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Chairman: Mr. Francisco CUEVAS CANCINO (Mexico).

AGENDA ITEM 58

Draft International Convention on the Elimination of All Forms of Racial Discrimination (continued) (A/5803, chap. IX, sect. I; A/5921; E/3873, chap. II and annexes I and III; A/C.3/L.1237, L.1239, L.1241, L.1249, L.1262, L.1272, L.1291 and Add.1, A/C.3/L.1292, L.1297, L.1303 to L.1305, L.1307)

ARTICLES ON MEASURES OF IMPLEMENTATION (continued)

Article XIV

1. The CHAIRMAN invited the Committee to consider article XIV (formerly article XIII) of the articles relating to measures of implementation (A/C.3/L.1291) to be added to the provisions of the draft International Convention on the Elimination of All Forms of Racial Discrimination. He recalled that the sponsors of the draft of that article had accepted the text proposed in the New Zealand amendments (A/C.3/L.1304).

2. Miss TABBARA (Lebanon) proposed the deletion of the word "available" after the word "procedures" and the word "and" after the word "discrimination" in the first part of the New Zealand amendments.

3. Miss HART (New Zealand) thanked the delegations of Ghana, Mauritania and the Philippines for having accepted her delegation's text in lieu of their own and she, in turn, accepted the suggestions just made by the Lebanese representative. The resulting text might be further improved if the words "shall be applied without prejudice to" were replaced by "shall not prevent the States Parties from having recourse to". The last part of the article, beginning with the words "and shall not prevent ..." to the end of the paragraph, could be taken for granted and might therefore be deleted. Her delegation would not, however, press those suggestions.

4. Mr. COCHAUX (Belgium) supported the deletion of the last part of the article.

5. The CHAIRMAN invited the Committee to vote on article XIV (formerly article XIII) as amended by New Zealand and Lebanon and accepted by Ghana, Mauritania and the Philippines. He put to the vote the first part of the article, reading as follows:

> "The provisions of this Convention concerning the settlement of disputes or complaints shall be applied without prejudice to other procedures for settling disputes or complaints in the field of discrimination laid down in the constituent instruments of, or in conventions adopted by, the United Nations and its specialized agencies."

The first part of the article was adopted by 76 votes to none, with 1 abstention.

6. The CHAIRMAN invited the Committee to vote on the last part of the article: "and shall not prevent the States Parties from having recourse to other procedures for settling a dispute in accordance with general or special international agreements in force between them".

The last part of the article was adopted by 58 votes to 4, with 13 abstentions.

Article XIV, as a whole, as amended, was adopted by 78 votes to none, with 1 abstention.

7. After a short procedural discussion, in which Mr. RIOS (Panama), Mr. WALDRON-RAMSEY (United Republic of Tanzania), Miss ADDISON (Ghana), Mr. RAO (India) and Mr. CAPOTORTI (Italy) took part, Mr. KORNIENKO (Ukrainian Soviet Socialist Republic) suggested that the Committee should defer the discussion of article XIII until it had before it the compromise text which was being drafted and that it should proceed meanwhile to discuss the suggestions for final clauses submitted by the officers of the Committee (A/C.3/L.1237) and the Polish amendments thereto (A/C.3/L.1272).

It was so decided.

FINAL CLAUSES

8. Mr. DABROWA (Poland), referring to his delegation's first, second and seventh amendments (A/C.3/L.1272), said that the final clauses I, II and XI submitted by the officers of the Committee (A/C.3/L.1237), as at present worded, limited participation in the International Convention on the Elimination of All Forms of Racial Discrimination to certain specific categories of States, namely, Members of the United Nations, members of the specialized agencies, Parties to the Statute of the International Court of Justice and

States which might be invited by the General Assembly. There was no legal justification for such a limitation, nor was there any moral justification for perpetuating past discriminatory measures in a convention on the elimination of discrimination. The number of States which favoured opening treaties to universal participation was increasing yearly. In his delegation's view, it would be inconsistent with contemporary concepts of international law, particularly the law of treaties, to restrict to specific categories of States participation in a convention of great humanitarian importance. International law could not be strengthened unless all existing sovereign States were able to adhere to treaties. Since his delegation favoured the universality of international law, it believed that all States should not only be allowed to participate in the Convention but should also have a right to take part in all forms of free and equal international co-operation regardless of their political or social system, their level of economic development, or their membership in particular international organizations.

9. Furthermore, although many treaties had been concluded under the auspices of the United Nations, for which the Secretary-General acted as depositary, there was no need for any formal link between the question of participation in the treaties and the question of membership in the United Nations or in any other international organization. After a treaty had been concluded and had entered into force, it lived its own life, not necessarily related to the activities of the international organization under whose auspices it had been concluded. Since the International Convention on the Elimination of All Forms of Racial Discrimination was of interest to the international community as a whole, it should not be closed to States which were not members of the Organization under whose auspices it had been concluded.

10. It was a well-known principle that participation by a State in a multilateral treaty did not necessarily imply that that State recognized all the other States Parties. For example, Poland was a party to a number of international conventions whose Parties included some States to which it had not extended recognition. The same was true of many other countries, as could be seen from the examples of the Geneva Conventions for the Protection of War Victims of 12 August 1949, the 1954 Geneva Agreements on the Cessation of Hostilities in Indo-China, the 1962 Declaration on the Neutrality of Laos and the Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and Under Water, signed at Moscow in 1963. Even the draft treaty to prevent the spread of nuclear weapons, submitted by the United States to the Eighteen-Nation Committee on Disarmament provided that that treaty should be open to all States for signature.

11. The Third Committee should therefore ensure the universality of the Convention in accordance with the principles of the Charter. To deprive any State of the possibility of participating in the Convention would constitute a violation of the principle of the sovereign equality of States. Experience had shown that the only treaties that withstood the test of time were those which respected that principle.

12. In his delegation's view, therefore, the territorial application of the Convention should be as broad as possible and all States, without distinction or discrimination, should be entitled to accede to the Convention. The Committee should not permit any politically motivated discrimination against any State and must recognize the right of every State to participate in international relations on an equal footing.

13. Those were the reasons for the submission by his delegation of its amendments to clauses I and II. Its amendment to clause XI was a formal consequence of those amendments, which would probably also affect clause X.

14. His delegation was opposed to clause IV because it appeared to some extent to indicate approval of the existence of colonialism. The problem of the so-called colonial clause in international treaties would cease to exist as soon as all colonial territories had attained independence and could accede to such treaties in their own right. The inclusion of such clauses in international conventions was generally incompatible with the rules of international law now in force and could no longer be justified by international law.

15. In the United Nations, the issue of the colonial clause had first arisen at the second session of the General Assembly in connexion with the transfer to the Organization of the functions exercised by the League of Nations under the Convention for the Suppression of the Traffic in Women and Children of 1921, the Convention for the Suppression of the Traffic in Women of Full Age of 1933, and the Convention for the Suppression of the Circulation of and Traffic in Obscene Publications of 1923, each of which contained a colonial clause. For the purpose of effecting the transfer of functions, the Economic and Social Council had prepared two draft protocols which did not provide for any substantial change in the colonial clauses. An amendment to delete those clauses from the conventions, submitted by the USSR, had been adopted by the Third Committee and maintained in the General Assembly despite an attempt by the United Kingdom to reverse the Committee's decision.1/ It was also worth recalling that the first draft of the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others of 1950, as prepared by the Secretariat, had contained a colonial clause, to which two further paragraphs had been added by the Economic and Social Council. On the proposal of the Ukrainian SSR, the Third Committee had decided in 1949 to delete the clause, and an attempt by the United Kingdom to reintroduce it had again been rejected in the General Assembly by a large majority.2/ Many more recent conventions, including the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages of 1962, contained no colonial clause.

16. The major reason why many States opposed the colonial clause was that it made possible the non-

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1/ See Official Records of the General Assembly, Second Session, Plenary Meetings, vol. I, 97th meeting; and ibid., vol. II, annex 7, documents A/412 and A/417.

2/ See Official Records of the General Assembly, Fourth Session, Plenary Meetings, 264th meeting; and ibid., Annex, documents A/1164 and A/1175.

application of a convention to certain dependent territories with respect to which no declaration was made by the colonial Powers at the time of signature, ratification or accession, and no notification was made after "consultation" with the territories. Such a possibility was contrary to the very nature of a convention on the elimination of all forms of racial discrimination, the provisions of which should be applicable equally to a contracting metropolitan State and to all the territories administered or governed by it. The deletion of the colonial clause would not prevent the colonial Powers from consulting their dependent territories before ratification of accession, if they wished to do so. In his work Law of Treaties, McNair stated as a general rule of international law that, subject to express or implied provisions to the contrary, a treaty applied to all the territory of the contracting party, whether metropolitan or not.[3] The same principle had been clearly stated by the International Law Commission in article 57 of its draft articles on the law of treaties and in the commentary thereto,[4] as well as in the Summary of the Practice of the Secretary-General as Depositary of Multilateral Agreements.[5]

17. His delegation also proposed the deletion of clause V. It was true that the central Government of a federal State, unlike that of a unitary State, often lacked the legislative authority to perform the obligations which it had undertaken, such authority being vested in the component states or provinces. However, that was a matter of domestic jurisdiction and should not be introduced into the international sphere, since other States Parties to a treaty were not concerned with the question whether all the local legislatures of a federation had given their consent. It was a well-established principle of international law that each State was responsible for its internal governmental machinery. It was not necessary, in fact, for States Parties to a treaty to know what were the constitutional arrangements of the other parties. On the contrary, as the International Law Commission had stated in article 31 of its draft articles on the law of treaties,[6] when the consent of a State to be bound by a treaty had been expressed, the fact that a provision of the internal law of the State regarding competence to enter into treaties had not been complied with did not invalidate the consent expressed by its representative, unless the violation of its internal law was manifest. Article 23 of the Harvard Law School draft on the law of treaties[7] stated that, unless otherwise provided in the treaty itself, a State could not justify its failure to perform its obligations under a treaty because of any provisions or omissions in its municipal law, or because of any special features of its governmental organization or its constitutional system. A central Government might consult local governments before a treaty was signed, ratified or approved, but once it was finally bound by a treaty, it was understood that the State would be in a position, under its own law, to give effect to the terms of the treaty. The State must act as a whole, not only in entering into treaties, but also in performing them, and it must comply with the rules of international law as well as with its internal law. Article VI of the United States Constitution, for instance, stated that "all treaties made ... under the Authority of the United States, shall be the supreme law of the land ... any Thing in the Constitution or laws of any State to the contrary notwithstanding".

18. A federal clause involved inequality of rights of the States Parties to a convention, since unitary States were obliged to perform all its provisions without exception, while federal States could escape certain obligations on the pretext of the "incompetence" of the central authorities. Because such a situation was hardly acceptable to the majority of States, a federal clause had been included in only a few multilateral instruments; the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, for instance, contained no such clause.

19. With reference to clause VI of the suggested final clauses, he said that his delegation fully accepted the existing principle of international law that every State had a sovereign right to make reservations to international treaties. His delegation believed it should be recognized, however, that reservations in respect of the principles and aims of the draft Convention under discussion would nullify the effect of accession by the State concerned. The International Law Commission, in its work on the draft articles of the law of treaties, had taken the view that reservations to substantive articles of a convention should not be accepted. Examples of that rule were article 9 of the UNESCO Convention against Discrimination in Education of 1960 and article 9 of the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 1956, which permitted no reservations, and article 8 of the Convention on the Nationality of Married Women of 1957, which permitted reservations to certain articles only.

20. Clause VIII of the suggested clauses was based on two related but separate principles: the obligation to settle disputes by peaceful means, and the tacit recognition of the compulsory jurisdiction of the International Court of Justice. While his delegation fully approved the first principle, it was not yet prepared to accept the second. Its amendment, though minor in form, was of great significance. The text submitted by the officers of the Committee implied compulsory jurisdiction of the Court for all States Parties to the Convention, whereas the Court's Statute provided for optional jurisdiction as a principle and for compulsory jurisdiction, under the terms of article 36, only as an exception.

21. In the interest of the widest possible ratification of the Convention, acceptance of it must not be linked with acceptance of the compulsory jurisdiction of the Court, the principle of which was opposed by many States for various reasons. According to the Yearbook

[3] See Lord McNair, Law of Treaties (1961), pp. 116-117.

[4] See Official Records of the General Assembly, Nineteenth Session, Supplement No.9, p. 7.

[5] ST/LEG/7, paras. 102-103.

[6] See Official Records of the General Assembly, Eighteenth Session, Supplement No.9, p. 3.

[7] See Harvard Law School, Research in International Law, American Journal of International Law, vol. 29, Supplement (1935), part III, Law of Treaties (art. 23).

of the International Court of Justice, 1963-1964, less than one third of the States Parties to the Statute of the Court had accepted the "optional clause" of article 36, and only a few States had signed and ratified the Optional Protocols to the Geneva Conventions on the Law of the Sea of 1958 and to the Vienna Conventions on Diplomatic Relations and on Consular Relations of 1961 and 1963 respectively, all of which dealt with the compulsory jurisdiction of the Court. Moreover, many States which did accept the compulsory jurisdiction of the Court made such extensive reservations as to nullify their acceptance in practice.

22. Under international law, a sovereign State could not be made subject to the jurisdiction of the Court except by its own consent, which could be given in individual cases. Thus, there was no need to force States to accept such jurisdiction generally, and they would not be prevented from submitting to the International Court of Justice a particular dispute in connexion with the application or interpretation of the Convention, if all parties to the dispute agreed to do so. That means of settlement, as well as all the other means of peaceful settlement mentioned in Article 33 of the Charter, would always be open to States. Furthermore, under Article 34 of the Charter, the Security Council could investigate any dispute, or any situation which might lead to international friction or give rise to a dispute, in order to determine whether the continuance of the dispute or situation was likely to endanger the maintenance of international peace and security, as it was already doing in connexion with the question of the policy of apartheid.

23. Clause VIII, if amended in the manner proposed by his delegation, would be similar to article 8 of the UNESCO Convention against Discrimination in Education of 1960 and article 48 of the Single Convention on Narcotic Drugs of 1961, and would be exactly the same as article 8 of the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages.

24. In submitting its amendments to the final clause, his delegation was ready to give careful consideration to any sub-amendment, suggestion or proposal consistent with the objectives he had mentioned.

25. Mr. ZULOAGA (Venezuela) said that, but for budgetary considerations, he would have requested that the Polish representative's statement should be circulated as a Committee document. If the Polish delegation could arrange for that part of the statement relating to Clause IV to be reproduced for the information of other delegations, it would be performing a useful service.

ARTICLES ON MEASURES OF IMPLEMENTATION (continued)

Article XIII (continued)

26. Mr. LAMPTEY (Ghana) read out a revised text of the new article XIII sponsored by Argentina, Chile, Colombia, Costa Rica, Ecuador, Ghana, Guatemala, Mauritania, Panama, Peru and the Philippines.[8]

27. The CHAIRMAN suggested that discussion of the text should be deferred until it had been circulated in writing.

It was so agreed.

The meeting rose at 5.40 p.m.

[8] Subsequently circulated as document A/C.3/L.1308.

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