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CONTENTS

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.1292, L.1305 and Add.1, A/C.3/L.1307/Rev.2, L.1313, L.1314, L.1317)

FINAL CLAUSES (continued)

CLAUSE IV

1. The CHAIRMAN invited the Committee to continue its consideration of the suggestions for final clauses submitted by the officers of the Committee (A/C.3/L.1237) and the amendments thereto.

2. Mr. ABDEL-HAMID (United Arab Republic) said that his delegation was in favour of the deletion of clause IV, as proposed in the third of the Polish amendments (A/C.3/L.1272), since the substance of the text was already contained in the second revised version of article XIII (bis) (A/C.3/L.1307/Rev.2) of the articles relating to measures of implementation.

3. Mr. HOVEYDA (Iran), supported by Miss FAROUK (Tunisia) and Mr. RIOS (Panama), suggested that the vote on clause IV and on the third Polish amendment should be postponed, in order not to prejudge the Committee's decision on article XIII (bis).

It was so agreed.

CLAUSE V

4. Miss TABBARA (Lebanon) supported the fourth Polish amendment (A/C.3/L.1272), calling for the deletion of clause V. A State, whether unitary or federal, was represented at the international level as a single entity, and the United Nations had never concerned itself with the manner in which international instruments were applied within the territory of a country. It might be dangerous for the federal States themselves to expose their systems to criticism, as a consequence of the procedure envisaged in clause V, sub-paragraph (c). The question was a purely domestic one, which it would be better for the States concerned to settle internally.

5. Mr. LAWREY (Australia) observed that, as the representative of a federal State, he did not share the misgivings expressed by the representative of Lebanon. For essentially practical reasons, his delegation favoured the inclusion of a federal clause in the draft Convention, and it was quite prepared to accept the text suggested by the officers of the Committee, including sub-paragraph (c). Under Australia's written federal Constitution, the implementation of most international instruments relating to economic and social matters necessarily required the consent of and action by, a number of governments. To obtain such consent and action was time-consuming and sometimes difficult, owing to the variety of legislation involved; in the case of the draft Convention under discussion, even municipal ordinances and regulations would be required. The adoption of clause V would enable the Australian Government to accept obligations under the Convention within the limits of its authority, without awaiting the consent of all local governments which would be necessary for the application and implementation of the instrument. His delegation therefore felt obliged to oppose the fourth Polish amendment.

6. Mrs. SEKANINOVA (Czechoslovakia) opposed the inclusion of the so-called "federal clause" in the draft Convention. In addition to the arguments advanced by the representatives of Poland and Lebanon, her delegation considered that such a clause would substantially weaken the Convention as a whole by establishing inequality of obligations as between federal and unitary States. It would not be in conformity with the recognized principles of international law, under which a federal State as a whole was regarded as a subject of international law.

7. Mr. HOVEYDA (Iran) said that, although he had no strong views on the matter, he thought it rather strange to include in the draft Convention a provision such as the suggested clause V. When a federal State acceded to an international Convention, it acted on behalf of all its constituent states or provinces, and the Third Committee had already adopted provisions designed to ensure implementation of the Convention throughout the territory of a State Party. He was not

convinced by the Australian representative's argument, and he would vote in favour of the Polish amendment.

8. Miss WILLIS (United States of America) said that, although her country had a written Constitution and was a federal State, her delegation nevertheless agreed with the representative of Poland who, in introducing his amendment, had said that such clauses tended to destroy the uniform application of international agreements by placing federal States in a special position. Her delegation would therefore vote in favour of the Polish amendment.

9. Mr. KOCHMAN (Mauritania) said that his delegation, too, would vote in favour of the Polish amendment. A federal State which ratified a convention must ensure that its provisions were applied throughout its territory, and only the central Government could take the necessary measures to that end.

10. Mr. TSAO (China) said that his delegation's main concern was to ensure that as many States as possible acceded to the Convention. The constitutional position of other federal States was not necessarily the same as that of the United States, and his delegation would therefore vote in favour of the retention of the federal clause.

11. Mr. INCE (Trinidad and Tobago) supported the Polish amendment. It was an accepted fact that, whatever form of constitution a State might have, foreign affairs were within the purview of the central Government. Some treaties, which were self-executing, automatically became the law of the land once they were acceded to by a federal State, while in the case of non-self-executing treaties the constitutional processes of the federal State provided for legislation to make them operative in the constituent provinces or states. His delegation could not, therefore, accept the arguments advanced by the representatives of Australia and China.

12. Mr. TAYLOR (United Kingdom) said that for his country, which itself had no problems arising from a federal constitution, an explanation such as that given by the representative of Australia concerning the genuine difficulties a government would have in accepting a United Nations instrument was sufficient reason for the inclusion in the instrument of a federal or other necessary clause. It was not appropriate for any Member State to imply that another could manage its affairs more effectively if it adopted a different kind of constitution. His delegation would therefore abstain in the vote on the Polish amendment.

13. Mr. LAWREY (Australia) said that the statement of the position of federal States made by the representative of Trinidad and Tobago did not accurately reflect Australia's constitutional position. In order not to take the time of the Committee, he himself had not dwelt on the subject in detail, but it was true, as the representative of China had suggested, that the constitutional position was not necessarily identical in all federal States. As the United Kingdom representative had appreciated, the matter was of some practical concern to Australia, and it was in the interest of facilitating the widest and easiest acceptance of the draft Convention that his delegation had taken its position in favour of the retention of a federal clause.

14. Mr. BOULLET (France) observed that the suggested clause V was not of direct concern to his country, which had a unitary Constitution. His delegation, while appreciating the concern of federal States for the integrity of their constitutional systems, believed that a federal clause would enable a State to accede to the Convention while avoiding the application of its provisions to a part of its territory. It would appear more logical for a federal Government first to obtain the consent of its constituent states or provinces, after which it could accede to the Convention without reservations of any kind. His delegation therefore favoured the deletion of the federal clause.

15. Mr. RODRIGUEZ FABREGAT (Uruguay) recalled that his delegation had always taken the position that the argument of domestic jurisdiction could never be advanced in justification of any violation of human rights. The United Nations Charter made it quite clear that all human beings, whether living in a federal or a unitary State or in a colonial territory, were entitled to the enjoyment of such rights, and the draft Convention must go at least as far as the Charter itself. His delegation would vote accordingly on clause V.

16. Mrs. MANTZOULINOS (Greece) said she did not believe that a federal clause was customary in United Nations practice. Although she appreciated the concern of some delegations, the inclusion of such a clause would, in her view, establish international precedents which might create difficulties in the future. Her delegation therefore considered that the federal problem should be treated as a domestic matter.

17. Miss AGUTA (Nigeria), speaking as the representative of a federal State, said that her Government supported the Polish amendment because it deemed it inappropriate for the United Nations to specify how any State should implement the Convention in the light of its own Constitution. The provisions already adopted provided a sufficient option for States wishing to become parties to the Convention.

18. Mr. DAYRELL DE LIMA (Brazil) said that his delegation would support clause V in the form in which it appeared in document A/C.3/L.1237.

19. The CHAIRMAN invited the Committee to vote on the fourth amendment submitted by Poland (A/C.3/L.1272) calling for the deletion of clause V.

The fourth Polish amendment (A/C.3/L.1272) calling for the deletion of clause V was adopted by 63 votes to 7, with 16 abstentions.

CLAUSE VI

20. Mr. LAMPTEY (Ghana), introducing the three-Power amendment (A/C.3/L.1314) to the fifth Polish amendment (A/C.3/L.1272) concerning clause VI of the suggested final clauses (A/C.3/L.1237) on behalf of the sponsors, said that the latter supported the fifth Polish amendment in the belief that reservations to the substantive clauses, and especially to articles I to V, would make the Convention meaningless. They had submitted their amendment because a careful

reading of the articles on measures of implementation (articles VIII to XIV) showed that reservations to those articles would nullify their effect, render the implementation machinery meaningless, and destroy the whole Convention.

21. Mr. ABDEL-HAMID (United Arab Republic) suggested that, since the text of articles VIII to XIV had not yet been finalized, the Committee should postpone action on final clause VI.

It was so agreed.

CLAUSE VII

22. The CHAIRMAN invited the Committee to consider clause VII of the suggested final clauses (A/C.3/L.1237).

Clause VII was adopted unanimously.

CLAUSE VIII

23. The CHAIRMAN invited the Committee to consider clause VIII of the suggested final clauses (A/C.3/L.1237) and the amendments thereto: the sixth Polish amendment (A/C.3/L.1272) and the second amendment submitted by Ghana, Mauritania and the Philippines (A/C.3/L.1313).

24. Mr. MACDONALD (Canada), referring to the suggested final clause VIII, said that he opposed the sixth Polish amendment (A/C.3/L.1272), since it would have the effect of nullifying the entire clause on the settlement of disputes. If all parties to a dispute had to consent to its submission to the International Court of Justice, there was no need for a special provision on the subject, since any inter-State dispute could be brought before the Court with the common consent of the parti

25. Any party to a dispute over the interpretation or application of the Convention should be able to bring the matter before the Court, for the Convention was being prepared under United Nations auspices and the Court was the Organization's principal juridical organ. Moreover, clause VIII allowed parties to a dispute considerable latitude. They could resort to negotiation and other modes of settlement, and no time-limit was imposed for settlement. A controversy could thus be protracted almost indefinitely before recourse was had to the Court. In view of the flexibility of the article's terms, he did not see why the Polish delegation should want, in effect, to eliminate reference to the Court under the Convention.

26. He supported the second three-Power amendment (A/C.3/L.1313), which made a valuable addition to the clause.

27. Mr. KORNIENKO (Ukrain'an Soviet Socialist Republic) supported the Polish amendment and expressed surprise that the Canadian representative should have interpreted it as eliminating reference to the International Court of Justice. It was the Committee's repeatedly expressed desire that the Convention should be ratified by the largest possible number of States. If that was so, the views of a large number of States on the present issue should be respected. As the Polish representative had said at the 1358th meeting, under international law a sovereign State could not be made subject to the jurisdiction of the Court except by its own consent. That principle had been confirmed by the Committee's own action in adopting article 8 of the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages. The Committee should not now take a backward step and create fresh obstacles for prospective signatories. The Polish amendment was not designed to eliminate reference to the Court, but to bring the clause concerning such reference into line with current practice.

28. Mr. MACDONALD (Canada) said that he had meant only that the adoption of the Polish amendment would leave matters as they currently stood under international law. His delegation hoped, on the other hand, that it would be possible to confer in advance on the Court a measure of jurisdiction in regard to matters connected with the Convention. He fully realized that some countries might be reluctant to accept the Court's jurisdiction. However, in view of the latitude allowed under clause VIII, which did not require reference to the Court unless it was requested, he had hoped that all delegations could accept the clause as drafted.

29. Mr. LAMPTEY (Ghana) said that the three-Power amendment was self-explanatory. Provision had been made in the draft Convention for machinery which should be used in the settlement of disputes before recourse was had to the International Court of Justice. The amendment simply referred to the procedures provided for in the Convention.

30. Replying to a question from Mr. COCHAUX (Belgium), Mr. DABROWA (Poland) said that the meaning of the Polish amendment was that all parties to disputes must agree on the Court's jurisdiction in each particular case.

31. Mr. OSPINA (Colombia) said that the Polish amendment would deprive clause VIII of all its force. He supported the three-Power amendment.

32. Miss WILLIS (United States of America) said that the Polish amendment would make clause VIII a meaningless provision since in the absence of such a provision the States Parties could agree among themselves to refer a dispute to the International Court of Justice. The Polish delegation's argument that under the Court's Statute the jurisdiction of the Court was compulsory only for States accepting the "optional clause" of Article 36 was not entirely correct. It was true that the Court's jurisdiction depended on consent, but the declaration provided for in Article 36, paragraph 2, of the Statute was only one way by which a State could indicate such consent. Article 36, paragraph 1, of the Statute provided that the Court's jurisdiction comprised, inter alia, "all matters specially provided for ... in treaties and conventions in force". Moreover, the San Francisco Conference had clearly accepted the principle that "legal disputes should as a general rule be referred by the parties to the International Court of Justice in accordance with the provisions of the Statute of the Court" (Article 36, paragraph 3, of the Charter). The adoption of clause VIII as drafted would reaffirm the Committee's adherence to a Charter principle. Moreover, the Court, composed of judges of the highest moral character and legal qualifications, could be of considerable value in settling the complex legal

issues which might be involved in disputes arising out of the Convention. Her delegation would regret any decision which would make reference to the Court dependent on the agreement of all States parties to a dispute.

33. Mr. MOVCHAN (Union of Soviet Socialist Republics) said that the authors of the Charter and the Statute had proceeded on the basic premise that the Court could consider only such matters as were referred to it with the consent of the parties. That principle was clearly stated in both the Charter and the Statute. Thus there were no grounds for suggesting that the Polish amendment belittled the functions and importance of the Court. The United States representative had referred to Article 36, paragraph 1, of the Statute, but it was important to note that the Article began: "The jurisdiction of the Court comprises all cases which the parties refer to it ...".

34. Agreement to bring cases before the Court could be given in individual cases or in advance with respect to certain categories of questions. For a number of years two opposing approaches had been taken in the drafting of multilateral agreements, and the approach defended in the Committee by the Canadian and United States representatives had by no means won general acceptance. In view of the United States delegation's frequent appeals for generally acceptable provisions he would have thought the Polish amendment would have commended itself to that delegation. The amendment would reaffirm what was stated in the Charter and the Statute and would leave reference to the Court open to those States which had accepted its compulsory jurisdiction. It was therefore in keeping with the spirit in which the draft Convention had so far been formulated.

35. Regardless of the decision taken in the Committee, the principle of voluntary recourse to the Court could not be altered. It had been confirmed by the practice of recent years and was being increasingly recognized in international agreements, among them the Vienna Conventions on Diplomatic Relations and on Consular Relations and the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages.

36. Mr. WALDRON-RAMSEY (United Republic of Tanzania) endorsed the previous speaker's remarks. The consent of all parties to a dispute must obviously be obtained before the question was brought before the International Court of Justice. That was consistent with the Charter and the Statute of the Court.

37. Obtaining the common consent of parties had practical merits as well. The Committee had discussed at length who would defray the expenses incurred in the implementation of the Convention. In the present instance, if any party to a dispute could refer it to the Court, financial problem were likely to arise. The expenses of the Court would have to be defrayed by someone. Whether it would be the party referring the case to the Court, both parties or the United Nations would have to be determined. If the Polish amendment was adopted, however, recourse to the Court would be with the consent of both parties and it was logical to expect that they would share the costs. Thus for practical reasons in addition to reasons of principle he favoured the Polish amendment.

38. Mr. BOULLET (France) said that his delegation could not support the Polish amendment. It was his country's traditional position to accept a priori the jurisdiction of the International Court of Justice whenever a party to a dispute chose to submit the matter to the Court, provided of course that the issue arose within the framework of a convention to which his country had acceded. His delegation would support the three-Power amendment since it brought clause VIII into line with provisions already adopted in the matter of implementation.

39. Mr. CAPOTORTI (Italy) said that the Statute of the Court and current international law clearly allowed for both possibilities under discussion—the submission of a dispute to the Court either by any or by all of the parties. The principle of consent of the parties was respected in both cases, the only difference being in the time of consent; in one case consent was given upon ratification of the convention, while in the other it was given when a particular dispute arose. It had been said that the Polish amendment was more in keeping with international practice, but that practice in fact recognized both methods. Many conventions included a provision such as the suggested clause VIII. He did not think international law or the Statute of the Court could usefully be invoked to decide the present issue. The Committee should adopt a practical approach and decide which method was more in accord with the spirit of the Convention and would ensure the most satisfactory settlement of disputes relating to the Convention. From that standpoint he favoured the clause suggested by the officers of the Committee (A/C.3/L.1237). Consent of States would be much more difficult to obtain when a dispute already existed than when the Convention was opened for signature. States should be all the more ready to give their consent at the outset because of the great variety of admissible settlement procedures short of recourse to the Court. He therefore supported clause VIII and the three-Power amendment, which was a useful addition.

40. Mr. COCHAUX (Belgium) agreed with the previous speaker. The Court was an important international organ whose role in settling disputes connected with the present draft Convention—an instrument created by the United Nations—should not be belittled. As others had noted, clause VIII provided for various modes of settlement offering ample opportunity for agreement before the Court was resorted to. Acceptance of the clause was very important for the effective implementation of the Convention. He would support the three-Power amendment, which introduced a useful clarification.

41. Mr. INCE (Trinidad and Tobago) said that his delegation supported the three-Power amendment to clause VIII, which would strengthen that clause. He agreed with the Canadian representative that the use of the word "all" would make it much more difficult to bring a case before the International Court of Justice. However, since, in accordance with accepted principles of international law, a sovereign State could not be haled before the Court without its consent and since the Convention was being drawn up in a spirit of goodwill, the wisest course might be to let the word "any" stand, in order to facilitate reference of cases

to the Court. He therefore appealed to the Polish representative not to press his amendment.

The second amendment submitted by Ghana, Mauritania and the Philippines (A/C.3/L.1313) was adopted unanimously.

The sixth Polish amendment (A/C.3/L.1272) was rejected by 37 votes to 26, with 26 abstentions.

Clause VIII, as a whole, as amended, was adopted by 70 votes to 9, with 8 abstentions.

42. Mr. LAMPTEY (Ghana) said that his Government took the position that cases should be referred to the International Court of Justice only with the full consent of both parties. However, it had accepted the compulsory jurisdiction of the Court in the case of certain specific conventions. His delegation attached so much importance to the International Convention on the Elimination of All Forms of Racial Discrimination that it could have supported clause VIII as submited by the officers of the Committee. In view of its position of principle on the question of the International Court, it had abstained in the vote on the Polish amendment.

43. Mr. BOŽOVIĆ (Yugoslavia) said that his country did not recognize the compulsory jurisdiction of the International Court of Justice and had reserved its right to decide in each case whether a dispute arising out of the provisions of a treaty to which it was a signatory should be referred to the Court. It supported the principle that disputes over the interpretation of treaties should be brought voluntarily before the Court. For that reason his delegation had abstained in the vote on clause VIII.

44. Mr. TEKLE (Ethiopia) said that he had voted in favour of the Polish amendment because he considered that the full consent of both parties was necessary for a case to be brought before the International Court of Justice.

CLAUSE IX

45. The CHAIRMAN invited the Committee to consider clause IX of the suggested final clauses (A/C.3/L.1237).

46. Mr. BOULLET (France) said that his delegation could not accept the principle that the General Assembly, whose membership would include some States not parties to the Convention, should decide on a request for revision of the Convention. That decision should be taken by the States Parties alone. In any event, the procedure for such requests and the action to be taken on them should be dealt with in rules of procedure and not in the Convention itself. His delegation therefore requested that a separate vote should be taken on the second sentence of clause IX.

47. Miss TABBARA (Lebanon), supported by Mrs. WARZAZI (Morocco), said that the procedure provided for in the second sentence of clause IX was entirely appropriate. Since it was the General Assembly which was preparing and would adopt the Convention, it and not the States Parties should revise it.

48. Mr. DABROWA (Poland) and Mr. KOCHMAN (Mauritania) supported the French representative's request for a separate vote.

49. Mr. CAPOTORTI (Italy) said that the situation would be quite different once the Convention was in force. Now, when the General Assembly was drafting the Convention, no States had as yet assumed obligations under it. However, a revision of the Convention when the latter was in force would affect the obligations of the parties and it was thus logical that the task of revision should be entrusted to the States Parties. He therefore supported the French representative's view. Clause IX should in any case be regarded as supplementing clause X.

50. Mr. LAMPTEY (Ghana) observed that since the Convention would be a multilateral instrument in which all States would have an interest, it was only proper that all States, including non-parties, some of which might be in the process of ratifying it, should have a say in its revision. The General Assembly was certainly the appropriate body to institute revision procedures.

51. Mr. BELTRAMINO (Argentina) said that clause IX should be read in the light of article VIII (bis) as adopted by the Committee (A/C.3/L.1305), which implied the idea of revision of the Convention. His delegation would support clause IX in its present form.

The second sentence of clause IX (A/C.3/L.1237) was adopted by 47 votes to 21, with 23 abstentions.

Clause IX as a whole was adopted by 75 votes to none, with 16 abstentions.

CLAUSE X

52. The CHAIRMAN invited the Committee to consider clause X of the suggested final clauses (A/C.3/L.1237).

53. Mr. DABROWA (Poland) requested a separate vote on the words "referred to in paragraph 1 of article I".

54. In reply to questions by Mr. MUMBU (Democratic Republic of the Congo) and Mr. AL-RAWI (Iraq), the CHAIRMAN said that, while it was true that the Committee had not yet voted on the clause concerning reservations and that the numbers of the articles referred to in clause X would have to be changed in the light of previous decisions, the Committee would be voting only on the notification procedure. The consequential amendments necessitated by decisions which the Committee had taken or would take would be made to the final text.

The words "referred to in article I, paragraph 1 in clause X (A/C.3/L.1237) were adopted by 62 votes to 11, with 18 abstentions.

Clause X as a whole was adopted by 81 votes to none, with 10 abstentions.

CLAUSE XI

55. The CHAIRMAN invited the Committee to consider clause XI of the suggested final clauses (A/C.3/L.1237) and the seventh Polish amendment (A/C.3/L.1272) which proposed the deletion from paragraph 2 of the words "belonging to any of the categories mentioned in article I, paragraph 1".

The seventh Polish amendment (A/C.3/L.1272) was rejected by 55 votes to 14, with 20 abstentions.

Clause XI as a whole was adopted by 78 votes to none, with 10 abstentions.

56. Mrs. MANTZOULINOS (Greece) said she wished the record to indicate that her delegation had voted in favour of clause XI.

The meeting rose at 1.40 p.m.