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Eighth Session

SUMMARY RECORD OF THE THREE HUNDRED AND FIRST MEETING

Held at Headquarters, New York,
on Tuesday, 20 May 1952, at 10.30 a.m.

CONTENTS:

Draft international covenants on human rights and measures
of implementation: part III of the draft covenant drawn up
by the Commission at its seventh session (E/1992, E/CN.4/635/Add.5,
E/CN.4/L.77/Rev.1): article 31.

<u>Chairman:</u>	Mr. MALIK	Lebanon
<u>Rapporteur:</u>	Mr. WHITLAM	Australia
<u>Members:</u>	Mr. NISOT	Belgium
	Mrs. FIGUEROA	Chile
	Mr. CHENG PAONAN	China
	AZMI Bey	Egypt
	Mr. JUVIGNY	France

Members: (continued)

Mr. KYROU	Greece
Mrs. MEHTA	India
Mr. AZKOUL	Lebanon
Mr. WAHEED	Pakistan
Mr. BORATYNSKI	Poland
Mrs. ROSSEL	Sweden
Mr. KOVALENKO	Ukrainian Soviet Socialist Republic
Mr. MOROZOV	Union of Soviet Socialist Republics
Mr. HOARE	United Kingdom of Great Britain and Northern Ireland
Mrs. ROOSEVELT	United States of America
Mr. BRACCO	Uruguay
Mr. JEVREMOVIC	Yugoslavia

Also present:

Miss MATIAS	Commission on the Status of Women
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Representatives of specialized agencies:

Mr. MORELLET)	International Labour Organisation (ILO)
Mr. PICKFORD)	

Representatives of non-governmental organizations:

Category A:

Mr. LEARY	International Confederation of
Miss SENDER	Free Trade Unions (ICFTU)

/Category B

Category B and Register:

Miss AIETA	Catholic International Union for Social Service
Mr. MOSKOWITZ	Consultative Council of Jewish Organizations
Mr. HALPERIN	Co-ordinating Board of Jewish Organizations for Consultation with the Economic and Social Council
Mr. LONGARZO	International Conference of Catholic Charities
Mrs. CARTER	International Council of Women
Mrs. ROBB	International Federation of University Women
Miss PHILLIPS	Liaison Committee of Women's International Organizations
Mr. JACOBY	World Jewish Congress
Mr. RONALDS) Mrs. POLSTEIN)	World Union for Progressive Judaism

Secretariat:

Mr. LIN	Division of Human Rights
Mr. DAS) Miss KITCHEN)	Secretaries of the Commission

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DRAFT INTERNATIONAL COVENANTS ON HUMAN RIGHTS AND MEASURES OF IMPLEMENTATION:
PART III OF THE DRAFT COVENANT DRAWN UP BY THE COMMISSION AT ITS SEVENTH SESSION
(E/1992, E/CN.4/635/Add.5, E/CN.4/L.77/Rev.1) (continued)

Article 31

The CHAIRMAN drew the Commission's attention to article 31, with regard to which there was only one proposal, submitted by the Swedish representative (E/CN.4/L.77/Rev.1), to delete the article. He would suggest the proper procedure for dealing with the proposal when the Commission was ready to vote; in the meantime, the Swedish representative was, of course, free to defend it.

Miss MANAS (Commission on the Status of Women) stated that the Commission which she represented was anxious that article 31 should be maintained, and recalled that the General Assembly, in its resolution 421 E (V), had decided to include in the covenant an explicit recognition of equality of men and women with regard to economic, social and cultural rights. The Commission on Human Rights had at its past session, drafted article 31 in obedience to that decision. While it was true that there was a general clause on non-discrimination in article 1, it was essential to lay especial emphasis on the principle of equal rights of men and women, a principle so frequently and so flagrantly violated. Far from weakening the general clause, the retention of article 31 would actually lend it strength.

Mrs. ROSSEL (Sweden) remarked that her aim was precisely the same as the preceding speaker's, but that her interpretation of the non-discrimination clause in article 1 and of the meaning of the word "everyone" as used throughout the covenant was entirely different. There was no country in the world in which men and women were truly equal; and the struggle of women's organizations and trade unions to achieve such equality would have to continue for a long time. She did not think, however, that their cause would in any way be assisted by the inclusion in the covenant of an article which, in so far as it was repetitious, merely served to weaken the broad general prohibition of all forms of discrimination contained in article 1. That article, adopted by
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a large majority, stated, in particular, that there should be no distinction as to sex; and the various other articles adopted stated that the rights enunciated in them were to be granted to "everyone". She herself had had occasion to say that, in that context, the word "everyone" meant men and women alike; no one had ever denied her assertion, but some representatives had remained silent on the point, and she therefore asked them all to place on record their interpretation of the word as well as of the provision that there should be no distinction as to sex. In her understanding, by the use of that language the Commission had already introduced the substance of article 31 in the covenant, so that the article itself was not only superfluous, but weakened the general clause and cast doubt on the meaning of "everyone".

On the only point on which the article was not repetitious, it was vague. It spoke of "all economic, social and cultural rights" as contrasted with those set forth in the covenant. She did not believe that any important rights had been omitted from that document; the only logical conclusion then was that States were being asked to promise to ensure equality with regard to some dim and unspecified rights which might be recognized in a distant future. She failed to see how such an indefinite commitment could be accepted by the parties to the covenant.

Mr. WAHEED (Pakistan) said that his delegation warmly supported article 31. The general non-discrimination clause in article 1 was so broadly drafted that it was necessary to call special attention to discrimination against women, which was widespread in many countries, including some of the most advanced. Furthermore, article 31 should be retained because, by establishing the right of men and women to equal enjoyment of economic, social and cultural rights it widened the scope of the articles concerned with those rights, since they would have to be so implemented as to be equally available to both sexes.

In his own country, women were on the same footing as men; they were free to follow any profession and to dispose of their property, and lost none of their rights through marriage. It was only when woman was thus enabled to be man's equal that the family could be a stable nucleus of society. Regrettably, in many parts of the Islamic world, the law of equality had been transgressed,

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and woman had been relegated to a subordinate position. He appealed to the Commission, by retaining article 31, to restore that equality and to make it possible for men and women the world over to march forward towards a better future.

Mr. KYROU (Greece) knew the Swedish representative to be an ardent defender of equal rights for women. She was perhaps unwilling to retain article 31 because the affirmation of equality it contained was not entirely true; but the inclusion of the article in the covenant would help to make the affirmation true. The Swedish representative felt that the article would weaken the cause of women's rights; that might have been true if it had applied to one specific right, but it applied to all the rights in the covenant. He agreed, however, that the word "recognize" might be undesirable, as it would make the entire article subject to the provisions of article 1, paragraph 1; it should therefore be replaced by some other word, possibly by "reaffirm". To meet another point raised by the Swedish representative, the words "and particularly those" should be deleted. With these amendments, he was strongly in favour of retaining article 31.

Mrs. MEHTA (India) entirely agreed with the Swedish representative that article 31 was superfluous, and would abstain in the vote on that article.

If there was reason to fear that women would not be granted equal rights in spite of provisions to that effect in the Charter, the Universal Declaration of Human Rights, and article 1 of the covenant itself, then men must be determined not to give women equality, and even article 31 would not help. There was no doubt in her mind that the word "everyone", as used throughout the covenant, applied to both sexes; but men who had a different mental attitude would cling to it, no matter how often the Commission repeated that men and women should have equal rights. She thought it far better to rely on a strong general article prohibiting discrimination in all its forms than to repeat specific injunctions again and again.

Mr. AZKOUL (Lebanon) said that his delegation had always opposed repetition of any clauses in the covenant, except when the nature of a right demanded it.

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In the case of equality of men and women, he believed that a special provision was justified for the following two reasons: first, of the various forms of discrimination enumerated in article 1, only discrimination on the grounds of sex was universal; and secondly, whereas all other forms of discrimination were generally condemned, the principle of equality of the sexes had not yet received universal recognition, and therefore deserved special emphasis.

Anxious as he was to safeguard that principle, he feared that, in view of the covenant's present structure, the provisions of article 31 might be interpreted as constituting an excuse for States to postpone its implementation. As at present drafted, the article stated that the parties to the covenant recognized the equal right of men and women to the enjoyment of various other rights. It might therefore be claimed that the article was directly governed by the provisions of article 1, paragraph 1, which applied to all the rights recognized in the covenant, and that it was therefore subject to all the limitations contained in that paragraph. Thus, whereas the general non-discrimination clause in article 1, paragraph 2, was to be implemented without delay, it could be argued that the specific prohibition of discrimination against women was to be implemented only progressively, as when the means became available. Seen from that angle, article 31 would appear to constitute a reservation with regard to the principle of equal rights for men and women, instead of, as intended, a reaffirmation of that principle.

He would therefore keep an open mind on the retention of article 31, and hoped that the representative of the Commission on the Status of Women and all other representatives sincerely concerned with promoting the cause of women's rights would be able to allay his fears.

Mr. HOARE (United Kingdom) said that his delegation wished article 1, paragraph 2, to be amended, not because it did not want a non-discrimination clause, but because it wondered whether the immediate fulfilment of the provisions in that paragraph was possible. Nevertheless, a non-discrimination clause should certainly be embodied in the draft covenant: the existing paragraph 2 of article 1 had the merit of not providing an exhaustive list of all kinds of discrimination, but of giving a list of examples introduced by

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the words "such as". It thus went to the root of the problem; any attempt to introduce further specific provisions for non-discrimination would merely weaken that provision. The Lebanese representative's contention that discrimination on the ground of sex was so widespread that it might warrant specific mention was open to the objection that there were other kinds of discrimination which, if not so common, were perhaps more reprehensible. Thus, to single out one kind of discrimination would be unwise. Article 31 was repetitious, although its scope was wider than that of article 1, paragraph 2, in that it purported to cover all economic, social and cultural rights, and not merely those enunciated in the draft covenant. Admittedly, repetitions already abounded in some of the texts adopted by the Commission but, in the interests of good drafting, they should be as few as possible. There seemed to be no need for the increased scope given to article 31, for it was unlikely that any important rights had been overlooked. Those who had given such increased scope to article 31 really had in mind not further economic, social or cultural rights, but rather all those forms of discrimination outside the field of specific rights, which related to the question of status, and which depended, as the Indian representative had well observed, on ingrained mental attitudes. As the changing of the attitude of individuals towards other individuals rather than the recognition of specific rights was involved, the Commission could hardly achieve the abolition of that kind of discrimination merely by incorporating an article in a draft covenant. Thus, article 31 added nothing useful and could not have the desired effect, whereas the broadest possible affirmation of the need to abolish all discrimination, such as that in article 1, paragraph 2, would go as far as a covenant could go towards attaining the end in view.

Mrs. ROOSEVELT (United States of America) said that the United States delegation had always been anxious that the best possible covenant should be drafted. Article 1 stated very clearly the undertaking by States to guarantee and enforce the rights enunciated in the covenant without discrimination of any kind. That article should be given the greatest possible weight; any repetition of part or the whole elsewhere in the draft covenant could only weaken it. She felt very strongly that discrimination of all kinds should be wiped out. To repeat the objection to one kind of discrimination alone in article 31 would weaken the force of the statement in
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the general clause. She would therefore support the Swedish proposal (E/CN.4/L.77/Rev.1). She was fully aware in doing so that very many women in the United States felt, like the Commission on the Status of Women, that special emphasis should be laid upon the equality of men and women and might think that because she opposed the Swedish stand against inclusion of a special reference to women, she was opposed to equality. For some years she had opposed the passage of an equal rights amendment to the United States Constitution, because it would have wiped out the many existing measures for the protection of women. But she had ceased for some time to oppose that amendment because it no longer mattered, as women had become able to organize for their own protection. That did not mean that full equality between the sexes had been achieved, at any rate in the United States. She was sure, however, that the USSR representative would say that complete equality under the Constitution had been achieved in his country. The cause of equality received a great deal of lip-service, particularly from vote-hunting politicians; but it was up to the women themselves to say that they wanted real equality; not simply the right to work at the same jobs and just as hard as men, but equality at the highest policy-making levels. That alone would change history. That cause would hardly be advanced by a statement of the general right where it was not really important; whereas a general statement, such as that in article 1, paragraph 2, against all kinds of discrimination would in the long run ensure conditions in which women would have access to the policy-making positions. She asked for a separate vote on the phrase "and particularly of those"; she would vote against that and against the article as a whole.

Mrs. FIGUEROA (Chile) was opposed to the deletion of article 31 for reasons similar to those she had adduced in connexion with article 21. She appreciated the United States representative's position but regretted that she could not share it. She entirely agreed with the Swedish representative's contention that nowhere in the world had full equality between men and women been achieved, but she could not see how that fact was a convincing argument for the deletion of the article. If the Swedish representative accepted that fact, surely the first thing to do was to remedy the evil. Undoubtedly those who opposed and those who supported article 31 had the same end in view,
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but they differed diametrically about the means. Some progress had been achieved at the current session beyond the draft drawn up at the previous session; but the deletion of article 31 would be a serious step backwards. During the discussion of article 31 at the seventh session not a single delegation had opposed its inclusion in the draft covenant. The only objection raised had been that it should not be confined solely to covering the economic, social and cultural rights but should apply also to the civil and political rights. The Chilean delegation would submit an amendment to the covenant on civil and political rights proposing its inclusion therein. At the seventh session, Mrs. Roosevelt had submitted an amendment proposing equality in the enjoyment of all economic, social and cultural rights, and in particular of the economic, social and cultural rights set forth in the covenant (E/CN.4/SR.230). Mr. Whitlam, the representative of Australia, Mrs. Mehta, the representative of India, and the representative of China had all proposed somewhat similar wording or had supported the United States proposal. At the current session it was being asserted that the article's inclusion would weaken the non-discrimination paragraph in the general clause and that that paragraph could be extended to cover all other articles. The Commission should beware of trying to stretch the general clause further than it could safely be stretched. A majority of the Commission had already decided that the general clause was not adequate in all cases and had incorporated specific obligations in some articles. She was not inclined to be as pessimistic as the Indian representative. If discrimination was due to a mental attitude on the part of men towards the equality of men and women, that attitude must be altered. The United Nations had, in the Charter and in the Universal Declaration of Human Rights, made a beginning by creating a moral obligation; but the establishment of a legal obligation was still required. Arguments that the style of the draft covenant must be entirely consistent and that nothing redundant should be included in it were really somewhat formalistic in view of the very serious problem the Commission was coping with. Article 31 was the only article which unequivocally stated the equality of men and women. All agreed that discrimination existed. The Commission could either pass it over in silence or risk some slight repetition. To pass it over would appear to be condoning discrimination on the ground of sex. The Lebanese representative had been right in only one respect: the word "recognize" in article 31 was weaker than "guarantee" in article 1, paragraph 2 (E/CN.4/666). The Chilean delegation therefore proposed that the words "undertake to guarantee" should be substituted for the word "recognize" in article 31.

Mr. MOROZOV (Union of Soviet Socialist Republics) said that the Commission was not confronted with a question of form or style but rather with an attempt to pay lip service to a principle while opposing effective obligations on States guaranteeing that principle. A similar situation had arisen in connexion with article 21 on equal pay for equal work to men and women and the majority of the Commission had favoured the inclusion of a non-discrimination clause in that important article. It was essential for the Commission to be consistent and to include article 31 which would put an end to the unchecked discrimination against women in most capitalist countries.

It was surprising that unconvincing arguments in favour of the deletion of article 31 guaranteeing equality to women should be presented by the representatives of Sweden and the United States who themselves were women. The Swedish proposal for deletion of the article was unacceptable because it ran counter to resolution 421 (V) of the General Assembly which decided "to include in the Covenant on Human Rights economic, social and cultural rights and an explicit recognition of equality of men and women in related rights...". It was interesting to note that the position of the Swedish delegation was inconsistent with the practice of the Swedish Constitution and Swedish legislation which contained explicit references to men and women and was not restricted to a general reference to everyone. The practice of explicit statement was also followed in other national constitutions and in the Charter.

In the light of the admission by the United States representative that the situation of women in her country in the matter of equality with men was unsatisfactory, he would not elaborate on the point further. Moreover, the United States representative had anticipated the position of the USSR delegation in explaining the status of women in the Soviet Union. Article 122 of the USSR Constitution granted women equal rights in all fields and those rights were effectively implemented in practice. Although complete equality of women had not yet been achieved, considerable progress had been made in the last thirty years and efforts in that direction were continuing. It was noteworthy that one-third of the members of the Soviet parliament were women and that thousands of women were trained in the professions and occupied important positions. In recognition of the significance of article 31, the USSR delegation considered it essential to include a provision in the covenant guaranteeing equality to women in the enjoyment of economic and social rights.

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It had been stated that article 31 was broader in scope than the minimum rights covered in the covenant. It was however erroneous to state that, because of its broader scope, article 31 was not completely covered by the non-discrimination clause in article 1. It was also important to note that the final clause of the article did not embody the main idea of the text.

Referring to the doubts expressed by the Lebanese representative to the effect that article 31 would weaken the principle of article 1, paragraph 2, he expressed the view that the two texts were not mutually exclusive or contradictory and that they did not cover the same ground. The Lebanese statement that subordination of article 31 to article 1 would lead to progressive implementation was incorrect because article 31 proclaimed no specific right but recognized the principle that in ensuring concrete rights States should permit equal enjoyment of those rights by men and women. If progressive implementation occurred, at each level of development women should enjoy equal benefits. He therefore could not share the anxieties of the representatives of Lebanon and the United Kingdom regarding the danger of the progressive element as applicable to article 31.

He was prepared to support the Chilean proposal if it was formally presented because it would constitute an improvement in article 31. He would oppose the position that the retention of article 31 would weaken the covenant or detract from the non-discrimination clause in article 1. Article 31 was not redundant; it was essential.

At the invitation of the CHAIRMAN, Mrs. CARTER (International Council of Women) addressed the Commission. In view of the discussion of article 31, she felt impelled to explain the reasons underlying the statement of the International Council of Women in document E/CN.4/NGO/38. She regretted to have to oppose the views of the representatives of the United States, Sweden and India whose opinions she highly respected. Her organization had however given careful consideration to article 31 at its triennial conference at which the representatives of 26 countries had unanimously adopted a resolution endorsing the General Assembly's action stressing the necessity for explicit recognition of the equality of men and women in the enjoyment of economic, social and cultural rights and expressing the view that the covenant should contain a clear and unequivocal declaration prohibiting discrimination against women.

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That action had been taken because of a general uneasiness regarding the effectiveness of broad non-discrimination clauses which in the past had often required interpretation and involved legal controversy. Moreover, such clauses often contained loopholes. Accordingly a clear statement was essential in article 31.

Mr. JUVIGNY (France) said that in France women participated fully in the political, economic, social and cultural life of the nation. Whereas their claim to vote and to be elected had formerly been disputed, nowadays a large number of women sat in French legislative bodies, though they were still not so numerous as the men.

While it fully endorsed the principle of equal enjoyment of rights by men and women, the French delegation, for technical reasons, concurred in some of the views expressed by the representatives of Sweden, the United Kingdom and the United States. It was convinced of the necessity of making the general non-discrimination clause applicable to all the articles of the covenant. Inconsistent language differing from article to article would raise doubts regarding the validity of the general non-discrimination clause and would mar the unity and effectiveness of the covenant. Moreover, it would be dangerous to assign priority status to the various aspects of non-discrimination by referring only to some of them in particular articles; the only article should be that on non-discrimination, article 1 of the covenant. Furthermore, the French delegation thought it better, if article 31 was to be retained, to let it cover only the rights defined in the covenant.

Mr. HOARE (United Kingdom) said, in reply to the representative of the USSR, that he was content to leave the views he had expressed on article 31 to be judged on their merits.

He was gratified that the representative of the USSR, in contrast to his attitude on some other questions, had frankly admitted that much still remained to be done in the Soviet Union in the field of equality of women, although he had also submitted a record of achievement which was certainly remarkable.

The USSR representative's position that article 31 was not an enunciation of a right, but merely a reference to equality of men and women
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in the enjoyment of economic, social and cultural rights, was interesting but had serious implications. Article 31 referred to two categories of economic, social and cultural rights: those set forth in the covenant and those not included in the covenant. It was possible to reach the conclusion that article 1, paragraph 1 providing for progressive implementation of the rights enunciated in the covenant would not apply to the second category mentioned in article 31. Thus parties to the covenant would be expected to undertake immediate implementation of an unspecified group of rights.

His own view was that the reference in article 31 was not to additional rights but to all forms of economic and social discrimination which could be eliminated only by a change in the mental attitudes of individuals, a long-term process that States could not undertake to carry out immediately.

The Chilean proposal would involve difficulties regarding actual rights enunciated in the covenant. While there was no disagreement in principle, a difficulty arose in connexion with immediate implementation, similar to the case of article 21, in view of the joint operation of article 1, paragraph 2 and the terms of the article in question. The position of under-developed countries was particularly difficult in those circumstances.

Mr. BORATYNSKI (Poland) said that as a new member of the Commission the Polish delegation had carefully studied the texts adopted at the preceding session and had found that a majority had agreed to article 31 as well as to a general non-discrimination clause in article 1. At that time the majority had apparently been convinced that there was no contradiction between the two texts.

Referring to various statements on the inter-relation between the first article and article 31, he said that paragraph 2 of the first article relating to non-discrimination was independent of the provisions of paragraph 1 on progressive implementation. If the Commission accepted the United Kingdom representative's view that article 31 was limited by the provision for progressive implementation, it must also affirm that the non-discrimination clause in paragraph 2 was limited by the provision on progressive implementation in paragraph 1. That conclusion would, however, be contrary to the intentions of the majority which had voted for the present wording of the non-discrimination clause in the understanding that it was not limited by the provision on progressive implementation. Any attempt to establish a connexion between

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the two paragraphs constituted an attempt to undermine the Commission's achievements at its current session.

Replying to the various objections to repetition in the covenant, he pointed out that in law it was customary to repeat certain general clauses and particular provisions which were the basis for the elaboration of other provisions. Restatement in such cases could not really be regarded as repetitious or redundant.

In view of the importance of equality for women, the Polish delegation was unable to accept the Swedish proposal for deletion of article 31.

The meeting rose at 1 p.m.

3/6 p.m.