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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.1221, L.1237, L.1239, L.1241, L.1249, L.1251, L.1262, L.1266, L.1268, L.1270 to L.1273, L.1274/Rev.1, L.1278)

ARTICLES ON MEASURES OF IMPLEMENTATION (continued)

1. Mrs. BERRAH (Ivory Coast) expressed her delegation's regret that, despite intensive efforts, the Afro-Asian group had been unable to consolidate the Philippine draft articles relating to measures of implementation (A/C.3/L.1221), to be added to the provisions of the draft International Convention on the Elimination of All Forms of Racial Discrimination (A/C.3/L.1239, L.1241, L.1249, L.1262) with the amendments thereto submitted by Ghana (A/C.3/L.1274/Rev.1).
2. From the statements which had been made it was clear that the Third Committee was determined to submit to the General Assembly at its present session a proposal for measures to implement the Convention. Her delegation welcomed that determination because without such measures the Convention would be like a body without a head or a worker without tools, and unless the Committee adopted such measures at its present session, its work would be only half-done.
3. Her delegation suggested that the Committee should dispense with a general debate and should immediately commence consideration on the Philippine draft articles, that text having chronological priority. The draft should be considered article by article, the amendments submitted being dealt with in conjunction with the article to which they related. That procedure would save time and effort and would leave members free to submit sub-amendments if they so desired.

4. A spirit of realism should guide the Committee's deliberations. The Convention, as a multilateral treaty, was subject not only to ratification, but also to reservations, notwithstanding article XIV of the Ghanaian amendments (A/C.3/L.1274/Rev.1). The Committee might jeopardize everything by trying to achieve too much. If positions were too rigid, the measures in the Convention might remain a dead letter. The debate had shown the importance which each State attached to its national sovereignty, and no State would tolerate any interference by another in its domestic affairs. In that context article XII of the Ghanaian text seemed to her delegation to be particularly well advised.

5. Her delegation would have been willing to adopt a more uncompromising position if it had felt that the States now violating the most elementary human rights would thereby be brought to reason. Those States were South Africa, Portugal, and the illegal government of Ian Smith, which were turning their backs on history, morality and justice.

6. The alternative to her delegation's suggestion as to procedure would be for the Committee to put to the vote as a whole the draft submitted by the Philippines on the one hand and the amendments submitted by Ghana on the other. Her delegation did not favour such a course because it believed there was more to be gained by consolidating the two texts as far as possible, together with the amendments to them.

7. Mr. MACDONALD (Canada) said that the draft Convention was of great importance to the international community and to the United Nations in particular as part of a collective effort to clarify and formulate principles and procedures to promote basic individual liberties and extend them to a greater number of human beings in more areas of the world. The draft Convention could be a significant response by the United Nations to the increasing demands being made throughout the world for freedom and equality. It was essential to make the draft Convention effective and prevent it from becoming a dead letter through failure to make provision for its implementation. He had been impressed by the Ghanaian representative's plea that the Committee should take advantage of the present opportunity to make a stride forward in the struggle against racial discrimination. His delegation was prepared to join in the effort to match deeds to words by seeking new ways and means to ensure the Convention's success.

8. The Philippine proposals (A/C.3/L.1221) appeared to call for three main measures: the submission of reports by Governments; the establishment of a United Nations good offices and conciliation committee

and the acceptance under certain circumstances of petitions from individuals or groups.

9. The Ghanaian amendments (A/C.3/L.1274/Rev.1), which formed a complete alternative to the Philippine text, also provided for reporting and conciliation procedures but proposed the establishment of two bodies, rather than one, and the creation of national committees to screen petitions before they were forwarded to the international committee. They also contained provisions for the taking of an oath of impartiality by the members of the conciliation commission and included a procedure for the settlement of disputes, elements which the Philippine text did not contain. Under the Philippine text, reports could be forwarded to States which were not signatories to the Convention.

10. Those differences were mainly differences of detail and nuance rather than of substance and both texts had much in common. Both recognized the importance of reporting, conciliation and petition procedures, but neither offered anything either new or revolutionary. Reporting and conciliation were already techniques familiar to international organizations, especially in the field of human rights, and had been put to a variety of uses. However, the Convention offered an unprecedented opportunity to give old ideas practical effect in regard to the problem of racial relations. Although the tried and true methods of reporting and conciliation were particularly effective when accompanied by wide publicity, they did not go far enough. That was particularly true of the conciliation of disputes between States, for friendly States did not like to tangle in public, whereas rival States sought every pretext to do so. The ILO complaints system was a good illustration of the way such a system might operate.

11. What was necessary was that groups and individuals within a State should have access to competent and impartial decision-makers outside the State; in other words, non-national authorities should be vested with the authority to judge the treatment which a State meted out to its nationals. By means of such a provision an individual could have recourse outside his State and could secure independent judgement of the standards that State applied in the field of human rights.

12. Article 16 of the Philippine proposals and the Costa Rican proposal for the creation of a post of United Nations High Commissioner for Human Rights (A/5963) met that requirement in part. Both went beyond the proposal for national committees, made in article XII of the Ghanaian text, and were consistent with his delegation's view of the desirability of open societies, large world groupings, the formation of international rather than exclusively national loyalties and individual participation in the processes of power. Those goals could not, of course, be easily attained. Societies stood at different stages of development. As long as poverty, exploitation, disease and instability existed in the world, it was unlikely that there could be universal acceptance of an effective petitions procedure in the field of human rights. Many countries were not yet ready for it, and others did not share the traditional Western concept of human rights.

13. His statement should be considered as pointing the way to the standard the Committee should seek. In its discussions, the Third Committee should be bold, experimental and enthusiastic, not traditional and conservative; it should bear in mind the fact that the work of the Commission on Human Rights and the Third Committee itself had in the past been criticized by non-governmental, academic and expert bodies because it had not provided adequate measures of enforcement. Lastly, the Committee should not allow itself to be mesmerized by the concept of sovereignty.

14. Mr. COMBAL (France) said that, in his delegation's view, international measures of implementation were needed in the Convention. While it was true that the ratification of the Convention by a State implied that that State would introduce into its national legislation measures of implementation, the main idea of the Convention was that racial discrimination was a shameful blot on the present age, which should be eradicated by a concerted international effort. The Committee could not therefore rely exclusively on national measures of implementation but must do pioneering work, especially since no Convention of equal scope or significance had ever been adopted before. The Convention would be lacking in meaning without some international machinery and international measures of implementation must be a part of the Convention itself. Whether the articles providing for such measures were short or long was immaterial; what was important was that they should be well thought out and effective.

15. The Committee should consider the three main texts before it, the Philippine (A/C.3/L.1221), Ghanaian (A/C.3/L.1274/Rev.1) and Latin American proposals (A/C.3/L.1268), from the point of view of the machinery they advocated. The Philippine proposals should be regarded as the basic text for discussion, because it had been submitted first and was the most comprehensive. In considering those proposals in detail, his delegation would try to reconcile two requirements, which far from conflicting, were in fact complementary: first, that the system of implementation should be as effective as possible and, secondly, that it should not infringe national sovereignty.

16. The first objective could not be achieved if the Committee did no more than adopt a reporting system. In that case it would be doing very little, for in fact a reporting system on human rights already existed in United Nations practice. However, in trying to satisfy the first requirement he had mentioned, the Committee should not lose sight of the second.

17. While the Convention itself in fact necessarily implied some limitation of national competence, the text, if freely ratified, would represent no violation of sovereignty because the act of ratification itself was an exercise of sovereignty. However, the machinery for ensuring observance of the Convention should be consistent with the contractual character of the obligations assumed by ratifying parties. The conciliation commission, for example, for which there was no question of granting the power to impose obligations on a State, should be composed only of States Parties to the Convention. The Third Committee

should be careful to avoid directly or indirectly giving non-parties to the Convention the right to pass judgement on compliance by States Parties.

18. In granting to individuals and groups of the right to petition regarding the non-observance of human rights was furthermore a delicate subject that should be given careful consideration. It would be inadvisable moreover in the implementation clauses to impose upon a State any particular institutional measures.

19. The Third Committee should draft implementation clauses acceptable to all and thus make the Convention an effective international instrument.

20. Mr. HOVEYDA (Iran) welcomed the Philippine proposals (A/C.3/L.1221), which constituted a well-thought-out and useful contribution to the Committee's consideration of the item before it.

21. At the previous meeting some representatives had placed emphasis on the principle of non-intervention in the domestic affairs of States. His delegation strongly supported that principle, but felt that there were cases in which domestic questions relating to natural rights were and should be of general concern. The fact that many United Nations bodies were at present dealing with various aspects of the problem of racial discrimination showed that the problem existed and required solution. The sovereignty of States must naturally be respected, but he drew attention to the fact that the Committee, in discussing a proposal to hold a seminar on apartheid, had recently considered the need for international action to eliminate racial discrimination.

22. In his delegation's view, procedures for implementation of the Convention should be embodied in the Convention itself. Although the question was primarily a legal one, the Committee should not overlook the important factor of public opinion. The man in the street might well criticize the efforts of the Committee if it adopted a Convention that failed to make provision for its implementation. However, the principles underlying the implementation clauses should not go beyond the principles embodied in the substantive articles. Although the drafts submitted appeared generally satisfactory, they required careful consideration, preferably by a smaller body which could produce a single coherent text; however, in view of the appeal by the delegation of Ghana for adoption of the implementation clauses at the current session, he was prepared to agree with the suggestion of the representative of the Ivory Coast that the texts should be considered article by article by the Committee itself. The juridical problems mentioned by the representatives of the Netherlands, Canada and France should be borne in mind.

23. Mr. HANDL (Czechoslovakia) observed that the principles embodied in the substantive articles of the draft Convention constituted international norms of non-discrimination which had been observed by the Czechoslovak Government for many years in both its internal and its foreign policies. His delegation was convinced, therefore, that implementation was primarily a matter for the contracting States, since, as had been recognized by a number of experts in international law, only States possessed the machinery

and the means to provide effective safeguards for the exercise of human rights. It was therefore important that the greatest possible number of States should ratify the Convention and effectively apply its provisions in the political, economic, social, cultural and other spheres, without delay or prevarication. He hoped that the United Kingdom, whose delegation had eloquently supported the adoption of effective international measures of implementation but whose proposals had tended to weaken the substantive articles of the draft Convention, would contribute to that end.

24. Although his delegation was convinced that primary responsibility for application of the principles embodied in the draft Convention must be vested in the individual State, it did not in any way underestimate the role of international implementation measures. On the contrary, it would support the adoption of the most effective measures which would be in accord with the purposes and principles of the Charter and with the practice and experience of some of the specialized agencies. On that basis, it was prepared to support an effective system of reporting on legislative, administrative, political, economic and social measures taken by the contracting parties in order to implement the Convention, and also the creation of a special body to be entrusted with certain functions in connexion with the application of the Convention, provided that its terms of reference were not in contradiction with the principles of the Charter and the generally recognized principles of international law and that it was elected solely by the contracting parties, with due regard to equitable geographical representation.

25. It would be unfortunate if the adoption of the draft Convention were postponed until a later session on the pretext of lack of agreement concerning some of the implementation clauses. His delegation believed that the draft Convention and at least the basic implementation clauses should be adopted at the present session, on the understanding that the additional measures of implementation would be considered at the next session.

26. Mr. ZULOAGA (Venezuela) agreed with the Ivory Coast representative's suggestion that the two drafts should be considered article by article, as that seemed to be the only practical method of work.

27. In considering the extent to which States ratifying a convention surrendered a part of their sovereignty, it should be borne in mind that all States Members of the United Nations had made such a surrender upon signing the Charter. Although decisions of the Third Committee had only the force of recommendations, the Security Council had much more extensive powers under the proviso contained in Article 2, paragraph 7, of the Charter, and the implementation clauses of the draft Convention should be viewed in that light.

28. He wished to emphasize how important it was to the implementation of the Convention that publicity should be given to its provisions in every country, especially in schools, where the prejudices often acquired by children in their homes could be eradicated. It should also be borne in mind that the scope

of application of the Convention would be greatly limited by the fact that precisely those States where discrimination was a way of life would not accede to it.

29. With reference to the Canadian representative's statement, he considered that the Western countries had no reason to pride themselves on their advanced moral concepts, since it was in those countries that racial discrimination had originated and still existed, despite great efforts made by Governments to eliminate it.

30. He shared the misgivings of the French representative concerning article XII of the Ghanaian draft (A/C.3/L.1274/Rev.1) but would not propose any formal amendment, in the hope that the sponsor would take into account the views expressed during the debate. The idea of each State Party to the Convention constituting a national committee seemed excellent in principle, but he did not see how the members of such committees could have no official connexion with their Government.

31. In its concern to develop methods of implementation, the Committee should not forget that the States Parties themselves would be undertaking, in article II, paragraph 1 (c), and article VII of the Convention, to take effective implementation measures.

32. Mr. HELDAL (Norway) said that the delegations of the Philippines and Ghana had performed a valuable service in submitting their drafts which, despite differences in the means of implementation proposed, covered a considerable area of common ground. The system of implementation adopted by the ILO was perhaps stronger in some respects than the two drafts before the Committee, and 98 per cent of the Members of the United Nations had ratified the Constitution of the ILO, thus accepting that system. His delegation was in favour of strong articles of implementation for the very important instrument under discussion.

33. Mrs. RAMAHOLIMIHASO (Madagascar) said that, however unquestionable the good faith of States Parties to the Convention might be in the matter of interpretation and implementation, it was essential to have articles of implementation if the Convention was to be more than a mere declaration. The fact that the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, for instance, did not include any implementation clauses was due to the nature of its subject matter. The situation was quite different in the case of a convention dealing with a principle of universal importance recognized in the Charter.

34. The three types of implementation measures proposed in the Philippine and Ghanaian drafts should be considered very carefully, as they would no doubt constitute a precedent for future conventions relating to human rights. A reporting system presented no difficulties, but it was obviously not sufficient in itself, since the reports would be prepared by the States Parties. Provision must therefore be made for the second type of action, namely, petitions by individuals or groups; in that connexion it seemed wise to call for the establishment of national committees to screen petitions as proposed in article XII of the Ghanaian draft. The third proposal, which

deserved even closer attention, envisaged the filing of complaints by one State Party against another—a possibility to which no State should object in the interest of ensuring better protection of human rights and fundamental freedoms. The texts before the Committee appeared to offer sufficient safeguards against cases of abuse for political purposes.

35. The proposal for the establishment of a good offices and conciliation committee raised the question whether similar committees were likely to be set up for the implementation of future conventions. It might be desirable to consider whether a single committee of that kind should not be established for all human rights conventions, since complaints might in some cases allege violations of more than one such instrument.

36. She agreed with the suggestion of the representative of the Ivory Coast that the draft and amendments before the Committee should be considered article by article.

37. Mr. MURUGESU (Malaysia) said that his delegation had no objection to the adoption of the articles of implementation at the present session. However, the texts before the Committee must first be considered article by article in order to ensure that all their terms were acceptable to prospective States Parties, since otherwise the draft Convention would have no effect.

38. His delegation naturally agreed that everyone should have the right of redress if he considered himself affected by racial discrimination, and it would welcome the constitution of national committees, as proposed by Ghana in article XII of its draft. However, both the Philippine and Ghanaian drafts contained clauses which would allow interference by one State Party in the affairs of another. Such provisions were morally wrong and contrary to the principles of the United Nations Charter. They might cause endless dissension among States if they were not deleted entirely. Such provisions might be acceptable in the case, for instance, of border disputes, but in the field of racial discrimination they could scarcely be invoked unless a State employed spies throughout the territory of another State in order to detect alleged violations.

39. Mr. WALDRON-RAMSEY (United Republic of Tanzania) said that some delegations appeared to regard the discussion on measures of implementation as an opportunity for gaining political advantage over other delegations. He had in mind particularly the statements of the United Kingdom and Canadian representatives. Surely no one could accept the thesis that the representatives of developing countries who attacked colonialism and apartheid but who advocated prudence in dealing with the question now before the Committee were opposed to the effective implementation of the draft Convention. In fact, those who accused the developing countries of resisting the inclusion of effective measures of implementation in the draft Convention had themselves hesitated to become signatories of the Universal Declaration of Human Rights. The record of the Western countries in the matter of human rights gave those countries absolutely no right to take a patronizing

attitude towards others. Moreover, the Western countries did not consistently support the implementation of international recommendations and decisions. The United Kingdom representative had expressed her desire to see strong implementation measures incorporated in the draft Convention, but in the sphere of trade and development the United Kingdom delegation had resisted even the use of the word "implementation" in connexion with the recommendations of the United Nations Conference on Trade and Development. It should be noted in that regard that the improvement of international trade had an indirect but important connexion with the furtherance of human rights. With respect to the Canadian representative's statement, the Western world clearly had nothing to teach the developing countries in the matter of human rights; indeed, it was the Western world that had given birth to colonialism and slavery, while the developing countries had suffered as a result. The most flagrant violations of human rights still occurred in the so-called open and free societies, and they were often allowed by the authorities on the very pretext that the societies were "free" and "open".

40. His delegation saw some legal difficulties in the implementation clauses proposed to the Committee. The principle of State sovereignty was jealously guarded by all countries. It was embodied in Article 2, paragraph 7, of the Charter in clear recognition of the fact that the United Nations was not a supranational body which could dictate to States in domestic matters. Certainly the principle of State sovereignty should not impair the struggle against colonialism, apartheid and genocide, which were of direct concern to all mankind. But in view of the strong feelings of States on the question of sovereignty, he did not see how the Committee could accept a provision under which one State could lodge a complaint against another State concerning internal practices. Under the Ghanaian proposal (A/C.3/L.1274/Rev.1), such a complaint might ultimately reach the International Court of Justice, whose decision would be final. But even the Statute of the International Court of Justice provided for non-recognition of the Court's compulsory jurisdiction. The Committee must therefore proceed very carefully in that complex and sensitive legal area. There already existed United Nations machinery for handling complaints by individuals regarding violations of human rights. If the Committee thought that machinery inadequate, it should indicate whether it wished it to be altered or replaced, and not simply propose new procedures which would create a confusing situation and place the Secretary-General in difficulties.

41. The Ghanaian proposal called for the constitution by States of national committees composed of "independent and objective persons not having any official connexion with the Government" (article XII, paragraph 1). The Convention, however, could apply only to States and only States could be subject to inter-

national law. Moreover, from a practical standpoint, States could scarcely be expected to appoint persons who were not aware of and dedicated to the national interest. Both the Ghanaian and Philippine proposals provided that the body to be set up to supervise the implementation of the Convention should meet in New York or at Geneva. He opposed that idea: the United Nations was composed of countries situated in all parts of the world, and that should be reflected in its organizational arrangements. On the question of petitions, he believed that individuals should have the right to petition to national or international authorities. The practice of petitions was known in the United Nations in the areas of trusteeship and human rights. He considered it an excellent means of recourse that should be fully employed in the application of the Convention. Conciliation, on the other hand, was not particularly appropriate to the subject of the Convention. He did not see how complaints concerning human rights violations could be settled by conciliation.

42. He agreed with the United Kingdom representative that no country in the world could claim to be entirely free of discrimination. In Africa, as a result of the pernicious practices of colonialism, the independent countries now had to correct past injustices which had resulted in the degradation of the native Africans. In order to achieve a more balanced society, the countries of the region had embarked on a process of "Africanization". They should not be exposed to charges of violations of human rights simply because they sought to remedy the evils forced on them by the colonial Powers.

43. He hoped that the Ghanaian and Philippine delegations could jointly develop a text which would take into account the discussion in the Committee. He agreed with the Czechoslovak representative that if the Committee could not adopt all the implementation measures at the present session, it might continue to work on them at the twenty-first session. The Committee should not act hastily on such a vitally important matter.

44. Mr. LAMPTEY (Ghana) observed that the Tanzanian representative had misconstrued the provisions of the Ghanaian proposal concerning the International Court of Justice, which did not in fact go further than the Court's Statute.

45. Lady GAITSKELL (United Kingdom) wondered how the Tanzanian representative could impugn the motives of the United Kingdom when at that very time there was a bill on racial discrimination before the House of Commons. As to trade and development, she was not an expert in the matter but she hardly thought it relevant to the present item. Racial discrimination was a very complex subject, and attempts to oversimplify it could only hinder the Committee's efforts.

The meeting rose at 1.15 p.m.