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**Chairman:** Mr. Salvador P. LOPEZ (Philippines).

AGENDA ITEM 85

**Draft Convention and draft Recommendation on Consent to Marriage, Minimum Age of Marriage and Registration of Marriages (A/4844, A/4820 and Corr.2, paras. 629-633) (continued)**

GENERAL DEBATE (continued)

1. The CHAIRMAN, speaking on behalf of the members of the Committee, welcomed Mr. MAURICE-JONES (Sierra Leone), who thanked him.
2. Mr. BENTLEY (United Kingdom), after recalling that his delegation had warmly supported the idea of a Convention on Consent to Marriage, Minimum Age of Marriage and Registration of Marriages and had taken an active part in the drafting of the text before the Committee (A/4844, annex I), said that the sole purpose of the amendments presented by the United Kingdom was to solve certain legal difficulties. As those amendments had not been accepted, his delegation had had to abstain in the vote on articles 1 and 2 and must reserve its position as regards the draft Convention.
3. Mr. ALCIVAR (Ecuador) explained that he had had to vote against the revised amendment presented by New Zealand and Spain (A/C.3/L.916) concerning marriage by proxy, because Ecuadorian legislation prescribed no limitation in that respect. In view of that fact, his Government might be unable to ratify the part of the Convention relating to that matter.
4. Miss AGUIRRE (Mexico) had abstained in the vote on the second Indian amendment (A/C.3/L.910) since the primary purpose of the Convention was to ensure the consent of the minor; furthermore the text in question might give rise to interpretations which could be used to perpetuate anti-social practices. In Mexican law a minor's consent was validly expressed only if it was accompanied by the consent of the persons exercising parental authority or guardianship, but that legal principle was implicitly recognized in the draft Convention.

5. With regard to marriage by proxy, her delegation had voted as it had because Mexican legislation, while recognizing that type of marriage, specified a number of conditions and guarantees designed to prevent deceit in obtaining consent and the consequent abuse of such marriages.

6. Mrs. TSIMBOUKIS (Greece) was prepared to vote for the first text, which her delegation had helped draft, because she found it clear, simple and sufficiently flexible not to conflict with the various national legislations. It was dangerous to make amendments to a text which had been drafted on the basis of very complete information by a fully competent committee. Her delegation had therefore voted against all the proposals which would alter the substance of the draft, but had supported amendments to the preamble, since they would not weaken the principles involved. It had also supported the Congo (Leopoldville) amendment (A/C.3/L.908) which strengthened article 1. On the other hand, it had abstained in the vote on article 1 as a whole because of the adoption of the amendment presented by New Zealand and Spain. That amendment was inconsistent with the provisions of article 1350 of the Greek Civil Code, which provided that both parties must give their consent in person.

7. In conclusion, she expressed the hope that the Committee would find time to adopt the final clauses (A/4844, annex III) at the present session and would thereby complete its work on an instrument which would mark another step forward on the way towards improving the status of women.

8. Mr. LENERT (Austria) said that his delegation naturally supported all the principles proclaimed in the draft Convention and that it had abstained in the vote on article 2 because it had considered that the instances where a dispensation as to age could be granted were too narrowly defined. While that was only a minor detail, it nevertheless warranted consideration. Austria had seen fit to apply a more liberal system and yet there had been no instances of its abuse. As the articles which the Committee had just adopted would be binding, each country naturally had to consider whether it would be able to ratify them. A convention was not only a guide, it was also a goal to strive for and one which it would be impossible to attain if States were obliged to discard laws which had proved their merit. Efforts could be made, of course, to solve the difficulties by flexible interpretations of the texts, but that method was rather risky.

9. Begum Aziz AHMED (Pakistan) had been unable to vote for the articles of the draft Convention for the reasons which she had given in her first statement (1066th meeting) but she had nevertheless supported article 1 in its original form. She believed that, in seeking to draft an article that would be acceptable to all, the Committee had allowed itself to be sidetracked into points of detail which it would have been better to leave to each State to solve for itself. Furthermore,

if the Committee was to go into details, it should have considered the question of the expression of consent through a proxy. That was a very wide-spread practice in many countries and one which, far from being inconsistent with the principle of consent, supplemented it admirably; Pakistan could not abolish by legislation such a normal practice which was still so deeply rooted in custom. The same considerations had prompted her delegation to vote against the retention, in the amendment presented by New Zealand and Spain, of the words "the circumstances are exceptional and that" and against the amendment itself.

10. She had also voted against the amendment presented by the Congo (Leopoldville), for she shared the view of the Saudi Arabian representative that individuals should, if they so desired, be able to avoid publicity entirely, so far as their marriage was concerned.

11. On the other hand, she had supported the second Indian amendment, since minors might sometimes act recklessly and no one could protect their interests better than their parents or guardians. The text proposed by India would therefore have provided a valuable safeguard, and her delegation regretted that the Committee had rejected it.

12. Mr. MAHAROOFF (Ceylon) first stated the two fundamental principles by which he had been guided in voting: first, in a matter such as marriage, only the most general statement of principle would have a chance of finding the widest measure of acceptance; second, at the present stage a declaration of principle would be more appropriate than a binding convention. For that reason his delegation had voted for the preamble and the clauses setting out the general principles; it had, for example, supported the first part of article 1, which was drafted in the most concise terms possible. On the other hand, it had felt that the rest of that article went into unnecessary detail regarding the implementation of the principle and it had therefore abstained.

13. That distinction between the general principle and the machinery for its implementation had remained the guiding factor for his delegation in determining its position on the other clauses of the draft considered by the Committee.

14. Miss DE VINK (Netherlands) said she had voted for the changes in the preamble and for the Polish amendment (A/C.3/L.907). She had, however, voted against most of the amendments to articles 1 and 2 since they tended to weaken the original text. She had supported the amendment of New Zealand and Spain. Some delegations had noted that the original version of article 1 implicitly authorized marriage by proxy; by placing certain limits on the interpretation of the article and by restricting the possibilities for proxy marriages, the new paragraph strengthened the principle stated at the beginning of the article.

15. Her delegation had also voted for the amendment of the Congo (Leopoldville), which further safeguarded the freedom of consent. It had voted against the second Indian amendment for, although parental consent to the marriage of minors was certainly very important, it would be better not to broach that matter in a Convention which was solely intended to state three major principles. If the Committee were to go further, it would have to cover all the other aspects of the institution of marriage.

16. Daw MYA SEIN (Burma) said that her delegation endorsed article 3 in principle but had abstained on it only because in her country a marriage by consent alone was deemed to be a lawful marriage. Before the registration of marriages was made compulsory, women must be given the necessary education, for otherwise, by denying them the status of legally married wives, they would find themselves deprived of the rights they enjoyed today. Doubtless, marriages were often registered in the towns, and young men and women made increasing use of the civil registry services, but much more time and effort was needed before the principle stated in article 3 could be applied satisfactorily in Burma.

17. Mr. COX (Peru) noted that in view of Peruvian legislation on the matter it was difficult for his country to accept certain parts of the draft Convention. Marriage by proxy was recognized in Peru, for the country was very large and communications were difficult; he would have preferred to see a general clause inserted into article 1 authorizing proxy marriages. His delegation had been unable to support the amendment of New Zealand and Spain not because it opposed the idea but because in endorsing such a text it would have conceded that marriage by proxy was possible only in exceptional circumstances, whereas in Peru it was widely practised. He believed, nevertheless, that the draft Convention would encourage the unification of marriage legislation and would serve as a means for protecting women and the family.

18. Mrs. SIVOMEY (Togo) wished to thank her colleagues, on behalf of all African women, for the dignity, wisdom and generosity with which the draft Convention had been considered. She was certain that the instrument which in substance had just been adopted would be most satisfactory and she hoped that the final clauses could be examined at the present session.

#### Organization of work

19. The CHAIRMAN congratulated the Committee on the spirit of co-operation and the efficiency it had shown during the eight meetings in which it had succeeded in adopting the preamble and substantive articles of the draft Convention. He hoped that following that initial success, it would find the time to adopt the final clauses during the current session. He recalled that, at the request of the Economic and Social Council, the Secretariat had prepared a draft setting out various alternatives (A/4844, annex III). Delegations were requested to submit their proposals as early as possible in order that some agreement on the final clauses might be reached in advance and their adoption by the Committee achieved after a few meetings only.

20. It would also be necessary for the Committee to prepare a draft resolution for the General Assembly to approve the Convention and open it for signature and ratification or accession.

21. He did not believe that the Committee would find time to deal also with the draft Recommendation (A/4844, annex IV) at the present session. It could either recommend to the General Assembly to consider that document at its seventeenth session or request the Economic and Social Council to deal with it at one of its sessions in 1962, taking into account the action on the Convention taken by the General Assembly and the views expressed in the course of the current proceedings.

22. Since most members of the Committee sincerely wished to conclude the study of the draft Convention at the present session, he would suggest that the Committee should decide at once to give the necessary number of meetings to the final clauses at the most appropriate stage, on the understanding that that proposal did not imply a redistribution of meetings among the various items on the agenda.

23. The Committee might also devote to the final clauses any meetings originally set aside for other items which for lack of speakers would not be fully employed.

24. Mrs. TILLET (United States of America), Miss AGUIRE (Mexico) and Mr. PEREZ QUESADA (Argentina) supported the Chairman's suggestions.

25. After an exchange of views in which Mrs. AFNAN (Iraq), Mr. KASLIWAL (India), Miss HAMPTON (New Zealand) and Mr. BENTLEY (United Kingdom) took part, Mr. BAROODY (Saudi Arabia) stressed that it was difficult, from the practical point of view, to go from one item to another in the course of a single meeting. He believed that the best way for the Committee to expedite its work would be to proceed immediately to a consideration of the draft International Covenants on Human Rights (agenda item 35) and to decide formally that any meetings which might be left at the end of the session should be devoted to the final clauses of the draft Convention on marriage.

*It was so decided.*

26. The CHAIRMAN put to the vote the proposal that the Committee would reserve for the final clauses the portions of meetings which for lack of speakers could not be used in the discussion of other agenda items.

*The proposal was rejected by 22 votes to 21, with 17 abstentions.*

#### AGENDA ITEM 35

**Draft International Covenants on Human Rights (E/2573, annexes I-III, A/2907 and Add.1-2, A/2910 and Add.1-6, A/2929, A/4789 and Corr.1, A/C.3/L.903, A/C.3/L.919-920)**

27. The CHAIRMAN invited the Committee to proceed to the consideration of the draft Covenants and observed that the drafting of the Covenants was one of the most ambitious and most difficult enterprises undertaken by the United Nations which was responsible to all the peoples of the world for bringing it to a successful conclusion.

28. He reviewed the progress that had been made during previous sessions and expressed the hope that at its current session the Committee would be able to complete the remaining substantive articles (articles 19 to 26) of the draft Covenant on Civil and Political Rights (E/2573, annex I B) and of such additional articles as might be proposed during the discussion.

29. The first article which the Committee would have to consider was article 19, dealing with freedom of information. The Committee might take as its starting point the text of the first two articles<sup>1/</sup> of the draft Convention on Freedom of Information, which had been adopted by the Committee at the fourteenth and fifteenth sessions and which represented the most recent

opinions held in the United Nations. The Committee had before it an amendment proposed by the delegation of India (A/C.3/L.919) that reproduced parts of the two articles.

30. Mr. KASLIWAL (India) presented the Indian amendment to article 19 and explained that the wording proposed for paragraphs 2 and 3 was the same as that of articles 1 (b) and 2 (1), respectively, of the draft Convention on Freedom of Information. The Committee had adopted that wording by a large majority and the Indian amendment did not alter it in any way.

31. Mr. BAROODY (Saudi Arabia) thanked the representative of India for introducing his amendment to article 19, which was a very important article, so promptly; the work of the Committee thus was rendered easier.

32. The wording which, under the Indian amendment, would replace paragraph 3 of article 19 was taken from article 2 of the draft Convention on Freedom of Information, which the Committee had adopted at its last session (1044th meeting) by a large majority. In reviewing the course of the discussion on that article and the views expressed, he emphasized that the delegations which had been in favour of that wording and therefore of the restrictions it mentioned were no less determined than the other delegations to defend and safeguard freedom of information. It was not at all their intention to help Governments impose unlawful restrictions on that freedom. Their only purpose was to prevent freedom of information from becoming synonymous with licence, which it had too often become in many countries considered to be in every respect among the most advanced.

33. Licence, whether in morals or politics, was an evil the gravity of which could not be exaggerated. Obscene publications, freely disseminated as "art" without causing the slightest concern to politicians, were a grave danger to the health and morality of the people of a country and especially to minors. Even more dangerous was propaganda—incitement to hatred or contempt of other peoples, dissemination of false or distorted news, even silence about certain facts—which could, in the era of nuclear weapons, plunge the world into a war of annihilation at any time.

34. It would be said that there was no way of defining propaganda so precisely as to make a clear distinction between it and an honest but perhaps inaccurate expression of opinion, and that some Governments might call any expression of opinion propaganda in order to restrict freedom of information. His delegation appreciated the difficulty, but it did not think that every Government should be considered a priori evil-minded. A Government was first and foremost the representative of the people and the administrator of their affairs. Moreover, public opinion was now alert enough not to permit the authorities to abuse their prerogatives with impunity.

35. The wording proposed by the Indian delegation for paragraphs 2 and 3 of article 19 would provide an excellent basis for discussion. For his part, he could accept it as it stood. The list of restrictions in article 3 would not of course be exhaustive, but it would serve to ensure freedom in its real sense.

36. The CHAIRMAN reminded delegations that had submitted amendments to article 19 at earlier sessions and still wished them to be considered by the Committee to resubmit them at the current session. Also, observations or proposals regarding the article which

<sup>1/</sup> See Official Records of the General Assembly, Fourteenth Session, Annexes, agenda item 35, document A/4341, annex; and ibid., Fifteenth Session, Annexes, agenda item 35, document A/4636, annex.

had been transmitted to the Secretary-General by Governments could not be examined unless they were submitted as amendments.

37. Mrs. AFNAN (Iraq) expressed her appreciation of the Indian delegation's suggestions. She pointed out, however, that article 1 (b) of the draft Convention on Freedom of Information had singled out for prohibition all government interference with freedom of information precisely because the draft Covenant on Freedom of Information had been prepared in sufficient detail to enable other forms of interference—interference by the management of publications or financial interests, for example—to be dealt with in other articles. In the case of the draft Covenant on Civil and Political Rights, however, only article 19 dealt with freedom of information. It would therefore be necessary either to prohibit all possible forms of interference or to delete the reference to government interference.

38. Mr. HENDRANINGRAT (Indonesia) said that he was prepared to support the text of article 19 as it stood; in his view it was clear and well balanced.

39. The Indian amendment differed from the original text only on a few points, but it upset the balance of the article. His delegation had voted in favour of the adopted articles of the draft Convention on Freedom of Information because the tenor and wording of those articles were suited to that instrument, which dealt with a specific question. Article 19 of the draft Covenant on Civil and Political Rights, however, only laid down a principle and should not go into too much detail. The Committee should accept the wording it had been given by the Commission on Human Rights.

The meeting rose at 5.25 p.m.