

COMMISSION ON HUMAN RIGHTS

Third session

ORDER OF VOTING ON PROPOSALS AND AMENDMENTS
CONCERNING ARTICLE 13 OF THE
DRAFT DECLARATION

Memorandum by the Secretary-General

The Secretariat has been asked to suggest the order in which the various proposals and amendments relating to Article 13 of the Draft Declaration should be voted on. The rule of procedure governing this question is Rule 54 which reads as follows:

Rule 54

If two or more proposals are moved relating to the same question, or if one or more amendments are moved to a proposal, the Commission shall first vote on the most far-reaching proposal or amendment, and then on the next most far-reaching proposal or amendment, and so on, until either all the proposals and amendments have been put to the vote, or one or more of them has been adopted, which in the opinion of the Commission makes voting on the remaining proposals and amendments unnecessary.

In applying this rule the Secretariat has followed the generally accepted rule that the phrase "most far-reaching proposal or amendment" involves a comparison with the original text before the Committee, namely, the text of the Drafting Committee. In other words, the term "most far-reaching" as used in this rule has essentially the same meaning as the term "furthest removed in substance from the original proposal" which is used in the Council Rule 62 and the General Assembly Rule 82. (This is shown by the discussion in the Council Committee on Procedure in document E/AC.2/SR.8, page 2, and by the French text of Rule 54).

In applying this standard in this particular case it is necessary to determine which of the various proposals and amendments would change the original text most. The Secretariat feels that it is impossible to avoid a certain amount of arbitrariness in making this choice. Moreover, it is

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also felt that it is undesirable in connection with this procedural question to attempt to decide which of the ideas are most fundamental or would have the greatest effect. Consequently, the Secretariat has analyzed the proposals and amendments in terms of the component ideas without attempting to evaluate the scope or effect of the particular ideas. On this basis the text which would delete or add the largest number of expressly formulated ideas in relation to the original text would be the furthest removed in substance.

In accordance with this analysis the order of voting would then be as follows:

1. Proposals submitted by India and the United Kingdom:

Men and women are entitled to equal rights as to marriage.

This proposal is the furthest removed from the text of the Drafting Committee because there are four ideas in the latter text which are not expressly included in the India-United Kingdom proposal, viz. in accordance with the law, full consent of both intending spouses, age of puberty, protection by State and Society.

2. Amendment submitted by the representative of Egypt to the United States proposal which is to delete the words "deriving from marriage".

This amendment should be voted on before the United States proposal for two reasons: In the first place, it is an amendment to the United States of America proposal. Secondly, it is further removed from the text of the Drafting Committee than the United States text because it would give protection even to family groups which do not derive from marriage.

3. Proposal submitted by the United States:

Men and women are entitled to equal rights as to marriage.

The family deriving from marriage is the natural and fundamental group unit of society and shall be entitled to protection.

This proposal is not as far removed as the India-United Kingdom proposal because it deletes only three ideas mentioned in the text of the Drafting Committee, viz. in accordance with the law, consent of both intending spouses, age of puberty. On the other hand, it adds one idea which is not in the text of the Drafting Committee, namely, that the family deriving from marriage is the natural and fundamental unit of society.

4. Proposal submitted by the Representative of the Union of Soviet Socialist Republics, which is:

(a) to insert the phrase "and the equality of men and women in the marriage" after the word "family" in the second paragraph
/of the text

of the text presented by the Drafting Committee;

(b) to add a new paragraph to the text of the Drafting Committee reading as follows: "Both men and women shall have equal rights to dissolve marriage".

This proposal is not so far removed from the text of the Drafting Committee because it adds only two new ideas not contained in the latter text, viz. the equality of men and women during marriage, and the express mention of dissolution of marriage.

5. Proposal submitted by the Representative of France, which is:

1. Every man and woman of the age of puberty has an equal right to contract marriage provided that this be with his or her full consent and to found a family.
2. Every man and woman has equal rights as to marriage.
3. The family, which is the natural and fundamental group unit of society is entitled to protection.

This proposal seems to be the nearest to the text of the Drafting Committee because it introduces only one new idea, viz. the idea that the family is the natural and fundamental unit of society.

The Secretariat has not included the proposals of Belgium and the Lebanon in the list because it understands that both of these proposals were withdrawn by their sponsors in favour of the United States text.
