

support it too, as well as the amendments which had been submitted.

28. Mr. SMIRNOV (Union of Soviet Socialist Republics) said that, after studying article VIII as contained in document A/9095/Add.1, he believed that it was appropriate to consider certain imperfections in the text of articles VII and IX. In article VII, the words "accord-

ing to a scheme to be established by . . ." should be replaced by the words "to the group established under article VIII". That change would bring article VII into line with article VIII. With regard to article IX, it would be logical to fill in the blank in the first line with the words "Commission on Human Rights".

The meeting rose at 5 p.m.

2006th meeting

Thursday, 25 October 1973, at 10.45 a.m.

Chairman: Mr. Yahya MAHMASSANI (Lebanon).

A/C.3/SR.2006

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.2016-2023):

(b) **Draft Convention on the Suppression and Punishment of the Crime of Apartheid (continued)** (A/9003 and Corr.1, chaps. XXIII, sect. A.2, A/9095 and Add.1, A/C.3/L.2016-2023)

1. Mr. CATO (Ghana), introducing draft resolution A/C.3/L.2022, took note of the fact that the draft Convention (A/9095, annex, and A/9095/Add.1) had already been approved by the Commission on Human Rights, the Economic and Social Council and the Special Committee on Apartheid and that the Secretary-General had referred it to the Governments of States Members of the United Nations and members of the specialized agencies for their comments. The sponsors of the draft resolution were confident that the international community was at last trying to adopt effective measures to eliminate apartheid.

2. The major purpose of the draft Convention was to outlaw apartheid and to cut off the racist clique in South Africa and its supporters from contact with the civilized world. He hoped that the fears expressed by some delegations in connexion with certain provisions of the draft had been allayed now that members had had the opportunity to improve the text. Very few legal instruments were perfect, and it was unfair to assume that the Convention would be a source of confusion. In fact, it was designed to eradicate the chaos caused by the policy of apartheid, which in the past had jeopardized friendly relations between States and international peace and security.

3. The Proclamation of Teheran¹ adopted by the International Conference on Human Rights, held at Teheran in 1968, called on the international community to use every means to eradicate the evil of apartheid and recognized the struggle against apartheid as legitimate. The draft Convention before the Committee was a response to that call.

¹ *Final Act of the International Conference on Human Rights* (United Nations publication, Sales No. E.68.XIV.2), chap. II.

4. He read out the draft resolution and pointed out that the sponsors had made a revision in operative paragraph 5 of the text, which should begin with the words "Requests the Economic and Social Council to invite the Commission on Human Rights". He hoped that the draft resolution would meet with a favourable response in the Committee and stressed the urgent need for the international community to meet the challenge of apartheid and adopt all effective measures to punish those guilty of that crime.

5. Mr. KRISHNAPPA (India) said he had been struck by the sense of despair that seemed to have infected a few members of the Committee who had suggested that it would be pointless to adopt a convention on apartheid, since earlier resolutions on the subject had had no impact. Other delegations, however, felt that was precisely the reason why no effort should be spared to make the Convention under consideration as effective as possible.

6. The draft Convention not only established apartheid as a crime but branded those who committed it as criminals. That represented a significant change in the approach to the question.

7. Since the end of the Second World War, the colonial Powers had been guilty of allowing apartheid to flourish and grow. His delegation's position on the question was unequivocal. Apartheid was a criminal offence which had to be rooted out completely. To give up the struggle at the current stage would be to invite disaster, since the world would soon forget that apartheid existed and was continuing to expand.

8. He reminded members that India had consistently been in the vanguard of the struggle against apartheid. It was India that had brought the evil of racial discrimination to the attention of the United Nations and which had first raised the issue of apartheid in the United Nations as a question within the purview of the Charter. It was largely on the initiative of India that South Africa had been expelled from the Commonwealth. In 1945, India had been the first country to sever trade relations with South Africa in protest against its racial policies, despite the considerable economic sacrifice involved in that action. India contributed to the liberation movements throughout Africa, provided scholarships for African refugees and was a regular contributor to various funds both within and outside the United Nations designed to combat colonialism and apartheid and pro-

vide assistance to the victims of *apartheid*, despite the strain which that imposed on its own limited resources.

9. While the draft Convention was not perfect, that was no reason to abandon it. He was confident that the adoption of the draft would help accelerate the fight against *apartheid*, and trusted that it would be adopted by consensus.

10. Mr. GOLOVKO (Ukrainian Soviet Socialist Republic) said that the adoption of draft resolution A/C.3/L.2022 and of the draft Convention would be a milestone in the struggle against *apartheid*. His delegation's position on the subject was well known. It had been one of the initiators of the idea that an international convention would make an important contribution to the struggle against *apartheid* and colonialism. It was a member of the Special Committee on *Apartheid* and had contributed to the struggle in that forum also.

11. The necessity and timeliness of adopting an international convention to suppress and punish the crime of *apartheid* and other violations of human rights was felt acutely at the present time, when the policy of *apartheid* in southern Africa was assuming monstrous forms that threatened international peace and security.

12. The Convention would make an important contribution to international law. *Apartheid* had always been regarded as a crime against humanity. The purpose of the draft Convention was to define that crime precisely and provide for its punishment. His delegation had no difficulty in supporting the amendments to the draft Convention submitted thus far.

13. With regard to draft resolution A/C.3/L.2022, his delegation particularly welcomed operative paragraph 4, which provided for valuable publicity for the aims of the Convention.

14. The CHAIRMAN announced that Algeria, Czechoslovakia, Egypt, Gabon, the Gambia, Guyana, Jamaica, Kenya, Madagascar, Mali, Mauritania, the Niger, Yugoslavia and Zambia had become sponsors of draft resolution A/C.3/L.2022, and that the Niger and Pakistan had become sponsors of the amendment contained in document A/C.3/L.2020 to the draft Convention.

15. Mr. SHAFQAT (Pakistan) said that the amendment in document A/C.3/L.2020 would make it very clear that the draft Convention, in its scope and application, related specifically to the subject of *apartheid*. It trusted that the amendment would clear up the doubts of those delegations which had expressed certain reservations with regard to the definition and scope of the term "*apartheid*" and that those which had not been able to do so before would now support the draft Convention.

16. Mr. SMIRNOV (Union of Soviet Socialist Republics) said that draft resolution A/C.3/L.2022, once it was adopted, would occupy a special position among the resolutions adopted in connexion with the struggle against *apartheid*. The problem of *apartheid* had been considered by the General Assembly and various United Nations bodies for many years. From 1945 to 1960 the Assembly had repeatedly appealed to the South African Government to end its policies of *apartheid* in the light of its obligations under the Charter of the United Nations. Those appeals had met with no response.

17. From 1960 onwards, both the Security Council and the General Assembly had adopted numerous resolutions and decisions calling on the South African Government to end its policies of *apartheid*, and appealing to Member States to take measures, either separately or collectively, to contribute to the elimination of *apartheid* by severing diplomatic, trade and other relations with South Africa. The purpose of all those resolutions and decisions had remained largely unfulfilled. Indeed, South Africa had intensified its policy of racial discrimination and in the preceding 10 years there had been a substantial growth in trade and in military and other co-operation between South Africa and various developed countries. Currently, more than 20 States Members of the United Nations maintained diplomatic relations with South Africa.

18. Effective measures to eradicate the crime of *apartheid* were long overdue. At the twenty-sixth and twenty-seventh sessions of the Assembly, his delegation, in co-operation with others, had used its best efforts to prepare a draft Convention. The Commission on Human Rights had helped substantially to improve the wording of the text. The draft Convention as it now stood, together with the amendments which had been submitted, constituted a complete document which could be approved by the General Assembly. That document and the Convention on the Prevention and Punishment of the Crime of Genocide had been the product of differing historical and political causes, and were very different in scale, in scope and in their aims. While the provisions of the Convention on genocide stressed the right to life, the approach of the draft Convention before the Committee was a broader one, envisaging the protection of a number of other human rights and freedoms.

19. As was appropriate in view of the very serious nature of the crime involved, the draft Convention dealt in considerable detail with the question of responsibility of those who had perpetrated the crime of *apartheid*. The system of implementation of the Convention by States parties would involve United Nations bodies, and especially the Commission on Human Rights. His delegation attached great importance to the system of periodic reports by States parties concerning measures they had adopted to implement the Convention, especially measures of a legislative, judicial and administrative nature. The inclusion of a provision which would give States parties the right to appeal to appropriate United Nations bodies to take action to combat *apartheid* were extremely important for the realization of the aims of the Convention.

20. The draft Convention was a broader and more detailed document than the International Convention on the Elimination of All Forms of Racial Discrimination, which contained only one article relating to *apartheid*. His delegation anticipated that the adoption of an international convention on *apartheid* would prove to be a very important step towards liquidating that evil, and he was confident that all concerned would ratify it.

21. Lastly, he drew attention to certain inaccuracies in the Russian version of article IV (b), and in the English version of the amendment submitted by his delegation (A/C.3/L.2019).

22. Mr. KOLBASIN (Byelorussian Soviet Socialist Republic) said that the adoption of the draft Convention would be a major contribution to the struggle for the

speedy elimination of *apartheid*, whose sole purpose was the preservation and intensification of slavery in order to enrich a small group of bosses in South Africa and international monopolies from the States of the North Atlantic Treaty Organization.

23. His delegation was convinced that the protection of human rights at the international level could be more effective if each form of violation of human rights was opposed by a clear and distinct legal norm or instrument providing for responsibility for each crime. The draft Convention before the Committee would be one further element in a system of international legal agreements designed to combat racial discrimination and *apartheid* and defend human rights, a system which included the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on genocide and conventions adopted by the ILO and UNESCO aimed at preventing discrimination in employment and education.

24. Under the draft Convention, *apartheid* was viewed as a crime which violated existing norms of international law and the fundamental principles and purposes of the Charter of the United Nations, thus constituting a serious threat to international peace and security. He drew attention to article II, which for the first time in international law gave a definition of the policy and practice of *apartheid* from the standpoint of criminal law. Other articles set forth basic legal norms for the suppression of *apartheid*.

25. His delegation strongly supported draft resolution A/C.3/L.2022 and expressed its conviction that the Convention would serve the cause of eradicating *apartheid*, whose existence on earth could not be endured by mankind.

AGENDA ITEM 55

Elimination of all forms of religious intolerance (A/8330, A/9134 and Add.1, A/9135):

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

26. Mr. SCHREIBER (Director, Division of Human Rights) drew attention to the background information on the item contained in the documents before the Committee. With regard to the analytical presentation of observations received from Governments, which was contained in the note by the Secretary-General (A/9135), he pointed out that only observations which had been received before 15 August 1973 had been analysed in the note. The four replies which had been received since that date, and which had not been analysed for the purpose of the study, had been reproduced in document A/9134/Add.1.

27. Mr. VAN WALSUM (Netherlands) said that his Government's position on the question of the drafting of an international instrument for the elimination of all forms of religious intolerance was set out in document A/9134. He recalled that, by resolution 3027 (XXVII), the General Assembly had decided to accord priority to the completion of a declaration on the subject. The unopposed adoption of that resolution provided a solid

basis for further progress in that regard. He appealed to the representatives of the Byelorussian SSR, the Soviet Union and the Ukrainian SSR not to reopen the discussion on the relative priorities to be given to a declaration and a convention on the subject.

28. In his Government's additional observations (see A/9134/Add.1), it had submitted a new draft declaration intended to meet the concerns of those delegations which had, at the previous session, found it difficult to determine which text should serve as a basis for the preparation of a declaration. That new text followed closely the six articles prepared by the Working Group set up by the Commission on Human Rights at its twentieth session (see A/8330, annex II),² and borrowings had also been made from elements of the draft convention previously adopted by the Third Committee (see A/8330, paras. 18-20).³ In addition, previous discussions in various bodies had been taken into account; however, he stressed that the text was intended only as a basis for discussion, and changes could, of course, be made if it was felt that anything essential had been left out.

29. He felt that it would be useful to explain the source of each article in his delegation's text. As he had noted, the first six articles adhered closely to the six articles proposed by the Working Group set up by the Commission on Human Rights. Article I reproduced article I of the Working Group's draft, except that the last sentence of the Netherlands version had been taken from article I (a) of the draft Convention adopted by the Commission on Human Rights (*ibid.*, annex III). Article II of his delegation's draft was the same as article II of the Working Group's draft, except that it had been updated in order to take into account the International Covenants on Human Rights. Article III was identical with article III of the Working Group's draft. Article IV reproduced article IV, paragraph 1, of the Working Group's draft; paragraph 2 had been eliminated for the sake of conciseness. Article V corresponded to article V, paragraph 1 of the Working Group's draft; as in the case of article IV, paragraph 2 had been deleted for the sake of brevity. One sentence had also been deleted from article V, paragraph 1, namely, the one which read: "In the case of a child who has been deprived of his parents, their expressed [or presumed] wish shall be duly taken into account, the best interests of the child being the guiding principle." That sentence had been deleted because it presented a very difficult legal question. Article VI was identical with article VI of the Working Group's draft.

30. Article VII was based on article VI, paragraph 4, of the preliminary draft Declaration prepared by the Sub-Commission on Prevention of Discrimination and Protection of Minorities (*ibid.*, annex I).⁴ Article VIII had been taken from article I (d) of the articles of the draft Convention adopted by the Commission on Human Rights (*ibid.*, annex III). Article IX was based

² For the printed text, see *Official Records of the Economic and Social Council, Thirty-seventh Session, Supplement No. 8*, para. 296.

³ For the printed text, see *Official Records of the General Assembly, Twenty-second Session, Annexes*, agenda item 54, document A/6934, paras. 29, 72 and 90.

⁴ For the printed text, see *Official Records of the Economic and Social Council, Thirty-seventh Session, Supplement No. 8*, para. 294.

on article VI, paragraph 3, of the preliminary draft Declaration submitted by the Sub-Commission and on a USSR proposal for a new article set forth in the annex to the articles prepared by the Working Group (*ibid.*, annex II).

31. During the debate on the organization of the Committee's work, his delegation had proposed the establishment of a working group which would make possible an early start on the preparation of a Declaration. Since objections had been raised to that proposal, his delegation would not insist on it.

32. Mr. FØNS BUHL (Denmark) recalled that General Assembly resolution 3027 (XXVII) had been adopted by an overwhelming majority of 101 votes in favour, none against and 22 abstentions. That clearly showed that there was a general atmosphere in favour of elaborating a Declaration on the Elimination of All Forms of Religious Intolerance in order to give more substance to article 18 of the Universal Declaration of Human Rights.

33. His delegation had carefully studied the documents that were before the Committee and appreciated the difficulty of deciding which text should be used as the basis for its work. The draft submitted by the Netherlands delegation had the important merit of taking into account all previous discussions and combining in a single text the essential elements of the other texts. He therefore supported the Netherlands delegation's suggestion that its version as presented in document A/9134/Add.1 should be used as the basis for the Committee's work, and he suggested that the Committee should examine it article by article. He hoped that it would be possible to comply with the aim of resolution 3027 (XXVII), namely, the adoption of a Declaration on the Elimination of All Forms of Religious Intolerance as part of the observance of the twenty-fifth anniversary of the Universal Declaration of Human Rights.

34. Miss CAO PINNA (Italy) said her delegation attached great importance to the question of eliminating all forms of religious intolerance, and hoped that a declaration on the matter could be adopted during the current session of the General Assembly.

35. In its reply to the Secretary-General, which appeared in document A/9134/Add.1, her Government had suggested that, like the first six articles considered by the Commission on Human Rights, the other articles should also be discussed first by the Commission, on the basis of the proposals made on the subject by the Sub-Commission on Prevention of Discrimination and Protection of Minorities. At that time, her delegation had not known that the Netherlands delegation planned to submit a combined version of the draft articles proposed to date. Her Government now wished to support the Netherlands suggestion, which would greatly facilitate the completion of the Committee's work on the draft Declaration during the current session.

36. Mr. LOSHCININ (Byelorussian Soviet Socialist Republic) said it seemed that an attempt was being made to create the impression that the Committee had been presented with a newborn child, whereas in fact the subject under discussion was one with which the United Nations had been concerned for 12 years. The item was one of the most complex and confused that the Committee had had to deal with. The confusion had begun in 1962 when, in accordance with General

Assembly resolution 1781 (XVII), the Sub-Commission on Prevention of Discrimination and Protection of Minorities had been asked to prepare both a draft declaration and a draft international convention on the elimination of all forms of religious intolerance. In other words, the same resolution had requested the preparation of two documents. In 1964 the Sub-Commission had submitted to the Commission on Human Rights a preliminary draft Declaration; the Commission had set up a Working Group to prepare a draft Declaration on the basis of that text. The Working Group had made diligent efforts but had been able to obtain a more or less balanced consensus on only the first six articles. Far from adopting those articles, the Commission had not even examined them. It was therefore quite clear that the six articles prepared by the Working Group were still of a very preliminary nature and required careful study.

37. As the Commission had not been able to examine those articles, an impasse had been reached. The Western countries had then proposed the urgent consideration of a draft convention. In other words, the same countries that had first been in favour of giving priority to a draft declaration had suddenly changed their position and favoured the preparation of a draft convention first. In 1965 the Sub-Commission had prepared a draft Convention, which had been carefully examined at the twenty-first, twenty-second and twenty-third sessions of the Commission on Human Rights. The Commission had finally adopted a preamble and 12 articles of the draft International Convention in 1967, which had been transmitted to the General Assembly by Economic and Social Council resolution 1233 (XLII).

38. At the twenty-second session, the Third Committee had devoted 29 meetings to the discussion of the draft Convention; despite that great effort it had been able to adopt only the preamble and article I of the text adopted by the Commission. It was only logical that the Committee should continue its work on the draft Convention. Yet the same Western Powers which had changed their position previously had caused further confusion by going back to the idea of giving priority to the consideration of the draft Declaration. Their flexibility was astounding. The tradition followed in the United Nations had always been first to prepare a declaration and then a convention; how could the Western Powers speak of tradition when they themselves had broken it? Who could tell what their position would be at the next session?

39. The best explanation for the abrupt change in the Western position could be found in the Italian reply to the Secretary-General (see A/9134/Add.1), which mentioned the fact that some amendments had been submitted which considerably altered the general outline and spirit of the draft Convention. That was a reference to a proposed text for the preamble which had been submitted by the developing countries and which stated that violations of fundamental human rights and freedoms, in particular freedom of thought, conscience and religion, had directly or indirectly caused wars and serious human suffering and had served as an instrument for interfering in the internal affairs of States. There had been a lengthy debate on that proposal and the developing countries had brought up many historical truths that were not to the liking of the Western Powers.

40. His delegation felt that the Committee should continue its work on the draft Declaration, but it was in such a labyrinth it was hard to tell which document to use as a basis for its work. Why should it use the Netherlands document, which had been distributed only towards the end of September, in preference to the draft prepared by the Sub-Commission in 1964, which represented the collective efforts of 30 members over an entire year? How could the matter be resolved in such haste? He was amazed that the Danish representative should have gone so far as to suggest that the Committee should examine the Netherlands text article by article, without even holding a general debate. There had been no debate on the item since 1967. He was also amazed at the flexibility of the Italian delegation, which had abandoned its position as reflected in its reply to the Secretary-General in favour of using the Netherlands text. The original Italian suggestion, namely, that the articles should first be examined by the Commission on Human Rights, was the appropriate one.

41. The best way out of the prevailing confusion was to submit all three documents, including the Netherlands text, and all the comments and replies of Governments, to the Commission on Human Rights, in order that it might decide which document should be used as a basis for the preparation of the final version of the draft Declaration.

42. Mr. COSTA COUTO (Brazil) said his delegation hoped it would be possible to avoid a procedural debate, since that would be contrary to the decision

adopted at the previous session by the General Assembly. Resolution 3027 (XXVII), which had been adopted by an overwhelming majority, clearly stated that priority should be given to the elaboration of the draft Declaration. The Committee must follow that mandate.

43. The Netherlands proposal was a most interesting and helpful one. His delegation would have no objection to starting the discussion on the basis of the Netherlands text. However, since, as the Byelorussian representative had pointed out, it had been distributed only towards the end of September, and in view of the difficulties some delegations were having, he suggested that the Committee should avoid a procedural debate by proceeding with the texts that had been before it for years. The analytical presentation of the observations received from Governments, prepared by the Secretariat and distributed in document A/9135, would be very useful; it should be studied together with document A/9134/Add.1, since the comments contained in the latter were not included in the analysis.

44. His delegation sincerely hoped that it would be possible to have an appropriate instrument to commemorate the twenty-fifth anniversary of the Universal Declaration of Human Rights. The draft Declaration on the Elimination of All Forms of Religious Intolerance could not be considered the work of any one group of countries; it represented the mandate of 101 Member States.

The meeting rose at 12.55 p.m.

2007th meeting

Friday, 26 October 1973, at 10.50 a.m.

Chairman: Mr. Yahya MAHMASSANI (Lebanon).

A/C.3/SR.2007

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 (continued)** (A/9003 and Corr.1, chaps. 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. MARTINEZ ORDOÑEZ (Honduras), introducing amendments (A/C.3/L.2026) to the draft Convention (A/9095, annex, and A/9095/Add.1), said that the delegations of Bolivia, Chile, Colombia, Costa Rica, Haiti and Paraguay wished to be added to the list of sponsors.

2. The sponsors were proposing the amendment to article III in order to safeguard the principle of diplomatic immunity. If article III was left as it stood, the phrase "representatives of the State" could be inter-

preted as including diplomatic representatives who were covered by other treaties to which some States parties to the Convention might also be parties. The sponsors had therefore thought it desirable to add an introductory phrase to the article which would make it clear that it was without prejudice to the commitments entered into by States in other international instruments.

3. The amendment to article X had been proposed in order to safeguard the long-standing tradition of asylum which was so dear to the Latin American nations. It was most important to guarantee the right of the country granting asylum to qualify the alleged offence and decide whether the accused should be protected. Such protection was granted only in cases where it was considered that a person had been accused because of his political views rather than because of acts he had committed. Of course it could never be argued that a crime of *lèse humanité* should be considered a political act whose perpetrator might benefit from the right of asylum; where accusations were politically motivated, however, the accused should be protected. The additional sentence which the sponsors were proposing was similar to the second paragraph of article VII of the Convention on the Prevention and Punishment of the