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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 and L.1273, L.1274/Rev.1, L.1278, L.1289 to L.1291)

### ARTICLES ON MEASURES OF IMPLEMENTATION (continued)

1. Mr. COCHAUX (Belgium) said that, in the substantive articles of the draft International Convention on the Elimination of All Forms of Racial Discrimination as adopted by the Committee (A/C.3/L.1239, L.1241, L.1249, L.1262), the term "racial discrimination" meant any distinction, exclusion, restriction or preference based on race, colour, descent or, national or ethnic origin which had the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life. In his view, it would be a gross error to stigmatize only the conventional western type of colonialism—whose evils were well known but those historical value and significance were equally clear—and to ignore other forms of discrimination which were just as serious and deserved equal attention.

2. With regard to the principle of respect for sovereignty, which had proved a stumbling block for the last few meetings, he wished to point out—and thought it appropriate to refer in that connexion to the obligations stated in Articles 55 and 56 of the Charter, which, while they did not provide for sanctions, were none the less specific—that if Member States wished to fulfil the obligations they had assumed on joining the United Nations, they must accept the idea that, by virtue of their very sovereignty, they were required to act effectively in the Organization, in accordance with the Charter.

3. In that connexion, he drew attention to the fact that basic instruments which had been adopted during the first years of the life of the United Nations, such as the Convention on the Prevention and Punishment of the Crime of Genocide and particularly the Universal Declaration of Human Rights, had their origin in the Charter. The European Convention for the Protection of Human Rights and Fundamental Freedoms could even be said also to form part of that libertarian and egalitarian movement. Following those first efforts, the heightened national conscience of new nations and peoples had spurred the United Nations to further efforts in the defence of equality of rights among peoples. At present it had to be recognized—and it was an irreversible evolution which obeyed only its own laws and dictates—that the movement for the liberation of the formerly dependent countries had had a determining influence on the progress achieved in the field of human rights, although, during that historic phase, the struggle to protect individuals against arbitrary action by Governments might have suffered a momentary eclipse.

4. It was, moreover, to two of the countries which had only recently regained their independence, the Philippines and Ghana, that credit was due for having envisaged practical means of guaranteeing the rights of the individual against arbitrary governmental action. With a few exceptions—such as were indicated in the statements by the representatives of Czechoslovakia and the United Arab Republic and other less categorical statements such as that of the representative of Hungary—the Committee was unanimous in recognizing the vital importance of such measures. However, while it was gratifying that all realized the need to agree on some common denominatory, he hoped that that denominator would be high enough for the Convention to retain its validity. The Mauritanian amendments (A/C.3/L.1289) should therefore be rejected since they would unduly limit the scope of the measures of implementation. He wished to point out, moreover, to those delegations which deemed it essential to maintain some balance in the text between the substantive articles and the articles on implementation, that it was necessary, on the contrary, if effective machinery was to be developed to guarantee the rights and freedoms of individuals and of States, for the articles on implementation to be explicit and detailed, and therefore long and, if necessary, complex. He referred, in that connexion to the case of the European Convention, one of the most distinctive features of which was that it embodied complex, but effective machinery for supervising the implementation of treaties, machinery which, according to Sir Humphrey Waldock, first President of the European

Commission of Human Rights, constituted a first step in the evolution of the status of the individual in international law.

5. There could be no denying that without measures of implementation there could be no convention worthy of the name. Moreover, as the Canadian representative had very rightly pointed out, there was nothing revolutionary in the measures proposed in the draft articles submitted by the delegations of the Philippines (A/C.3/L.1221) and Ghana (A/C.3/L.1274/Rev.1). It was therefore surprising that the question of the sovereignty of States should so often be raised. It seemed to him obvious that their sovereignty must be respected and that accession to the Convention was in itself an act of sovereignty. Under the pretext of sovereignty, were individuals to be left at the mercy of arbitrary governmental action? Formerly they had been, it was true. The protection of the individual against arbitrary governmental action had been unknown and in 1903, for example, a writer such as Oppenheim had said that the law of nations was a law governing the international conduct of States and not a law for their citizens. [1] Since that time, things had changed, and the Charter, by requiring respect for the fundamental rights and freedoms of the individual had made the matter a subject of international law. Member States seemed not always to realize clearly their obligation to respect the rights of the individual, which was imposed on them by the Charter. The measures proposed by the Philippines and Ghana—periodic reports, conciliation procedure, petitions—deserved the support of the Committee in as much as they contributed, particularly in the case of the right of petition, to formalize recognition of an international law applicable to individuals and designed to protect them against arbitrary action by Governments. In that connexion he drew attention to the fact that the European Convention for the Protection of Human Rights and Fundamental Freedoms empowered the Commission to examine complaints by individuals in addition to those submitted by States. No State Party to that Convention had ever felt that that could prejudice its sovereignty. The European Convention was not the only example. There was the more closely related case of the ILO conventions whose extremely liberal but binding machinery which had proved generally advantageous had been mentioned in laudatory terms by several speakers. Ninety-six per cent of the Members of the United Nations had accepted the procedure established by the ILO without any impairment of their sovereignty and there was no reason why something which existed and proved effective within the framework of a specialized agency should not do the same in the United Nations. It might be desirable for the ILO representative to explain to the members of the Commission how that procedure worked.

6. He supported both the idea of setting up a committee such as had been advocated by the Philippines, which would ensure freedom for all but which would subject the community to the rule of law, and the idea of allowing recourse to the International Court of Justice. As for the proposal to establish national bodies, his delegation saw little use for them in Western-type countries which already had effective bodies and institutions.

7. Mr. CHKHIKVADZE (Union of Soviet Socialist Republics) pointed out that the Declaration on the Granting of Independence to Colonial Countries and Peoples, adopted as a result of a USSR initiative in 1960, the Declaration on the Elimination of All Forms of Racial Discrimination and, lastly, the Convention under consideration were all successive stages in the efforts made by the United Nations to rid mankind of the last vestiges of colonialism.

8. Recent events bore witness to the necessity for the Convention on the Elimination of Racial Discrimination to be adopted in all urgency. In Southern Rhodesia the racist régime of Ian Smith had on 11 November declared what it called "independence", for the purpose of perpetuating the domination of the minority group, which held more than 4 million Zimbabwe in thrall, denying them freedom and social justice and disregarding the many decisions of the United Nations condemning racial segregation in Southern Rhodesia. There was no doubt that that Government would not have dared to carry out its criminal designs if it had not had the support of the colonialists. The USSR Government fully shared the views of the independent African States, as reflected in the decisions of the Organization of African Unity. The United Kingdom Government bore the responsibility for the crimes being committed against the Zimbabwe people. It denounced the acts of the Southern Rhodesian authorities by word of mouth—as did its representative in the Third Committee—but at the same time it endeavoured to defend the colonialist policy of the racist Government of Southern Rhodesia.

9. The USSR delegation considered that, in order to comply with the resolutions of the seventeenth (1780 (XVII)) and eighteenth (1906 (XVIII)) sessions of the General Assembly, the Third Committee should adopt the Convention under consideration in its entirety. Since the opening of the discussion, some representatives, while pretending to favour the adoption of that document, had been doing everything in their power to prevent that happening. They were now submitting blatantly unacceptable proposals, which derogated from the sovereignty or ran counter to the principles of the United Nations Charter, in order to keep the number of States acceding to the Convention as low as possible. The manœuvring, however, was perfectly transparent: it was designed to help the racist Governments in their task and to create international tension. It was no longer possible, however, to deceive world opinion and his delegation was confident that the majority of the members of the Committee would know how to frustrate the manœuvre and would adopt the Convention in its entirety at the present session.

10. As far as the measures of implementation were concerned, he endorsed the idea of introducing a system of reports on the legislative, judicial and other measures enacted by the signatory States for the implementation of the Convention and of setting up a committee, on the basis of equitable geographical

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[1] L. Oppenheim, International Law, A Treatise, 7th ed. (London, Longmans Green, 1948), vol.I—Peace.

representation, composed exclusively of representatives of States Parties to the Convention and reflecting the various types of civilization and the principal legal systems. In that respect the draft submitted by Ghana provided a satisfactory basis.

11. Furthermore, the United States delegation had rightly pointed out that the measures of implementation should respect the principle of the sovereignty of States, be such as to enable as many States as possible to ratify the Convention, and offer the means for an effective campaign against all forms of racial discrimination.

12. The USSR delegation asked the Committee to do everything in its power to ensure that mankind would finally overcome racism and colonialism.

13. The CHAIRMAN invited the representative of the International Labour Organisation to tell the Committee about his Organisation's experience in the matter of the implementation of international conventions.

14. Mr. BLAMONT (International Labour Organisation) said that he would simply set forth the broad lines of the procedure whereby the International Labour Organisation adopted conventions and put them into effect, the implementation procedure being closely linked to the way in which the conventions were adopted.

15. The International Labour Organisation was a tripartite body composed of representatives of Governments, workers and employers, the same structure being repeated in the Governing Body of the International Labour Office and in the International Labour Conference.

16. Under its Constitution, the main function of the International Labour Organisation was to adopt international rules in the sphere of labour which were calculated to raise levels of living throughout the world. Those rules were incorporated in international conventions and in recommendations which, unlike the conventions, were not subject to ratification and hence had not the same executory force.

17. The international labour conventions were adopted after a procedure of two readings, spread over two years, by the International Labour Conference, in which each country had two Government representatives, one representative of the workers and one representative of the employers. Under the Constitution, the texts adopted were submitted by Governments to the national authority responsible for ratification, which was generally the Parliament. In ratifying a convention, States undertook certain commitments, but they were not exempt from all obligation when the convention was not ratified.

18. The provisions for implementing conventions comprised a regular procedure for reporting and a procedure for the settlement of disputes. Under the former procedure the International Labour Organisation provided that Governments Parties to a convention must report each year on the way in which they were putting it into effect, the difficulties they encountered and the solutions that they adopted. Those reports were sent to the International Laoubr Office, which received more than 3,000 of them each year, since there were 124 international labour conventions and the ILO had 115 member States. In the case of conventions that were not ratified or had not yet been ratified, the Governing Body of the International Labour Office, in accordance with the Constitution, laid down the intervals at which Governments were obliged to send reports on the action they were considering taking with a view to ratification.

19. The reports of the implementation of conventions were first submitted to the consideration of a Committee of eighteen independent experts appointed by the Governing Body of the International Labour Office, on the proposal of the Directory-General, on the grounds of their high qualifications and their impartiality. The Committee studied and compared the reports, on the basis of legislation and existing practices, and reported to the International Labour Conference, which was composed of representatives of Governments, workers and employers. By that procedure, therefore, it was possible to combine individual technical competence, the authority of Governments and the authority of the other constituent parties of the International Labour Organisation, namely the professional employers' and workers' organizations.

20. When the report of the Committee of Experts was placed before the International Conference, it set up a tripartite committee to examine cases in which States had failed to fulfil their obligations under the conventions. At that stage the representatives of the workers and the employers had an opportunity to raise any matter either in regard to their own Government or in regard to any other Government whose legislation or practice was not, in their opinion, in conformity with the convention. The decision generally taken by the International Labour Conference was to request the Government in question to amend its legislation or its practice and, in the great majority of cases, the Government concerned accepted that decision.

21. That, then, was the regular reporting procedure established by the Constitution, with which every State undertook to comply but which applied to ratified conventions only.

22. In addition to the reports procedure, there was also a procedure whereby formal complaints could be filed against States failing to apply a particular international convention. There were two categories of complaints: complaints by employers' and workers' associations against a State, and complaints by one State against another.

23. The Constitution of the International Labour Organisation provided in the former case that any employers' or workers' association which had a complaint against a Government concerning non-observance of a ratified convention should notify the Governing Body of the ILO which, after communicating with the State concerned, decided whether or not it was necessary to appoint a Commission of Inquiry to verify the various allegations made and to make the necessary written recommendations to the defaulting Government. The procedure was identical in the case of a complaint by a State against another State.

The Commission of Inquiry was composed of experts appointed, in an individual capacity, by the Governing Body on the recommendation of the Director-General, for their competence and their integrity.

24. The Constitution provided that if the Governments concerned in the complaint did not accept the findings of the Commission of Inquiry within a specified time-limit, the complaint could be referred to the International Court of Justice, whose decision was final. If, notwithstanding the Court's decision, the State in question failed to comply, the Governing Body could ask the International Labour Conference to take the necessary measures. In practice, however, matters had never reached that point because the procedure he had described involved the international responsibility of States and States were reluctant to resort to it. There had been only eight cases of complaints filed by employers' or workers' associations in forty-eight years and, in each instance the State involved had complied before the need to establish a Commission of Inquiry had arisen. There had been only two cases of complaints by States, one complaint by Ghana against Portugal concerning non-observance of the Convention on forced labour and one complaint by Portugal against Liberia for the same reason. In both cases, plaintiffs and defendants had complied with the findings of the Commission of Inquiry of the matter had consequently not been referred to the International Court of Justice.

25. He then discussed the conciliation procedure, of which the International Labour Organisation had only had relatively recent experience and, in particular, the procedure applied in the case of complaints of infringement of the freedom of association, which should, perhaps, be taken into account in connexion with the implementation of the draft covenants. He recalled that in 1950 in agreement with the Economic and Social Council, the ILO had established a Fact-finding and Conciliation Commission composed of nine independent members to look into complaints submitted to the Governing Body of the ILO in that field. The complaints, which were generally very numerous, were first considered by a tripartite committee of the Governing Body which decided whether or not they should be referred to the Fact-finding and Conciliation Commission. If the committee decided that a complaint should be so referred, the complaint was placed before the Governing Body which tried to obtain the consent of the State concerned. If it failed to obtain that consent, it took appropriate measures, which usually consisted in the publication of the proceedings. If consent was obtained, the Commission of Inquiry was seized of the complaint and instructed three of its members to examine it.

26. Since 1951, about 450 complaints concerning freedom of association had been filed with the Governing Body of the ILO, which sometimes made its own recommendations to the State concerned, and sometimes—although rarely—decided to publish the proceedings. In two recent cases, involving Japan and Greece, the two Governments had consented to action by the Fact-finding and Conciliation Commission. In applying that procedure, it was very important to secure the consent of the State concerned, because the conventions of freedom of association were not necessarily ratified by the States concerned in the complaint and it was therefore necessary to make sure that they would approve the procedure to be followed and also to guard against any infringement of State sovereignty.

27. Of the 124 international labour conventions, there was one to which reference was made in the draft convention before the Third Committee. That was the Convention concerning Discrimination in respect of Employment and Occupation, which had been adopted in 1958 and had been ratified by 52 member States. It provided, in a more limited field of application, for the same objectives as those covered by the Convention of the Elimination of All Forms of Racial Discrimination. The ILO Convention was subject to the reporting and complaints procedures that he had described. In his view necessary co-ordination would have to be ensured between the implementation of the Convention on the Elimination of All Forms of Racial Discrimination and that of the ILO Convention he had mentioned, when the relevant clauses were drafted in their final form. Article XIII of the Ghanaian draft, which had been retained in the new revised draft, took account of that need. It was to be hoped that the final text would contain a similar clause.

28. Mr. LAMPTEY (Ghana) announced that the drafts submitted by Ghana (A/C.3/L.1274/Rev.1), Mauritania (A/C.3/L.1289) and the Philippines (A/C.3/L.1221) had been replaced by a single document which he wished to introduce (A/C.3/L.1291).

29. The sponsors of the new text had been guided by the following considerations: on the one hand, the implementation clauses would have to be based on generally recognized principles of international law and should not violate State sovereignty; on the other hand, it should be borne in mind that accession to any treaty entailed a partial loss of sovereignty—as Chapter VII of the Charter showed—and that natural rights sometimes went beyond national boundaries. In the opinion of the sponsors, only contracting parties should be members of any committee, and disputes should be settled in a spirit of mutual understanding. Moreover, the system of reporting and conciliation should be complemented by the right of petition by individuals or groups of individuals, on the understanding that that right should not be internationalized so as to undermine the sovereignty of States. Lastly, the draft should be clear, succinct and unequivocal; the length of the articles on implementation should not be such as to spoil the balance of the Convention. The sponsors had tried to take account of the views of all representatives. They had not been able to deal with the question of the right of petition which, being complex and delicate, required more thorough study. The draft did not contain any clause concerning intervention by the International Court of Justice, for which provision could be made in the final clauses. The sponsors would be willing to make further necessary changes in their text to take account of the views of the other delegations.

30. Article I of the Ghanaian draft had become article VIII of the new draft, since the measures of imple-

mentation had to form part of the draft Convention, which already had seven articles. While under the former article I the committee to consider reports was to have been composed of plenipotentiaries from States Parties, article VIII of the new draft provided that the committee would be made up of experts chosen by States Parties from among their nationals. Article IX of the new draft showed no change from the original article. In article X, the draftsmen had taken into account the Tunisian amendment (A/C.3/L.1273) with some slight modifications. It had appeared that the procedure by which a committee came between the States Parties to a dispute offered the best guarantees of reaching a solution.

31. An important change occurred in article XI, which provided that if the States Parties to the dispute failed to reach agreement on the composition of the ad hoc conciliation commission the latter would meet in any case, its members being elected by a two-thirds majority by the committee of experts. Paragraph 4 of the same article covered the difficulty involved in a conciliation commission meeting at United Nations Headquarters where, for instance, the dispute was between two Far Eastern countries, in which case it would obviously be advisable to choose a city in that region as the meeting-place. The rest of article XI remained unchanged. Article XII also hardly differed from the corresponding article in the original text. Article XIII took account of the fact that States Parties to the Convention might also be parties to other general or special international agreements.

32. He explained that the text he had just introduced was a compromise between the fundamental ideas in the various texts which had been submitted, and its aim was to satisfy the greatest number of States. The clause of the right of petition would, if necessary, be inserted before article XIII.

33. Mr. ZULOAGA (Venezuela) was gratified by the progress of the Committee's work and optimistic as to its outcome. He had listened with the greatest interest to the statement of the Belgian representative, which made it clear that the Belgian delegation intended, without fear for the sovereignty of its country, to accede to a convention on racial discrimination and favoured the principle of the right of petition. That was particularly to be welcomed, because the Belgian delegation had at one time adopted a diametrically opposite position. It had refused to sit at the table of the Committee on Information from Non-Self-Governing Territories when petitioners had taken seats there; it had described the petitioners as "agitators" and had challenged their right to present their requests. There was all the more cause for surprise in that, since Belgium, a small country occupying a geographically difficult position, had during its history had to fight time and time again—and had fought heroically—against foreign domination. In that connexion, he regretted that the joint text submitted by Ghana, Mauritania and the Philippines (A/C.3/L.1291) no longer made any reference to the right of petition.

34. Most delegations had recognized that it was essential to supplement the Convention by measures of implementation, without which the document would have no value. No doubt, in accordance with the adage of Roman law Pacta sunt servanda, treaties were of themselves binding. But they were binding only on the signatories and were not applicable to third parties: Pacta tertiis nec nocent nec prosunt. Hence implementation machinery was necessary. Nevertheless, the right framework had to be found, since if the implementation measures involved too numerous or too stringent obligations, the Convention would be ratified only by a few States, thereby depriving the nationals of other countries of any protection.

35. Mr. WALDRON-RAMSEY (United Republic of Tanzania) fully shared the views of the Venezuelan representative regarding the legal aspects of the text before the Committee and would therefore confine himself to a few practical observations.

36. Paragraph 3 of article VIII stated that the expenses of experts on the committee should be the responsibility of the States Parties concerned. He could not see why expenses relating to the committee, which would be an organ of the United Nations with great responsibilities and prestige, should not form part of the regular United Nations budget. His remarks applied equally to paragraphs 6 and 7 of article XI.

37. With regard to article X, paragraph 3, he wondered whether it referred to internal remedies or the remedies provided for in international law. That point ought to be clarified and particular attention should be paid to the case of federal States. Perhaps interpretation clauses would be necessary. He also wondered who was to ensure that all remedies had been exhausted: was it to be the plaintiff, the committee of experts, the Secretary-General, a State which was not involved in the dispute or any State Party to the Convention? Article X was therefore not clear and revision was called for, since it was open to several interpretations.

38. In article XI, he did not see what purpose was served by recalling, in paragraph 2, the conditions to be fulfilled by members of the commission, since they were chosen from the committee and would automatically fulfil the conditions listed in article VIII.

39. The most serious omission was the one pointed out by the representative of Venezuela; the fundamental aim of the Convention was, after all, to protect individuals against discrimination in their own country, and not to confer new rights of States. It was therefore indispensable to guarantee the right of petition, without which the scope of the Convention would be greatly reduced.

The meeting rose at 5.20 p.m.

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