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CONTENTS

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

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.939) (continued)

ARTICLE 22 OF THE DRAFT COVENANT ON CIVIL AND POLITICAL RIGHTS (E/2573, ANNEX I B) (continued)

1. Mrs. MARTIN (Guinea) said that the first three paragraphs of article 22 were fully in conformity with her country's legislation. During the colonial period, women had been the victims of forced marriages, permanent instability in their family life and arbitrary divorce, although in earlier days matriarchy had existed in many African societies. Since the attainment of national independence, women in Guinea enjoyed the same civil and political rights as men, but there were still some practices relating to marriage and women's status in the home which should be swept away. At a time when women were playing a greater role in public life, they must also be able to take part in family life on an equal footing with their husbands, instead of being limited to bearing children and performing household tasks. Equality for women must, of course, entail many mutual compromises and concessions, and the husband must remain head of the family, since no ship could have two captains.

2. In the view of her delegation, paragraph 4 of the article did not meet the expectations of African women. Guinea had therefore co-sponsored the fourteen-Power amendment (A/C.3/L.939), which should receive majority approval.

3. The protection of children born out of wedlock was regulated by law in her country, and the representative of Ghana had been right to raise the question (1090th meeting).

4. Mr. LIMA (Cameroun) felt that article 22 could be rapidly disposed of, since some aspects had been fully discussed during the recent debate (1062nd to 1070th meetings) on the draft Convention on Consent to Marriage, Minimum Age of Marriage and Registration of Marriages (A/4844). The family had existed as a unit under many cultures, and acquaintance with the family systems of other peoples would lead to a better understanding of the possibilities of human relationships and the discarding of ways of life based on false premises. Article 22, if adopted, would provide for the protection of the family unit in all nations and all cultures, and he would vote for it.

5. Although paragraph 1 of the article merely introduced the subject matter, it would promote a valuable understanding of the need to protect the institution of the family.

6. Paragraph 2, in guaranteeing the right of the individual to marry and to found a family, was a recognition of the law of inheritance, the family unit being one of the most effective means by which the human heritage, not only of property but of intangibles, was retained. The right of existence of the family was thus the corner-stone of all rights.

7. The substance of paragraph 3 had already been approved in the draft Convention on marriage and called for no further comment.

8. Paragraph 4 constituted a broad statement which must be implemented in conformity with national traditions and within the framework of the Charter of the United Nations. To go into details at the present stage would be wasted effort, since tradition always overshadowed legislation in such matters.

9. Article 22 as drafted was clear, concise and comprehensive, but if it was to have real meaning for mankind and to uphold the principles of the Charter of the United Nations, the right of men and women to marry and to found a family regardless of race, colour or creed must be protected, and that included the right to contract mixed marriages.

10. Mr. WAN MUSTAPHA (Federation of Malaya) said that the first three paragraphs of article 22 were acceptable to his Government. The Israeli representative had suggested a drafting change in paragraph 1 (1090th meeting), but the original text was better, because it consisted of two distinct propositions. Any State whose laws did not recognize the family as the natural and fundamental group unit of society should introduce legislation to do so and should then recognize that the family was entitled to protection.

11. He had some doubts concerning the words "at its dissolution" in paragraph 4, which might cause difficulties for States whose legislation did not provide for divorce, but only for judicial separation. It might be held that the term "dissolution" covered judicial separation, but the latter did not in fact constitute termination of the marriage. Although the question caused no difficulty to his own country, the delegations affected might consider introducing an amendment to add the words "including judicial separation" after the word "dissolution".

12. Paragraph 4 had been criticized on the grounds that equality of rights and responsibilities was not

practicable, since the husband had to work in order to support the family. He saw no grounds for such concern, since the paragraph clearly referred to responsibility for ensuring the success of the marriage, and not for earning a living.

13. The wording of the fourteen-Power amendment bore the same meaning as the original, which he preferred. He suggested that, as a compromise, the words "shall be directed towards" in the original text might be replaced by "shall give due consideration to".

14. Since article 22 dealt with the question of marriage, any change in the last sentence of paragraph 4 designed to protect children born out of wedlock would be out of place. The sentence itself appeared rather vague, and it was not clear whether the Government or the parents were to be responsible for the special measures for the protection of children. He suggested that the words "on the parents" might be inserted after the word "measures".

15. Mr. DOMINGUEZ CABALLERO (Panama) stated that his delegation was in favour of provisions to enhance the dignity of women as members of the family, since the family was the basis of society and was entitled to protection by the State. The first three paragraphs of article 22 appeared clear, and he would vote for them as drafted.

16. Panama had co-sponsored the fourteen-Power amendment to paragraph 4 because the words "shall be directed towards" appeared too vague. Some countries might feel unable to accept the amendment, but a number of delegations had stressed that the Committee was legislating for the future. Even if the amendment was defeated, members would have derived some benefit from the debate since the essential purpose of the Committee was to determine objectives and to establish values.

17. The national legislation of his country went much further than article 22, all distinction between legitimate and illegitimate children having been eliminated. He therefore agreed with the suggestion that provision should be made for the protection of children born out of wedlock, although such a clause might be open to abuses.

18. Mr. BENGTSON (Sweden) expressed the hope that, although opinion had been sharply divided on article 22, it might be possible to find a formulation acceptable to all members. It was appropriate that the elementary right to marry and to found a family should be spelt out in the draft Covenant, and the first three paragraphs of the article were acceptable to his delegation.

19. Where paragraph 4 was concerned, the basic consideration was that inequalities still existed in many countries. The text should be sufficiently strong to impress the urgency of the question on Governments and to enable them to use it against the protagonists of the old order. That urgency was reflected in the Universal Declaration of Human Rights (General Assembly resolution 217 (III)), and the principle of equality was firmly enshrined in the Charter of the United Nations, so that any backward step would be unfortunate. But paragraph 4 as drafted was far removed from article 16 of the Universal Declaration; it was also vague and lacked the clarity necessary in a legal instrument. The principle embodied in article 16 of the Universal Declaration was now fully accepted and applied in Swedish legislation but, since such a formulation would certainly have met with opposition, his delegation had co-sponsored the fourteen-Power amendment, the terms of which were somewhat more moderate but did not involve any loss of clarity or urgency.

20. Mr. ALCIVAR (Ecuador) said that his delegation had no objection to the first three paragraphs of article 22 and would vote for them as they stood.

21. Paragraph 4, which had commanded most of the Committee's attention, viewed the family from the legal rather than from the moral or social point of view. It could be said, in that regard, that a marriage was a legal contract entailing certain rights and obligations. But to say that men and women should have equal rights and obligations in marriage, as the Spanish version of article 22 did, was totally unrealistic, because the family obligations of men in all societies were necessarily somewhat different from those of women. His delegation therefore supported the fourteen-Power amendment which, among other things, appropriately replaced "obligaciones" by "responsabilidades" in the Spanish text.

22. Paragraph 4 very rightly dealt also with the very serious question of dissolution of marriage and its effects. He did not believe that countries which did not have the institution of divorce would be prevented from supporting the paragraph, since dissolution of marriage could apply to both divorce and separation.

23. Mr. HASSAN (Somalia) remarked that on the basis of his country's constitutional provisions he could very readily accept paragraphs 1 and 2 and the second sentence of paragraph 4 of article 22.

24. He could not, however, vote for paragraph 3 or the first sentence of paragraph 4, since his country had an old and established law which it could not amend. He wondered how other countries having the same law would approach the provisions in question.

25. Mr. MATE (Ghana) recalled that his delegation's only objection was to the second sentence of paragraph 4. The principle underlying the sentence was acceptable, but since all parents had an obligation to see to the protection of their children, there seemed no reason to stipulate that "special measures" should be laid down in the case of dissolved marriages. Furthermore, as he had already pointed out, the sentence seemed deliberately to ignore children born out of wedlock. He had consulted with other delegations and, rather than request the deletion of the sentence or the introduction of the same wording as used in article 10, paragraph 3 of the draft Covenant on Economic, Social and Cultural Rights (A/C.3/L.903), he proposed the following rewording of the sentence: "In the case of dissolution, the law shall make provision for all necessary protection of any child."[1]

26. Daw MYA SEIN (Burma) said that in her country marriage had always been, under customary law, a civil contract entered into with the free and full consent of the intending spouses. At the time of marriage, during marriage and at its dissolution the spouses had equal rights and responsibilities. Moreover, when Burma had adopted a new Constitution in 1948, it had included a guarantee against any discrimination on account of race, creed or sex.

27. Discrimination against women, a phenomenon unconnected with the level of civilization, had existed

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[1] Subsequently circulated as document A/C.3/L.940.

in ancient Greece and Rome. Indeed, it was not so long ago that European countries had had to adopt special legislation to safeguard women's property rights. In Burma, women retained control over their property when they married and shared in the ownership of property acquired during marriage. At dissolution of the marriage, property might as easily be awarded to the woman as to the man.

28. In the early days of the feminist movement, women had shown a tendency to fight for privileges. But in the long run privileges were discrimination in another form. Women today wanted equality of rights instead.

29. Her delegation had co-sponsored the fourteen-Power amendment because after centuries of discrimination against women it was not enough to have the legislation of countries "directed towards" equality of rights and responsibilities, as stated in the original text of article 22. It was high time to "ensure" that women had those rights and responsibilities.

30. Mrs. ROUSSEAU (Mali) firmly supported the objectives of article 22. The age of inequality between men and women had clearly passed, and national and international legislation in that matter must today be very definite. In Mali, women had the same rights and responsibilities as men and took an active part in the country's life. There were, of course, deeply rooted customs in the country, but education was making rapid strides, and her delegation would have no difficulty in supporting a strongly worded text for paragraph 4. To say that legislation should be "directed towards equality" was to admit that little or no change would be made. If the Committee did not pronounce itself in favour of equality, but acted to maintain women in their present position, there would be no need to discuss article 22 at all.

31. The fourteen-Power amendment, of which her delegation was a sponsor, made a basic alteration in the original text of article 22 by inviting States to ensure equality of rights and responsibilities of married men and women. She wished to thank the representative of Ghana for drawing attention to the problem of children born out of wedlock. In Mali, all children were protected regardless of their parentage.

32. Mrs. TONGSON-GALINDO (Philippines) said that her delegation had found the existing text of article 22 eminently satisfactory and would be prepared to vote for it as it stood.

33. Despite the division of opinion on the first sentence of paragraph 4, she believed that a compromise text could be found that would establish the principle of equality and yet allow a certain degree of flexibility which would enable States to adapt their legislation to their own particular conditions and traditions. Her delegation would accordingly propose a sub-amendment [2/] whereby the words "take appropriate steps to" would be inserted between the words "shall" and "ensure" in the fourteen-Power amendment. She hoped that the formula would be acceptable both to the sponsors and to those who favoured the original text.

34. Mr. KASLIWAL (India) believed that the Committee's task was to find some happy mean between the two basic positions held by delegations, one that articles of the draft Covenant should conform to existing national laws and the other that all laws should be brought into immediate conformity with some universal standard. He would consequently be very pleased to support the sub-amendment just proposed, for it seemed to have found that happy mean.

35. If the first sentence of paragraph 4 was adopted in its amended form, the second sentence need no longer refer to "the law" but might read, using the opening words of the Ghanaian amendment: "In case of dissolution, measures shall be taken for the protection of children of the marriage". He still questioned, however, whether the second sentence was necessary at all. First, it referred only to the protection of children at the dissolution of a marriage; did that mean that children needed no protection during the marriage? Secondly, as he had pointed out earlier (1090th meeting) there already existed a Declaration of the Rights of the Child (General Assembly resolution 1386 (XIV)). Lastly, the sentence seemed out of place in the context of the article, which dealt with marriage and not with children. Nevertheless, if the Committee wished to retain the sentence, he hoped it would bear in mind the wording he had suggested.

36. Mrs. TSIMBOUKIS (Greece) said that the Committee should not introduce into the draft Covenant terms that would not be acceptable to States, even States with good records in the field of human rights. There were many advanced countries in which full equality of the sexes had not yet been achieved, although in some of them women played the dominant role in running the family and educating the children. Tradition and religious principles could not and should not be changed overnight, and since equality of responsibilities as well as of rights was involved, a certain amount of time would obviously be necessary to attain the ideal. Her delegation would accordingly support the Philippine sub-amendment.

37. Mr. MAHAROOF (Ceylon) remarked that he had no difficulty with the first three paragraphs of article 22. In considering paragraph 4, however, he could not but bear in mind the conditions obtaining in his country, where the laws relating to marriage did not spring entirely from the legislative process. Different religious communities lived side by side in Ceylon, and in the matter of marriage each group was governed by its own laws, although basic guarantees were provided by the State. Thus, the country could not enact marriage legislation arbitrarily. His delegation could accept the Philippine sub-amendment, which permitted States such as his own to take gradual steps towards the attainment of the objectives stated in the article.

38. He pointed out that paragraph 4, which followed directly from the preceding provisions of the article, spoke of dissolution purely in terms of lawfully contracted marriages. Logically, the last sentence would also relate to the offspring of such marriages. He appreciated the desires of those who sought a provision regarding the protection of illegitimate children, but he did not think that article 22 was the proper place for it.

39. Mrs. BERNARDINO CAPPA (Dominican Republic) wished to remove the confusion in the minds of some representatives as to what exactly was meant by the term "equality of rights" used in paragraph 4 of article 22. It was not a matter, for instance, of permitting women to have several husbands simply because in some countries men might take more than one wife. What women were seeking was full legal capacity in marriage.

2/ Subsequently circulated as document A/C.3/L.941.

40. It was a proven fact that there were still many countries where married women were accorded no legal competence whatever. They were mere chattels, subject exclusively to the authority and control of their husbands. They could not practise an independent profession or administer or dispose of their incomes without their husbands' authorization. They had no share in the administration of the common property of the household or indeed of their own personal property. Parental authority was exercised principally by the father, and if he died or became incapacitated it did not pass automatically to the mother. When a marriage was dissolved the wife received no share of the property towards the acquisition of which she had, directly or indirectly, contributed. The custody of the children was granted automatically to the father, even if he were the guilty party, and in the event of his death or incapacity it did not pass to the mother. The most elementary justice required that the law, where it embodied such inequities, should be changed.

41. While women remained legally incompetent any political, economic or other rights they might acquire were absolutely meaningless. It was for that reason that her delegation, together with others, was sponsoring the fourteen-Power amendment, which was designed to strengthen the first sentence of paragraph 4, and which she urged the Committee to adopt by an overwhelming majority.

42. Mr. SITA (Congo, Leopoldville) recalled that it had been his initial view that article 22 was acceptable as it stood. He had at first been chary of the fourteen-Power amendment, because it seemed to be too radical, but he had been won over to some extent by the Polish representative's arguments. Now, however, he believed that the Philippine sub-amendment offered a far better text, for, while preserving the goal to be attained, it allowed for gradual action.

43. It was inconceivable that, in African countries at least, and probably in many Asian countries, too, women should immediately achieve absolute equality in marriage. The number of women able to exercise such rights and assume such responsibilities amounted to no more than 5 per cent of the population, and they were exclusively women living in the towns. For the rest, there was a long road to be travelled before they could reasonably be accorded such equality. All possible haste would be made, but progress must be gradual or it would not be genuine.

44. Governments could not impose upon the family legislation for which it was not yet ready, nor could the United Nations compel a Government to adopt legislation it did not deem appropriate. He therefore urged the Committee to resist the temptation to adopt spectacular texts which might well prove inapplicable, but instead to follow the more prudent and realistic course.

45. With reference to the Ghanaian representative's proposal, he would say that, while not opposed to the protection of children born out of wedlock, he considered it legally inadmissible to insert a provision for their protection in an article concerned exclusively with marriage.

46. Mrs. TILLETT (United States of America) believed that the Philippine sub-amendment offered a possibility for agreement on the drafting of the first sentence of paragraph 4.

47. Mr. BAROODY (Saudi Arabia) felt that it was essential in the present case not to strain after the impossible but to limit the article to what was practicable in present conditions. That did not mean that he was hostile to women's interests. The representative of the Dominican Republic spoke in the Committee as if she believed that women were the victims of men; the feminist movement in the United Nations was, he submitted, unnecessarily intransigent.

48. Mrs. BERNARDINO CAPPA (Dominican Republic), speaking on a point of order, objected to those remarks: the women members of the Committee, as of all other United Nations organs, were representatives of their Governments entitled to the full exercise of their rights. There was no call, therefore, to speak of a "feminist movement". As for intransigence, the equal rights of men and women had been proclaimed in the Charter signed by the very founders of the United Nations. Women had been fighting for that equality ever since. There already existed such instruments as the Convention on the Political Rights of Women (General Assembly resolution 640 (VII), annex) and the Convention on the Nationality of Married Women (General Assembly resolution 1040 (XI), annex); she was merely pressing for a degree of consistency between those two instruments and the draft Covenant. The illustrations she had given were verifiable facts embodied in the codes and laws of many countries bearing witness to the legal incapacity under which married women in many parts of the world still laboured.

49. Mr. BAROODY (Saudi Arabia) said that he was as anxious to secure the ideal as anyone else, but circumstances must be accepted for what they were. In any case, article 49, paragraph 2, of the present draft Covenant, to which delegations had already subscribed, referred specifically to the progressive implementation of article 22, paragraph 4. If the wording some delegations desired were inscribed in article 22, the two articles would be in direct conflict. As a number of representatives had said, certain age-old customs could not be abolished overnight. Moreover, it was to be questioned whether the institution of the family itself had altogether benefited from the adoption of some modern ideas. The evidence from the number of divorces, the extent of juvenile delinquency, etc., would seem to suggest that that was not the case. By adopting a more cautious approach it might be possible to salvage from tradition certain elements which were beneficial to family life. It was for those reasons that he whole-heartedly supported the Philippine sub-amendment, and he would be able to vote for the fourteen-Power amendment only if that proposal were adopted.

50. Mrs. MARTIN (Guinea), referring to the remarks of the representative of the Congo (Leopoldville), recalled that it had been said that the Committee was legislating for the future. There was no doubt that at the present time African women living in the bush could not benefit from the same rights as women living in the towns. The situation would change, however, and it would be a pity to adopt today provisions there might be reason to regret tomorrow.

51. Her delegation could subscribe to the Philippine sub-amendment, but for reasons rather different from those given by the representative of the Congo (Leopoldville).

52. Mr. GORBAL (United Arab Republic) believed that the French translation of the Philippine sub-

amendment lacked the implication of gradual action residing in the English text.

53. Mr. BOUQUIN (France) confirmed that that was true: in the French version the sub-amendment did not alter the meaning of the amendment as it did in the English version.

54. The CHAIRMAN said that he would seek the help of the Language and Meeting Services of the Secretariat in bringing the translations of the sub-amendment into conformity with the original.

The meeting rose at 6.15 p.m.

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