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Chairman: Mr. Nemi Chandra KASLIWAL
(India).

AGENDA ITEM 44

Draft Convention and draft Recommendation on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (A/4844, A/5035, A/5128, A/C.3/L.982 and Add.1, A/C.3/L.983/Rev.1, A/C.3/L.985) (continued)

DRAFT CONVENTION ON CONSENT TO MARRIAGE,
MINIMUM AGE FOR MARRIAGE AND REGISTRA-
TION OF MARRIAGES (continued)

Article 4 (*concluded*)

1. Mrs. NIKOLAEVA (Union of Soviet Socialist Republics), speaking in explanation of her vote on article 4 (1142nd meeting), said that the Committee, by its decision, had excluded hundreds of millions of women from the benefits of the Convention. However, she had been gratified to note that less than half of the delegations had voted for such exclusion and that very many delegations had spoken in favour of the five-Power proposal (A/C.3/L.982 and Add.1) which would have opened the Convention to signature by all States.

2. All States, without exception, should be able to accede to the Convention if they so desired, for the more universally it was applied, the more effective it would be. Moreover, the very principles of peaceful coexistence demanded an end to the kind of discrimination implicit in the text adopted, particularly since the broadest possible international co-operation was essential if the status of women and their equality in law were to be improved.

3. Unfortunately, some delegations had persisted in their unwillingness to co-operate with the Socialist and other States which did not share their political views. Such an attitude was not only ostrich-like, since the Socialist States existed and would continue to exist, but also represented a serious obstacle to international co-operation.

4. However, the voting on article 4 had clearly shown that those delegations were rapidly losing ground, and she trusted that there would soon be an end to such discriminatory practices.

Article 5

5. Mrs. AFNAN (Iraq) proposed the adoption of article 5 as drafted in the memorandum by the Secretary-General (A/4844, annex III).

Article 5 was adopted by 55 votes to none, with 13 abstentions.

Article 6

6. Mr. IDRIS (Indonesia) proposed that the number of instruments of ratification or accession needed for the Convention to enter into force should be fixed at twenty-two, a figure which had already been adopted in a number of international conventions.

7. Mrs. MANTZOULINOS (Greece) considered that, since the draft Convention related to the rights of women, the number of instruments of ratification or accession required in the Convention on the Nationality of Married Women (General Assembly resolution 1040 (XI), annex) was a relevant precedent. That figure had been fixed at six. However, to take account of the increase in the membership of the United Nations, she proposed that it should be raised to eight in the present draft Convention.

8. The CHAIRMAN said that the proposal of the Greek representative was an amendment to the Indonesian proposal. He would therefore put it to the vote first.

The Greek amendment was adopted by 39 votes to 8, with 23 abstentions.

Article 6 as a whole, as amended, was adopted by 60 votes to 1, with 13 abstentions.

Article 7

9. Mrs. NIKOLAEVA (Union of Soviet Socialist Republics) said that in the past her delegation had always insisted on the inclusion of a territorial application clause—the so-called colonial clause—in all international agreements in order to guarantee that the benefits of such agreements were extended to the inhabitants of colonial territories. Today, however, the position had changed and the USSR delegation was opposed to the insertion in the draft Convention of any territorial application clause, since the inclusion of such a clause would mean legalizing the continued existence of colonial rule for an indefinite time. That would be entirely contrary to the provisions of the Declaration on the granting of independence to colonial countries and peoples (General Assembly resolution 1514 (XV)) and of General Assembly resolution 1654 (XVI), both of which called for the immediate transfer of power to all dependent territories. The day was rapidly approaching when all

peoples would be able to decide for themselves whether or not to accede to the Convention and it would be wrong for the Committee to legislate on the basis of the continued existence of dependent peoples and territories.

10. For those reasons she would oppose the inclusion of any colonial clause in the draft Convention.

11. Mrs. AFNAN (Iraq) said that the evolution of the territorial application clause represented a remarkable example of the progress which had been made on the colonial question in the past few years. In earlier conventions the colonial clause had provided for the optional exclusion of the colonial territories. Later, the character of the clause had changed, but it had still constituted a recognition of colonialism. Today, however, it had lost all meaning, the Declaration on the granting of independence to colonial countries and peoples having made it redundant.

12. She therefore considered that no territorial application clause should be included in the draft Convention.

13. Mr. IONASCU (Romania) endorsed the views of the USSR and Iraqi representatives. The text of article 4, as adopted (1142nd meeting), had already detracted from the principle of universality, and the adoption of the first, third or fourth versions of article 7 would do further harm to that principle by allowing a metropolitan country to decide whether or not to apply the Convention to the dependent territories for which it was responsible. Such a provision was discriminatory and therefore contrary to the Charter of the United Nations and to the Universal Declaration of Human Rights (General Assembly resolution 217 (III)).

14. It was true that variant 7-B contained no such discriminatory provision, since it would make the Convention applicable to all territories regardless of their status. However, to include it in the Convention would be both anachronistic and contrary to the provisions of the Declaration on the granting of independence to colonial countries and peoples. For those reasons the Romanian delegation was opposed to the inclusion of any territorial application clause.

15. Sir Douglas GLOVER (United Kingdom) thought it unfortunate that the discussion of article 7 should be turned into a debate on colonialism. Such matters were the exclusive concern of the Fourth Committee, the Trusteeship Council and the other bodies specifically established for that purpose.

16. The opponents of the territorial application clause seemed to think that it would detract from the universality of the Convention or tend to perpetuate the colonial status of some territories. In fact, however, the right territorial application clause would have precisely the opposite effect and would go far to facilitate the universal application of the Convention. The absence of such an article or the inclusion of the wrong one, on the other hand, would have the effect of virtually precluding acceptance of the Convention by the United Kingdom and would thus prevent its application to the people of the United Kingdom and of all the territories for whose international relations the United Kingdom was still responsible. Those territories had a wide measure of self-government and the United Kingdom could not impose the Convention on them without the fullest consultation with their appropriate legislative and administrative au-

thorities. Thus, if there were no territorial clause the United Kingdom would be unable to sign the Convention until every single territory had signified its consent, during which time the inhabitants of all the territories, including the United Kingdom, would be deprived of the protection of the Convention. He therefore regarded the inclusion of such a clause as essential. Indeed, the absence of such an article was the sole obstacle which prevented the United Kingdom from becoming a party to the Convention on the Political Rights of Women (General Assembly resolution 640 (VII), annex).

17. A territorial application clause, far from being contrary to the provisions of the Declaration on the granting of independence to colonial countries and peoples, was very much in the spirit of that Declaration, since it contributed to the growth of self-government and progress towards independence of the territories concerned. Delegates to the conference which had approved the Single Convention on Narcotic Drugs, 1961,^{1/} had wisely come to the conclusion that the territorial application clause would not conflict with that Declaration. The provisions of the Convention would in any case be widely known throughout the dependent territories and it would be unfortunate if it were also known that a majority of the Committee had taken action to deny them its benefits.

18. Of the four specimen articles suggested, articles 7-B and 7-C were completely unacceptable, since the purpose of the United Kingdom was to bring in its dependent territories, not to keep them out. Version 7-D was the ideal and he formally proposed its adoption. However, if it was the will of the majority, the United Kingdom delegation would be prepared to accept version 7-A which was the article used in the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices similar to Slavery, 1956,^{2/} in the Convention on the Nationality of Married Women, of 1957, in the Convention against discrimination in education, adopted by UNESCO on 14 December 1960,^{3/} and, as recently as August 1961, the Convention on the reduction of statelessness.^{4/}

19. Mr. SHARP (New Zealand) said that, at a certain stage in its development towards full independence, a colonial territory acquired jurisdiction over such matters as those dealt with in the draft Convention. It would clearly be wrong for the administering country to rearrogate to itself the right to decide for the territory whether the Convention should apply to it or not. Pending the time when dependent territories had full control of their affairs, they should not be prevented from exercising such rights as they had already acquired. His delegation therefore favoured the inclusion of a territorial application clause, preferably article 7-D, and, if not, article 7-A.

20. Mr. ZULOAGA (Venezuela) did not agree with the United Kingdom representative that the Third Committee was not the proper place to discuss the question of colonialism, just as he had been unable to agree, earlier, that political issues should not figure in the Committee's discussions. There were

^{1/} E/CONF.34/22.

^{2/} United Nations publication, Sales No.: 57.XIV.2.

^{3/} See United Nations Educational, Scientific and Cultural Organization, General Conference, Eleventh Session, Paris, 1960, resolutions, pp. 119-122.

^{4/} A/CONF.9/15.

no sharp divisions between the questions discussed in the United Nations, and the Third Committee would be unable to take any decisions if it was barred from touching on such vital issues as colonialism and political affairs.

21. Nevertheless, he understood the United Kingdom representative's desire for a territorial application clause, and while he sympathized with those who felt that such a clause would be contrary to the spirit of General Assembly resolution 1514 (XV), he hoped that some formulation might be found which would allow the Convention's provisions to be extended to dependent territories until the time when they acquired full independence. Article 7-D, favoured by the United Kingdom representative, did not seem an acceptable solution, however, since it made no provision for consultation with the dependent territory and left the matter of extending the application of the Convention entirely in the hands of the administering country.

22. Mr. IDRIS (Indonesia) favoured the deletion of article 7 because it implied the continued existence of colonialism. The best course for the United Kingdom, in his view, was not to insist on a territorial clause but to speed the granting of independence to its territories so that they themselves could become parties to the Convention.

23. Mr. CHAKCHOUK (Tunisia) said that, as anxious as his delegation was to ensure the universal application of the Convention, it could not accept the restrictive measures provided in article 7. In view of the General Assembly's clear-cut position on the question of colonialism, the Third Committee could not take any action sanctioning the existence of the colonial system. His delegation opposed the inclusion of a territorial application clause.

24. Mr. BELAUNDE MOREYRA (Peru) suggested that the Committee should defer further consideration of article 7 until after it had discussed article 8, which dealt with reservations. If a suitable formulation of article 8 could be found, there might be no objections to the deletion of article 7.

25. Sir Douglas GLOVER (United Kingdom) said that the Committee certainly had every right to discuss the question of colonialism. He had simply wanted the question to be debated in a practical context and with the recognition that a genuine problem existed. He stressed once again that an administering country did not have the right to interfere in the internal affairs of a territory which had reached the state of internal self-government. It was because the United Kingdom wanted such territories to benefit from the Convention that it pressed for the inclusion of a territorial clause.

26. Mrs. ROUSSEAU (Mali) opposed the inclusion of a territorial clause in any form. She was not convinced by the United Kingdom representative's argument that, in the absence of such a clause, many people would be deprived of the Convention's benefits, for no such concern had been shown at the previous meeting when many millions of people had been excluded from participation in the Convention on purely political grounds. There was no doubt that the dependent peoples would soon be in a position to accede to the Convention. In the meantime, the Committee should do nothing that countenanced the perpetuation of the colonial system.

27. Mr. TEKLE (Ethiopia) said that, if a territorial application clause was to be included, he would prefer the alternative offered in article 7-A, since it offered the greatest safeguards. The incorporation of that provision would not in his view be prejudicial to the achievement of independence by all dependent peoples, since the clause would cease to apply to a territory when it became independent. If no such clause was included, millions of people would not have the benefits of the Convention.

28. Mr. MURAYWID (Syria) supported the proposed deletion of article 7. The Committee should not give recognition to an undesirable phenomenon which was in the process of disappearing.

29. Mrs. AFNAN (Iraq) expressed doubts that the inclusion of a territorial clause was a technical necessity for any State. Countries which were responsible for the foreign relations of dependent territories and which represented them in the entire international sphere must certainly have the means of applying to them the provisions of an international convention.

30. Mr. WHITE (Australia) observed that much work had been done to produce the draft Convention and that his delegation was very anxious to see it applied. He urged the Committee to take a realistic attitude. It had been said that great progress was being made towards the achievement of independence by dependent peoples; in his view, the formulation of articles 7-A and 7-D was indicative of that progress. He formally proposed the inclusion of article 7-A.

31. Sir Douglas GLOVER (United Kingdom) withdrew his proposal for the inclusion of article 7-D and supported the Australian representative's proposal in favour of article 7-A.

32. Mr. BOUQUIN (France) also supported the inclusion of article 7-A. He added that the French text of that article should be brought into line with the English text and refer, in paragraph 1, to non-metropolitan Territories "for the international relations of which any State Party is responsible".

33. Mr. GHANUS (Afghanistan) felt that at the present stage no territorial application clause was needed. The inclusion of such a clause would be incompatible with the letter and spirit of General Assembly resolution 1514 (XV) and would mean that the United Nations was continuing to legislate in the narrow spirit of colonialism. His delegation opposed the adoption of article 7 in any form.

34. Mr. RADVANYI (Hungary) observed that the Committee's work could not be contrary to General Assembly resolutions. Resolution 1514 (XV) called for immediate steps to transfer all powers to the peoples of territories which had not yet attained independence; his delegation hoped that the injunction would be carried out in respect of all such territories by 1963 and it could not, therefore, agree to the inclusion of a territorial application clause in the draft Convention.

35. Mrs. KIRILOVA (Ukrainian Soviet Socialist Republic) found it incomprehensible that, in drafting a humanitarian convention two years after the adoption of the Declaration on the granting of independence to colonial countries and peoples, an attempt should be made to sanction the existence of colonialism. Her delegation believed that article 7 should be deleted from the draft Convention.

36. Mr. BAROODY (Saudi Arabia) recalled that States with a federal form of government had at one time insisted upon the inclusion of a so-called federal clause in international agreements, on the ground that they could not ratify or adhere to such instruments without consulting their component political entities. He noted that there was no federal clause in the draft Convention before the Committee, the States in question having apparently found means of overcoming their difficulties. He appealed to the United Kingdom to consider, in view of the increasing number of delegations which were opposed to the inclusion of a colonial clause in any United Nations convention, whether it could not follow the example of the federal States and find a way of overcoming the technical difficulties that impelled it to insist on a territorial application clause.

37. Mr. GHORBAL (United Arab Republic) said that the arguments being put forward in favour of the inclusion of a colonial clause in the draft Convention belonged to an era that was already past; the terminology once approved by the General Assembly for certain international conventions was not relevant in the context of the Committee's current work. The colonial Powers had had almost two years in which to implement General Assembly resolution 1514 (XV), and to seek the incorporation in a universal convention of a clause allowing them further time was to ask too much. At the opening meetings of the session, many delegations had said that the Committee should comply with resolution 1680 (XVI) of the General Assembly in giving priority to the item under discussion; in the same way, the General Assembly's decision of two years previously should be respected. His delegation favoured the deletion of article 7.

38. Miss RENJU (Tanganyika) emphasized that colonialism was contrary to the resolutions of the United Nations and inconsistent with the humanitarian purposes of the Third Committee. If the colonial Powers were concerned for the interests of the peoples under their rule, they should grant them independence, so that those peoples could themselves sign the conventions which would be legally binding on them. Her delegation was not prepared to accept article 7.

39. Mr. PICO (Argentina) said that it would be anachronistic to include in the draft Convention an article which was a vestige of an era that had ended with the adoption of General Assembly resolution 1514 (XV). Unfortunately, there were still a few Non-Self-Governing Territories, but they would attain independence shortly and, in the meantime, the metropolitan countries were responsible for their well-being and should ensure that the draft Convention applied to them. On the other hand, the United Kingdom's difficulties must be acknowledged, and the Peruvian representative's suggestion might offer a solution.

40. Sir Douglas GLOVER (United Kingdom) remarked that some of the statements made concerning Non-Self-Governing Territories indicated a misunderstanding of the problem. The difficulty in which the United Kingdom found itself was due largely to the very fact that many of the territories for which it was responsible were virtually self-governing, with the result that his Government had no power to direct them in matters of domestic legislation. The inclusion of a territorial application clause in the draft Convention was vital to their interests at the present time, and the aim of the United Kingdom Government was not to prolong colonialism, but rather to hasten its end.

41. Mr. E. K. DADZIE (Ghana) considered the United Kingdom representative's statement very important, since in effect it confirmed the view taken by many delegations that there should be no territorial application clause. If most Non-Self-Governing Territories were well on the way to independence, they would soon be able to accede to the Convention in their own right, and article 7 was not needed. In keeping with Ghana's long-standing position, his delegation could not support any move that would lead to a perpetuation of the evil institutions of colonialism, imperialism and neo-colonialism, and it would take no part in the vote on any proposal to retain article 7.

The meeting rose at 1 p.m.