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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.982-983) (continued)

DRAFT CONVENTION ON CONSENT TO MARRIAGE, MINIMUM AGE FOR MARRIAGE AND REGISTRATION OF MARRIAGES

Article 4

1. Mr. IONASCU (Romania), speaking on behalf of Iraq and Romania, introduced a proposal to add an article 4 to the draft Convention (A/C.3/L.982).
2. Mrs. KIRILOVA (Ukrainian Soviet Socialist Republic) recalled that the Committee had considered and adopted the main articles of the draft Convention at the sixteenth session. She expressed the hope that it would be possible to complete the study of the draft and to adopt the Convention at the seventeenth session.
3. The two variants of article 4 which appeared in the memorandum by the Secretary-General (A/4844, annex III) were unsatisfactory. The purpose of the Convention was to eliminate all the forms of discrimination to which women might still be subject as the result of such customs as marriage without consent or child marriage. Unfortunately, in draft articles 4-A and 4-B there was a tendency to introduce another type of discrimination: through the exclusion of certain States, the women who were citizens of those States were also excluded. There was a contradiction here. It seemed anomalous to seek to remove one type of discrimination by setting up another. Accordingly, the proposal submitted by Iraq and Romania, which provided that the Convention should be opened for signature by all States, offered the only acceptable solution.
4. Mr. IDRIS (Indonesia) reminded the Committee that it had been set up to deal with social, cultural

and humanitarian questions, and that it should confine itself to examining the items before it from those points of view, to the exclusion of all others. Furthermore, the preamble and the substantive articles of the draft Convention before the Committee related to all marriages without exception. Accordingly, it was the Committee's duty to ensure that the Convention could be signed and ratified by all the States which wished to do so.

5. In all the countries of the world marriage was a social institution, and the goal of the draft Convention before the Committee was to apply to that institution the principles set forth in the Universal Declaration of Human Rights (General Assembly resolution 217 (III)). To set conditions with regard to the signature and ratification of such a text would prejudice the interests of millions of women who, for purely political reasons, were not represented in the Committee. In those circumstances he would support the Iraqi and Romanian proposal with regard to article 4. Similarly, draft article 5, which dealt with accession to the Convention, should be amended to convey the idea that it was open to all States.

6. Mrs. TILLET (United States of America) said that, while her delegation generally approved of draft articles 4-A and 4-B as they appeared in the memorandum by the Secretary-General, they contained several technical imperfections. First, article 4-A excluded such States as Switzerland which, although not Members of the United Nations, were nevertheless members of one or more specialized agencies. Article 4-B took those States into account but, apart from the fact that the wording was imprecise, it raised the question whether future Members of the United Nations might sign the Convention. Neither article 4-A nor article 4-B set a time limit for ratification. Since article 5 provided for accession, it would be necessary to specify a time limit on signature and ratification. Furthermore, draft articles 4-A and 4-B provided that the Convention should be signed and ratified, whereas article 5 gave States another opportunity of becoming Party to it by accession. There was therefore an incompatibility between the ratification clause, which was mandatory, and the provision concerning accession.

7. The United States delegation would prefer to replace those draft articles by wording which it had submitted in writing (A/C.3/L.983), modeled on various conventions on the law of the sea.^{1/} That wording could not be regarded as restrictive, since it authorized signature by all States Members of the United Nations or members of the specialized agencies and by any other State invited by the General Assembly

^{1/} See United Nations Conference on the Law of the Sea, *Official Records, Volume II: Plenary Meetings* (United Nations publication, Sales No.: 58.V.4, Vol. II), annexes, pp. 135, 138, 141, 143.

to become a Party to the Convention. Accordingly, it unambiguously specified the States which could sign and ratify the Convention—something which the Secretary-General, as the depositary, must be in a position to know. The text proposed by Iraq and Romania lacked this clarity, and her delegation therefore could not accept it.

8. Mrs. NIKOLAEVA (Union of Soviet Socialist Republics) said she could not see why such a useful and progressive convention could not be signed and ratified by all States. Because of its humanitarian character, that instrument should be signed by the greatest possible number of States, and the Committee would be taking a wrong course if it allowed a choice to be made among the States called upon to ratify the Convention. Article 4-A as set forth in the memorandum by the Secretary-General should provide that the Convention would be open for signature to all States Members of the United Nations and to all other States. She would therefore support the proposal submitted by Iraq and Romania. A consequential amendment should also be made to article 5, so as to enable any State to accede to the Convention.

9. She was unable to understand how the United States representative could countenance the idea that women in certain countries should be denied the protection of a convention on marriage.

10. Sir Douglas GLOVER (United Kingdom) agreed that the Third Committee's task was to deal exclusively with social, cultural and humanitarian questions. That was why he unreservedly supported the United States proposal, for although a convention such as the one at issue was undeniably universal in character, the fact remained that the Iraqi-Romanian proposal was not motivated solely by the wish to ensure the application of the principle of universality. He therefore preferred the United States formulation. No one should forget that it was an honour for a State to be invited to become a Member of the United Nations or a member of the specialized agencies. Nevertheless, some States were not members either of the United Nations or of the specialized agencies, and it was not for the Third Committee to amend the practice hitherto followed in their regard; the responsibility for taking decisions in that purely political sphere lay with other organs.

11. Mr. BAHNEV (Bulgaria) was afraid that, in accordance with a time-honoured practice, certain representatives were trying not to listen to the arguments advanced against their own, for fear of being convinced by them. They cited precedents, particularly those provided in the memorandum by the Secretary-General, and various international agreements, such as the conventions on the law of the sea. Unfortunately, the value of such precedents was doubtful in the case at issue.

12. The Third Committee, whose task it was to study social, cultural and humanitarian questions, was called upon to examine a convention which, although cultural and humanitarian in character, would take its place in international law. The great majority of the speakers had stressed the universality of the draft Convention (1140th meeting) and it had even been said that the Committee would be legislating for the world. The United Kingdom representative, in his turn, had just said that the Convention would be universal in character. If that was so, there was no justification for adopting a formula such as that pro-

posed in the first paragraph of article 4-A, which excluded millions of women from benefiting from the provisions of the Convention.

13. The adoption of such an article would open the door to every possible interpretation and would deprive the draft before the Committee of the universality which all wished to give it. Accordingly, all States should be able to sign and ratify the Convention or to accede to it, including the States which some now wished to exclude and which, according to data provided by the Population Commission, accounted for 700 to 800 million persons.

14. Mr. E. K. DADZIE (Ghana) regretted that draft articles 4-A and 4-B and the United States proposal tended to limit the application of a Convention which, because of its highly humanitarian character, should be universal in scope. For its part, his delegation could not admit that the way was barred in that regard to such countries as Korea, Viet-Nam and China.

15. The proposed texts exemplified an attitude which was regrettable since it tended to limit the Organization's field of action to one part of the world only. It seemed to Ghana that the moment had come when all nations, and no longer just States which were Members of the United Nations or members of the specialized agencies, should be enabled to benefit from the activities and accomplishments of the Organization. Moreover, the United Nations itself had renounced that unfortunate practice on occasions which had seemed to it exceptionally important. No further evidence need be cited than resolution 1474 (ES-IV), in which the General Assembly had requested all States without exception to refrain from any action which might tend to impede the restoration of law and order and the exercise by the Government of the Republic of the Congo of its authority. The Convention on marriage was likewise an important instrument, and the United Nations should act in that area with the breadth of view which it unflinchingly advocated.

16. His delegation would accordingly vote in favour of the text submitted by Iraq and Romania which fully satisfied the objective of universality so highly prized by Ghana.

17. Mrs. DEMBINSKA (Poland) recalled that her delegation had always attached the greatest importance to the principle of universality and had supported that principle at several international conferences.

18. The trend towards universality, which was keeping pace with developments in international relations, had been reflected in a number of important conventions, including the four conventions adopted at Geneva in August 1949 concerning wounded military personnel and the protection of civilian persons in time of war.^{2/} In addition, the International Law Commission, in commenting in its report on articles 8 and 9 of its draft articles on the law of treaties, had declared that general multilateral treaties "because of their special character should, in principle, be open to participation on as wide a basis as possible".^{3/} That being so, certain general treaties such as the Convention on marriage could not be closed to States desiring to become Parties without infringing

^{2/} United Nations, *Treaty Series*, vol. 75, 1950, I. Nos. 970-973.

^{3/} See *Official Records of the General Assembly, Seventeenth Session, Supplement No. 9 (A/5209)*, p. 11.

the fundamental principles of international law, of the Charter of the United Nations and of the Universal Declaration of Human Rights.

19. As the representative of the Ukrainian SSR had correctly stated, one purpose of the Convention was to eliminate all forms of discrimination to which women were subject. It could not therefore include a discriminatory clause. On the contrary, a convention of that kind, concluded under United Nations auspices, must be universal in character, in conformity with the concept of international co-operation. Since all States had an interest in the Convention, all should be able to accede to it. The proposal of the Iraqi and Romanian delegations could not therefore fail to meet with Poland's approval.

20. Mr. RIOS (Panama) considered that, since the Convention had a universal character, it should be open for signature by all States desiring to adhere to it. The problem before the Committee might be solved simply by the addition of a paragraph stipulating that the Convention could be ratified by any State that might express a wish to do so.

21. Miss WACHUKU (Nigeria) shared the view of the Panamanian representative. The States Members whose representatives had taken part in the discussion of the Convention could sign it and ratify it; as to non-member States that wished to apply it, there was nothing to prevent them from doing so.

22. Mr. SKURKO (Byelorussian Soviet Socialist Republic) expressed his satisfaction at the presence in the Committee of the representatives of four new Member States. He went on to state his deep regret that the United States of America and the United Kingdom had put forward cold-war arguments in a committee dealing with humanitarian and social matters. Those delegations deliberately sought to exclude not only countries such as China and Viet-Nam, which represented approximately 1,000 million persons, but also the countries which had not yet attained independence.

23. He hoped that the Committee would reject the text submitted by the United States delegation and would accept the wording proposed by the Iraqi and Romanian delegations.

24. Mr. BARODY (Saudi Arabia) noted that a debate such as the present one recurred whenever the discussion turned to provisions concerning the application of a legal instrument or a resolution.

25. It was necessary to avoid confusing political questions, which were one thing, and the safeguarding of human rights, which was another. It must not be forgotten that nations were composed of human beings who, whatever their religion or whatever the political system under which they lived, had sacred rights which the conventions on human rights sought to protect. Those conventions should, therefore, have a universal character, and the United Nations should permit all States that so desired to accede to them, without any distinction as to ideology. If the United Nations did otherwise, it would run the risk of becoming a kind of club.

26. He seemed to remember that, in at least one case in which the question had been raised, the Third Committee, moved by humanitarian concerns, had succeeded in finding a compromise solution which

had satisfied both of the positions now being put forward but without excluding any State. He earnestly hoped that a similar solution might be found in the present instance.

27. Mrs. AFNAN (Iraq) wished to stress again that the Convention should be universal in character. The formula proposed in the alternative article 4-A, as the comment indicated, (A/4844, annex III) followed the example of the Convention on the Political Rights of Women adopted by the General Assembly in 1952 (resolution 640 (VII), annex). It was surprising that so discriminatory a formula could have been adopted only ten years ago; if it was used again now, the Convention adopted by the United Nations would be in danger of rapidly falling behind the historical march of world events.

28. She did not believe that the text proposed by the United States of America could be considered an amendment to the proposal submitted by Iraq and Romania. It was actually an entirely different proposal.

29. Mr. DIAZ CASANUEVA (Chile) warmly supported the representatives of Saudi Arabia and Panama. He said that, in his opinion, it would be premature for the Committee to take a stand immediately on the two proposals before it, namely, the very broad proposal by Iraq and Romania and the other plainly restrictive proposal in the Secretariat draft.

30. The universality regarded as desirable was not, of course, a universality limited to the members of what the representative of Saudi Arabia had called a club. The question was, however, complicated by a political factor, since there was a danger that certain countries which the General Assembly had not admitted to membership in the United Nations might force their entry indirectly through the signing of a convention. That difficult problem must, therefore, be examined with goodwill, and a formula must be found by which the principle of universality would be safeguarded. That formula might be based on the fact that there was a juridical distinction between restricting signatures to certain countries and prescribing certain formal requirements for possible signatories.

31. The CHAIRMAN suggested that the Committee should go on to the discussion of article 5. That would give delegations time to draw up a compromise proposal before the vote.

32. Mr. IONASCU (Romania), supported by Mr. BAHNEV (Bulgaria) and Mrs. NIKOLAEVA (Union of Soviet Socialist Republics), expressed the opinion that the Committee could not undertake the discussion of article 5 before it had voted on article 4, since the two texts were closely connected.

33. Mr. BA (Mauritania) formally moved the adjournment of the meeting so that delegations might have time to examine the proposals before the Committee thoroughly and seek a compromise solution.

34. The CHAIRMAN put the motion to the vote, in accordance with rule 119 of the rules of procedure.

The motion was adopted by 42 votes to 5, with 22 abstentions.

The meeting rose at 4.35 p.m.