United Nations
GENERAL ASSEMBLY
TWENTIETH SESSION
Official Records

THIRD COMMITTEE, 1306th MEETING

Friday, 15 October 1965, at 10.45 a.m.

NEW YORK

CONTENTS

Chairman: Mr. Francisco CUEVAS CANCINO (Mexico).

AGENDA ITEM 58

Draft International Convention on the Elimination of All Forms of Racial Discrimination (continued) (A/5803, chap. IX, sect. I; A/5921; E/3873, chap. II and annexes I and III; A/C.3/L.1208 to L.1212, L.1216 to L.1225, L.1226 and Corr.1, A/C.3/L.1228, L.1231 and Corr.1)

ARTICLES I TO VII (continued)

1. Mr. SABEV (Bulgaria) said that, although his delegation found the text of the draft International Convention prepared by the Commission on Human Rights (A/5921, annex) generally acceptable, it had submitted a number of minor amendments (A/C.3/L.1218) designed to improve the text and render it more precise. The first amendment, to article II, stemmed from the consideration that racial discrimination occurred not only in the matter of political and civil rights but also, in an acute form, in the social, economic and cultural fields. While it was important to proclaim the noble principle of equality for all, it was even more important to bring about the material conditions which would guarantee enjoyment of the rights proclaimed in the draft Convention.

2. The amendment to article V was proposed because the phrase "to participate in elections" appeared to refer primarily to voting rights, while the amendment to article VI was designed to ensure that the interests of groups and individuals were protected, not only by the State, but by all competent governmental bodies, administrative or other. Lastly, the proposal that the word "culture" should be inserted in article VII was intended to provide, for instance, for the development of a national theatre or of the national traditions of various groups, and more specifically for such measures as prohibiting the exhibition of films reflecting racist theories and encouraging the exhibition of films promoting notions of equality. His delegation also had in mind in that connexion the UNESCO programme, which included a number of positive measures in the cultural field.

3. Mr. LAWREY (Australia) said that his delegation had supported the United Nations Declaration on the Elimination of All Forms of Racial Discrimination (General Assembly resolution 1904 (XVIII)) and now supported the attempt to embody similar principles in an instrument which would be binding on States parties. The draft Convention was a further stage in the international community's effort to eliminate the irrational idea and odious practice of racial discrimination.

4. A central issue to be faced was the ability of States to accept the Convention—a binding agreement—under their particular constitutional and legal conditions. The Committee should make every effort to secure the widest possible measure of agreement and to provide an element of flexibility wherever that was necessary. If it created a strait jacket, very few would be prepared to put it on.

5. One problem which arose was the possibility of conflict between various freedoms. The Convention should not, in the name of freedom from discrimination, infringe other basic freedoms, particularly those of thought, opinion, expression, association and peaceful assembly recognized in articles 18 to 20 of the Universal Declaration of Human Rights and in the constitutions and laws of many countries. His delegation had stated, on the adoption of General Assembly resolution 1904 (XVIII)), that Australia could not be expected to "pass a special law to prosecute and punish under criminal law every person who utters a remark capable of being interpreted as advocacy of racial discrimination. Indeed, to do so might well make martyrs out of people whose objectionable ideas would otherwise be rejected by reasoned argument, or more probably by ridicule".

6. Another problem was the diversity of constitutional provisions and legal systems in the States Members of the United Nations. The manner in which the Convention was drafted could make it easier, or more difficult, to secure wide acceptance by States of the principles on which there was fairly general agreement among delegations. His own country was a federal State, and the application of the Convention would require the consent and action of a number of Governments, each with its own constitutional rights. The Committee should avoid doing anything that would make the problem of application to a great number of countries more difficult than it had to.

7. Those considerations were relevant to a number of articles of the draft Convention and to the instrument as a whole. At that stage, however, he would refer

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1/ Official Records of the General Assembly, Eighteenth Session, Plenary Meetings, 1261st meeting, para. 153.

only to article II of the draft—which his delegation could, on the whole, support, subject to his previous remarks—and to the amendments to it.

8. The second Brazilian amendment (A/C.3/L.1209) was entirely appropriate and acceptable. On the other hand, the third Polish amendment (A/C.3/L.1210) seemed to imply that special legislation would have to be enacted to deal with racial discrimination even though the problem might be adequately dealt with already by the general law and practice of the country concerned. His delegation found the seventh amendment submitted by the sixteen Powers (A/C.3/L.1226 and Corr.1) preferable to the related amendment submitted by the Bulgarian delegation (A/C.3/L.1218), since the former was based on the Universal Declaration of Human Rights and was clear and precise.

9. Mr. LAMPTEY (Ghana) stressed the importance of securing the widest possible acceptance of the Convention and, to that end, of drafting provisions which could command unanimous or nearly unanimous support.

10. As a legal instrument, the draft Convention must be as precise in its meaning and terminology as it was possible to make it. Although it was being drafted for people suffering racial discrimination, its acceptance or rejection by States would ultimately depend on the recommendation of their respective legal authorities. It was towards the instrument's acceptability in that sense that the Committee must bend its efforts.

11. He wondered whether controversial issues which had been raised and settled in the Commission on Human Rights should be reintroduced in the Third Committee, especially by delegations which had participated in the earlier stage of the work. Such action would not facilitate the Committee's task.

12. His delegation had supported the Indian formulation of article I, paragraph 1 (A/C.3/L.1216), with the term "national origin" incorporated in it, and the addition of a new paragraph 2 as proposed in the six-Power amendment (A/C.3/L.1224). He had strong objections to the French and United States proposal (A/C.3/L.1212) because its explanation of "national origin" was too sketchy. Nor did he agree with the view that the term "nationality" had a universally accepted meaning; a reading of Soviet literature on the nationality question showed that not to be so. At the 1304th meeting, the United States representative had referred to the notions of ancestry and previous nationality; they seemed to him adequately represented by "descent" and "place of origin" in the Indian proposal. His delegation did not take a dogmatic position, however, and was ready to support any rephrasing of article I which met the requirements he had suggested earlier. He could not accept the first Brazilian amendment (A/C.3/L.1209), the second Polish amendment (A/C.3/L.1210), the French and United States amendments (A/C.3/L.1212) or the fifth of the sixteen-Power amendments (A/C.3/L.1226 and Corr.1), which all concerned article I. He could support the first Czechoslovak amendment (A/C.3/L.1220), although the proposed addition did not appreciably improve the draft. While he agreed with the United Kingdom representative that the word "underprivileged" was as open to abuse as the word "underdeveloped", he considered the former preferable in the context and would therefore support the first two amendments submitted by Mauritania, Nigeria and Uganda (A/C.3/L.1225).

13. Regarding article II, paragraph 1, he could not support the third amendment submitted by Brazil, Colombia and Senegal (A/C.3/L.1217) since it altered the nature of the provision, but he found the second Brazilian amendment perfectly acceptable. In the sixth amendment of the sixteen Powers he could support points (a) and (b) and had no strong feelings on point (c). The third Polish amendment was acceptable; its adoption would not, in his view, make enactment of legislation imperative in all cases; it would, however, guard against accusations that the lack of legislation allowed racial discrimination to exist. With regard to article II, paragraph 2, he could support the first Bulgarian amendment, which added a very important clarification.

14. With regard to article III, he supported the eighth amendment submitted by the sixteen Powers, since he believed it improved the text.

15. With regard to article IV, he supported the second Czechoslovak amendment concerning the introductory paragraph, the ninth of the sixteen-Power amendments and the Ukrainian amendment (A/C.3/L.1208).

16. With regard to article V, he supported the second Indian amendment (A/C.3/L.1216) since the original wording was open to misinterpretation: the Convention was intended to eliminate racial discrimination and not to grant rights which might not yet be recognized in certain countries. However, he proposed that the word "notably" should be inserted in the Indian amendment, between "the present Convention" and "in the matter of", since the list of rights which followed was not exhaustive. He also supported the second Bulgarian amendment and the amendment submitted by Mauritania, Nigeria and Uganda calling for the addition of the words "and choice of spouse" to subparagraph (d) (iv) of the article since the law in some countries prohibited interracial marriage. The other amendment of those three Powers to article V was unnecessary.

17. As regards article VI, his delegation supported the third Bulgarian amendment; it also supported the fifth amendment of Mauritania, Nigeria and Uganda because it believed there were some circumstances in which reparation would be neither feasible nor desirable.

18. Mr. RESICH (Poland) said that the present wording of article II, paragraph 1 (c) was open to the interpretation that the decision as to whether there was any need for legislation to put an end to racial discrimination rested solely with the State concerned, even in States where no such legislation existed. There was therefore no guarantee that racial discrimination would be prohibited by law in all States. In order to clarify the situation, the Convention should impose upon States parties the obligation to prohibit racial discrimination through their legislation if they had

not yet done so. His delegation's third amendment (A/C.3/L.1210) was designed to impose that obligation.

19. The Jamaican amendment (A/C.3/L.1223) had the same purpose but he believed his delegation's amendment was needed also in order to make the Convention perfectly clear on that point.

20. Mrs. PONCE DE LEON (Colombia) regretted that the Ghanaian representative was not able to support the third amendment submitted jointly by her delegation and those of Brazil and Senegal (A/C.3/L.1217). In her view it was not enough for States merely to prevent injustice; they should also take positive action to promote understanding between the races. She could not see why such a reference to the positive side of State action in the field of racial discrimination should not be included in the Convention.

21. In their fourth amendment, the sponsors would replace the words "fronteras entre las razas" in the Spanish text, to which a number of objections had been raised, by "barreras raciales".

22. Mrs. BERRAH (Ivory Coast) saw no difference of substance between the French and United States amendment (A/C.3/L.1212) to article I, paragraph 1, and the six-Power amendment (A/C.3/L.1224) and wondered whether the various sponsors could not submit a consolidated text.

23. With regard to article I, paragraph 2, she observed that the need for the "adequate development or protection of certain under-developed racial groups or individuals belonging to them" had often been invoked in the past to justify colonialism. Moreover, that principle still represented discrimination, even though the aims might be good and even though limits were set for the length of time such special measures would be in effect. The paragraph as a whole was unfortunate: it opened the door to all sorts of legal manœuvring to justify various kinds of racial discrimination and it would favour the racists more than their victims. She therefore proposed its deletion and also the deletion of article II, paragraph 2, which had a similar effect. The adoption of her proposal would also put an end to the polemics that were bound to arise over the word "under-developed", and would avoid a situation in which the Committee would become the unwitting accomplice of those who might try to distort its good intentions.

24. Mr. SAKSENA (India) said he failed to see how the word "under-developed" in article I, paragraph 2, could be considered a reflection on anyone's inherent qualities; it merely described those who through deprivation had been unable to develop their innate potentialities. However, in deference to the feelings of others, he would not insist on the retention of the word. Unfortunately, the word "underprivileged" was not a satisfactory substitute.

25. Paragraph 2 of the article had been included in the draft Convention in order to provide for special and temporary measures to help certain groups of people, including one in his country, who, though of the same racial stock and ethnic origin as their fellow citizens, had for centuries been relegated by the caste system to a miserable and downtrodden condition. While it was true that the members of that group had been underprivileged in the sense that they had been denied the rights and privileges enjoyed by others, they had also been under-developed, not because of any lack within themselves, but because they had for centuries been denied those advantages that were essential for the full development of the human personality. When India had gained its independence in 1947, it had set about removing that social canker. It had given the members of that group complete equality before the law and had passed constitutional and legal enactments to do away with all social and legal barriers to their advancement. That had not been sufficient, however, and they had also been given special rights with a view to raising their educational, social and economic status.

26. The word "underprivileged" meant one thing in a sociological context, but something quite different in a legal context. It raised legal difficulties for his delegation because the Indian Constitution had abolished all privileges and titles. The special rights granted to members of the group he had mentioned had not been privileges but measures of protection. That was why his delegation could not accept the word "underprivileged".

27. In order to solve the difficulty, he proposed that the words "development or protection of certain under-developed racial groups or individuals belonging to them" in article I, paragraph 2, and in article II, paragraph 2, should be replaced by "advancement of certain racial or ethnic groups or individuals needing such protection as may be necessary".

28. Mr. GOONERATNE (Ceylon) expressed the hope that the sponsors of the various amendments would endeavour to reconcile their texts, lest the aims of the draft Convention should be lost sight of in a welter of amendments. The expression "national origin" in article I needed clarification, particularly since, under the terms of article V, States parties to the Convention would undertake to guarantee the right of everyone to equality in the enjoyment of political rights, which it was generally agreed should not be extended to non-nationals. The amendments submitted by France and the United States and by India had the same objective, and he hoped that agreement could be reached between the sponsors on a single text. He agreed with many other speakers that the word "underprivileged" was more suitable than "under-developed" in paragraph 2 of the same article; nevertheless, as the representative of India had mentioned certain legal difficulties and had expressed his willingness to consider any compromise wording, the Ceylonese delegation suggested that the expression "less developed" should be used.

29. Mr. ABDEL-HAMID (United Arab Republic) supported the sixth amendment of the sixteen Powers concerning article II, paragraph 1 (b), but requested the sponsors to delete from their amendment to article II, paragraph 1 (c), the words "of any kind", which appeared unnecessary and might give rise to misunderstandings. Before taking a stand on article I, paragraph 2, and article II, paragraph 2, he wished to know why it had been considered necessary to use the same wording twice in the draft Convention; if

the paragraphs in question were adopted in approximately their original form, he would prefer the use of the word "underprivileged", although he appreciated the constitutional difficulties mentioned by the representative of India.

30. Miss AGUTA (Nigeria) said that her delegation could not accept the Indian oral amendment to article I, paragraph 2, especially as it related to the need for the protection of particular groups. She hoped that the Indian delegation would withdraw its objection to the first two of the amendments submitted by Mauritania, Nigeria and Uganda, since the draft Convention was not intended to deal with a particular case of the kind which had given rise to the objection. The reason why many delegations opposed the use of the word "under-developed" was not primarily that it was offensive to certain groups, but that it was not a suitable description of a human individual or group. She hoped that the Indian delegation would reconsider its stand on the amendment, which the sponsors felt obliged to maintain.

31. Mr. ZOUPANOS (Cyprus) suggested that the passage in article I, paragraph 2, under discussion whould be rephrased "certain racial groups or individuals suffering from a denial of opportunities and/or rights".

32. Mr. KOCHMAN (Mauritania) felt that that phrase meant essentially the same as "certain underprivileged groups" and merely lengthened the text.

33. Mr. SAKSENA (India), replying to the representative of Nigeria, said that article I, paragraph 2, was a special temporary provision relating to a special group, and was not intended to refer to racial groups in general. The use of the word "suffering" in the wording suggested by the representative of Cyprus was not appropriate, since the group in question now enjoyed equal opportunities and rights.

34. Mr. SANON (Upper Volta) said he agreed with the representative of the Ivory Coast that article I, paragraph 2, should be deleted.

35. Mr. TEKLE (Ethiopia) said that his delegation could support, and would be glad to co-sponsor, the Indian amendment if it was revised in the manner suggested by the representative of Cyprus.

36. The CHAIRMAN noted that the articles of the draft Convention had been exhaustively discussed, and suggested that the Committee should proceed, at its next meeting, to vote in the first instance on articles I to III and V to VII.

It was so agreed.

The meeting rose at 12.50 p.m.

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