



CONTENTS

	Page
<i>Agenda item 58:</i>	
<i>Draft International Convention on the Elimination of All Forms of Racial Discrimination (continued)</i>	
<i>Articles on measures of implementation (continued)</i>	
<i>Article XII (concluded)</i>	387
<i>Article XIII (continued)</i>	389

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.1227, L.1239, L.1241, L.1249, L.1262, L.1272, L.1291 and Add.1, A/C.3/L.1292, L.1297, L.1301 to L.1303, L.1306)

ARTICLES ON MEASURES OF IMPLEMENTATION
(continued)

Article XII (concluded)

1. The CHAIRMAN invited the Committee to continue its consideration of article XII of the articles relating to measures of implementation (A/C.3/L.1291) to be added to the provisions of the draft International Convention on the Elimination of All Forms of Racial Discrimination and drew attention to the revised text of that article submitted by Ghana, Mauritania and the Philippines (A/C.3/L.1301) and the amendments thereto submitted by the United Republic of Tanzania (A/C.3/L.1302).
2. Mr. RAO (India) requested clarification of the first and third Tanzanian amendments (A/C.3/L.1302). He himself would have thought that the words "has fully considered the complaint" in the three-Power text (A/C.3/L.1301) implied the words "and received all the evidence" in the first Tanzanian amendment. The first amendment should perhaps read "has fully considered the complaint in the light of all evidence received". Similarly, he could see no material difference between the third Tanzanian amendment and the three-Power text since material transmitted to the General Assembly automatically became public property.
3. Mr. KOCHMAN (Mauritania) announced that the sponsors had agreed to replace the words "the complaint" in their text (A/C.3/L.1301) by the words "each case".

4. Mr. BOŽOVIČ (Yugoslavia) wondered whether the Secretary-General was empowered to publish information received from a non-United Nations body.

5. Mr. WALDRON-RAMSEY (United Republic of Tanzania) asked what would be the financial implications of the publication of the report of the proposed commission, since the latter would not be an organ of the United Nations.

6. Mr. DAS (Secretary of the Committee) said that, if the General Assembly adopted a resolution of which the Convention on the Elimination of All Forms of Racial Discrimination would form a part, the Assembly would have decided on the tasks to be carried out by the United Nations and the Secretary-General. In that event, if the text of article XII, paragraph 3, as proposed in document A/C.3/L.1301, was included in the Convention, the Secretary-General would publish the report of the commission as provided therein, but the form in which the Secretary-General would publish the report could not be specified at present. If, however, the Convention provided that the report was to be transmitted to the General Assembly, as proposed in the third Tanzanian amendment (A/C.3/L.1302), then, in all probability, the report would be distributed as a General Assembly document.

7. The financial implications of the publication of the commission's report had been given in document A/C.3/L.1292.

8. Mr. CAPOTORTI (Italy) recalled that under paragraph 2 of article VII (bis), which the Third Committee had already approved, the proposed committee would submit to the General Assembly an annual report on its activities. Now, under paragraph 3 of the three-Power proposal, a separate report on each case considered by the commission would also be published. He wondered whether so many reports would in fact be needed, especially since the commission's conclusions in each case could be included in the committee's annual report.

9. With reference to the second Tanzanian amendment (A/C.3/L.1302), he drew attention to the fact that the Convention made no provision as yet either for meeting *in camera* or for the taking of evidence. If that amendment was adopted, moreover, the chairman of the proposed committee could decide whether the evidence received by the commission should be transmitted to the General Assembly. It might be better to leave the whole matter to be decided by the committee itself when it adopted the rules of procedure.

10. Mr. COCHIAUX (Belgium) could see no reason why the commission's report should be forwarded to the General Assembly. If the objective was to avoid polemics, to safeguard the commission's authority

and at the same time to refrain from any infringement of the sovereignty of States, the three-Power proposal was preferable. While publication of the commission's report would no doubt be useful, the commission's conclusions in each case could very well be included in the committee's annual report. In any case, the evidence heard by the commission should not be transmitted.

11. Mr. LAMPTEY (Ghana) could see no need for the first Tanzanian amendment, which was implicit in the three-Power text.

12. There appeared to be some confusion with regard to the respective reports of the committee and the commission. The committee would report to the General Assembly on its activities; since the commission would be an *ad hoc* body for conciliation of disputes between States and would be concerned only with the States involved, there was no reason why it should report to the General Assembly, although its reports should of course be published. It was mainly for financial reasons that the three Powers had not proposed that those reports should be transmitted to the States Parties to the Convention. The sponsors therefore could not accept the third Tanzanian amendment, which was wholly at variance with their proposal.

13. Mr. WALDRON-RAMSEY (United Republic of Tanzania) observed that, under the three-Power proposal, the States Parties would have to bear the cost of the proposed committee and the disputant States the cost of the commission, but the General Assembly would be called upon to bear the cost of publication of the latter's reports even though the commission's work would be of no concern to the United Nations. If the commission's reports were not intended for the General Assembly, he wondered why the Secretary-General should publish them. If the majority of Members of the General Assembly did not become parties to the Convention there was no reason why they should share in the cost of publishing the reports. Moreover, if a financial crisis existed in the United Nations, it should not be exacerbated by unnecessary expenditure.

14. Mr. LAMPTEY (Ghana) said that the sponsors of the revised draft article had sought to limit the expenditure which the United Nations would incur, particularly in view of the Organization's present financial situation. Nevertheless, they recognized that the United Nations had a paramount duty in connexion with the Convention and felt that it should therefore be responsible for certain costs. Under article IX, paragraph 3, for instance, the secretariat of the committee would be provided by the Secretary-General.

15. Mr. COMBAL (France) said that, although the new text of article XII (A/C.3/L.1301) was much more satisfactory than that contained in document A/C.3/L.1291, his delegation still had some doubts concerning paragraph 3. Since the commissioner's parent body would be reporting annually through the Secretary-General to the General Assembly, under the terms of article VIII (bis), paragraph 2, he failed to see why the commission itself—an *ad hoc* body—should be required to report separately to the

Secretary-General on each case it considered. It would be preferable, in his view, to delete the last part of paragraph 3.

16. Mr. A. A. MOHAMMED (Nigeria) said that his delegation had no strong objection to the revised three-Power text (A/C.3/L.1301). It saw considerable merit, however, in the Tanzanian amendment to paragraph 1 (A/C.3/L.1302) since it would be impossible for the commission to decide some cases without receiving evidence from individuals and groups of individuals, and its right to do so should be spelt out.

17. With respect to the first Tanzanian amendment to paragraph 3, it was difficult to see how a detailed report could be written without including certain references to the evidence on which the report was based; he would prefer a wording indicating that such evidence should not be communicated without the consent of the parties concerned.

18. If the words "for publication" in the three-Power text simply meant that the Secretary-General would issue the report in question as a United Nations document, the wording suggested in the second Tanzanian amendment to paragraph 3 might be preferable, in order that persons suffering from discrimination might see that their rights were being protected by the United Nations. If, on the other hand, the three-Power text meant that wide publicity would be given to the report—that being the sense in which his delegation understood it—it would be better to retain the wording in document A/C.3/L.1301.

19. Miss WILLIS (United States of America) said that the purpose of articles X, XI, and XII was to establish a conciliation procedure, and not to set up a framework for judicial proceedings. The word "case" would therefore seem to be inappropriate. All delegations might more readily accept article XII if the word "complaint" was retained in paragraph 1 or if it was replaced by the word "matter". The word "evidence" in the Tanzanian amendment could be criticized on the same grounds for, while the conciliation Commission would, of course, receive all the facts that were pertinent, it would be better to avoid such legal terminology.

20. With respect to paragraph 3 of the article, the committee would undoubtedly include in its annual report, in what she hoped would be the infrequent invocation of the complaint procedure, a full account of the complaint and of the report submitted by the commission. She questioned whether it was desirable for the commission's own reports and the declarations of the parties concerned to be published separately on each occasion.

21. Mr. BOŽOVIČ (Yugoslavia) agreed with the representatives of Italy and France that, since the committee was to report annually to the General Assembly, there was no need to publish all the material which might emerge from a conciliation procedure. The Assembly should be interested only in the results of the conciliation, and not in the conciliation proceedings themselves. If the results were positive, it would suffice that that fact was recorded in the annual report, and if they were not positive the committee, in giving an account of its work,

would certainly provide all the information needed to enable the Assembly to make appropriate recommendations.

22. Mr. COMBAL (France) suggested that the doubts expressed by a number of delegations concerning paragraph 3 might be met by replacing the end of the paragraph, beginning with the words "related to this report", by the words "to the other States Parties to this Convention". Thus, the report of the *ad hoc* commission would be communicated only to States Parties, while the results of the conciliation would appear in the committee's annual report to the Secretary-General and the General Assembly.

23. Mr. MIXCO FISCHNALER (El Salvador) proposed an amendment to paragraph 2 (A/C.3/L.1306).

24. Mr. LAMPTEY (Ghana) recalled that the word "complaint", and subsequently the word "case", in paragraph 1 had been chosen after lengthy consultations. In order to facilitate the proceedings, the sponsors were prepared to agree to a further change and to use the word "matter", as suggested by the United States representative. They also accepted the amendment to paragraph 3 suggested by the representative of France.

25. Mr. WALDRON-RAMSEY (United Republic of Tanzania) withdrew his two amendments to paragraph 3 of article XII (A/C.3/L.1302).

26. The CHAIRMAN invited the Committee to vote on the revised text of article XII (A/C.3/L.1301), as further revised orally by the sponsors, and the amendments thereto.

The amendment of the United Republic of Tanzania (A/C.3/L.1302) to paragraph 1, was rejected by 26 votes to 4, with 51 abstentions.

The amendment of El Salvador (A/C.3/L.1306) to paragraph 2, was rejected by 11 votes to 10, with 62 abstentions.

Article XII, as a whole, as revised orally by the sponsors, was adopted by 81 votes to none, with 2 abstentions.

Article XIII (continued)

27. The CHAIRMAN invited the Committee to continue its consideration of a new article XIII (A/C.3/L.1291/Add.1). Amendments to that text had been submitted by the Latin American delegations (A/C.3/L.1303), and a related article had been proposed by Saudi Arabia (A/C.3/L.1297).

28. Mr. BELTRAMINO (Argentina) said that the amendments sponsored by the Latin American delegations (A/C.3/L.1303) would substitute three new paragraphs for paragraphs 2, 3, 4 and 5 of the basic text (A/C.3/L.1291/Add.1). The primary objective of the sponsors was to remove the references to national committees and to introduce the more general notion of "an organ or organs competent to receive and consider petitions from individuals and groups of individuals". The amendments also provided for the name of the organ or organs, rather than the names of the members of national committees, to be communicated to other States Parties. Lastly, they provided for copies of complaints, rather than of

registers of complaints, to be transmitted to the Secretary-General.

29. The amendments did not specify that the organ or organs to be appointed should be national, since many countries, particularly federal ones, might prefer to set up local bodies. It would be a bad precedent to incorporate in an international convention a detailed specification on the type of domestic institution which a participating State should create. He realized that the provision in paragraph 2 of the basic text concerning the appointment of national committees was an optional clause, but it might pave the way towards compulsory clauses with international law recognized that the organs in question should be established under domestic law.

30. He hoped that the amendments, which sought to provide a measure of flexibility while respecting the domestic practices of States, would commend themselves to the Committee.

31. Mr. BAROODY (Saudi Arabia) said that his proposal (A/C.3/L.1297) for a separate article calling for the appointment of national committees to receive and consider complaints by individuals regarding violations of human rights was intended to supplement the provisions already adopted which called for the establishment of an international committee of eighteen experts. It would be a great mistake to provide only for the committee of experts, which would primarily receive reports from States Parties. Such reports might be used by rival States as a political weapon. Indeed, States might even go so far as to plant *agents provocateurs* in order to set the stage for complaints against other States. The sole result would be a heightening of international tensions, and the individual, whose rights the Convention aimed to protect, would not benefit at all. Moreover, States might well ignore even legitimate complaints from abroad, for in present world circumstances they were often sensitive to external criticism. In that case the Convention would represent no advance over the Declaration on the Elimination of All Forms of Racial Discrimination; indeed, it would be better to have the Declaration stand alone than to supplement it with an ineffectual Convention.

32. The emphasis in the Convention should be placed on protection of the rights of individuals. It was necessary always to bear in mind that almost every article of the Universal Declaration of Human Rights began with the words "Everyone has the right to...", or, conversely, "No one shall be...". The committee of experts, situated at Headquarters, obviously could not get at the root of the problems of individuals in all the countries of the world. It was the State—its people, institutions, judiciary—that was best equipped to consider and redress the grievances of its nationals, within the framework of the national constitution and laws.

33. The national committees which his delegation proposed should be constituted would know what constitutional and legal provisions were applicable and would have the confidence of the people, since their members would be independent and objective persons not having any official connexion with the Government of the State. The fact that the names of

members would be registered with the United Nations provided some guarantee of their inviolability.

34. He welcomed the submission of a new article XIII (A/C.3/L.1291/Add.1) which took into account the needs of the individual and incorporated many of the ideas presented in his own proposal. The three-Power text merited close and sympathetic consideration, although it might be further improved—for instance by providing for an additional right of appeal to special national tribunals, as mentioned in his own proposal. The Latin American amendments (A/C.3/L.1303) would remove all reference to national committees, which he thought altogether unreasonable both in the light of what he had said and because the establishment of national committees was optional under the proposed new article XIII. It seemed to him, moreover, that those amendments actually constituted a separate proposal, for they not only eliminated the idea of national committees but altered the whole nature of the proposal they purported to amend. If the sponsors insisted on their text, he hoped they might agree to reintroduce it as a separate proposal,

so that the proposed new article XIII might receive proper attention.

35. Mr. BELTRAMINO (Argentina) said that the Latin American amendments (A/C.3/L.1303) came fully within the definition of an amendment given in rule 131 of the rules of procedure.

36. The aim of the amendments was to protect the rights of the individual as effectively as possible. Paragraph 1 of the proposed new article XIII would remain unchanged and the provisions on domestic machinery would simply be made more comprehensive. A measure of control was retained by virtue of the submission of the names of the particular organs to the other States Parties. He had already commented on the implications of even an optional clause calling for national committees.

37. The Latin American countries had a long tradition of respect for human rights, and the amendments were a direct corollary of that tradition.

The meeting rose at 5.30 p.m.