



CONTENTS

Agenda item 58:

Draft International Convention on the Elimination of All Forms of Racial Discrimination (continued)

Articles on measures of implementation (continued)

Article XI 375

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.1237, L.1239, L.1241, L.1249, L.1262, L.1272, L.1291 and Add.1, A/C.3/L.1292, L.1297)

ARTICLES ON MEASURES OF IMPLEMENTATION
(continued)

Article XI

1. The CHAIRMAN invited the members of the Committee to take up article XI of the draft articles relating to measures of implementation submitted by Ghana, Mauritania and the Philippines (A/C.3/L.1291).

2. Mr. SY (Senegal) drew attention to article XI, paragraph 7, which provided that the Secretary-General should be empowered to pay the expenses of the members of the commission, if necessary, before reimbursement by the States parties to the dispute. He wondered what purpose would be served by so empowering the Secretary-General, considering that the United Nations budget made no provision for any such eventuality.

3. He saw no necessity to repeat in paragraph 2 what had already been stated in another article, namely that the members of the commission should be persons of such high moral standing and acknowledged impartiality as to deserve the confidence of the States Parties to the dispute. He did not object to such repetition, but saw no point in it; in his opinion it should suffice to state that the members of the commission should be nationals neither of the States parties to the dispute nor of a State not Party to the Convention.

4. Mr. COCHAUX (Belgium) inquired whether, when paragraph 1 had been in preparation, the possibility had not been contemplated that the members of the conciliation commission might be members of the eighteen-member committee.

5. Mr. CAPOTORTI (Italy) replied that the sponsors had envisaged two possible procedures for the appointment of the members of the conciliation commission. On the one hand, the States parties to the dispute might themselves choose the members, with the assistance of the chairman of the eighteen-member committee, and would be entitled to call either upon members of that committee or upon other persons to serve; incidentally, for the Senegalese delegation's information, that was why it had been thought desirable to restate in paragraph 2 the conditions to be satisfied by members of the commission. On the other hand, if the States parties to the dispute failed to reach agreement on the composition of the commission within three months, the members of the commission were to be elected by two-thirds majority vote of the eighteen-member committee.

6. Mr. COCHAUX (Belgium) thanked the Italian representative for his information but pointed out that it did not precisely answer his question; what he had been wondering was whether thought had been given to the possibility of selecting the members of the commission from among the members of the eighteen-member committee.

7. Mr. CAPOTORTI (Italy) said that the Belgium representative's question was very much to the point; the French text did not appear to correspond entirely to the English and Spanish texts, which made it perfectly clear that the members of the commission were to be chosen from among the members of the eighteen-member committee.

8. However, when the choice was made directly by the States, they could appoint whomever they saw fit.

9. Mr. SY (Senegal) said that, in view of the explanations given by the Italian representative, his observations on paragraph 2 had lost their point; however, he considered a committee composed of eighteen experts too large.

10. Mrs. CABRERA (Mexico) said that her delegation had some minor amendments to submit, some of which were purely matters of drafting. In the Spanish text of paragraph 1 (a), she proposed that the words "a base del" should be replaced by the words "sobre la base del" and that, after the word "nombrará", the following phrase should be inserted: "después previa consulta, y con el acuerdo de los Estados interesados".

11. Her delegation further suggested to the sponsors that article XI, paragraph 1 (b), and paragraph 7 should be deleted.

12. Mr. CAPOTORTI (Italy) pointed out for the Mexican representative's information that paragraph 1 (a), clearly stated that the chairman of the eighteen-member committee was to appoint a conciliation commission with the unanimous consent of the parties to the dispute; that was a very firm provision. He wondered whether it was really the Mexican representative's wish that the States should merely be consulted.

13. He could not agree to the deletion of paragraph 1 (b); in his opinion that paragraph was extremely important, for it was designed to prevent paralysis of the conciliation procedure in the event that the States parties failed to reach agreement on the composition of the commission.

14. Mr. MOMMERSTEEG (Netherlands) said that the text of paragraph 1, like any compromise text, had its weaknesses; in the circumstances, however, it was the best obtainable solution.

15. His delegation would have preferred a standing conciliation commission which in time would have gained a certain status and developed its own jurisprudence. Unlike an *ad hoc* body, it would have presented no recurrent problems of composition. In a spirit of compromise, however, his delegation accepted the idea of an *ad hoc* conciliation commission provided that there was no risk of the conciliation procedure being paralysed by failure to reach agreement on the composition of that commission. The full and unanimous consent of both parties was of course an important requirement for the appointment of the members, but such a requirement could jeopardize the whole procedure of conciliation at the outset. His delegation consequently attached great importance to paragraph 1 (b), which provided a solution in the event that the States parties to the dispute failed to reach agreement.

16. His delegation also favoured the idea that the persons appointed to the conciliation commission under article XI, paragraph 1 (a), should in as many cases as possible be selected from among the members of the eighteen-member committee, so as to establish the closest possible links between the two bodies.

17. His delegation's position on paragraph 1 would depend on the outcome of the discussion on subparagraph (b).

18. Mr. MACDONALD (Canada) felt that the wording of paragraph 1 (a) should be made clearer and, in particular, the single over-long sentence would be better divided into two. He therefore submitted an amendment^{1/} to replace the text of that paragraph.

19. Mr. LAMPTEY (Ghana) reminded the Committee that, as already explained, article XI, paragraph 1, was a compromise text designed to satisfy the supporters of a standing body, and at the same time, those who favoured a political body. In paragraph 1 (a) the sponsors had wished to give the States

parties to the dispute the deciding voice in the selection of the members of the commission. That was natural, since they were directly concerned and the body to be set up was an organ of conciliation; it was reasonable to hope that two States would always manage to reach agreement on persons of such standing that neither State could object to them.

20. Next, in order to prevent the conciliation procedure from being paralysed by lack of agreement between the two parties to the dispute, the sponsors had provided in paragraph 1 (b) that those members of the commission not agreed upon by the States parties to the dispute should be elected by two-thirds majority vote of the committee from amongst its own members. That was the only compromise text which it had proved possible to draw up. If that paragraph was deleted, the only remedy for failure of agreement would be to refer the dispute to the International Court of Justice; indeed, the final clauses provided that any dispute between two or more Contracting States over the interpretation or application of the Convention, which was not settled by negotiation, should at the request of any of the parties to the dispute be referred to the International Court of Justice. However, since referral to the Court was not made compulsory, the Convention automatically lost all its force.

21. Mr. TAYLOR (United Kingdom) said, with reference to article XI, paragraph 4, that he would merely like to point out that if the commission decided to meet elsewhere than at Headquarters, it could only do so with the agreement of the country concerned. He did not wish to dwell further on that well-known principle of international law.

22. As to the question of expenses, which was dealt with in principle 6 and 7, his delegation continued to believe that the independence and impartiality of the commission could be preserved only if its expenses were charged against the regular budget of the United Nations. It would, moreover, be unfair for those expenses to be distributed equally between the States parties to the dispute because, on the one hand, a State might be deterred by lack of financial means from applying to the commission, and, on the other hand, it was not inconceivable that some rich and powerful State might, with malicious intent, decide to bring a complaint against another State which, even though innocent, would none the less be obliged to meet half the expenses. In his delegation's opinion, those two paragraphs should be revised.

23. The question of privileges and immunities should be considered at a later stage, and provisions concerning it should be drawn up for possible incorporation in a separate protocol.

24. His delegation would also like the reference to the International Court of Justice which had appeared in the previous drafts to be restored.

25. Mr. COCHAUX (Belgium) said, with reference to the Mexican proposal, that he opposed to the deletion of paragraph 1 (b). On the other hand, he fully supported the Canadian proposal, which seemed to him an excellent one. He also endorsed the remarks made by the United Kingdom delegation with regard to paragraph 4. As to paragraphs 6 and 7, he fully

^{1/} Subsequently circulated as document A/C.3/L.1298.

appreciated the stand taken by the United Kingdom delegation. He would nevertheless point out that the views of certain countries on the need for charging the expenses of experts to the States parties were dictated by the precarious financial situation of the United Nations. His delegation clearly favoured an independent committee of experts. It would have been better if circumstances had allowed the expenses to be defrayed by the United Nations. But his delegation had felt bound to accept the proposed compromise formula. It, too, would like a reference to be made to the International Court of Justice in the draft under consideration.

26. Mrs. CABRERA (Mexico) said that paragraph 1 (a) should in essence state that the committee would appoint a conciliation commission, of an *ad hoc* nature, composed of five members with the full and unanimous consent of the parties to the dispute. Paragraph 1 (b) would be eliminated.

27. Mr. BECK (Hungary) said that the Mexican proposal for the deletion of paragraph 1 (b) was a logical one, since that paragraph was intended to apply only in the event of failure to achieve the "unanimous consent" which the members of the Third Committee seemed to agree was essential.

28. Mr. ZULOAGA (Venezuela) thanked the representative of Italy and Ghana for having explained that if the States Parties were not in agreement on the composition of the conciliation commission, the members of the commission must be selected from among the members of the committee, but that, in the event of agreement on that point, there was no reason why the members of the commission might not be selected from outside the committee.

29. He would therefore like the word "members" in paragraph 1 (a) to be replaced by the word "persons", since the persons in question were not necessarily selected from among the members of the committee.

30. Mr. RIOS (Panama) suggested the deletion—at least in the Spanish text—of the double negative at the end of paragraph 2, which was apt to be confusing. The phrase "nor of a State not party to this Convention" should be replaced by the sentence: "Only the nationals of the States Parties to this Convention may be members of the Commission".

31. Mr. COMBAL (France) said that he was prepared to give approval to the principles underlying article XI despite the problems of form which continued to exist but which could be easily overcome at a later stage.

32. He had been surprised that the United Kingdom delegation had reopened a question already settled by the Third Committee, namely, the procedure for financing the bodies to be set up under the Convention. The French delegation could not countenance any arrangement for the inclusion in the United Nations budget of expenses that must normally be defrayed by the States Parties. It would, moreover, be unreasonable to aggravate the financial difficulties currently besetting the United Nations.

33. If the United Kingdom delegation wished the Third Committee to reverse the decision already taken, it must request the application of the relevant

procedure provided for in the General Assembly's rules of procedure. If unwilling to make such request, it should have made its comments in connexion with an explanation of its vote.

34. Miss TABBARA (Lebanon) said that she supported the Italian representative's arguments in favour of retaining paragraph 1 (b), for if the States parties could not come to an agreement, the procedure provided for in that paragraph would offer a solution. As, moreover, the members of the commission would be selected from among the members of the committee, who would already have been approved by the States parties, those States could not but have confidence in such members.

Mrs. Warzazi (Morocco) Vice-Chairman, took the Chair.

35. Mr. GOONERATNE (Ceylon) said that the Canadian amendment clarified the initial text and was couched in clear and satisfactory terms.

36. Mr. HELDAL (Norway) expressed regret that appeal to the International Court of Justice, which had originally been provided for, was not mentioned in the new draft. His delegation nevertheless accepted the text as it stood because it was the result of a compromise; it did, however, object to the deletion of paragraph 1 (b), which it regarded as essential.

Mr. Cuevas Cancino (Mexico) resumed the Chair.

37. Miss HART (New Zealand) said she had already had occasion to point out that a conciliation procedure of the kind contained in article XI was necessary to avoid protracted disputes.

38. The procedure provided for in paragraph 1 (a)—which would be improved if remodelled along the lines suggested by the Canadian delegation—was a valuable one, and paragraph 1 (b) constituted an indispensable counterpart to that procedure by specifying the course to be followed in the event that the States parties were not in agreement on the composition of the conciliation commission. The measures provided for in paragraph 1 (b) were as satisfactory as they could be. Although the members who would be appointed to the commission would not necessarily be those who would have been selected by the States parties to the dispute, they would at least meet the conditions laid down in article VIII. Hence, although it was to be hoped that the provisions of paragraph 1 (b) would not have to be applied, they none the less continued to be indispensable, and her delegation was therefore opposed to the deletion of that paragraph.

39. Mr. HOVEYDA (Iran) said that while agreeing with the French representative that article XI, paragraph 1, would benefit from improvements in its forms, he fully endorsed the principles it enunciated.

40. With regard to paragraph 2, he would like the words "should be persons of such high moral standing and acknowledged impartiality as to deserve the confidence of the States parties to the disputes, but" to be deleted, for they implied that there were some misgivings concerning the choice which might be made by the chairman of the committee or by the committee as a whole.

41. Mr. WALDRON-RAMSEY (United Republic of Tanzania) introduced several amendments^{2/} to draft article XI. With regard to paragraph 1 (a), the question had arisen whether the conciliation commission should be a standing body or should meet only as required; his delegation preferred the latter alternative and thought that express mention should be made of the ad hoc nature of the commission. His delegation would also like the same paragraph to specify that the commission would be appointed from time to time.

42. With regard to paragraph 1 (b), the thought that the election, by two-thirds majority vote, of those members of the commission not agreed upon by the States parties to the dispute should be held by secret ballot in accordance with the practice generally followed by United Nations organs in similar cases.

43. Furthermore, since the members of the commission to be elected by the eighteen-member committee would presumably be persons not agreed upon by the States parties, the chances of appointing a commission acceptable to the States parties would be very slim. He therefore proposed to submit an amended version of paragraph 1 (b).

44. He agreed with the Iranian representative that to reiterate in article XI, paragraph 2, that the members of the commission were required to fulfil certain conditions of moral standing and impartiality would seem to impugn the integrity or discernment of the eighteen-member committee or its chairman. He therefore whole-heartedly supported the Iranian representative's proposal that the passage in question should be deleted and proposed a rewording of paragraph 2.

45. He unreservedly supported the United Kingdom delegation's position regarding the commission's expenses. He too held firm conviction that the only way to guarantee the experts' impartiality was for the United Nations to undertake the financing; that would also prevent a wealthy and powerful State from involving a poorer State in proceedings which the latter could not afford. His delegation therefore proposed that paragraphs 6 and 7 should be replaced by a single paragraph reading as follows: "The expenses of the Commission shall be borne by the regular budget of the United Nations." The States which failed to meet their financial obligations were responsible for the Organization's financial crisis, and it was for them to bring it to an end. Moreover the cost of operating the proposed conciliation machinery would be relatively small.

46. He further proposed the addition of a new paragraph reading as follows: "The recommendations of the Commission shall be made public, but not necessarily the evidence received in camera by the Commission."

47. Mrs. SEKANINOVA (Czechoslovakia) said that the Mexican representative's proposal regarding article XI, paragraph 1 (b), deserved attention and should be examined in the light of several factors, in particular the functions assigned to the future commission under article XII.

48. Under paragraph 1 the conciliation commission, of an ad hoc nature was to make its good offices available to the States concerned if they failed to reach an amicable solution of the matter, and was to do so with the unanimous consent of the parties to the dispute. In submitting its amendment, the Mexican delegation had doubtless been guided by the fact that paragraph 1 (b) was not in harmony with paragraph 1 (a). The unreserved consent of both parties was a prime requirement for an amicable solution, and the conciliation procedure would prove fruitless unless the commission that was appointed enjoyed the complete confidence of those parties. The danger mentioned by the representative of Italy that the conciliation procedure could become paralysed, should be avoided by reaching agreement.

49. Mr. MOVCHAN (Union of Soviet Socialist Republics) reminded members of the Third Committee that document A/C.3/L.1291 was the result of long negotiations and that the sponsors had done their utmost to take into account the various opinions expressed. His delegation considered that a legal instrument could not be properly applied unless it was clear and precise; admittedly, however, the text could be weakened by over-anxiety to improve on it.

50. In his opinion, some delegations were inclined to lose sight of the real objective of paragraph 1. They were in favour of retaining paragraph 1 (b) because it guaranteed that, whatever happened, a conciliation commission would be set up; the main consideration, however, was not to establish a commission but to ensure that its decisions were carried out. But the conciliation commission's decisions would be more likely to be respected if the parties to the dispute had given the commission their full and complete confidence. Free consent was the surest pledge of the success of the attempt at conciliation.

51. In that respect the sponsors were proposing nothing new, for that was the principle on which conciliation commissions generally worked. His delegation fully supported paragraph 1 (a). Three months should be ample time for two States to find five conciliators if they really wished to do so. His delegation also endorsed the remarks of the Mexican and Hungarian delegations.

52. With regard to the financial question, he considered that the Third Committee had already defined the principles to be applied in that connexion to the implementation measures as a whole. Since it had been decided that the eighteen-member committee would be financed by all the States Parties to the Convention, there seemed to be no reason why the conciliation commission, a smaller body established for a short period, should be financed differently. In that respect he whole-heartedly subscribed to the relevant observations of the French representative.

53. Several delegations had proposed that the International Court of Justice should be mentioned, thus making it, in a sense, one of the factors in the conciliation procedure. States could obviously refer a dispute to the International Court of Justice, since article XIII gave them the right to resort to any

^{2/} Subsequently circulated as document A/C.3/L.1290.

procedure for settling disputes which was available under the United Nations system; but there was no need to say so expressly. His delegation saw no necessity to specify where or under what conditions the meetings should be held; all such matters should be settled in consultation with the States parties to the dispute, in accordance with the generally accepted rules of international law.

54. Mr. LAMPTEY (Ghana) said that the sponsors accepted the Canadian proposal for the rewording of paragraph 1 (a). It was to be hoped that the procedure provided for in paragraph 1 (b), would never be needed and that the States parties would always be able to reach agreement on the appointment of a conciliation commission. The sponsors had considered, however, that a way out would have to be provided in case the States parties failed to reach agreement on the composition of the commission. For that reason they could not agree to delete that paragraph, which strengthened the Convention and which was all the more important in that the idea of recourse to the International Court of Justice, which would be dealt with in the final clauses, gave rise to many reservations.

55. With regard to financing, it had been decided in principle that the States Parties would share equally all the expenses of the members of the commission; that would probably give rise to some difficulties. It was to be hoped, however, that no Government would refuse to meet its financial obligations. In any case there could be no question of making one of the States parties to the dispute solely responsible for all the expenses. Neither was it possible, as the French representative had emphasized, to ask the United Nations to cover those expenses. His delegation was willing to agree that the financing should be the collective responsibility of the States Parties.

56. Mr. PASHA (Pakistan) said that every compromise text contained defects and lent itself to criticism. The co-sponsors had endeavoured to conciliate contradictory points of view and therefore the drafting was frequently imprecise since a text that was too categorical would certainly not have been able to receive so many votes. Care must therefore be taken not to make any great changes in the text. He agreed with the representative of Iran that it was useless to repeat in paragraph 2 of article XI that the members of the commission should be persons of such high moral standing and acknowledged impartiality, for supposing even that those members were not chosen from among the members of the committee, it was most unlikely that the States parties to a dispute would approve of persons who did not fully deserve their confidence.

57. With regard to the English text of paragraph 4, it would seem that the Headquarters of the United Nations was not an appropriate place for holding meetings of the commission in normal times; consequently he proposed to insert the word "other" before the words "convenient place".

58. Paragraph 1 (b) should be kept in case the procedure prescribed in paragraph 1 (a) should lead to a deadlock.

59. Mrs. MBOIJANA (Uganda) said that the question of financing raised real difficulties for the developing countries and she approved of the proposal of the representative of the United Republic of Tanzania to charge the expenses of the members of the commission to the ordinary budget of the United Nations. It would be regrettable if countries wishing to resort to the body in question were prevented from doing so on account of financial considerations. Nevertheless that might happen to developing countries faced by such financial difficulties as to prevent them from adding to the burdens of their budget.

60. Mr. KIRWAN (Ireland) agreed that the question of financing the commission deserved full attention. The allocation of the expenditure between States parties to a dispute would be particularly unjust if one of the States had been accused of false grounds or purely out of ill will. On the other hand, he agreed with the French delegation that expenses other than those of the Secretariat should not be charged to the ordinary budget of the United Nations. That difficulty might be overcome, perhaps, by providing that the committee should not institute conciliation proceedings if it considered after preliminary inquiry that at first sight there were not sufficient grounds for the complaint. He recalled the question put by the representative of Senegal with reference to paragraph 7 of article XI concerning payment of the expenses of the members of the commission before reimbursement by the States parties to the dispute; he would be glad if the Secretariat would give further information on that matter.

61. Mr. MONTENEGRO MEDRANO (Nicaragua) noted that under paragraph 1 (b) if the States parties to the dispute failed to reach agreement on all or part of the composition of the commission, those members of the commission not agreed upon should be elected by the committee. But if the members thus elected were not approved by the States parties then the problem would continue as before; there was therefore a gap which should be remedied.

62. He hoped that the expenses of the commission would be paid by the United Nations, as suggested by various delegations for many small countries could not afford expenditure of that kind.

63. Mr. WALDRON-RAMSEY (United Republic of Tanzania) said that he had not requested the elimination of paragraph 1 (b), but had merely restricted himself to suggesting certain drafting changes. He proposed that all members of the commission and not only those whose candidature was a subject of controversy should be elected by secret ballot.

64. Mr. DAS (Secretariat) said that the Controller's Office had been consulted concerning the financial implications of article XI, paragraph 7 and had stated that no difficulties would be raised by that paragraph. That view was reflected in document A/C.3/L.1292 which did not foresee financial implications with regard to article XI, paragraph 7.

65. Mr. SY (Senegal) said that he had asked how the Secretary-General could pay the expenses of the members of the commission if no credit had been allotted for that purpose in the United Nations budget.

66. The CHAIRMAN said that without wishing to prejudge the position of the Controller's Office he thought that so soon as the Convention had entered into force it would perhaps be possible for the Secretary-General to act under the provisions of the relevant resolution concerning unforeseen and extraordinary expenditure, it being understood that the parties benefiting thereby should repay the advances made as quickly as possible.

67. Mr. LAMPTEY (Ghana) said that the sponsors accepted the Tanzanian amendment for the rewording of paragraph 2. They also agreed to insert the word

"other" before the words "convenient place" in paragraph 4, as proposed by the representative of Pakistan.

68. Miss TABBARA (Lebanon), supported by Mr. COMBAL (France), Mr. RIOS (Panama) and Miss AGUTA (Nigeria), proposed to postpone the vote on article XI to the following meeting.

69. Mr. KOCHMAN (Mauritania) and Miss IDER (Mongolia) opposed that proposal.

The proposal of the representative of Lebanon was adopted by 47 votes to 18, with 10 abstentions.

The meeting rose at 1.20 p.m.