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CONTENTS

Chairman: Mr. Humberto DIAZ CASANUEVA (Chile).

AGENDA ITEM 43

Draft Declaration on the Elimination of All Forms of Racial Discrimination (A/5459, A/5503, chap. X, sect. II; E/3743, paras. 89-145; A/C.3/L.1067, A/C.3/L.1085, A/C.3/L.1090 and Add.1, A/C.3/L.1111, A/C.3/L.1116/Rev.3, A/C.3/L.1117, A/C.3/L.1124/Rev.1, A/C.3/L.1125, A/C.3/L.1126/Rev.1, A/C.3/L.1127, A/C.3/L.1130 (continued)

ARTICLE 9 (continued)

1. Mr. SHERVANI (India), introducing the eight-Power sub-amendments (A/C.3/L.1127) to the nine-Power amendments (A/C.3/L.1090 and Add.1) to article 9 of the draft Declaration on the Elimination of All Forms of Racial Discrimination, reminded the Committee that vigorous efforts had been made to produce a text capable of commanding the widest possible support, and remarked that it would be regrettable if those efforts ended in failure because of minor technicalities. He appealed to members not to become embroiled in an examination of individual words and phrases, but rather to consider each proposed version of article 9, as contained in documents A/5459, A/C.3/L.1090 and Add.1 and A/C.3/L.1127 respectively, as a whole; he was confident that such an examination would reveal that faithful observance of the terms of the last-mentioned draft would result in the effective prohibition of racist organizations, while at the same time meeting the constitutional difficulties of certain countries.

2. He trusted that the Committee would agree to vote first on the eight-Power text because it had been submitted in the form of sub-amendments to the text in document A/C.3/L.1090 and Add.1 and also because, in the words of rule 131 of the rules of procedure of the General Assembly, they were the amendments furthest removed in substance from the original proposal.

3. Mr. IVANOV (Union of Soviet Socialist Republics) pointed out that the Russian version of the eight-Power sub-amendments did not faithfully render the English words "All incitement to, or acts of violence" in paragraph 2 and "and/or" in paragraph 3. The latter expression was, moreover, vague and should be replaced simply by "and".

4. Miss WACHUKU (Nigeria) explained that the term "and/or" had been agreed to after long negotiations in which she believed the USSR participant had consented to a Russian equivalent to it. In any case, the term was meant to indicate that different degrees of punishment could be applied; depending on the circumstances, an organization could be either prosecuted or both prosecuted and outlawed. The term was not vague; it simply enabled countries to fit the punishment to the offence.

5. She believed that a reading of the eight-Power sub-amendments and of the amendments to which it applied would show the former to be the stronger text. The sub-amendments also had the indisputable merit of commanding the support of most delegations and of being applicable in most countries of the world. The declaration would have little value if only a fraction of the United Nations membership voted for it, for then its provisions would extend to only a small part of the world's population. She appealed to delegations to act in the interests of all mankind and not to take a narrow stand.

6. Mr. LAMANI (Albania) said that, since the eight-Power sub-amendments would be voted on first, his delegation would replace its own sub-amendment (A/C.3/L.1117) by a sub-amendment to paragraph 3 of the eight-Power text, calling for the substitution of the word "and" for the term "and/or" and for the insertion of the words "racist, fascist and other" between the words "outlaw" and "organizations".

7. Mr. MINKOVICH (Byelorussian Soviet Socialist Republic) said that article 9, which dealt with practical measures against racial discrimination, was one of the most important articles in the draft Declaration. The efforts made to reach agreement on its terms were therefore understandable and welcome. However, the eight-Power sub-amendments did not solve the basic problem—that of the dissolution of racist organizations. The nine-Power amendments had settled that issue in a clear and straightforward way by calling for the prohibition and disbanding of such organizations. The eight-Power text did not, furthermore, cover all forms of racial discrimination but limited itself to incitement to violence and acts of violence. The declaration should leave no room for racial discrimination in any form. His delegation would submit a sub-amendment [1] to the eight-Power text remedying those defects.

8. Mr. PINHEIRO (Brazil) remarked that the term "and/or" had been a major stumbling block in the negotiations on article 9. It implied, as the Nigerian representative had pointed out, that varying degrees of punishment could be applied, including the penalty of outlawing. That was far different from the original intention of the sponsors of the nine-Power amendments, who had sought the prohibition and disbandment

[1] Subsequently circulated as document A/C.3/L.1128.

of all organizations practising racial discrimination. The "and/or" formula represented an attempt to compromise with delegations that had difficulty with the stronger wording; unfortunately, it raised difficulties of translation. He agreed with the Byelorussian representative's remarks, but he feared that they would bring the Committee back to its original dilemma.

9. The Committee now had before it a variety of texts reflecting the different points of view of delegations. It had spent much time on he article and had made every possible effort to reach a common understanding. He therefore moved that the debate should be closed and that the Committee should proceed to vote on the proposals before it.

10. Mr. BAROODY (Saudi Arabia) opposed the motion for closure of the debate for the reason that the final text of the eight-Power sub-amendments had been in the hands of representatives only since the start of the present meeting. The new text was far from an ideal compromise, as it satisfied neither those who wanted severe punitive measures nor those who, like himself, were afraid of jeopardizing the freedom of individuals to form associations. He felt that members should be given more time to discuss those features of the eight-Power text that might preclude the wide support which article 9 of the draft Declaration deserved.

11. The CHAIRMAN suggested that the motion for closure should be deferred for a short time to enable delegations to address themselves to the new sub-amendments.

12. Mr. PINHEIRO (Brazil) agreed to defer his motion, although he was convinced that every aspect of article 9 and the amendments to it had already been exhaustively discussed.

13. Mr. SHERVANI (India) stressed that the words "and/or", which had been criticized by some delegations, were used in paragraph 3 of the eight-Power sub-amendments in the interests of flexibility. It was essential that Governments should be free, in accordance with the seriousness of each particular case and with the constitutional framework in which they had to act, either to prosecute and outlaw organizations promoting discrimination or merely to prosecute them. Delegations wishing to change the eight-Power sub-amendments would do well to compare it with article 9, as drafted by the Commission on Human Rights, and with the nine-Power amendments, and to ask themselves whether the new text did not merit their support. It would be highly undesirable to reopen the discussion in order to reintroduce language which had been superseded by a laboriously prepared compromise.

14. Mr. BAROODY (Saudi Arabia) said that article 9, as drafted in the eight-Power sub-amendments, called upon States to take not only legislative but also "other" measures against racist organizations. He had the gravest apprehensions concerning the use of such language. It was by no means impossible for unscrupulous Governments to introduce "agents provocateurs" into an organization they disliked and to outlaw it by administrative action on the ground that it came within the scope of article 9, paragraph 3 of the draft declaration. In an age which had seen so much abuse of power, it was essential that freedom of association should be subject to restriction only by due process of law. He would ask for a separate vote on the words "and other" and the words "and/or outlaw" in paragraph 3. That paragraph was objectionable also on grounds of style. Forms of words such as "and/or" and "incite to, or use violence" might be appropriate in a strictly legal text, but seemed very much out of place in a document intended to rouse world public opinion.

15. Mr. ELUCHANS (Chile) stated that his delegation, although one of the sponsors of the nine-Power amendments, supported the new text as a commendable attempt to overcome the legal and constitutional difficulties to which the amendment had given rise. He could not agree with the Saudi Arabian representative that the text might be used by Governments as a cloak for arbitrary administrative action and that all reference to other than legislative measures should therefore be avoided. In his country, for example, organizations acquired legal status by an administrative procedure. Any organization promoting racial hatred would accordingly be dealt with by administrative, not legislative measures. Each State, would have to proceed in accordance with its own laws. By permitting administrative action against organizations propagating racial violence, the declaration would not encourage Governments to exceed their powers. The words "and/or outlaw organizations ..." provided, as the Indian representative had rightly pointed out, for different alternatives and thus enabled Governments to suit their action to the seriousness of the problem with which they had to deal.

16. The introduction of the word "fascist", as proposed by Albania, was not acceptable to his delegation. Chile was opposed to fascism, but it did not favour the prohibition of all political and social movements whose philosophy was objectionable to the Government. Moreover, the declaration was not intended to deal with political concepts, but merely with racial discrimination. Any fascist organization propagating racial hatred was already covered by the provisions of article 9. A reference to fascism was inadvisable also because the term lacked precision, being used in some quarters to describe any attitude disapproved of.

17. Mrs. ARIBOT (Guinea) introduced an amendment (A/C.3/L.1130) to the eight-Power text on behalf of the delegations of Guinea, Senegal and Cameroon.

18. Mr. SHERVANI (India) moved that a time limit, expiring at 12 noon on 15 October 1963, should be set for the submission of sub-amendments to the eight-Power text.

It was so decided.

19. Mr. Antonio BELAUNDE (Peru) expressed surprise at the criticisms levelled against the eight-Power sub-amendments. The text had been drafted after extensive discussion in which many delegations, not only the sponsors, had participated, and was carefully balanced. All delegations should ask themselves which was more important: to draft an appeal to the conscience of mankind in terms which would command the widest possible support or to insist on fine points of detail. He did not agree with the Saudi Arabian representative that the language of paragraph 3 of the draft conflicted with freedom of association. The passage complained of made it quite clear that the only organizations which should be prosecuted and/or outlawed were those which incited to or used violence for the purposes of racial discrimination.

20. Mr. ALONSO OLEA (Spain) agreed with the Peruvian representative. Paragraph 3 of the eight-Power

text had been so drafted as to strike a balance between the universally recognized right to freedom of association and the abuse of that right when it was exercised for purposes of racial discrimination. He did not share the Saudi Arabian representative's fear that the text would make it possible to attack any organization at will, since the application of the measures envisaged was subject to two conditions—the organizations affected must incite to or use violence, and the purpose of such violence must be discrimination based on race, colour or ethnic origin. As regards the objection that the language was too technical, he believed that the wording was readily intelligible, and technical terminology had to be used in propounding juridical notions.

21. The proposed text would adequately protect fundamental freedoms, while giving States a powerful instrument for the suppression of incitement to or use of violence by individuals or groups; the best proof that it provided a middle ground which should be acceptable to all was that it had been criticized by some delegations as being too strong and by others as being too weak.

22. Mr. HAMID (Sudan) said that the position of his delegation, as a co-sponsor of the eight-Power sub-amendments, was essentially one of compromise, as explained by the representatives of Peru, Spain and Chile. The expression "and/or" was perfectly proper legal terminology and was intended to impart flexibility to the text. He fully appreciated that failure to prohibit racist organizations outright would be a disappointment to some delegations, for the Sudan itself was resolutely opposed to such organizations, which had caused much trouble in the past and might do so again in some countries; nevertheless, refusal to compromise on that point would make the text unacceptable to countries whose legislation did not allow them to abrogate certain freedoms, and his delegation did not wish the draft Declaration to be bereft of the moral force which it would derive from maximum support. Some delegations believed that even the degree of compromise achieved in the eight-Power text already endangered the freedoms in question, and it would be difficult for his delegation, as for others, to accept any further amendments; the wording proposed by Cameroon, Guinea and Senegal would completely destroy the spirit of compromise which appeared to offer the only way out of the Committee's dilemma.

23. Miss ADDISON (Ghana) recalled that some articles of the draft Covenant on Civil and Political Rights already approved by the Committee provided for restrictions, in the public interest, on the exercise of the rights proclaimed in the draft Covenant, and also that a number of United Nations documents had urged Governments to revise their laws and rescind certain legislation. In view of those precedents and of the text of article 4 of the draft Declaration under discussion, as adopted by the Committee (1225th meeting), she failed to understand the difficulty which had arisen in connexion with article 9. The Committee should remember its moral obligation to the millions of persons still subjected to racial discrimination, who had waited only too long for their release. If the positions of the various delegations on article 9 were unchanged, it was futile to prolong the discussion, and the Committee should proceed to the vote.

24. Mr. POLYANICHKO (Ukrainian Soviet Socialist Republic) emphasized that his delegation could not give its full support to the eight-Power sub-amendments, which weakened the draft Declaration. He associated himself with the Ghanaian representative's appeal that members should remember their duty, not simply to reach unanimity among themselves if possible, but to help the millions of victims of racial discrimination. He did not consider the eight-Power text to be the most balanced wording possible, even from a political point of view, since the expression "and/or" would mean that unequal obligations were imposed on different States approving the draft Declaration. Much had been said on the question of freedom, but the Committee was drafting a declaration, not on human rights in general, but on the specific question of racial discrimination, and he failed to understand how freedom to propagate such discrimination could be allowed in that context. The nine-Power amendments were entirely in conformity with the Purposes and Principles of the United Nations, and he drew attention in that connexion to article 29 (2) and (3) of the Universal Declaration of Human Rights.

25. He would support the sub-amendment proposed by Cameroon, Guinea and Senegal, which would strengthen the draft Declaration as a whole; if that text was rejected, he would vote in favour of the Byelorussian sub-amendment.

The meeting rose at 12.45 p.m.

Litho in U.N. 77301—March 1964—2,225