the law. The capacity of women for the purposes of the law was not, however, uniform in written and in customary law.

The written law dated from the time when Indonesia had been a Netherlands colony and when the population had been divided into indigenous and non-indigenous inhabitants. For a description of the status of women to whom the written laws applied she would refer to the information relating to the Netherlands (E/CN.6/208)

The situation in customary law differed slightly from area to area. Indonesia was divided into nineteen "law areas". As a general rule, however, an Indonesian woman who had attained the age of majority was sui juris, could sue, enter into contracts and carry on business or a trade, occupation or profession. Some marrie

(Miss Roesad, Indonesia)

women, for instance, had their own law offices and carried on professional activities in complete independence. Others conducted businesses for which they needed neither the help nor the consent of the husband.

The situation was far from uniform in the matter of parental rights and duties. Marriage in Indonesia was not solely a personal matter; it involved the whole family group, the clan. There were various forms of marriage, the principal ones being the patriarchal and matriarchal forms. If the marriage was patriarchal, the woman entered the husband's clan; the children belonged to the clan, which was responsible for their protection; if the marriage was matriarchal the woman remained in her own clan, to which the children belonged. In case of divorce, however, the mother usually had custody of the young children. Often factors taken into account for the purposes of custody were the grounds of the divorce and the children's preferences. Because the situation was complicated in Indonesia, as she had explained, she would need more time to decide her attitude to the draft resolution proposed jointly by France, Lebanon and Yugoslavia (E/CN.6/157).

Mrs. HAHN (United States of America) said that she had always regarded the subject of family and property law as most important. The recent mission she had undertaken for the United States Government had deepened that conviction. In the dozen countries she had visited in four months she had found that women were making progress, very often with the men's support, and that Governments were gradually revising their legislation. The Commission had a great responsibility, for it had to give that movement leadership.

In the course of her journey she had also been impressed with the complexity of situations and with the variety of systems of law built on differing religious, social and economic foundations. Consequently, she thought that the Commission could gain more for the time being through discussions and exchanges of views than by making recommendations to Governments. The United States delegation would, therefore, be able to vote for the Australian draft resolution (E/CN.6/L.158), but not for resolutions dealing with the substance of family and property law.

(Mrs. Hahn, USA)

She thanked the Secretariat for the material it had prepared and, in particular, for the reports on domicile and residence of married women and on parental rights and duties. The Commission had very wisely, at its eighth session, deferred action on those subjects. In the meanwhile the Secretary-General had had time to gather further information and Governments had been able to consider the subjects more thoroughly. The Commission might well adopt that procedure as a regular practice in the fields of family and property law and refrain from taking decisions on substantively new resolutions in those fields at the session at which they were submitted. Such a procedure would have the additional advantage of enabling the Commission to obtain the views of the non-governmental organizations on the practical effects of the action it contemplated. In especially complex matters it might be advisable to allow a period of two years to elapse between the submission of a draft resolution and the vote on it. She would be interested to hear comments on that suggestion.

Mrs. QUERY (Haiti) said that under Haitian law a married woman had no domicile other than that of her husband. In practice, however, she might have a separate domicile by reason of her occupation or business. The husband was under a duty to receive his wife in the marital home and to support her according to his means. If his wife left the conjugal home he was not bound to make payments for her support; he could even be authorized to seize or attach her personal income in order to force her to return to the home. She could not claim maintenance even if he accepted the de facto separation and did not offer to take his wife back. The court could order a woman to return to the conjugal home within a specified period under pain of fine.

With respect to property rights, the system of community of property was the most common and the husband administered the property. A married woman could not be a party to civil proceedings without her husband's authorization. She could neither contract nor open a bank account without his consent. A married woman

(Mrs. Guery, Haiti)

who was self-employed had legal and contractual capacity within the scope of her business without her husband's permission but she had to contribute at least one third but not more than two thirds of her income to joint expenses. In the case of divorce the wife was entitled to half the property acquired during the marriage. If the husband died she was also entitled to half of the common property. However, clauses of a will often stipulated that property was not to be divided, in which case the property was administered by the widow.

Under the separate property system, the wife had to contribute in proportion to her and her husband's income to the maintenance and educational expenses of the children. She even had to bear those expenses in full if the husband was bankrupt.

The law vested parental power in the father and mother. They had the right of custody and correction as well as the right to administer and enjoy the property of their children. The mother exercised full parental authority if the father was absent or declared unfit to act. The children remained under the authority of their parents until majority or emancipation and could not leave the paternal home without the father's permission. If the father considered his child guilty of serious misconduct he could have him committed to a remand home for a period of 50 days to six months. In the case of divorce, the father was under a duty, so far as his income allowed, to make payments for maintenance even if the mother had custody of the children by statute. Illegitimate children had the same rights and duties as legitimate children.

The estate of a deceased parent was shared equally between the legitimate and natural children. Upon the death or life imprisonment of either spouse, the custody of the minor or unemancipated children vested ipso facto in the other. Only the mother was entitled to refuse to assume custody but she was under a duty to act until a guardian had been appointed. If the mother wished to remarry she was bound, before remarrying, to consult the family council which decided who

(Mrs. Guery, Haiti)

should be appointed guardian. If it decided that the mother should continue as guardian, her new husband had to be appointed as co-guardian and they became joint custodians of the child during the marriage. The following persons could not be guardians or members of the family council: minors (with the exception of the father and the mother), persons of unsound mind, women other than the mother and female relatives in the ascending line, and any other person who was, or whose parents were, parties to proceedings affecting the interests of the minor. The minor children of a woman employed in the public service had a claim to her pension benefits.

Miss PAO SWEN TSENG (China) said that in China a woman was emancipated on attaining the age of twenty-one years, whether she was married or not. As from that age she had the right to administer her property, to enter into contracts and to carry on an independent occupation. On the death of the parents male and female children shared equally in the estate. On the death of the husband, his property passed to his widow. The wife had a say in the choice of a domicile. A married woman could sue for divorce on the grounds of mental illness, infidelity, cruelty, desertion or even incompatibility of temperament. In the case of divorce the mother generally received custody of the young children, and the other children were placed in the custody of the father or of a member of his family. The father was responsible for contributing to the support of his children even if they lived with their mother.

In China the rights of women were equal to those of men. There was no discrimination in the matter of property rights, choice of the domicile and residence, divorce and custody of children.

Mrs. LEFAUCHEUX (France) said that she would not make a general statement on the status of women in private law, because the questions involved were so complex that they should be examined separately. At its eighth session the Commission had adopted resolutions relating to matrimonial regimes and to the right of women to engage in independent work. At the current session it proposed

(Mrs. Lefauchaux, France)

to concentrate on parental authority and the domicile of married women. She would speak on those two questions during the discussion of the relevant resolutions. She did not feel that discussion of those resolutions should be postponed. The subjects dealt with were vital, and clear and unambiguous resolutions should be adopted without delay.

Mrs. HAHN (United States of America) said that it had not been her intention to request the postponement of the consideration of resolutions dealing with the two important items mentioned by the French representative. She had simply proposed that, in accordance with the precedent of the eighth session, any new draft resolutions relating to other important private law topics should be considered later, so that the Secretary-General and non-governmental organizations would have an opportunity to collect the necessary information.

The Begum ANWAR AHMED (Pakistan) said that in Pakistan the Christians and the Parsis were governed in matters of marriage and inheritance by civil law, which was somewhat similar to English law, whereas Hindu communities were governed by personal law. That law was by no means favourable to women, as they could not sue for divorce, or remarry if widowed, and had hardly any property rights. In India the marriage and property laws were being revised with a view to giving women far greater rights; it was to be hoped the Hindu women in Pakistan would also strive to improve their status.

Muslim family law placed men and women on an equal footing. A Muslim woman did not require her husband's consent for the purpose of working outside the home and she could own property in her own name and have a bank account. She received her inheritance from the same sources as her husband but her share was smaller. On the other hand the responsibility for supporting the family rested entirely on the husband.

(The Begum Anwar Ahmed,
Pakistan)

Under Islamic law, marriage was a civil contract requiring the personal consent of both parties, and the marriage settlement was an essential feature of the contract. However, other terms could be laid down in the marriage contract to ensure the wife's economic security, for example, terms which gave the wife the right to divorce without forfeiting her dower and the right to continued maintenance at a specified amount.

The majority of women, even the most educated, were in general unaware of the advantages of the marriage contract under Islamic law. To remedy the situation, the registration of Muslim marriages should be made compulsory and a draft marriage contract containing essential provisions for the protection of wives should be devised. Women's organizations in Pakistan were paying particular attention to that problem and working for marriage reform. However, if they were to be successful they needed the support of the men because the matter was a social problem and a solution should be found in a spirit of mutual understanding.

She supported the Australian draft resolution but would be unable to vote in favour of the other draft resolutions.

Mrs. GRINBERG-VINAVER (Secretary of the Commission) said that at its eighth session the Commission had adopted a draft resolution dealing with customs, ancient laws and practices affecting the human dignity of women, the text of which appeared in paragraph 65 of document E/2571. That draft resolution had been adopted unchanged by the Economic and Social Council in July 1954 (resolution 547 H (XVIII)), and unanimously by the General Assembly at its ninth session on 17 December 1954 (resolution 843 (IX)). She read out the text of the resolution.

Mrs. TABET (Lebanon) said that in private law a Lebanese woman was privileged, being by statute entitled to manage and transfer her property, to sue and to carry on independent occupation.

(Mrs. Tabet, Lebanon)

Yet, owing to the survival of ancient customs, there were still three matters in which women were discriminated against. Firstly, if the husband died, the law did not ipso facto grant the mother the guardianship and custody of the children although, if the court did not hold her unfit, it usually delegated the necessary authority to her. The statutory guardian was the nearest male parent, generally the grandfather or paternal uncle. Secondly, a woman could only obtain a travel permit in the absence of any objection on her husband's part; his consent was not required. The husband, on the other hand, could go abroad and even contract a new union there while the woman vainly awaited his return. Thirdly, the children and widower of a woman employed in public service had no claims to her retirement pension. Lebanese women were now striving to have those remaining discriminatory measures repealed.

Mrs. SAYERS (United Kingdom) pointed out two slight errors in the Secretary-General's report (E/CN.6/229/Rev.1).

In paragraph 24, the United Kingdom was listed among those countries where, if there was no agreement between the spouses, the husband, being considered as head of the family, chose the marital residence. In fact, there was no legal recognition of the husband as head of the family (E/CN.6/185/Add.1, page 18) and, as was stated in paragraph 26 of the Secretary-General's report, husband and wife were in the same position in regard to choice of residence. Furthermore, the last sentence of that part of paragraph 26 dealing with the United Kingdom was confusing, for it did not state that the husband also committed the offence of desertion if he ceased without cause to cohabit with his wife.

The question under discussion was extremely complex and in each country closely bound up with the particular legal system and religious and social traditions. In the United Kingdom the legislation was under constant review. At the moment, the Royal Commission on Marriage and Divorce was studying whether there was a case for amending the legislative provisions governing divorce, relations between spouses and the administration of property during the marriage and after its dissolution (for reasons other than death), the overriding considerations being the happiness of the marriage and the interests of the children.

(Mrs. Sayers, United Kingdom)

The Royal Commission had not yet submitted its report and she would therefore be unable to support the draft resolutions in documents E/CN.6/L.159 and E/CN.6/L.157/Rev.1 although her Government attached the greatest importance to the questions they dealt with. Her delegation would support the Australian draft resolution (E/CN.6/L.158).

Mrs. de CALVO (Inter-American Commission of Women) said that her organization was constantly making representations to Governments and legislatures in the Americas to secure recognition of women's civil rights. Those efforts had been successful in Argentina, where the Parliament had, in December 1954, enacted legislation modifying the law applicable to minors and the family. Furthermore, in keeping with certain resolutions adopted by the Inter-American Commission at its ninth session, Paraguay had, in September 1954, enacted legislation dealing with the civil rights of women; under the new provisions, adult women were entitled to exercise all the civil rights and functions exercised by men.

The Inter-American Commission was also urging the American States to ratify the Inter-American Convention on the Granting of Civil Rights to Women. In that endeavour, it had been successful in two cases: the President of the Chilean Republic had, in November 1954, submitted to Parliament draft legislation relating to the adoption of that Convention; and Mexico, a signatory, had deposited its instrument of ratification in August 1954, thus bringing to ten the number of ratifying countries (E/CN.6/269).

Mrs. GUERY (Haiti) said that, in accordance with the Lebanese representative's suggestion, she would introduce a revised text of the draft resolution she had submitted at the eighth session, when the Commission discussed the item "economic opportunities for women".

Mrs. DALY (Australia), with reference to the draft resolution proposed by France and Sweden (E/CN.6/L.159), drew attention to the passage in the Secretary-General's report (E/CN.6/229/Rev.1), which dealt with Australia.

In the matter of domicile and residence, the Australian legal system usually placed women at a disadvantage. However, she supported in principle the draft resolution proposed by France and Sweden and would vote in favour of it.

Mrs. LEFAUCHEUX (France), introducing the joint draft resolution (E/CN.6/L.157), said that it did not conform to the different legal codes applied in France, to customary law, to the law of the Koran or to the French Civil Code, an article of which provided that the husband was the head of the family and which constantly spoke of paternal rather than parental authority. Nevertheless, she felt it necessary to propose a draft which was likely to encourage progress. In a world where the equality of rights was to be something more than an empty formula, the equality of rights of parents with regard to their children should certainly be the basis of the institution of the family.

In some countries, for example, in the African countries within the French Republic, paternal authority did not pass to the mother in the event of the death or incapacity of the father. In certain of those countries, upon the dissolution of the marriage - and the father had the power to dissolve it without even notifying the mother - the parental authority vested by law in the father. Customary law gave custody of the children to the father in all cases and, on his death, to his family. In cases where the widow's right of custody was recognized, she lost it automatically if she remarried. The woman's freedom was thus dependent on her readiness to sacrifice custody of her children. That was a situation which the Commission should criticize in unequivocal terms.

(Mrs. Lefaucieux, France)

It was particularly necessary to amend those provisions of customary law because they undermined the very institution of marriage. Indeed, in some countries, women refused to have their unions registered lest they should lose custody of the children. It was to be hoped that the Commission would succeed in working out a draft resolution which would ensure equality of parental rights in cases where such equality was feasible and promote real progress in the less advanced areas.

If the representatives of Lebanon and Yugoslavia agreed, she would propose three amendments to the draft resolution (E/CN.6/L.157): in the first paragraph of the preamble to the resolution proposed to the Economic and Social Council, after the words "parental authority does not pass to the mother as a matter of right" the words "or is withdrawn from her in the event of remarriage" should be added at the end of the same paragraph, the words "regardless of the apportionment of blame between the spouses" should be added; and the following new paragraph should be inserted after the first paragraph of the preamble:

"Noting that in some countries this situation prompts women to refuse the regularization of their union in order to safeguard their claims and those of their families to children born of the union".

Mrs. TABET (Lebanon) agreed to the changes.

Mrs. MITROVIC (Yugoslavia) said she would like more time to consider them.

The CHAIRMAN said the French representative's proposals would accordingly take the form of amendments to the draft resolution (E/CN.6/L.157).

The meeting rose at 1 p.m.