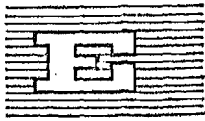


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COMMISSION ON THE STATUS OF WOMEN

Resumed Twenty-sixth session

SUMMARY RECORD OF THE 661st MEETING

held at the Palais des Nations, Geneva,
on Monday, 6 December 1976, at 3.10 p.m.

Chairman:

Mrs. GONZALEZ de CUADROS

(Colombia)

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INTERNATIONAL INSTRUMENTS RELATING TO THE STATUS OF WOMEN (agenda item 3) (continued)

(a) DRAFT CONVENTION ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN
(E/CN.6/591 and Add.1) (continued)

Article 4

1. The CHAIRMAN invited the representative of the United Kingdom to report on the result of the morning's discussions in the small working group on article 4.
2. Mrs. COCKCROFT (United Kingdom) said that the working group had drawn up a text for the first paragraph of the article which virtually reproduced the amendment submitted by the United States delegation (E/CN.6/L.688). The text read as follows:

"Adoption by States of temporary special measures aimed at accelerating de facto equality shall not be considered discriminatory but shall in no way entail, as a consequence, the maintenance of unequal or separate standards and should be discontinued when the objectives of equality of opportunity and treatment have been achieved".
3. The working group had agreed upon the following text for the second paragraph:

"Adoption by States of special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory".
4. Mrs. HUSSEIN (Egypt) said she found the two paragraphs read out by the representative of the United Kingdom satisfactory and hoped that they would be acceptable to the Commission.
5. Ms. HENDSCH (United States of America) said that the second paragraph read out by the United Kingdom representative raised problems for some delegations. A vote should be taken paragraph by paragraph. For its part, the United States delegation had expressed reservations during the discussions regarding certain points contained in the second paragraph; indeed, the views of the United States delegation had been stated on several occasions. In particular, legislation in the United States could not provide for men to be included under special measures to protect maternity.
6. Mrs. DEVAUD (France) noted that the future tense should be used in the last part of the sentence of the French version of the first paragraph drawn up by the working group.
7. After an exchange of views between Mrs. COCKCROFT (United Kingdom) and Ms. LORANGER (Canada) on the use of tenses, the CHAIRMAN stressed that their use in legal documents varied from one language to another. The necessary editorial changes would be made.

8. Mrs. NIKOLAEVA (Union of Soviet Socialist Republics) felt that a separate vote should not be taken on each of the two paragraphs of article 4, because, as a number of delegations were absent, the vote might not have the desired result. Agreement had been reached in the working group on a version acceptable to all countries, even if some delegations, including that of the USSR, did not consider it to be entirely satisfactory. An effort had been made to take the United States proposal (E/CN.6/L.688) into account, and the United States delegation should now make a similar effort to compromise and waive its request for a vote.
9. Mrs. FREDGARD (Sweden) agreed with the representative of the United States that the proposed text of article 4 should be put to the vote paragraph by paragraph.
10. Mrs. GUEYE (Senegal), like the representative of the USSR, thought it better to refrain from a vote, particularly as many delegations were absent. Moreover, the Commission included only some of the countries represented in the General Assembly and the Economic and Social Council. Lack of agreement between a limited number of delegations would create an unfortunate impression. If a vote were taken, however, she would request that the report should specify that some delegations had wanted to maintain the text of article 4 as read out by the United Kingdom representative.
11. Mrs. HIRLEMANN (France) pointed out that if a vote were taken the Commission could not subsequently submit two different texts; in other words it would be impossible to refer to the text read out by the United Kingdom representative if it was not adopted. Moreover, the Commission could not, in reaching its decisions, make allowance for delegations that were absent.
12. Miss TYABJI (India) said it was unfortunate that the text read out dealt only with temporary measures and failed to mention permanent measures; that appeared to be inconsistent with the aim of article 4 which ought to cover all exceptions, and not only half of them.
13. Mrs. HUSSEIN (Egypt) stressed that the second paragraph, dealing with the protection of maternity, was in point of fact more important than the first.
14. The CHAIRMAN noted that the first paragraph could possibly be adopted by consensus; however, a vote on the second paragraph would not in itself constitute a negative procedure.
15. Mrs. COCKCROFT (United Kingdom) said that very divergent views had been expressed in the working group. It had been possible to narrow the gap and the United Kingdom delegation had, for its part, compromised considerably to that end. She called upon the representative of the United States to make a further effort at compromise so that paragraph 2, like the first paragraph, might be adopted by consensus.

16. Ms. HENDSCH (United States of America) recalled that paragraph 2 was based on an original Canadian proposal, amended by the United Kingdom and Hungary. The revised text under consideration had been submitted after the morning session, and she had only seen it at lunchtime. There was no consensus on the text; indeed three or four delegations had referred to the problems it raised.
17. Ms. LORANGER (Canada) confirmed that her delegation had submitted the original proposal concerning the paragraph in question. It had been supported by the Hungarian representative and examined at the previous meeting. She had assumed that all delegations had seen it in good time.
18. Mrs. TALLAWY (Egypt) expressed the hope that a vote could be avoided and that article 4 could be adopted by consensus. Any explanations delegations might wish to give could be reflected in the report. In view of the small number of delegations present, votes on each paragraph of the draft convention would nullify the Commission's work.
19. Mrs. FREDGARD (Sweden) said that, in the view of her delegation, measures designed to protect the social functions of reproduction should cover both men and women. Sweden would therefore abstain if a vote were taken on article 4.
20. Mrs. NIKOLAEVA (Union of Soviet Socialist Republics) said she failed to understand the Swedish representative's argument, which had already been presented at the Commission's twenty-sixth session. Maternal functions were the lot of women, and the Commission's work should aim at social progress and help to make women good partners in society. The problems under discussion went beyond ideologies, and an integrated, global concept was needed. The aim should be to see that women gave birth to a generation of healthy children who would not be a burden on society. Mothers should be protected so that they did not give birth to mongolian or otherwise defective children. She hoped that the Commission would quickly break the deadlock created by the present ambiguity.
21. Mrs. COCKCROFT (United Kingdom) moved the closure of the debate on article 4.
22. The CHAIRMAN, referring to the rules of procedure, asked whether any delegations wished to oppose the United Kingdom motion. Noting that no delegation wished to do so, she put the text of article 4, paragraph 2, as read out by the United Kingdom representative, to the vote, after reminding delegations that they would be able to explain their vote later on.
23. The text of article 4, paragraph 2, was adopted by 15 votes to none, with 6 abstentions.

24. The CHAIRMAN proposed that the whole of article 4 should be adopted without a vote. In the absence of any objections, she would consider article 4 adopted by consensus.
25. It was so decided.
26. Mrs. FREDGARD (Sweden), explaining her delegation's abstention and replying to the representative of the USSR, stated that the views she had expressed were those of the Swedish Government, which included women as well as men. The Government considered that, to have healthy children, both men and women needed protection by the creation of a sound environment in society and on the labour market.
27. Mrs. TALLAWY (Egypt) requested that the summary record should reflect her opinion that, as the working group had submitted a consensus text, delegations which had not taken part in its discussions should not have opposed that text. Such action nullified the efforts made by the working group to reconcile divergent viewpoints.
28. Miss TYABJI (India) said she was surprised that, after the working group had drawn up a compromise text, four of the delegations represented on that group should have abstained from the vote on paragraph 2.
29. Mrs. DEVAUD (France) recalled that the working group had not achieved unanimity. Her own delegation had expressed reservations; in particular it had taken the view that it was unnecessary to refer to the protection of motherhood in article 4 because that point had already been dealt with in articles 5, 11 and 13; in any event the Commission was not drawing up a draft convention on the protection of motherhood. The vote which had just been taken was in line with democratic procedure; her delegation did not consider itself bound by a compromise, and could not be regarded as having broken its word.
30. Ms. HENDSCH (United States of America) said that the revised version of article 4, paragraph 2, had not been read out during her presence in the room where the working group had met. When differences of opinion arose owing to disparities in the laws and structures of different countries, each person was entitled to express their opinion. A question could not be settled by a consensus reflecting the views of only some members of the working group.
31. The CHAIRMAN thought that the normal procedure had been followed. When there was a consensus, discussion was unnecessary, but if differences of opinion arose, delegations should be allowed to express their views and, if necessary, a vote should be taken.
32. Miss TYABJI (India) said that her remarks had not been addressed to the United States delegation, which had made it clear from the outset that it would have difficulty in accepting the text of the amendment to paragraph 2. She had been referring to delegations which had agreed to the compromise but had then abstained from the vote. Her own delegation preferred the text submitted by the United Kingdom, but had accepted the revised version in a spirit of compromise.

33. Mrs. NIKOLAEVA (Union of Soviet Socialist Republics) pointed out that she had tried to convince the Commission of the merits of article 4, paragraph 2, and had suggested that it should be adopted by consensus. Some delegations had not responded to her appeal. The Chairman had therefore rightly put it to the vote, which was fully in accordance with the Commission's rules of procedure.

34. The Commission should be able to work in a climate of confidence. It was surprising to hear that certain members of the working group had not been familiar with the text of the compromise, as the chairman of the working group had read it out in the presence of all delegations. The members of the Commission were representatives of their Governments, which meant that they were working at a high level, and delegations should stand by what they had said.

35. Mrs. DEVAUD (France) considered that all delegations had acted in good faith. It was normal practice to work on a text in order to improve it, but the fact that delegations participated in that work did not commit their votes. The Commission should now proceed with the other matters before it as there was no point in commenting further on the results obtained. She therefore proposed the closure of the debate on article 4.

36. It was so decided.

Final Provisions - Article 17

37. The CHAIRMAN invited the Commission to consider article 17, the additional paragraph to it (E/CN.6/591, annex III, p. 120), and the relevant amendment submitted by Belgium (E/CN.6/591/Add.1, p. 8).

38. Mrs. COENE (Belgium) said that the text proposed by her delegation reproduced the ideas embodied in the two paragraphs of the original text. She thought that the Belgian text, which was based on paragraph 32 of the European Social Charter, was clearer.

39. Begum FARIDI (Pakistan) said that 40 countries, including Pakistan, had already endorsed the original text of article 17, which should therefore be adopted.

40. Mrs. DEVAUD (France) and Mrs. TALLAWY (Egypt) supported the Belgian amendment.

41. Mrs. NIKOLAEVA (Union of Soviet Socialist Republics) said that her delegation preferred the original text of article 17.

42. Miss TYABJI (India) did not think that the Belgian amendment introduced any new element, and as the original text had already been discussed by the Commission and by the working group and accepted by most delegations, it would be best to adopt it without amendment.

43. Mrs. BOKOR-SZEGO (Hungary) said that she had been in favour of the original text of article 17 and the additional paragraph. It was important that the provisions of conventions adopted under the auspices of the United Nations and specialized agencies should not only be more favourable to women but also more detailed; the ILO conventions were cases in point. The Belgian amendment had been well drafted but in order to follow up the idea of a more detailed convention it was advisable to adopt the additional paragraph, contained in annex III to document E/CN.6/591.

44. Mrs. DEVAUD (France) said that her delegation could not agree to the text of article 17 as it stood. It was impossible to accept the words "as diminishing the significance of the existing domestic legislation" which meant nothing in French. The Belgian text was preferable. If the original was to be adopted, her delegation would propose certain changes in it.

45. The CHAIRMAN thought that the problem was one of semantics and that it should be easy to find suitable wording. She asked the representative of Belgium whether she would withdraw her amendment so that the original text of paragraph 17 could be adopted by consensus.

46. Mrs. COENE (Belgium) said that the Belgian amendment was one of form rather than substance. Her delegation was prepared to associate itself with the consensus if the wording of the original text was improved.

47. Mrs. DEVAUD (France) proposed the following wording: "Nothing in this Convention shall affect the provisions of domestic legislation in force in a country if they are more favourable to women".

48. Mrs. COCKCROFT (United Kingdom) proposed the following text: "Nothing in this Convention may be regarded as affecting existing legislation which provides for more extensive measures to eliminate discrimination against women than are provided for in the present Convention".

49. Ms. LORANGER (Canada) said it was obvious that unless a convention had been ratified it could not affect the legislation in force in a country, and that, once ratified, it became part of domestic legislation.

50. Miss TYABJI (India) agreed that a convention ratified by a country should not prejudice the more extensive rights which might be granted to women in that particular country. It was important to make that clear as the rights already acquired by women had to be protected.

51. Mrs. DEVAUD (France) said that the text she had read out had exactly the same meaning as that submitted by the United Kingdom representative.

52. The Canadian representative's comment was apposite in the case of a convention dealing with a specific subject, such as equal pay or some other clearly-defined topic, but the convention under consideration contained clauses dealing with a variety of subjects such as civil, economic, political and social rights. A State could therefore ratify it but enter reservations in respect of some articles that were incompatible with its legislation. What was important was to state clearly that the convention must not prejudice existing laws.

53. Mrs. NIKOLAEVA (Union of Soviet Socialist Republics) said that, as the convention was intended to improve the status of women, care should be taken not to deprive them of the benefits they had already obtained in some countries. That was why it had been stated that the Convention should not diminish the significance of domestic legislation in countries where more extensive rights were granted to women. The aim was to induce the States parties to the convention to bring their own laws into line with its provisions.
54. She was unable to support the United Kingdom text. Although she could accept the French text in principle, she nevertheless preferred the original version.
55. The CHAIRMAN wondered whether it was necessary to continue the discussion of article 17 as delegations were agreed on its substance. Views appeared to differ on matters of form only. The wording of the Spanish version was acceptable; that of the French text was not however.
56. Mrs. DEVAUD (France) proposed that the task of redrafting the article should be left to the Drafting Committee.
57. Begum FARIDI (Pakistan) said she was in favour of the original text.
58. Mrs. COCKCROFT (United Kingdom) observed that all States were in agreement on the substance of the article. For her part, she preferred the term "existing legislation", which covered all legislation; in English the term "domestic legislation" was more restrictive.
59. Ms. HENDSCH (United States of America) said that her delegation could agree to the French amendment, but in her opinion, the two parts of the sentence should be reversed so that it would begin with the words: "If the existing domestic legislation of countries provides for more extensive rights for women"
60. Ms. LORANGER (Canada) proposed that, in the original text of article 17, the word "countries" should be replaced by "States Parties".
61. The CHAIRMAN suggested that the Commission should adopt article 17 by consensus, on the understanding that the various texts would be reviewed by the Drafting Committee.
62. It was so decided.
63. The CHAIRMAN invited the Commission to consider the additional paragraph of article 17.
64. Mrs. NIKOLAEVA (Union of Soviet Socialist Republics) said that she was not opposed to the adoption of the additional paragraph, but felt it must be made clear that the provisions of the convention should not affect existing conventions adopted under the auspices of the United Nations or its specialized agencies, provided they were more favourable to women. If they were less favourable they would have to be changed.

65. Mrs. COENE (Belgium) said she shared the views of the USSR representative. It should be stated clearly that the paragraph referred to conventions which were more favourable to women. For that reason, her delegation had submitted a new version of article 17.
66. Mrs. TALIAWY (Egypt) said that it was precisely because of the point made by the USSR representative that her delegation had supported the Belgian amendment, which took that aspect of the problem into account. If an international convention provided for less extensive rights for women, there should be no objection to a revision of such a convention. Consequently, the paragraph under consideration should be qualified by a phrase along the lines of: "if those conventions provide for more extensive rights for women than the provisions of this Convention".
67. Mrs. BOKOR-SZEGO (Hungary) supported the Egyptian representative's proposal but felt that it would be better to say: "... if those conventions provide for more extensive and more detailed provisions for women than those of this Convention".
68. Mrs. GUEYE (Senegal), supported by Mrs. HIRLEMANN (France), proposed that the first paragraph and the additional paragraph of article 17 should be recast to form a single paragraph, along the lines of the Belgian text. The paragraph would read as follows: "Nothing in this Convention may be regarded as affecting the provisions of the existing domestic legislation of a Member State or the provisions of existing conventions adopted by the United Nations or the specialized agencies, if they are more favourable to women".
69. Ms. HENDSCH (United States of America) suggested that article 17 should be redrafted to read as follows: "Nothing in the present Convention shall be interpreted as impairing any existing provision of domestic international laws that are more favourable to women. Nor shall any restriction upon or derogation from the fundamental rights of women recognized or existing in any country by virtue of law, convention, regulation or custom, be admitted on the pretext that the present Convention does not recognize such rights or that it recognizes them to a lesser extent".
70. Miss TYABJI (India) said it would be sufficient to amend the beginning of the additional paragraph to read: "The same principle should apply to existing conventions ..."
71. Mr. LEHMANN (Denmark) considered that the solution might be to insert the words "and international law" after the word "domestic" in the first paragraph of article 17.
72. The CHAIRMAN, pointing out that the first paragraph of article 17 had already been adopted by consensus, said that only amendments to the additional paragraph of that article could be considered. She suggested that the meeting should be suspended to allow the delegations of Hungary and India, together with other interested delegations, to hold consultations and, if possible, draft a joint text.
73. It was so decided.
74. The meeting was suspended at 5.10 p.m. and resumed at 5.20 p.m.

75. Miss TYABJI (India) said that, following consultations, delegations had reached agreement on a text for the additional paragraph of article 17 that would read: "Similarly, nothing in this Convention should affect existing conventions adopted under the auspices of the United Nations or its specialized agencies and having as their object the regulation of various aspects of the status of women, if they provide for more extensive rights for women".

76. The CHAIRMAN said that, if there were no objections, she would take it that the text was adopted by consensus.

77. It was so decided.

Article 18

78. Mr. LEHMANN (Denmark) observed that the final provisions of the draft did not follow the usual sequence for the type of instrument in question. Normally, the final provisions were placed in the sequence: signature, ratification, accession, entry into force, reservations, depositary governments.

79. The CHAIRMAN suggested that the articles should be considered in the order followed in the draft, on the understanding that once the articles as a whole had been adopted, they would be placed in a logical sequence.

80. It was so decided.

81. Mr. LEHMANN (Denmark) said that the first sentence of article 18 was acceptable. The second sentence was redundant, for it was obvious that the only way a State which had not signed the Convention could become a party to the instrument was to accede to it. Article 18 should therefore be redrafted to read as follows:

"1. This Convention shall be open for signature by all States.

"2. This Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations".

Article 18 bis, concerning accession, would read as follows:

"1. This Convention shall be open for accession by any State referred to in the preceding paragraph.

"2. Accession shall be effected by deposit of an instrument of accession with the Secretary-General of the United Nations".

82. If they were drafted in that way, the articles would be in keeping with the Vienna Convention on the Law of Treaties.

83. Mrs. BRUCE (Deputy Director, Centre for Social Development and Humanitarian Affairs) confirmed that the provisions proposed by the representative of Denmark were those normally contained in conventions on human rights and other international conventions adopted under the auspices of the United Nations. For example, virtually the same wording was used in articles 17 and 18 of the International Convention on the Elimination of All Forms of Racial Discrimination.

84. Ms. HOERZ (German Democratic Republic), Mrs. HIRLEMANN (France), Ms. HENDSCH (United States of America) and Mrs. COELLE (Belgium) supported the text proposed by the representative of Denmark.

85. The CHAIRMAN said that, if there were no objections, she would take it that the text proposed by the representative of Denmark for article 18 was adopted by consensus.

86. It was so decided.

Article 19

87. The CHAIRMAN said that, if there were no objections, she would take it that article 19 was adopted by consensus.

88. It was so decided.

Article 20

89. Mrs. BOKOR-SZGO (Hungary) suggested that the words "to withdraw from" should be replaced by "denounce" and the word "withdrawal" by "denunciation", the latter term being the one used in article 25. Moreover, the wording of article 20 should be changed to bring it into line with the practice followed in other conventions on human rights adopted under the auspices of the United Nations.

90. Mr. LEHMANN (Denmark) wondered whether it was really necessary to include an article on denunciation, in the draft convention. If it was necessary, it would be preferable to follow the text of the corresponding article of the International Convention on the Elimination of All Forms of Racial Discrimination, because the present text of article 20 was ambiguous and might give rise to difficulties of interpretation, particularly with regard to the "extraordinary events" prompting the denunciation.

91. Mrs. NIKOLAEVA (Union of Soviet Socialist Republics) said that she saw no need for a denunciation clause.

92. Mr. WILLFORS (Sweden), Miss TYABJI (India) and Mrs. COELLE (Belgium) also supported the deletion of the denunciation clause. If the clause was retained, it should be worded in the manner suggested by the representative of Denmark.

93. In reply to a question put by Mrs. COENE (Belgium), Mrs. BOKOR-SZEGO (Hungary) said that, in accordance with the Vienna Convention on the Law of Treaties, a convention concluded for an unlimited period, such as the draft convention at present before the Commission, could be denounced even if it did not contain a denunciation clause.

94. However, any State that had ratified the convention on the elimination of discrimination against women would be under an obligation, at the international level, to abide by the convention because the guarantee of human rights without any discrimination had become a mandatory norm of international law. The International Court of Justice had itself recently handed down an opinion to that effect.

95. For that reason she also favoured the deletion of article 20.

96. Begum FARIDI (Pakistan) said that, in principle, she supported the deletion of article 20. However, as the text had been communicated to Governments by the Secretary-General of the United Nations for comment, the proposal that the article should be deleted created difficulties for those delegations whose Government had expressed support for the article.

97. Mrs. DEVAUD (France) considered that article 20 was entirely redundant and should be deleted.

98. The CHAIRMAN observed that most members of the Commission were in favour of the deletion of article 20. If there was no objection, she would take it that the Commission decided by consensus to delete article 20.

99. It was so decided.

Article 21

100. Mrs. COENE (Belgium) noted that her delegation had proposed a new text for article 21 (E/CN.6/591/Add.1), and that it had subsequently modified the introductory paragraph of that text (E/CN.6/L.700).

101. Begum FARIDI (Pakistan) said that her Government had already endorsed the original text of article 21; any new text should be referred back to Governments for consideration and comment.

102. Mrs. ROMANOVICH (Byelorussian Soviet Socialist Republic) said that her Government had expressed support for the original text of article 21; the simplest, most logical and most effective course would be to entrust the Commission with responsibility for supervising the implementation of the convention.

103. Mr. MICHEEL (German Democratic Republic) said that his delegation was unable to support the Belgian proposal. The supervision of the implementation of the convention was the responsibility of the Commission, which was perfectly capable of performing that task. The establishment of a new committee for that purpose would have budgetary implications and would diminish the importance and political role of the Commission. His delegation therefore favoured the original text of article 21.

104. Mr. LEHMANN (Denmark) said that his delegation supported the revised Belgian text of article 21. It was essential to establish a committee responsible for ensuring compliance with the obligations undertaken by the States parties; without such a committee there was a danger that the convention would remain a dead letter.

105. Moreover, the convention would be an autonomous instrument and the States parties to it would not necessarily be the same as the members of the Commission; the system for the implementation of the convention must therefore be related to the convention itself, as in the case of the Convention on the Elimination of All Forms of Racial Discrimination.

106. Mrs. COCKCROFT (United Kingdom) and Ms. HENDSCH (United States of America) endorsed the views expressed by the delegations of Belgium and Denmark.

The meeting rose at 6 p.m.