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COMMISSION ON HUMAN RIGHTS

Ninth Session

SUMMARY RECORD OF THE THREE HUNDRED AND EIGHTY-SECOND MEETING

held at the Palais des Nations, Geneva,
on Monday, 11 May 1953, at 3.20 p.m.

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Present:

Chairman: Mr. AZMI (Egypt)

Members:

Mr. WHITLAM	Australia
Mr. LEROY	Belgium
Mr. DIAZ-CASANUEVA	Chile
Mr. CHENG PAONAN	China
Mr. ABDEL-GHANI	Egypt
Mr. CASSIN	France
Mrs. CHATTOPADHYAY	India
Mr. HARFOUCHE	Lebanon
Sir Abdur RAHMAN	Pakistan
Mr. INGLÉS	Philippines
Mr. DRUTO	Poland
Mrs. RÖSSEL	Sweden
Mr. KRIVEN	Ukrainian Soviet Socialist Republic
Mr. MOROSOV	Union of Soviet Socialist Republics
Mr. HOARE	United Kingdom of Great Britain and Northern Ireland
Mrs. LORD	United States of America
Mr. PEROTTI	Uruguay
Mr. JEVREMOVIĆ	Yugoslavia

Also present:

Mrs. LEFAUCHEUX	Representative of the Commission on the Status of Women
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Representative of a specialized agency:

International Labour Organisation	Mr. BLAMONT
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Representatives of non-governmental organizations:

Category A

World Federation of United Nations
Associations

Mr. ENNALS

Category B and Register

Catholic International Union for Social
Service

Miss de ROMER

Co-ordinating Board of Jewish Organizations

Mr. WARBURG

International Catholic Child Bureau

Mr. COTTIER

International Catholic Press Union

Mr. COTTIER

International Conference of Catholic
Charities

Mr. DUBOIS

International Federation of Business and
Professional Women

Mrs. SCHRADER-RIVOLLET

International Federation of Friends of
Young Women

Mrs. FIECHTER

International Federation of University
Women

Mrs. FIECHTER

International Union for Child Welfare

Mrs. SMALL

Pax Romana

Miss ARCHINARD

Women's International League for Peace and
Freedom

Mrs. BAER

World Jewish Congress

Mr. RIEGNER

World Union of Catholic Women's
Organizations

Mrs. DARBRE
Miss de ROMER

World Alliance of Young Men's Christian
Associations

Miss ARNOLD

Secretariat:

Mr. Humphrey

Representative of the
Secretary-General

Mr. Das)
Mrs. Bruce)

Secretaries to the
Commission

1. COMMUNICATIONS (item 20 of the agenda)(continued):

Confidential list of communications concerning human rights received by the United Nations from 7 May 1952 to 13 March 1953

In reply to a question from Mr. MOROSOV (Union of Soviet Socialist Republics), who regretted that he had been unable to attend the preceding closed (381st) meeting, the CHAIRMAN explained that the Commission had received a confidential list of communications addressed to the United Nations concerning human rights, and an addendum thereto, both of which had been prepared by the Secretary-General in pursuance of Council resolutions 75 (V) and 275 B(X), and had taken note of them.

Mr. INGLES (Philippines) understood that the Commission had decided to make public the summary record of the closed meeting, but that there had been no formal decision to take note of the confidential list of communications.

Mr. MOROSOV (Union of Soviet Socialist Republics), raising a point of order, considered that the decision to take note of the confidential list ought to have been put to the vote; then had he been present, he would have abstained. Proposing that the question be put to the vote at the present meeting, he said that he believed that such a procedure would be in order without the Commission's needing to revert to a closed meeting.

The CHAIRMAN explained that, no objection having been raised when he had proposed that the Commission note the distribution of the two documents,⁽¹⁾ that, in his view constituted a formal, if tacit, decision, and there was consequently no need for a vote at the present stage. He would therefore ask the Commission to declare whether or not it upheld that interpretation.

The Chairman's interpretation was upheld by 14 votes to none, with 4 abstentions.

(1) In the provisional summary record this phrase read "that the Commission take note of the two documents". At the 390th meeting, however, after discussion following a point of order raised by the Polish representative, the Commission agreed that the Rapporteur should be asked to collate the French and English texts in respect of the expressions "prendre acte" and "take note". In due course, the Rapporteur proposed that the English text should read "the Commission should note the distribution of the two documents", the phrase used above, which rendered more faithfully than did the words "take note" the interpretation which the Chairman had placed on the expression "prendre acte".

See also the following summary records:

381st (closed) meeting (E/CN.4/SR.381), pages 3 and 4;
385th meeting (E/CN.4/SR.385), page 4; and
390th meeting (E/CN.4/SR.390), pages 7 to 10.

Mr. MOROSOV (Union of Soviet Socialist Republics) requested that, since the vote just taken related to happenings at a meeting from which he had been absent, it be placed on record that, had he been present, he would have abstained from the decision to take note of the confidential list of communications and the addendum thereto.

2. DRAFT INTERNATIONAL COVENANTS ON HUMAN RIGHTS AND MEASURES OF IMPLEMENTATION (item 3 of the agenda)(resumed from the previous meeting):

Proposals for additional articles relating to the draft covenant on civil and political rights (E/2256)(continued):

Article on right to marriage and right of the family to protection by society and the State (draft resolution adopted by the Commission on the Status of Women) (E/CN.4/686)(continued)

The CHAIRMAN pointed out that the proposed new article submitted in the resolution adopted by the Commission on the Status of Women, and introduced at the 380th meeting by Mrs. Lefauchaux, representing that Commission (E/CN.4/686) was identical with Article 16 of the Universal Declaration of Human Rights. He drew attention to article 10 of the draft covenant on economic, social and cultural rights, which also related to the protection of marriage, motherhood and the family.

Mr. JEVREMOVIC (Yugoslavia) recalled that he had already explained why the Yugoslav delegation was willing to support the proposal put forward by the Commission on the Status of Women.

It could not be denied that, nearly all over the world, the position of women in matrimony and family life was unsatisfactory. Although their work was often harder than that of men, their rights in respect of marriage, the family and dissolution of marriage were inferior to men's. That position obtained not only in the under-developed countries, but also in some regarded as advanced, and it justified the inclusion in the covenant on civil and political rights of the text of Article 16 of the Universal Declaration, with the object of removing the traditional inequalities. Indeed, were it true that such anomalies were confined to the under-developed countries, progress towards equality might be expected even without the inclusion of such an article. Unfortunately that was not the case.

He was aware of the difficulties that the adoption of the proposal before the Commission would create, as his own country had experienced them on the national

plane. However, it had been precisely those difficulties which had led the Commission to include Article 16 in the Universal Declaration of Human Rights and which had spurred on those women who were still suffering from the existing inequalities to urge that similar provisions be written into the covenant on civil and political rights. The Commission must therefore find means of overcoming them.

Moreover, although article 10 of the draft covenant on economic, social and cultural rights included certain basic features of Article 16 of the Universal Declaration, that was no reason why the latter should not be reproduced in the covenant on civil and political rights. Several principles had, in fact, been included in both covenants, for instance, those of the right of self-determination and of the equality of men and women.

Mr. DIAZ-CASANEUVA (Chile) said that his delegation's position on the question of women's rights was well known; but while he wished to pay a tribute to the Commission on the Status of Women for its work, he felt certain doubts, not about the substance, but about the juridical form of its proposal.

His first question concerned the use of the term "of full age". That was an extremely imprecise expression. Marriageable age varied very much from country to country; in some it was identical with the age of legal maturity, whereas in others it was much lower, depending on what was regarded as physical maturity. It was undesirable that the proclamation in the covenant of the right to marry at a marriageable age should have the effect of encouraging marriage as soon as girls became nubile. In countries where the marriageable age was low, the figure was based solely on the physiological factor, and took no account of psychological considerations or of the development of personality. The period of adolescence was a critical one, and was directly associated with problems of social adaptation. Both men and women might be physiologically mature at what was fixed as the age of nubility, but completely unprepared psychologically to make a good marriage and found a family.

The proposed text specified race, nationality and religion as the circumstances which should not be allowed to limit the right to marry. He was in entire agreement with the inclusion of those three factors, although he was not aware that the legislation of any country forbade marriage with persons of a particular nationality.

He would, however, like to suggest the addition of a fourth consideration which at present, at least in practice, often constituted an impediment to marriage, namely the prejudice of social origin or fortune. As everyone knew, if an intending couple came from homes with highly disparate social and economic backgrounds, the families frequently stepped in to prevent the marriage taking place. Such considerations ought to play no part in a truly democratic society.

His third concern related to an omission from the text submitted. There were two principle elements in marriage: conjugal union and the family. The text recognized the right to freedom of choice in respect of the first, and the necessity for the protection of society and the State in respect of the second. Society and the State had a three-fold duty towards men and women who intended to marry: to recognize the free right of the parties; to promote their sense of responsibility; and to facilitate and protect the union. The last two elements were lacking from the text taken from the Universal Declaration, which itself raised one of the great and most delicate problems of contemporary society. Divorce or separation, although regarded as a misfortune, had none the less hitherto been accepted in many quarters as a necessary evil; but society was coming to seek ways of making marriages happy and lasting, and thus preventing their breakdown. Intending spouses must be prepared for marriage by a suitable educative process which it was the duty of the State to facilitate through appropriate legislation. It was a good thing that much was already being done in that direction in many countries.

Paragraph (1) failed to distinguish sufficiently clearly between the right to marry without restriction and equality of rights as to marriage. Although he realized that the concept of equality of rights would inevitably arouse opposition in certain countries, he believed that the two parts of the paragraph must be given the same weight. He would have preferred to see the word "family" followed by the phrase which now formed paragraph (2) ("Marriage shall be entered into only with the free and full consent of the intending spouses"), with the addition of some such phrase as: "The State shall provide all guarantees for the protection of these rights and for the exercise of the responsibilities that these rights entail". The provision relating to equal rights should be redrafted to make it absolutely clear. The intention was plain, namely, to eliminate the last vestiges of the old Roman

patriarchy, in which the head of the family was the head of the household religion, being both priest and judge, with absolute power, while the wife and children were relegated to a position of utter inferiority. As the structure of social life had gradually changed, so had the head of the family lost his patriarchal functions. And yet, though vast social progress had been made in many parts of the world, the family still remained the foundation of society, whereas the relationships within the family had changed, women getting nearer to equality and acquiring new responsibilities and the parent-child relationship becoming more human and flexible.

Finally, paragraph (3) should be more strongly worded, more emphasis being placed on the obligations resting upon society and the State.

Mr. CASSIN (France) considered that the problem was one of the most serious that the Commission had had to tackle, not merely in its substance, but also in its legal aspects.

With regard to the substance, the statements made at the 380th meeting by the representative of the Commission on the Status of Women were unfortunately only too true. In some countries it had taken centuries to improve the status of women, and in many others their treatment was still positively brutal. Hence, the Commission's duty was rather to improve the state of women in those countries where it was particularly wretched than to concentrate on securing for their complete equality with men in countries which had already gone a long way towards that goal.

With regard to paragraph (1) of Article 16 of the Universal Declaration, he agreed with the Chilean representative that the question of marriageable age raised difficulties; but he trusted that they could be overcome, for example, by using the notion of legal majority to complement that of the age of consent.

The essential question was, how to deal with the problem of the family in all the different parts of the world? Ever since 1948 he had been arguing that the sum total of family rights, including marriage, were so important as to warrant not a separate covenant, but a series of covenants, such as had been concluded in the case of refugees, for example. Admittedly, the General Assembly had given the Commission a difficult task; but the fact remained that, after long academic discussions, there, other problems such as slavery, nationality, and refugees had been removed from the scope of the draft covenants.

He recalled that the previous year, the Commission had inserted in the draft covenant on economic, social and cultural rights an article (article 10), paragraph 3 of which specified that the family, as the basis of society, was entitled to the widest possible protection, and that it was based on marriage, which must be entered into with the free consent of the intending spouses. That paragraph was pure civil law; and he wondered whether the Commission could not follow up the precedent thus created and insert in that draft covenant provisions relating to rights in the family and marriage. A decision to do so would help to solve the tricky problem of timing, since article 2 of that covenant already provided for progressive implementation. The Commission might be even bolder, as States were given a time-limit in which to honour their undertakings in respect of implementation, and insert Article 16 of the Universal Declaration of Human Rights integrally in that instrument.

If, however, the Commission decided to place Article 16 in the draft covenant on civil and political rights - as would, no doubt, be more logical - its responsibility would be very much greater. As members knew, family institutions varied widely from part to part of the world, and it would be impossible to include in a covenant involving an undertaking to implement it at once provisions requiring States to carry out overnight what centuries of evolution had not succeeded in bringing about. Moreover, if the Commission chose that method, it would run the risk of stirring up a hornet's nest of protests - some legitimate and others not - at the time of signature, and again when the covenant later came up for ratification by parliaments; and that might prove fatal for both instruments now being drafted.

In the light of his personal experience of canon law and Islamic law, he had tried to show that members could do a great deal of good or a great deal of harm, according to the decision they took.

Sir Abdur RAHMAN (Pakistan) said that he wished to reserve his general statement until the following day. At the moment, he would only say that it would be impossible for Pakistan, or any other Islamic country, to accept the recommendation of the Commission on the Status of Women.

Mrs. CHATTOPADHYAY (India) said that she too would make her general statement the following day, and for the time being wished only to take up the Chilean representative's point concerning the meaning of "full age". As the other members of

the Commission knew, India had permitted marriages at a very early age, but that had been at a time when parental control had been strict, so that the child-wife had enjoyed a certain measure of protection. As conditions had gradually evolved, the State had been obliged to intervene and to prescribe a minimum age for marriage. That age was not the same as the age of consent, however, and the protection of the State could still be sought until the age of consent had been reached. She, too, had therefore been troubled about the meaning of the words "of full age".

The wording of Article 16 of the Universal Declaration of Human Rights was in general much too broad for inclusion in a legally binding covenant. Her country had accepted the principle, which had also been recognized by the Commission, of conceding to each of its component cultural and religious groups the right to its own cultural laws and customs. It would therefore be very difficult to make uniform laws, particularly on so delicate a subject as marriage, unless they were accompanied by some very important reservations.

Mr. JEVREMOVIĆ (Yugoslavia), replying to an earlier observation of the Chilean representative, said that it was for States to fix the age of consent and the age of legal majority, since the position differed from country to country. Sociologists had laid down no definite rules on the subject; indeed, they held very divergent views on it.

The two ages were by no means necessarily identical. In any event, marriage must be based on the full consent of the future partners, even if conditions, such as parental approval, were imposed during the period between the age of consent and that of reaching majority.

He pointed out an error of translation in the Russian text of Article 16 of the Universal Declaration of Human Rights, where the French words "age nubile" had been rendered by the word "majority ("sovershennoletiya"), which was incorrect.

Mrs. LEFAUCHEUX, Representative of the Commission on the Status of Women, replying to the Chilean representative's remarks, observed that the Commission on the Status of Women had discussed the question of marriageable age in private session, and had decided that it was for States to fix that age.

She confessed that she was surprised by the discussion that had just taken place, since it was merely a question of introducing into the draft covenant on civil and political rights an article from the Universal Declaration, which the

Commission on Human Rights had adopted after thorough discussion. The Commission on the Status of Women had felt that it would be simplifying the Commission's task if it refrained from amending the text of Article 16 of the Universal Declaration, as the Chilean representative now suggested should be done. It had simply asked that the text be translated from the plane of proclamation of principles to that of practical reality, and she therefore felt that it would be unwise to tamper with a text that had already been approved by the States Members of the United Nations.

It was rather discouraging for the Commission on the Status of Women to learn that in the opinion of the French representative the principles laid down in Article 16 of the Universal Declaration ought only to appear in a covenant with a progressive implementation clause. When the Commission on the Status of Women had decided to ask that Article 16 be included in the covenant on civil and political rights, it had realized that its presence there would mean that governments would either have to take immediate appropriate steps, or declare that they were unable to sign the covenant before bringing their national legislation into line with the principles already recognized internationally, as governing marriage and family life. She accordingly emphasized on behalf of the Commission on the Status of Women that it was in the convention on civil and political rights that it desired Article 16 of the Universal Declaration to appear.

Speaking for herself, since the Commission on the Status of Women had not dealt with the point, she observed that members of the Commission attached great importance to the consideration that the decisions taken should be decisions of principle. She mentioned the example of the Convention on Political Rights of Women. The Commission, of which she had been Chairman when that instrument had been drafted, had preferred to include the principle of equality of access to public office, although it had known that such a provision would prevent a large number of countries from ratifying the Covenant. Rather than see a weak version of Article 16 of the Universal Declaration inserted in the covenant on civil and political rights, therefore, the Commission on the Status of Women would prefer the article to be included in the covenant on economic, social and cultural rights, although the latter suffered from the great disadvantage that it would be implemented only progressively.

The CHAIRMAN pointed out that the Commission was engaged in drafting legally binding instruments, which were essentially different from mere proclamations of ideals such as the Universal Declaration of Human Rights. States would be under a legal obligation to apply the provisions of the covenant on civil and political rights immediately, and those of the covenant on economic, social and cultural rights progressively.

Mr. WHITLAM (Australia) said that at the present stage of the discussion it was difficult to form any kind of judgment. His remarks should therefore be regarded as tentative.

He had been much impressed by the eloquent statement made at the 380th meeting by the representative of the Commission on the Status of Women, but the Chilean and French representatives had drawn attention to certain matters which gave grounds for hesitation. In particular, he agreed that paragraph (3) of Article 16 of the Universal Declaration of Human Rights was too weak. It expressed only a sociological concept. As such, it was probably appropriate in its context. But from the Christian point of view at least, marriage and family were not to be regarded in purely sociological terms; marriage was essentially a sacramental act. He was afraid that, if Article 16 of the Universal Declaration was inserted in the draft covenants, it would be interpreted by many as being the highest expression of the United Nations' convictions about marriage and the family, and that those institutions would suffer serious harm in consequence, in view of the world-wide respect which the covenants would command. He fully agreed with the Chilean representative that the Commission should not attempt to cover every aspect of marriage and the family, because all that it could insert in a legal instrument were certain purely legal provisions relating to them. It would be impossible to include provisions which would adequately cover those wide aspects of the subject which he had in mind without going outside the framework of the covenants as they were at present taking shape.

For that reason, he had been greatly interested in the Chairman's reference to article 10, paragraph 3, of the draft covenant on economic, social and cultural rights. All countries could accept what was said there, and the wording did not go farther than was proper in a legal instrument. Tentatively, he felt that that was

all that was required. If that view were accepted, the covenants would not refer to enjoyment by the sexes of equal rights as to marriage, during marriage and at its dissolution; that omission might appear to be a step backward, but he agreed with the French representative that, if it tried to achieve too much, the Commission would be hazarding the whole ship. Although the need for eliminating all forms of inequality must be borne constantly in mind, some were very deeply rooted in history, and it would be unrealistic to suppose that they could be removed overnight.

Mr. DIAZ-CASANUEVA (Chile) feared that the representative of the Commission on the Status of Women had misunderstood him. His only criticism which, he could assure her, had been made in a constructive and positive spirit, had been that paragraph (3) of the proposed text was too vague, and of too general a nature, for inclusion in the draft covenant, which was intended to be a legally binding instrument.

Mrs. RÖSSEL (Sweden) said that at the present stage she would confine herself to a few comments on the text proposed by the Commission on the Status of Women, and to the question whether it was appropriate in the context of the draft covenant on civil and political rights. In the first place, she noted that paragraph (1) read: "... without any limitation due to race, nationality or religion ...". In enumerations there was always a risk of omissions. She wondered, for example, whether limitations due to social origin, political opinions or marital status were not also relevant.

Secondly, she feared that as it stood the same paragraph would not be conducive to the abolition of certain harmful practices which were still prevalent; the words "of full age" should be replaced by some such words as "of an age to be provided for in national laws".

Thirdly, she suggested that the second sentence of paragraph (1) should read: "They are entitled to enjoy equality in their reciprocal rights and duties as to marriage, during marriage and at its dissolution".

Lastly, with regard to paragraph (3), she wondered whether the Commission on the Status of Women had given any thought to the responsibilities which would devolve upon the State in the economic sphere if that paragraph became legally binding.

The meeting rose at 5.30 p.m.