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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, L.1210, L.1220, L.1221, L.1223, L.1226 and Corr.1, A/C.3/L.1228, L.1237, L.1239, L.1241 to L.1243, L.1245, L.1249)

ARTICLE IV (continued)

1. Lady GAITSKELL (United Kingdom) said that article IV went to the very heart of the draft Convention, since it involved what her delegation considered to be the fundamental human right—freedom of speech. Freedom of speech was the foundation-stone on which many of the other human rights were built; without freedom of speech, many cases of racial discrimination remained completely undiscovered. Her country was taking legal and practical steps to tackle the problem of racial discrimination, but it also defended the right of all organizations, even fascist and communist ones, to exist and to make their views known, even though those organizations held views which the majority of the people utterly repudiated. The views of such organizations were tolerated with one provision—that their expression did not involve incitement to racial violence. Her country's position was based on the belief that in an advanced democracy the expression of such views was a risk which had to be taken.

2. Some of the proposed amendments to article IV infringed the fundamental right of freedom of speech. If they were accepted, she could not see how her Government or many others would be able to subscribe to the Convention. With regard to the Ukrainian amendment (A/C.3/L.1208), the United Kingdom could never agree to punish by law somebody who paid a subscription towards membership of a fascist organization, for example. The same objection applied to part (b) of the second Czechoslovak amendment (A/C.3/L.1220). No matter how odious the ideas of any group or organization were, her country could not agree to the banning of it. Part (c) of the second Czechoslovak amendment would delete the words "resulting in acts of violence", which her delegation

considered to be indispensable. Speech should be free, but incitement to violence should be repressed. The fourth Polish amendment (A/C.3/L.1210) was unacceptable for the same reasons.

3. Those who cherished free speech could not support the amendments she had referred to. If the draft Convention was not to become just a list of exhortations—a document demanding legislation which few could put into effect—all the Committee's efforts would have been wasted. Only a Convention that was widely accepted would be of assistance in tackling the problems of racial discrimination.

4. Mrs. SEKANINOVA (Czechoslovakia) announced that, in keeping with the resolution adopted by the Committee at its 1312th meeting (A/C.3/L.1244), her delegation had revised part (b) of its second amendment, which would not call for the insertion of the words "dissemination of ideas and doctrines based on racial superiority or hatred and all". The inclusion of those words was an indispensable and logical consequence of the condemnation, in the introductory clause of article IV, of "ideas or theories of the superiority of one race or group . . .". She recalled that article II, already adopted, would have States Parties undertake "to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms". In fulfilling that obligation States must have in mind all the manifestations and all the stages of the phenomenon of racial discrimination. Since article IV, sub-paragraph (a), dealt both with direct acts of discrimination and violence and with incitement to them, it was the appropriate place to strike at the very root of incitement, i.e., the dissemination of racist ideas and doctrines.

5. Her delegation could not accept the United States sub-amendment (A/C.3/L.1243). Freedom of expression was certainly one of the fundamental civil rights; it was proclaimed in the Universal Declaration of Human Rights and guaranteed in the Constitution of her own country; it was also explicitly mentioned in the appropriate place in the draft Convention, namely, article V. To refer to it in the very clause which would declare racist ideas and doctrines an offence punishable by law would imply that the clause could be interpreted very broadly and applied with low standards. The right to freedom of expression was not entirely unrestricted. It had to be exercised within limits set by the rights of others and the interests of society. She would refer members in that regard to article 29 (2) of the Universal Declaration of Human Rights and to article 26 of the draft Covenant on Civil and Political Rights. Fears of undue restriction of freedom of expression were out of place in the context of the draft Convention.

Deciding whether a particular discriminatory activity was punishable was a duty to be performed in the same way as it was for any other criminal activity. While she desired the draft Convention to be as widely acceptable as possible, she also believed that it was an obligation of States acceding to the Convention to bring their legislation into line with its provisions. Article II, paragraph 1 (c), already adopted by the Committee, required States Parties "to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination".

6. With reference to the United Kingdom representative's remarks, she felt that it was no proof of democracy that movements directed towards hatred and discrimination were allowed to exist. Her delegation was passionately dedicated to freedom of speech, but not when it was misused in the service of hatred, war and death. The wording proposed in the Czechoslovak amendment was entirely consonant with human rights and fundamental freedoms. There was accordingly no reason to dilute those parts of the Convention which sought to prohibit activities that were contrary to the very principles of the United Nations.

7. The purpose of her delegation's amendment to the introductory paragraph was to enjoin States Parties to take steps to eradicate not only incitement to discrimination but also acts of discrimination. The addition of the words "or acts of" was necessary because the elimination of direct acts was a basic aim of the draft Convention. The amendment also brought the wording of the introductory clause into line with that of paragraph (a), which referred to "incitement".

8. Part (c) of the second Czechoslovak amendment was designed to make it clear that any incitement to racial discrimination, whether it resulted in acts of violence or not, was to be regarded as a punishable offence. The words "resulting in acts of violence", the deletion of which had also been proposed in document A/C.3/L.1225, constituted a serious and unacceptable limitation.

9. Her delegation's objections to the United States sub-amendment (A/C.3/L.1243) applied equally to the five-Power sub-amendment (A/C.3/L.1245). The latter, moreover, was more a new proposal than a sub-amendment.

10. Mr. BECK (Hungary) supported the fourth Polish amendment (A/C.3/L.1210) unreservedly. He hoped that the United States delegation would explain the meaning of its sub-amendment (A/C.3/L.1242) to that amendment. If that delegation maintained the same position on the Convention as it had taken at the 1220th meeting during the Assembly's eighteenth session when the Draft Declaration on the Elimination of All Forms of Racial Discrimination had been under discussion, it would seem that, because United States law was based on the recognition of an unlimited right to freedom of speech and freedom of assembly, the United States could not accept the idea of the fourth Polish amendment, and would therefore be unable to support it. The United Kingdom representative had taken substantially the same position at the present meeting in referring to her country's attitude towards fascist or communist organizations

in the United Kingdom. He wished to point out, incidentally, that communist organizations did not advocate racial discrimination, but fascist organizations did. In any event, both the United States and the United Kingdom could alter their legislation in that regard if their parliaments decided to do so. Such a step would be in the interests of all countries and would represent progress. His delegation could not accept the United States sub-amendment because it was contrary to legislation which his country could not change.

11. Under article 4 of the Treaty of Peace with Hungary, signed at Paris on 10 February 1947, Hungary had undertaken not to permit in future the existence and activities of organizations of a fascist type which had as their aim denial to the people of their democratic rights and under article 2 it was obliged to take all measures necessary to secure to all persons under Hungarian jurisdiction, without distinction as to race, sex, language or religion, the enjoyment of human rights and of the fundamental freedoms. The conclusion of that Treaty had enabled the Allied and Associated Powers to support Hungary's application to become a member of the United Nations and also to adhere to any Convention concluded under the auspices of the United Nations. Hence his country was bound by a formal obligation imposed on it not to permit the existence or activities of fascist organizations on its territory. He therefore wondered whether, eighteen years after the signing of the Peace Treaty, the United States had the moral right to submit a sub-amendment which was in flagrant contradiction to an international treaty it had signed in the name of the United Nations.

12. For those reasons, his delegation could not accept either of the United States sub-amendments (A/C.3/L.1242, L.1243), nor could it sign a Convention which permitted fascist organizations to operate. It would not do that even if it was legally in a position to do so because it believed that measures should be taken to combat the activities of all organizations advocating any form of racial discrimination.

13. While it was true that the text of the Treaty of Peace did not specifically prohibit the propagation of racist ideas, such a prohibition was nevertheless implicit in the Treaty.

14. The five-Power proposal (A/C.3/L.1245) had been submitted after the time-limit and was not properly a sub-amendment. His delegation could not support the proposal because it believed that in order to eliminate racial discrimination a start must be made by implanting in the minds of men the idea of brotherhood and removing racist ideas. While the last vestiges of racial discrimination were disappearing in the Scandinavian countries and it might therefore seem unnecessary to those countries to prohibit the propagation of fascist ideas, there were many other countries in which the situation was not the same. It was not enough merely to discourage racial discrimination and every day of delay in beginning serious work towards the elimination of that scourge meant that it would take so much longer to eradicate. His country knew from its own experience that racial discrimination could not be eliminated overnight merely by passing laws; but it knew also that with work, patience and educational efforts it could be eliminated, as it had been in Hungary.

15. Mr. RESICH (Poland) observed that the present wording of article IV, sub-paragraph (b), of the draft Convention left it to each State Party to decide whether or not it should prohibit organizations or the activities of organizations which promoted and incited racial discrimination. Without such a prohibition, however, racist organizations and propaganda could legally exist. The Committee should recognize that the continued existence of such organizations represented a danger to mankind.

16. Some representatives had argued that the fourth Polish amendment (A/C.3/L.1210) infringed the rights of freedom of speech and assembly recognized in articles 19 and 20 of the Universal Declaration of Human Rights and was contrary to national legislation guaranteeing the free exercise of those rights. He could not agree. He doubted in the first place, that the legislation of any State failed to proscribe organizations which disturbed public order or threatened international peace, and racist organizations certainly fell within that category. Moreover, every freedom was subject to certain limitations, as it was the purpose of his amendment to introduce into the Convention the type of limitation embodied in article 29 (2) of the Universal Declaration.

17. The Convention should prohibit the public advocacy of racial discrimination. If sub-paragraph (b) of article IV failed to prohibit all propaganda in favour of racial discrimination it would not be consistent with sub-paragraph (a). That was why the fourth Polish amendment proposed that membership in an organization which promoted or incited racial discrimination and participation in its activities should be declared a crime. While it was true that the Commission on Human Rights had, after long deliberation, concluded that it was impossible to render an individual liable to punishment for the mere fact of belonging to a racist organization, nevertheless, if the Convention recognized that such organizations should be outlawed as a danger to public order and international peace, then it was only logical for it to recognize also that participation in such activities constituted a crime. If the existence of racist organizations and participation in them was not punishable as a crime but merely subject to administrative reprobation, the implementation of the Convention would be seriously jeopardized.

18. Mr. JERNSTROM (Finland), introducing the five-Power amendment (A/C.3/L.1245) to part (a) of the second Czechoslovak amendment (A/C.3/L.1220) on behalf of the sponsors, said that, any kind of racial discrimination being alien to the way of life of the Nordic countries, the latter sought to establish, in understanding with all other Member States, the most constructive possible text of the draft Convention in order to ensure its future implementation. Article IV was designed to safeguard certain human rights and fundamental freedoms, but that objective should not be achieved at the expense of other equally fundamental rights. Accordingly, the five-Power amendment would introduce a reference to the rights set forth in article V; in order to make the amendment more acceptable to delegations known to be favourably disposed towards it, it had been revised to read: "...after the words 'and to this end', insert the

words 'with due regard to the rights expressly set forth in article V'".

19. Mr. COMBAL (France) recalled that difficulties similar to those now confronting the Committee had arisen at the eighteenth session, when the draft United Nations Declaration on the Elimination of All Forms of Racial Discrimination had been under consideration. Unless all delegations displayed realism and a willingness to co-operate, it would not be possible to formulate a text which all States could ratify. Account must therefore be taken of the basic legal principles of those Governments which wished to condemn certain racist practices but desired at the same time to preserve fundamental democratic freedoms, particularly freedom of expression and freedom of association. In the view of his delegation, the text prepared by the Commission on Human Rights (A/5921, annex), although not perfect, drew a sufficiently clear dividing line between the use and the abuse of those freedoms. While his delegation favoured the adoption of that text, it was prepared to consider any amendments which would make the wording more precise; however, it could not agree, in particular, to the second Czechoslovak amendment which, by imperilling the basic freedoms of expression and association, would run counter to the very purposes of the Convention itself and, by ignoring the legal difficulties confronting some countries, would jeopardize its universal acceptance. While reserving his final judgement, he believed that—if any change in the original text was to be made—the five-Power amendment was a step in the right direction, but that the reference to the rights set forth in article V was somewhat ambiguous, since those rights were enumerated in that article in a rather different context. He therefore suggested that a further phrase, reading "within the framework of the principles set forth in articles 19 and 20 of the Universal Declaration of Human Rights", should be added to the text of the five-Power amendment.

20. Mrs. DABCEVIC-KUCAR (Yugoslavia) supported part (c) of the second Czechoslovak amendment to article IV, sub-paragraph (a), which would require States Parties to the Convention to take action against incitement to racial discrimination without waiting until it resulted, as it inevitably must, in acts of violence. She also supported the fourth Polish amendment, because the existing text of sub-paragraph (b) would enable persons engaging in racial propaganda to escape punishment by claiming that they did not belong to any organization. In addition, the Polish amendment would prohibit not only the activities of racist organizations, but their very existence. That, too, was quite proper, for while personal thoughts and feelings could not be regulated by law, and while it was generally agreed that the right to freedom of expression should be respected, the latter right could not be exercised to the detriment of other human rights and fundamental freedoms. With the adoption of the United Nations Charter, States had assumed an obligation to combat racial discrimination within their territories, and article 9 of the United Nations Declaration on the Elimination of All Forms of Racial Discrimination expressly condemned all propaganda and organizations based on ideas or theories of the superiority of one race or group of persons of one colour or ethnic

origin. If the problem was to be attacked at its roots, the mere existence of such organizations must be prohibited by law.

21. Mr. GOONERATNE (Ceylon) said that, while his delegation would vote in favour of a Convention setting forth adequate measures for the elimination of all forms of racial discrimination, it would wish the text to be consonant with Ceylon's democratic way of life and with its Constitution. In Ceylon, where freedom of expression was regarded as a vital and fundamental right, an individual could not be punished merely for speaking against a particular race, but if he incited others to racial discrimination resulting in acts of violence he committed a punishable offence. A distinction must therefore be drawn between the use and the abuse of freedom of speech, and also of freedom of speech, and also of freedom of association; from that standpoint, the adoption of the two United States amendments (A/C.3/L.1242 and L.1243) would result in a wording of sub-paragraphs (a) and (b) acceptable to his delegation. Since it was at least theoretically possible that States, in taking action against incitement to racial discrimination, might limit certain other rights, his delegation could also support the five-Power amendment, which made the introductory paragraph more precise and clear and was in harmony with the remainder of the draft Convention.

22. Lady GAITSKELL (United Kingdom) said that, in view of the Hungarian representative's statement, she wished to make it clear that her Government did have powers to deal with the illegal activities of fascist and other organizations which stirred up racial strife, although it could not ban the organizations themselves. Those powers, which had been used in the past, derived in part from the common law and in part from the Public Order Act of 1936, enacted specifically for the purpose of curbing the activities of Nazi and fascist organizations, and they would be further reinforced by the Race Relations Bill now before Parliament.

23. Mr. MACDONALD (Canada) said that his delegation could support parts (a) and (b) of the second Czechoslovak amendment (A/C.3/L.1220), and also the ninth amendment proposed by the sixteen Powers (A/C.3/L.1226, and Corr.1).

24. The amendment submitted by the Ukrainian SSR (A/C.3/L.1208) and the fourth Polish amendment (A/C.3/L.1210) were more controversial; the latter would substantially modify the existing wording of sub-paragraph (b), firstly, by removing an optional element and, secondly, by creating a new offence, namely, participation in the proscribed organizations. Canada's reaction to the two proposals would depend to a great extent on the Committee's decision concerning part (c) of the second Czechoslovak amendment; taken together,

the three amendments raised very real problems for countries which operated under the rule of law, at least in the democratic meaning of that term, because legislatures would have to be asked to recognize new crimes. The difficulty was twofold; in the first place, the crimes were not clearly defined—it was not indicated, for instance, whether "incitement to racial discrimination" meant incitement with intent or incitement per se—and, secondly, a more important problem was that of drawing a line between declaring incitement to racial discrimination a crime and preserving fundamental rights and freedoms. The problem was to devise a balanced legal formula which would allow the law to reach such offences without infringing human rights and freedoms.

25. The five-Power amendment (A/C.3/L.1245) went a long way towards effecting the kind of reconciliation which might make it possible for his Government to accept the new offences set forth in the draft Convention (A/5921, annex), and a reference to the Universal Declaration of Human Rights, as suggested by the representative of France, might not be out of place in the text.

26. Miss AGUTA (Nigeria) expressed approval of the five-Power proposal as orally revised and including the addition suggested by the French representative. She wondered, however, whether the French representative could agree to have the addition which he proposed refer simply to the Universal Declaration in general, and not to particular articles.

27. Mr. OLCAY (Turkey) said that he had been most impressed by the remarks of the Hungarian representative. He considered the revised five-Power amendment, with the French representative's suggested addition, an acceptable formulation for the introductory paragraph. It seemed a good, if not the only possible, compromise between the various amendments proposed. The problem was to curb discriminatory activities without jeopardizing the freedoms that lay at the basis of any democratic community. Care must be taken not to disrupt the legal order of countries, especially those in which the problem of racial discrimination did not arise.

28. Mr. BELTRAMINO (Argentina) endorsed the remarks of the French representative. The ninth amendment of the sixteen Powers, of which his delegation was a co-sponsor, would introduce a small change in the introductory paragraph. He believed that the five-Power amendment, as revised, offered the best basis for agreement in the Committee.

29. Mr. COMBAL (France) thanked the Nigerian representative for her support and accepted her suggestion.

The meeting rose at 12.25 p.m.