

60. She did not underestimate the complexities of developing an instrument of international law or the problems and misgivings expressed by a number of delegations. However, her delegation's legal advisers had assured her that the legal problems raised by the draft Convention were by no means insurmountable.

61. Her delegation wished to request a recorded vote on the draft Convention and the amendments to it.

62. Mrs. MOHAMMED (Nigeria) said that, while her delegation respected the views of those who found difficulty with specific provisions of the draft Convention, it could not understand objections to the principle of adopting a convention on the suppression and punishment of *apartheid*. The Commission on Human Rights¹ and the Special Committee on *Apartheid*² had approved the draft Convention. Her delegation appealed to members of the Third Committee to adopt the draft Convention with a view to eradicating the wicked and inhuman practices of *apartheid* and alleviating the suffering of

¹ See *Official Records of the Economic and Social Council, Fifty-fourth Session, Supplement No. 6*, chap. XX, resolution 16 (XXIX).

² See *Official Records of the General Assembly, Twenty-eighth Session, Supplement No. 22*, para. 124.

those under its yoke. Nigeria would vote in favour of its adoption.

63. Mr. PETROPOULOS (Greece) said that his country's traditions left no doubt as to its position on the question of *apartheid*. For example, Greece had acceded to the International Convention on the Elimination of All Forms of Racial Discrimination, which contained a specific reference to *apartheid*. At the same time, his delegation was not convinced that a number of serious legal problems raised by the document had been overcome by the amendments submitted. It could not give unqualified approval to an international instrument which had not reached the point where it could command universal acceptance, and would consequently abstain in the vote on the draft Convention.

64. Mr. MOUSSA (Niger) expressed gratitude to all those who had contributed to improving the draft Convention. His country, which had suffered colonial domination, welcomed the Convention's broadness of scope and would vote in favour of its adoption.

The meeting rose at 12.55 p.m.

2008th meeting

Friday, 26 October 1973, at 3.10 p.m.

Chairman: Mr. Yahya MAHMASSANI (Lebanon).

A/C.3/SR.2008

AGENDA ITEM 53

Elimination of all forms of racial discrimination (continued) (A/9003 and Corr.1, chaps. XXIII, sect. A.1 and A.2 and XXX, sect. B; A/9018, A/9094 and Corr.1 and Add.1 and 2, A/9095 and Add.1, A/9139, A/9177, A/C.3/L.2016, 2017, 2018/Rev.1, 2019/Rev.1, 2020-2026):

(b) **Draft Convention on the Suppression and Punishment of the Crime of *Apartheid* (concluded)** (A/9003 and Corr.1, chap. XXIII, sect. A.2, A/9095 and Add.1, A/C.3/L.2016, 2017, 2018/Rev.1, 2019/Rev.1, 2020-2026)

1. Mr. SMIRNOV (Union of Soviet Socialist Republics), explaining his vote in advance, said that the USSR was pleased to be one of the 33 sponsors of the draft Convention on the Suppression and Punishment of the Crime of *Apartheid* (A/9095, annex, and A/9095/Add.1), which it believed would have a decisive moral, political and legal influence in bringing about the elimination of that crime. His delegation was surprised at the unfounded misgivings expressed by some delegations, which had nevertheless refrained from making comments when they had had the opportunity to do so during the article-by-article consideration of the draft Convention. His delegation did not consider that the machinery provided for in the draft was complex or detrimental to the constitutional structures of United Nations organs. Moreover, if the draft Convention posed problems in connexion with the Constitution of a particular State, consideration should be given to mod-

ifying the constitutional structure of that State if progress was to be made in the struggle against *apartheid*.

2. The vote on the draft Convention and the related draft resolution (A/C.3/L.2022) would show which countries genuinely wished to combat *apartheid* and which countries were helping to perpetuate racism and racial discrimination in South Africa.

3. Mr. KABINGA (Zambia) said that Zambia was a sponsor of draft resolution A/C.3/L.2022 and would vote for the draft Convention and for all the amendments thereto, except for those contained in document A/C.3/L.2026, which in its opinion weakened the text. His delegation did not believe that the draft Convention posed legal problems, and it was convinced that the legal arguments adduced against the draft could ultimately be reduced to the national interests of a particular country and the way in which those interests were related to South Africa. In other words, those arguments were based on purely political considerations. Moreover, it was necessary to help to make international law more progressive, and his delegation found it regrettable that it was not possible to relate legal norms to justice. It should be reiterated that there was a marked parallel between nazism and *apartheid*, and it was surprising to find one Power affirming that, legally, *apartheid* was not a crime against humanity. He did not believe that legality could be divorced from reality. His country had therefore been extremely concerned about the reservations regarding the draft Convention which had been expressed at the previous meeting.

4. Miss FAROUK (Tunisia) said that her delegation considered that the draft Convention still required

further elaboration from the legal point of view, and in that respect shared the reservations expressed by the representative of Turkey at the previous meeting. Nevertheless, it preferred to vote for the text, whatever its imperfections, rather than to delay the adoption of an instrument to combat the crime of *apartheid*, since Tunisia had always been strongly opposed to that hateful policy.

5. With regard to the amendments submitted, she thought that the Moroccan amendment (A/C.3/L.2020) clarified and precisely defined the sphere of application of the Convention and helped to dispel certain misgivings expressed by some delegations. Her delegation would vote for all the amendments proposed, except for the amendment to article III contained in document A/C.3/L.2026, believing that the Committee's role was to help to elaborate a body of international law imbued with a sense of justice.

6. The CHAIRMAN invited the Committee to proceed to an unrecorded vote on the draft Convention (A/9095, annex, and A/9095/Add.1), on an article-by-article basis, and also on the amendments thereto, except in those cases in which a recorded vote had been requested.

First preambular paragraph

The first amendment by Mali (see A/C.3/L.2021) was adopted by 86 votes to none, with 16 abstentions.

The first preambular paragraph, as amended, was adopted by 89 votes to none, with 13 abstentions.

Second preambular paragraph

The second amendment by Mali (see A/C.3/L.2021) was adopted by 86 votes to none, with 17 abstentions.

The second preambular paragraph, as amended, was adopted by 93 votes to none, with 14 abstentions.

Third preambular paragraph

The third amendment by Mali (see A/C.3/L.2021) was adopted by 90 votes to none, with 15 abstentions.

The amendment by Ghana (A/C.3/L.2016) was adopted by 89 votes to none, with 15 abstentions.

The third preambular paragraph, as amended, was adopted by 90 votes to none, with 14 abstentions.

Fourth, fifth, sixth and seventh preambular paragraphs

The fourth, fifth, sixth and seventh preambular paragraphs were adopted by 87 votes to none, with 20 abstentions.

Eighth preambular paragraph

The new text proposed by Burundi (A/C.3/L.2024), as orally revised, was adopted by 84 votes to none, with 21 abstentions.

Ninth preambular paragraph

The fifth amendment by Mali (see A/C.3/L.2021) was adopted by 87 votes to none, with 20 abstentions.

The ninth preambular paragraph, as amended, was adopted by 88 votes to none, with 20 abstentions.

Article I

The sixth amendment by Mali (see A/C.3/L.2021) was adopted by 88 votes to none, with 18 abstentions.

Article I, as amended, was adopted by 91 votes to 3, with 18 abstentions.

Article II

Preliminary paragraph

The first part of the seventh amendment by Mali (see A/C.3/L.2021) was adopted by 90 votes to none, with 19 abstentions.

The amendment by Morocco, the Niger and Pakistan (A/C.3/L.2020) was adopted by 89 votes to 3, with 19 abstentions.

Subparagraph (a)

The second part of the seventh amendment by Mali (see A/C.3/L.2021) was adopted by 82 votes to none, with 22 abstentions.

Subparagraph (a) (ii)

The third part of the seventh amendment by Mali (see A/C.3/L.2021) was adopted by 89 votes to none, with 21 abstentions.

Article II as a whole, as amended, was adopted by 88 votes to 3, with 21 abstentions.

Article III

At the request of the representative of Mauritania, a recorded vote was taken on the first amendment by Bolivia, Chile, Colombia, Costa Rica, Ecuador, Haiti, Honduras, Panama, Paraguay, Peru, Uruguay and Venezuela (see A/C.3/L.2026).

In favour: Australia, Belgium, Bolivia, Brazil, Burma, Canada, Chile, Costa Rica, Ecuador, Guatemala, Haiti, Honduras, Iran, Netherlands, New Zealand, Peru, Sri Lanka, Turkey, Uruguay, Venezuela.

Against: Afghanistan, Algeria, Bulgaria, Byelorussian Soviet Socialist Republic, Cameroon, Congo, Cuba, Czechoslovakia, Democratic Yemen, Egypt, Ethiopia, Gabon, Gambia, German Democratic Republic, Ghana, Guinea, Hungary, India, Kenya, Kuwait, Lebanon, Liberia, Libyan Arab Republic, Madagascar, Mali, Mauritania, Mongolia, Nepal, Niger, Nigeria, Poland, Romania, Rwanda, Senegal, Sierra Leone, Somalia, Sudan, Togo, Tunisia, Uganda, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Republic of Tanzania, Upper Volta, Yemen, Yugoslavia, Zaire, Zambia.

Abstaining: Argentina, Austria, Bahamas, Bahrain, Barbados, Bhutan, Burundi, Central African Republic, Colombia, Cyprus, Denmark, Fiji, Finland, France, Germany (Federal Republic of), Guyana, Iceland, Indonesia, Iraq, Ireland, Italy, Jamaica, Japan, Laos, Malaysia, Mexico, Morocco, Norway, Oman, Pakistan, Philippines, Saudi Arabia, Singapore, Spain, Sweden, Thailand, Trinidad and Tobago, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United States of America.

The amendment was rejected by 48 votes to 20, with 40 abstentions.

The eighth amendment by Mali (see A/C.3/L.2021) was adopted by 72 votes to none, with 36 abstentions.

Article III, as amended, was adopted by 80 votes to 3, with 28 abstentions.

Article IV

Subparagraph (a)

The amendment by Egypt (A/C.3/L.2017), as orally revised, was adopted by 88 votes to none, with 22 abstentions.

Subparagraph (b)

The first amendment by Guyana (see A/C.3/L.2018/Rev.1) was adopted by 78 votes to none, with 31 abstentions.

Article IV, as amended, was adopted by 84 votes to 3, with 25 abstentions.

Article V

The ninth amendment by Mali (see A/C.3/L.2021) was adopted by 80 votes to none, with 24 abstentions.

Article V, as amended, was adopted by 85 votes to 3, with 23 abstentions.

Article VI

Article VI was adopted by 90 votes to 1, with 21 abstentions.

Article VII

Article VII, as orally amended, was adopted by 90 votes to none, with 22 abstentions.

New article VIII proposed by the USSR

The new article VIII (A/C.3/L.2019/Rev.1) was adopted by 83 votes to 3, with 25 abstentions.

Article IX (former article VIII)

Article IX was adopted by 89 votes to 3, with 20 abstentions.

Article X (former article IX)

Article X, as orally amended, was adopted by 89 votes to 3, with 20 abstentions.

Article XI (former article X)

The second amendment by Bolivia, Chile, Colombia, Costa Rica, Ecuador, Haiti, Honduras, Panama, Paraguay, Peru, Uruguay and Venezuela (see A/C.3/L.2026), as orally revised, was adopted by 63 votes to 3, with 43 abstentions.

Article XI, as amended, was adopted by 84 votes to 1, with 28 abstentions.

Article XII (former article XI)

Article XII was adopted by 88 votes to 1, with 24 abstentions.

Article XIII (former article XII)

The second amendment by Guyana (see A/C.3/L.2018/Rev.1) was adopted by 92 votes to none, with 17 abstentions.

Article XIII, as amended, was adopted by 89 votes to 3, with 20 abstentions.

Article XIV (former article XIII)

Article XIV was adopted by 94 votes to none, with 20 abstentions.

Article XV (former article XIV)

The tenth amendment by Mali (see A/C.3/L.2021) was adopted by 94 votes to none, with 18 abstentions.

Article XV, as amended, was adopted by 91 votes to none, with 22 abstentions.

Articles XVI, XVII, XVIII and XIX (former articles XV, XVI, XVII and XVIII)

Articles XVI, XVII, XVIII and XIX were adopted by 94 votes to none, with 20 abstentions.

Draft Convention as a whole, as amended

At the request of the representative of Mauritania, a recorded vote was taken.

In favour: Afghanistan, Albania, Algeria, Argentina, Bahamas, Bahrain, Barbados, Bhutan, Bolivia, Bulgaria, Burma, Burundi, Byelorussian Soviet Socialist Republic, Cameroon, Central African Republic, Chad, Chile, China, Congo, Costa Rica, Cuba, Cyprus, Czechoslovakia, Dahomey, Democratic Yemen, Ecuador, Egypt, El Salvador, Ethiopia, Fiji, Gabon, Gambia, German Democratic Republic, Ghana, Guatemala, Guinea, Guyana, Haiti, Honduras, Hungary, India, Indonesia, Iran, Iraq, Jamaica, Kenya, Kuwait, Laos, Lebanon, Liberia, Libyan Arab Republic, Madagascar, Malaysia, Mali, Mauritania, Mexico, Mongolia, Morocco, Nepal, Niger, Nigeria, Oman, Pakistan, Peru, Philippines, Poland, Qatar, Romania, Rwanda, Saudi Arabia, Senegal, Sierra Leone, Singapore, Somalia, Sri Lanka, Sudan, Thailand, Togo, Trinidad and Tobago, Tunisia, Turkey, Uganda, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Emirates, United Republic of Tanzania, Upper Volta, Uruguay, Venezuela, Yemen, Yugoslavia, Zaire, Zambia.

Against: Portugal.

Abstaining: Australia, Austria, Belgium, Botswana, Brazil, Canada, Colombia, Denmark, Finland, France, Germany (Federal Republic of), Greece, Iceland, Ireland, Italy, Japan, Lesotho, Netherlands, New Zealand, Norway, Spain, Sweden, United Kingdom of Great Britain and Northern Ireland, United States of America.

The draft Convention as a whole, as amended, was adopted by 93 votes to 1, with 24 abstentions.

7. The CHAIRMAN said that an unrecorded vote would next be taken on draft resolution A/C.3/L.2022, as orally revised.

The draft resolution, as orally revised, was adopted by 90 votes to 1, with 21 abstentions.

8. Mr. SAYAR (Iran), explaining his vote, said that his delegation's position concerning the question of *apartheid* was clear and had been stated very forcefully on numerous occasions. Iran had consistently denounced *apartheid*, not only in the light of the objectives of the Charter of the United Nations and the principles proclaimed in the Universal Declaration of Human Rights, but also out of solidarity with the brother countries of Africa and millions of human beings who were victims of that practice and whose un-speakable suffering was of concern to Iran. Iran had afforded proof of that attitude by its ratification of the International Convention on the Elimination of All Forms of Racial Discrimination, not to mention its participation in the International Conference on Human Rights in 1968, which it had had the honour to host. Moreover, Iranian experts had taken part in the International Conference of Experts for the Support of Victims of Colonialism and *Apartheid* in Southern Africa, held at Oslo in April 1973. The question of *apartheid* and the most appropriate and effective means of combating it had been dealt with on all those occasions.

9. His delegation felt that the draft Convention which had been adopted was a praiseworthy initiative, and met the desires of many countries which were impatiently waiting for the struggle against *apartheid* to take a more positive and concrete form through the adoption of an international instrument for the suppression of that crime. But it was one thing to draw up an instrument on paper and another to apply it in reality. The adoption of an international instrument of such importance, involving fundamental aspects of international law, the law of treaties, internal law and penal procedure, would be a crucial step in the evolution of international penal law, and therefore greater attention should be paid to its practical aspects. Articles III, IV and V of the draft immediately raised delicate problems and would lead to difficulties. Some delegations, especially that of Turkey, had described ably and in detail all the legal and practical difficulties which would be involved. His delegation had abstained in the voting on articles III, IV and V of the draft Convention solely for considerations of that order. However, that vote did not change in any way the position of his delegation and his Government with regard to the need to combat effectively the practice of *apartheid* and to eliminate that scourge of humanity.

10. Mr. PARDOS (Spain), speaking in explanation of his vote, said that the draft Convention which had been adopted was of transcendent importance because it sought to bring within the purview of criminal law one of the basic principles of humanity, the principle of the essential equality of all human beings; it was also important because of its very broad scope. However, its subject matter was delicate and difficult, because it affected the freedom of individuals and regulated such controversial matters as the criminal responsibility of organizations or institutions, so-called universal jurisdiction, the identification of certain crimes as crimes against humanity, the solution of conflicts between States, and so on. In the view of his delegation, the text adopted had neither given sufficient attention to, nor found solutions for, the difficulties raised by those matters, and such technical defects, combined with the

text's lack of harmony with other conventions in force, would make it very difficult to ensure its effective implementation.

11. As an example, he referred to the definition of the crime of *apartheid* in articles I and II: according to article I, all inhuman acts resulting from the policies and practices of *apartheid* constituted a crime, while under the terms of article II any inhuman act committed for the purpose of maintaining domination by one group constituted a crime. Article II therefore required that the act should have a purpose which was not required in article I; but in addition to that generic requirement, article II (a) required that in the case of an attack the act should be serious and produce a result. On the other hand, since intention alone was required in subparagraphs (b) and (c) of article II, there was some doubt as to whether intention was necessary for the commission of the crime or crimes described in subparagraph (a), a doubt which was further strengthened by a consideration of the wording of article I, which required neither a purpose, nor intention nor a result.

12. From another point of view, if the proposed text was compared with the corresponding articles of the Convention on the Prevention and Punishment of the Crime of Genocide, the content of which Spain had incorporated into its Penal Code, it would be found that that Convention punished the same acts that were made punishable by the text which had just been adopted and that the aim of domination by one group over another, which characterized *apartheid*, could be regarded as coming under the arm of the destruction of a group, which characterized genocide. An analysis of subparagraph (a) of article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination, to which Spain was also a party, showed that it declared an offence punishable by law "all acts of violence" against any group of persons "of another colour or ethnic origin" the purpose or result of which was to nullify or impair the equal enjoyment of rights. Therefore, while the Convention on genocide brought within the purview of criminal law a group's right to life and to a way of life, the International Convention on the Elimination of All Forms of Racial Discrimination, with *apartheid* unquestionably constituting one of those forms of racial discrimination, covered the principle of racial equality, which was also one of the aims of the draft that had just been adopted.

13. His delegation considered it necessary to take into account the interrelationship between the Conventions referred to and the text which the Committee had adopted, in order to achieve greater effectiveness in the efforts to eliminate *apartheid*. It was in the light of his delegation's concern over the draft Convention's effectiveness, which had been very realistically called into question in the Committee, that its vote should be understood. The Spanish people and Government rejected and condemned all forms of racism, and in particular *apartheid*, the practice of which it considered contrary to the most elementary norms of morality and justice. His delegation fully supported the purpose of the draft Convention, which aimed at giving effect to the principle of racial equality, but it had serious misgivings about the effectiveness of the means proposed, and therefore found itself obliged to mark its reservations by abstaining in the vote on the draft and its respective

amendments, as well as on draft resolution A/C.3/L.2022.

14. Mr. WILDER (Canada), in explanation of his vote, said that Canada approved the principle behind the action to bring about the eradication of all forms of *apartheid* and racial discrimination. The Canadian people and Government strongly condemned the policy of *apartheid* practised by the racist régime of South Africa and its attitude was exemplified by the statement of the Permanent Representative of Canada to the United Nations at the 862nd meeting of the Special Political Committee, on 11 October, on the occasion of the Day of Solidarity with South African Political Prisoners. Canada had always opposed and would continue to oppose policies which debased human dignity and freedom. His delegation had abstained in the vote on the draft Convention as a whole and on the draft resolution because it considered that the terms of a legally binding instrument should be drawn up much more carefully in order to avoid loose wording and, as a result, possibly widely varying interpretations. Certain terms used in the draft Convention could and should have been much more circumscribed, and before being voted upon should have been sent to a group of legal experts who would have studied in detail the consequences of its implementation and introduced textual improvements through clarification of language. As had been suggested by some delegations, in particular that of Turkey, the draft should have been referred to the Sixth Committee.

15. The Canadian Government foresaw juridical difficulties with the text as it stood. The draft Convention established universal jurisdiction in respect of the crime of *apartheid*, and the provisions of articles I, III, IV, V and X constituted for States parties an undertaking to enact domestic implementing legislation which would establish such universal jurisdiction. His Government, however, could not establish in Canada universal jurisdiction in respect of the crime of *apartheid* as so broadly defined in article II of the text under consideration. The draft Convention also gave rise to the problem of who, in the absence of an international criminal tribunal, would determine whether the crime of *apartheid* as defined in article II had been committed, who would give the evidence and under what conditions, and who would decide whether there was sufficient evidence to prosecute the alleged offenders. For those reasons, while his delegation agreed with the aims of the draft Convention, it had not been able to vote in favour of the draft in its existing legally imprecise form.

16. Mr. COSTA COUTO (Brazil), explaining his vote, said that his delegation, although firmly committed to the struggle against all forms of racial discrimination, had been unable to cast a favourable vote for either the draft resolution or the draft Convention. If the draft Convention had been considered from a strictly juridical point of view, his delegation would have had to express its position by a negative vote, since many of its paragraphs were in contradiction with Brazilian constitutional organization and international juridical order.

17. His delegation had serious misgivings about the advisability of the articles concerning the internationalization of criminal law and the definition of the scope of the draft Convention, and it also had doubts about the practicability of the draft, bearing in mind the

difficulty of applying the instrument in South Africa, which was precisely the country whose discriminatory system was the object of the Convention. He recalled in that connexion the example of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, the applicability of which had been seriously hampered by the impossibility of agreeing on the international penal tribunal set up under its article VI.

18. In view of the universal character of the United Nations, the draft Convention should have been negotiated in such a way as to take fully into account the position of all regional groups. He feared that the draft Convention as it stood would be more of a liability than an asset in the struggle against *apartheid*. He would have preferred that, after an examination of the draft by the Committee from a social and humanitarian point of view, it had been sent, before being put to a final vote, to other bodies with more expertise in juridical questions, such as the Sixth Committee. Finally, he repeated that *apartheid* was contrary to the very nature of the Brazilian people, which strongly supported any legal measure effectively contributing to its complete elimination, such as the International Convention on the Elimination of All Forms of Racial Discrimination, which Brazil had been one of the first countries to ratify.

19. Lord GAINFORD (United Kingdom), speaking in explanation of vote, said that his delegation had not taken the floor during the article-by-article discussion of the draft Convention but had participated in the consideration of earlier versions of the draft in the Commission on Human Rights and the Economic and Social Council, when it had explained a number of the difficulties it faced. The latter had not been resolved and his delegation had therefore abstained in the vote on the draft as a whole.

20. The United Kingdom agreed that the practice of *apartheid* was abhorrent but shared the doubts expressed by other speakers as to the likely effectiveness of the draft Convention and was concerned by its potential for confusion and widely differing interpretations. The United Kingdom did not accept the basic assumption of the draft Convention, namely, that *apartheid* was a crime against humanity, a term which had an established and specialized meaning in international law. It was also unable to accept the legitimacy of the provisions which purported to authorize States, in connexion with certain matters covered by the draft Convention, to exercise penal jurisdiction in respect of acts committed outside their jurisdiction by persons who were not their nationals. If the draft Convention came into force his delegation would have to reserve its rights in relation to the matter.

21. In addition, his delegation strongly objected to the mandate which article VIII sought to impose upon the Commission on Human Rights and its Chairman. It agreed with those representatives who had pointed out that, even though it was expressly formulated by the accompanying resolution, that mandate was incompatible with Article 68 of the Charter and was therefore legally ineffective. He further expressed opposition to the provisions relating to signature and accession contained in articles XII and XIII, which were inappropriate and likely to create considerable confusion. For those and other reasons his delegation had been unable to support the draft Convention.

22. Mr. NODA (Japan) said that his Government's position with regard to *apartheid* had been stated in various forums of the United Nations and at the 870th meeting of the Special Political Committee, on 24 October 1973. Japan condemned unequivocally the Government of South Africa for its policy of *apartheid*, and had always supported and faithfully complied with the decisions and recommendations of the United Nations calling for action against that country in the diplomatic, military, economic and cultural areas. His delegation considered that the most important of those measures was the embargo on arms supplies to South Africa and believed that Member States should stop all arms dealings of any kind with that country. Equally important was the ban on the transfer of military technology and Member States should likewise refrain from supplying such information to the Government of South Africa. Japan had no military or diplomatic relations with South Africa and had no intention of establishing them in the foreseeable future.

23. In spite of that strong attitude on the part of the Japanese Government, his delegation had felt it necessary to abstain in the vote on the draft Convention, in the first place because article II was ambiguous as a legal definition of a punishable act. It was neither appropriate nor practical to punish such vaguely defined crimes in accordance with the universal jurisdiction procedure provided for in article IV (b). Secondly, the main purpose of the draft appeared to be the establishment of procedures whereby a State party could bring to trial and punish even the highest representatives of another sovereign State who were responsible for the crime of *apartheid*. Such a purpose was unlikely to be achieved by the draft Convention, which contained no specific provision for international criminal jurisdiction comparable with the war tribunals resulting from World War II.

24. Finally, he quoted paragraph 152 of the study concerning the question of *apartheid* from the point of view of international penal law;¹ submitted to the Commission on Human Rights at its twenty-eighth session, and reiterated that his delegation had abstained in the vote on the draft Convention for strictly legal reasons. Its abstention did not affect in any way Japan's long-standing opposition to the policy of *apartheid* in any form.

25. Mr. VAN WALSUM (Netherlands) said that his delegation had voted in favour of most of the preamble of the draft Convention in order to give expression to its rejection of *apartheid* as a criminal policy, although that did not mean that it subscribed to all the elements and definitions contained in the preamble. It had, however, abstained on the articles and on the draft Convention as a whole because the Netherlands did not intend to accede to the instrument, which it did not regard as an effective means of combating *apartheid*. That abstention did not detract in any way from the Netherlands' total rejection of *apartheid* on moral and humanitarian grounds which had been expressed by his delegation on 23 October 1973, at the 869th meeting of the Special Political Committee.

26. Mrs. DIALLO (Guinea) said that her delegation was gratified that the draft Convention on the Suppression and Punishment of the Crime of *Apartheid* had

finally been adopted. The Republic of Guinea had consistently advocated the adoption of the most firm and effective measures to combat *apartheid* and considered that the international instrument just adopted was essential.

27. The total eradication of the evils inherent in racial discrimination was an obligation for all justice-loving States and peoples; yet despite the numerous United Nations resolutions there were some Member States that persisted in their ignoble policy of *apartheid*. Notwithstanding the condemnation of the international community, the Governments of Pretoria and Salisbury were still pursuing their harsh policy of racial discrimination. At the same time, the Portuguese colonialists were continuing to deprive the peoples of Mozambique, Angola, and the Cape Verde Islands of their right to self-determination. Even though condemned by world public opinion, all those régimes enjoyed the political, economic, military and other kinds of support of the imperialist Powers which were protecting them.

28. Her delegation, which resolutely supported the legitimate struggle of the peoples against imperialism, colonialism, neo-colonialism and racism, had from the outset been among the sponsors of the draft Convention, together with the Soviet Union. For that reason, it was grateful to all those who had contributed to the drafting of the final text, which would undoubtedly contribute to the success of the struggle against racial discrimination and *apartheid* in southern Africa.

29. Miss CAO PINNA (Italy) said that Italy firmly condemned *apartheid* and similar policies and practices of racial discrimination and supported any realistic effort of the United Nations to combat those evils through the adoption of effective measures. It did not, therefore, object in principle to the idea of an international instrument on *apartheid*. The draft Convention which had just been put to the vote, however, did not contain sufficiently realistic and effective measures which would modify the intolerable persistence of *apartheid*. Her delegation could not consider it as a means of strengthening the international instruments on racial discrimination.

30. In that connexion, she pointed first of all to the lack of clarity and juridical precision in the definition of *apartheid* formulated in article II, and in such important matters as the question of which persons and institutions among those indicated in article III should be subject to prosecution, and which types of evidence of their acts the competent tribunals of States parties to the Convention should take into account in prosecuting, bringing to trial and punishing them in accordance with the terms of articles IV and V. Owing to that lack of clarity and juridical precision, which was also to be found in other provisions of the draft Convention, States parties could interpret most of its provisions in a variety of ways, thus preventing the achievement of their main purpose. Furthermore, the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on genocide covered ground similar to that of the draft Convention on *apartheid*, so that in practice the latter might even have the negative result of weakening the effectiveness of the other international instruments in force.

31. Secondly, unlike the existing international instruments relating to racial discrimination, which were based on the principle of the territoriality of criminal

¹ E/CN.4/1075.

law, the draft Convention made *apartheid* a crime punishable on the basis of the principle of universality of criminal jurisdiction, which required careful scrutiny from the legal point of view. Furthermore, the number of ratifications required for the entry into force of the draft Convention was still too small and that was especially important with reference to the extension of criminal jurisdiction involved.

32. Thirdly, her delegation did not believe that the Commission on Human Rights was the appropriate body to consider the periodic reports from States parties; the Commission's mandate could be substantially affected by the provisions of the draft Convention.

33. Lastly, article I characterized *apartheid* as a crime against humanity and a serious threat to international peace and security, thus broadening the limited meaning of the term "crime against humanity" in international law and expressing judgements which could eventually fall within the competence of the Security Council.

34. For all those reasons her delegation was of the opinion that the draft Convention should be carefully considered by a legal body—as had been proposed at the fifty-fourth session of the Economic and Social Council—and had therefore abstained in the vote on it. It had also abstained on those amendments which did not refer to the points in the same paragraphs which had given rise to her delegation's doubts and objections.

35. Mr. ABSOLUM (New Zealand) said that his Government had made clear its total rejection of the doctrine and practice of *apartheid* through its activities in the various organs of the United Nations. There were many approaches to the problem of putting an end to the embodiment of racial discrimination in domestic law commonly known as *apartheid*. As one such approach, many countries considered it appropriate to make the practice a crime at international law. His delegation fully sympathized with the intention of such countries, but felt obliged to ask a number of basic questions. First of all, was there a need for a new convention, particularly in view of the existence of the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Prevention and Punishment of the Crime of Genocide? Secondly, would the new convention embrace any practices that were not already covered by the two existing conventions? His delegation had some doubts on that score, since the Convention on genocide appeared to cover the more serious acts listed in article II of the draft Convention on *apartheid*, and the International Convention on the elimination of racial discrimination appeared to cover both the more serious and the less serious acts. The wording was not particularly specific, but the intention and the obligation were clear.

36. With regard to the second question, the draft Convention appeared to contemplate a departure from the normal practice of States with regard to the territorial scope of their criminal law, in that it appeared to provide that States would have jurisdiction not only in respect of acts committed on their territory but also in respect of acts committed in any other country. The question was whether such an extension of territorial jurisdiction was justified. Although States had recognized the need for extraterritorial jurisdiction in dealing with piracy, hijacking, war crimes and now possibly crimes against diplomats, it was a very restricted list of

exceptional cases normally involving a number of States, in other words, clearly containing an "international element". His delegation was not convinced of the need for extraterritorial jurisdiction in the case of the crime of *apartheid*, at any rate as defined in the draft Convention. He fully agreed that *apartheid* was an offence against human dignity and that it must be eradicated, but looked at in practical terms, *apartheid* and other forms of racial discrimination were normally perpetrated within national boundaries. It was pertinent to note that in the Convention on genocide there was no provision for extraterritorial jurisdiction.

37. Another question was whether the crime of *apartheid* was defined in the draft in such a way that States would be able to implement it in a consistent and predictable manner. There again, his delegation had serious doubts, since article II covered a wide range of acts extending beyond *apartheid* to all forms of racial discrimination. Given the variety of ways in which the text could be interpreted, any country with a minority racial group could find that its citizens were subject to prosecution in other countries. That problem was also linked to a further question. At whom was the convention directed? Article III gave a very broad answer. By including individuals, it appeared to offer scope for wide-ranging prosecution, and it was unclear how far criminal responsibility would extend. Would it cover not only leading members of the Government but also public servants, law enforcement officers and even members of private organizations and the public? To what extent would the plea of superior orders constitute a defence? Nor was it possible to ignore the conflict between the reference in article III to the criminal responsibility of State representatives and the provisions of the conventions on diplomatic and consular relations.

38. In view of the complexity of those problems, his delegation had suggested at the fifty-fourth session of the Economic and Social Council that the draft text should be referred to the International Law Commission for examination. It greatly regretted that its suggestion had been rejected, since in the absence of an expert examination the basic reservations remained, and his Government would find itself unable to sign the Convention in its current form. Thus, since it could not ignore certain legal problems of great significance, his delegation had decided that the most appropriate course was to abstain from the voting.

39. Mr. SHAFQAT (Pakistan) said that his country's position had been reflected in the voting, and that although Pakistan's legal experts had not had the time to look carefully at the text of the draft Convention and the proposed amendments to it, it hoped that if there was any incompatibility between Pakistan's domestic legislation and the draft they could be cleared up before the Convention was open for signature.

40. Mr. RAMPHUL (Mauritius) said that he had been absent during the voting and that if he had been able to participate, he would have voted in favour of the draft Convention.

41. Mr. MENDES MOREIRA (Portugal) said that his delegation once again vehemently refuted the statement that there was an alliance or some sort of agreement between his country and Southern Rhodesia or South Africa. He also flatly rejected the accusations concerning the alleged massacre of the civil population

in Angola, Mozambique and Portuguese Guinea, the bombing of villages in Portuguese Guinea, and other violations of human rights. A number of delegations had attempted to find some parallel between the policy of *apartheid* and the policy applied by the Portuguese Government in the Territories in question, and thus to place Portugal in the category of those countries which practised genocide, *apartheid* and other acts regarded as violating human rights. His delegation denounced that Machiavellian intention and reaffirmed that neither *apartheid* nor racism nor racial discrimination existed in Angola, Mozambique or Portuguese Guinea, or indeed in any part of the world where there was a Portuguese community, since a Portuguese presence meant a total absence of racial prejudice. In that connexion he referred to the statement by the great Brazilian sociologist Gilberto Freyre in his book *Casa Grande e Senzala* to the effect that in Africa the Portuguese had tried to build up multiracial societies where there was no prejudice on grounds of race, colour, religion or ethnic origin. An attempt was being made to achieve in Africa what had been achieved in Brazil, Cape Verde and Angola.

42. Apart from the legal difficulties which several delegations had raised, the reason why the Portuguese delegation had voted against draft resolution A/C.3/L.2022 was that the text of the draft Convention on the Suppression and Punishment of the Crime of *Apartheid* did not take account of the basic principles laid down in the Charter of the United Nations, especially the principle of non-interference in the internal affairs of Member States.

43. Mrs. BERTRAND DE BROMLEY (Honduras) said that her delegation had voted in favour of the draft Convention, but would like to place on record that it had certain reservations in regard to article III in respect of the points mentioned in the amendment contained in document A/C.3/L.2026, and that it did not interpret the mention of representatives of the State in that article as referring to diplomats from any country.

44. Mrs. DE BARISH (Costa Rica) explained that her delegation had voted in favour of the draft Convention because it had always supported the efforts of the United Nations to eradicate that policy. For example, Costa Rica was a party to the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Prevention and Punishment of the Crime of Genocide. Nevertheless, it had some difficulty in regard to certain of the articles of the draft Convention, such as articles III, IV, V and X, which involved important principles such as international criminal responsibility, extraterritoriality and asylum. In addition, the vagueness of the wording in some cases, especially in article II, suggested the desirability of having the draft Convention examined by the Sixth Committee.

45. Another matter which raised problems was the scope of the draft, and in that connexion the Moroccan amendment (A/C.3/L.2020) introduced an improvement. Again, because of its concern about the possible interpretation of the scope of article III in respect of international criminal responsibility, her delegation had become a sponsor of the amendments contained in document A/C.3/L.2026. Having rejected the amendment to article III, her delegation had had to abstain from the voting on the amendment submitted by Mali

(see A/C.3/L.2021) and on the article as a whole. Nevertheless, in spite of its difficulties, in a spirit of co-operation it had voted in favour of articles IV and V and the amendments to those articles, which stipulated the jurisdiction of the State in applying the Convention.

46. With regard to article X, her delegation attached great importance to the amendment in document A/C.3/L.2026, which reproduced the second paragraph of article VII of the Convention on the Prevention and Punishment of the Crime of Genocide, since it safeguarded the principles laid down in the conventions on asylum. It was therefore gratified to see that that amendment had been approved, and it would thus be able to vote in favour of that article.

47. Her delegation hoped that in spite of its shortcomings and the legal difficulties it raised, the Convention would have the desired effectiveness.

48. Mr. CUESTA (Ecuador) said that his delegation had voted in favour of the amendments, the amended articles and the draft Convention as a whole; Ecuador could not do less than accede to any instrument aimed at the eradication of *apartheid*. In addition, it wished to explain that the amendments submitted by a number of Latin American delegations (A/C.3/L.2026) were concerned merely with strengthening the legal framework of the text of the draft.

49. Nevertheless, in spite of its vote in favour, his delegation had some reservations concerning the legal clarity of the text. For example, article V indicated that persons charged could be tried by a competent tribunal of any State party which acquired jurisdiction over such persons. On what grounds could a State party to the Convention acquire jurisdiction over such persons? Because of universal territoriality? On that point, it would have been useful to insert the words "by reason of its own penal legislation". Furthermore, with regard to article IX (b), account should be taken of the principle of the presumption of innocence failing proof to the contrary. With regard to article X, in addition to the amendment in document A/C.3/L.2026, his delegation would have preferred to see the text worded in positive terms to read: "The acts, enumerated in article II of this Convention shall be considered as ordinary crimes for the purpose of extradition", thus safeguarding the principle of asylum.

50. Mr. BOURGOIN (France) said that his delegation had always rejected all forms of racial discrimination and especially the hateful practice of *apartheid*. The French Government not only gave humanitarian assistance to the victims of *apartheid* but also complied scrupulously with the international instruments on racial discrimination to which it was a party. Thus, in 1972 it had had the French Parliament approve a new law against racism in application of the International Convention on the Elimination of All Forms of Racial Discrimination. However, his Government questioned whether the draft Convention just adopted was the best means of combating the policy of *apartheid*. Many international instruments had already been adopted with a view to combating racism and racial discrimination; his Government believed that the International Convention on the Elimination of All Forms of Racial Discrimination was still the most important of those instruments and that the strict application of that Convention by all States Members of the United Nations without exception continued to be the most effective means

of combating *apartheid*. It also considered that the best results would be obtained by seeking to influence peoples' minds, in accordance with the principles adopted in connexion with the Decade for Action to Combat Racism and Racial Discrimination.

51. His delegation considered that the text just adopted raised serious legal problems—as had been pointed out by the delegations of Australia and Turkey, among others—and that the explanations given had not been convincing. From the strictly legal viewpoint, many of its provisions ran counter to the principles of French criminal law, under which definitions of offences must be interpreted restrictively, whereas the explanations given by the representative of the United Nations Legal Counsel tended towards an extensive interpretation. That incompatibility was one of the reasons why his Government had been unable to accede to the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity. In that connexion, his Government had not changed its position, which was based on strictly legal considerations, and continued to follow the judicial precedents set by the Nuremberg Tribunal. Other legal problems stemmed from the inadequacy and imprecision of the text, the question of an international tribunal, the character of the bilateral extradition agreements, extraterritoriality and the assignment of a mandate to the Commission on Human Rights by a group of States parties to an international convention, a procedure which was contrary to the Charter. His delegation had abstained during the voting, and wished to express its reservations concerning all the provisions which raised legal problems, especially articles V, VII, VIII and IX of the text approved. It also wished to express the reservations of France regarding the "all States" formula used in article XII.

52. Mr. CADENA COPETE (Colombia) reaffirmed once again his faith in the principles of the Charter and the rights and fundamental freedoms inherent in every human being. The equality of the rights of all human beings and the individual's enjoyment of his freedoms were not only an imperative of natural law but also formed an essential part of the achievements of civilization, and his delegation was therefore firmly convinced that any type of racial discrimination was a crime against humanity. The plight of millions of human beings in South Africa was unimaginable: discrimination of every kind, denial of rights, persecution, torture and the terrible treatment inflicted on political prisoners, and prohibition of marriage, all of which were motivated by differences of race and colour, were merely symptoms of the terrible tragedy which was currently being experienced by millions of human beings as a result of the practice of *apartheid*.

53. Those facts made it necessary for the United Nations struggle to continue until every trace of racism and racial discrimination had vanished from the face of the earth. The impatience of some countries was justified by the continuance of that inhuman policy, but the United Nations efforts to eliminate *apartheid* were a great source of encouragement to the oppressed people of South Africa in their struggle for freedom and the conquest of their fundamental rights. The South African régime knew that world opinion was vigilantly watching everything it did, as was shown by a certain caution in the police measures taken in connexion with the strikes that thousands of workers were carrying out

in defiance of the law in order to obtain better wages. Another symptom was the student movements, which were gathering strength and were a good omen for the South African people, who currently more than ever before should count on the support of the international community.

54. The United Nations did not have sufficient means to ensure compliance with the resolutions adopted by the General Assembly, the Security Council and other bodies and his delegation joined the great majority of countries which were members of the United Nations in requesting all Member States to comply with General Assembly resolution 2923 E (XXVII). His delegation had approved of the preamble to the draft Convention, which laid the bases for the draft, and of article I, but had abstained on the other articles because they had serious legal defects. His delegation believed that if the draft Convention had been referred to the Sixth Committee and a group of legal experts, the wording would have been more effective.

55. Mr. KHMIL (Ukrainian Soviet Socialist Republic) said that his delegation had voted for the draft Convention and the amendments which improved and clarified it, and was glad that the text had been adopted. The adoption of the draft was an important development on the threshold of the Decade for Action to Combat Racism and Racial Discrimination, since it would play a significant role in ensuring the implementation of other measures taken during that Decade. He regretted that other countries had abstained from voting in favour of the text on the grounds that it raised legal problems, since the struggle against *apartheid* should take priority over everything else. In that connexion, he wondered whether the sophisms relating to legal problems might not indicate that the internal rules of some countries ran counter to the principles on which the draft Convention was based. He was referring specifically to the United Kingdom and the United States, which were the main allies of the racist régimes and were members of a group which included Portugal. Those abstentions revealed the interests of each country, and far from casting doubt on the text they emphasized its importance. The draft Convention just adopted would have a great influence on political and moral relations.

56. Mr. VON KYAW (Federal Republic of Germany) recalled that at the current session of the General Assembly (2128th plenary meeting), Chancellor Willy Brandt, speaking on behalf of the Federal Republic of Germany, had condemned racism and colonialism as anachronistic and inhuman. The Federal Republic of Germany rejected all forms of discrimination, especially those based on race and ethnic origin. That was a basic principle of its Constitution and also guided the policies of the Government, which had accordingly ratified important international instruments on that subject. Nevertheless, his country had been obliged to abstain in the voting on the draft Convention on *apartheid* because it considered that it still raised unsolved legal problems.

57. Mr. PAPADEMAS (Cyprus) observed that his delegation had repeatedly stressed that the legal structure of the draft Convention on *apartheid* should be considered in greater detail and improved. Nevertheless, like the majority of the members of the Third Committee, especially those countries which were

situated close to places where *apartheid* was practised, it had considered that that Convention should be adopted in 1973 and had therefore voted in favour of it, believing that it would constitute a further step towards the elimination of *apartheid*.

58. Mr. CEDE (Austria) said that his delegation had abstained during the voting on the draft Convention and the related draft resolution because it considered that the evolution of international penal law required certain legal preconditions which had not been met in the current case.

59. Mr. DAMMERT (Peru) said that his delegation had voted for the draft Convention because it was certain that as soon as that Convention entered into force it would be an effective instrument in the struggle against the brutal policy of *apartheid* applied by South Africa. The amendment in document A/C.3/L.2026 had in no way been aimed at limiting the efficiency and scope of the Convention. Peru's difficulties had been purely legal, and the Committee's rejection of its amendment had not prevented it from voting for article III, as well as for all the other articles. The position of the Government and people of Peru with regard to racism and colonialism was already well known in international circles. Peru had no relations of any type with South Africa, and since May 1973 it had been an active member of the Special Committee on *Apartheid*.

60. Miss MAIRIE (Cameroon) said that all the achievements of science and technology and international co-operation would be meaningless unless a new humanism was brought into being, and the draft Convention on *apartheid* should be considered in the light of that criterion. A more immediate question was whether a new international legal instrument was really necessary, and whether its adoption would not weaken existing instruments. Similarly, it was necessary to es-

tablish the scope of the instrument, i.e. whether it would be applicable to all States Members of the United Nations or only to States parties to the Convention. Of course, South Africa, which had made *apartheid* its official policy, would never agree to become a party to the Convention, and consequently there was some doubt about the real scope of the text, which would finally be approved and applied only by States which did not practise racial segregation. Furthermore, the Convention provided for legal action against persons guilty of the crime of *apartheid*, but contained no provisions relating to States or Governments which, like South Africa, practised such policies.

61. It was encouraging to note that since the twenty-seventh session of the General Assembly the international community had intensified its efforts to combat *apartheid* and that the great mass of the people oppressed by the Pretoria régime had demonstrated their firm determination to defend their rights and dignity. Parallel with that resistance, international support for the anti-*apartheid* movements had increased. All those actions were valuable, and no step designed to put an end to *apartheid*, no matter how superfluous, inadequate or ineffective it might seem, should be rejected until the final victory over that chronic and multiform evil was won. The draft Convention just adopted by the Third Committee seemed to form part of that multidimensional effort, and that was the reason why her delegation had voted in favour of it.

62. Her delegation had voted in favour of all the amendments submitted, except for the amendment to article III in document A/C.3/L.2026, because it felt that that amendment would weaken the text instead of strengthening it.

The meeting rose at 5.55 p.m.

2009th meeting

Monday, 29 October 1973, at 10.45 a.m.

Chairman: Mr. Yahya MAHMASSANI (Lebanon).

A/C.3/SR.2009

AGENDA ITEM 55

Elimination of all forms of religious intolerance
(*continued*)* (A/8330, A/9134 and Add.1 and 2, A/9135, A/C.3/L.2025);

- (a) **Draft Declaration on the Elimination of All Forms of Religious Intolerance: report of the Secretary-General** (*continued*) (A/8330, A/9134 and Add.1 and 2, A/9135, A/C.3/L.2025);
- (b) **Draft International Convention on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief** (*continued*) (A/8330)

1. Mr. THOMAS (Liberia) said that his Government was in favour of a declaration on the elimination of all forms of religious intolerance, which should be a statement of important principles that would serve as an

* Resumed from the 2006th meeting.

international standard for the protection of the freedom of religion and the eradication of discrimination based on religion. He hoped that consideration of the item would be concluded in time for the celebration of the twenty-fifth anniversary of the Universal Declaration of Human Rights.

2. The statements made at the 2006th meeting suggested that the world was still in an age of religious controversy and intolerance. Unfortunately, there were some countries which behaved as though they were in the age of the Inquisition with its dungeons and torture chambers, guarding day and night against the spread of any dangerous doctrines. That point had been made clearly in the Swedish delegation's statement (see A/9134) regarding the alarming reports it had received from different parts of the world concerning the persecution of religious minorities or unjustified restrictions on the practice of religion. Article 1, section 3, of the Liberian Constitution provided that all men had a