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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, L.1289)

ARTICLES ON MEASURES OF IMPLEMENTATION (continued)

1. Mr. NETTEL (Austria) said that, since the articles on measures of implementation, on which the Committee had still to take a decision, were just as important as the substantive articles 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), the Committee should examine them more closely and not merely try to put them into a more easily acceptable form. No purpose would be served by reaching agreement, by hard work, on implementation clauses which were purely symbolic, and leaving to a future session the far harder task of drawing up genuine implementation measures. The Committee should therefore strive to finish the examination and preparation of the clauses relating to those measures and the final clauses, in order to produce a complete final text.

2. With regard to the argument put forward to the effect that a fact-finding and conciliation committee of the type envisaged in the Philippine proposals (A/C.3/L.1221) and in the amendments submitted by Ghana (A/C.3/L.1274/Rev.1) might tend to encroach upon the sovereign rights of States Parties to the Convention, his delegation found it difficult, from the legal standpoint, to follow the reasoning of the delegations which supported that view. It was certainly true that, if the committee in question performed functions outside the scope of the Convention—i.e., in connexion with a State that was not a party—it would be acting in violation of the principle of non-

intervention. However, its activities would never constitute a violation of State sovereignty at international law if they were performed within the scope of the Convention, i.e., with the consent which each State Party implicitly gave in signing and ratifying the instrument.

3. Mr. A. A. MOHAMMED (Nigeria) said that the many legal, political and moral implications of the measures to implement the draft International Convention on the Elimination of All Forms of Racial Discrimination required most attentive scrutiny. Racial discrimination had been for centuries an obstacle to progress. Mutual respect, which was the hallmark of man's superiority over the rest of creation, was also the prerequisite for the co-operation which was the basis of United Nations activities.

4. That was the spirit in which his delegation had approached the consideration of the Convention and the measures of implementation which, it hoped, would be added to the Convention there and then. In its opinion, everything concerning the Convention should be adopted during the twentieth session. His delegation did not consider that the Commission on Human Rights should first study the proposed measures and submit a draft text to the Committee, because the political implications of the subject made it more a matter for the Committee. Again, Nigeria could not subscribe to any proposal which would lead to the adoption of half-measures; if there were legal obstacles, it was for the Committee to surmount them. The Committee should decide when it wanted the proposed measures adopted and how much ground they were to cover.

5. In his delegation's opinion, the measures of implementation should meet the following requirements: first, there must be a means of ascertaining that those States which had acceded to the Convention were applying its provisions effectively; that presupposed the existence of an impartial body to interpret the articles of the Convention. Secondly, there must be a body of competent and impartial persons responsible for conciliation in the event of disputes between States Parties to the Convention. Lastly, there must also be a body to which individuals or groups of individuals could address petitions when they considered that they had been subjected to discrimination in violation of any of the articles of the Convention.

6. There would of course be problems of organization and financing to solve when those bodies were established. Account must also be taken of the political complications which might arise in connexion with the powers of those bodies which, at the same

time, must be made effective enough to ensure respect for the Convention. A variety of opinions had been expressed regarding the advantages and disadvantages of a committee of experts as against a committee of plenipotentiaries. His delegation had no fixed opinion regarding the composition of the committee which was to consider reports from States Parties to the Convention on the methods adopted for its implementation; but the conciliation body should, in its view, be composed of impartial experts of complete integrity. In order to guarantee maximum impartiality in the arbitration of petitions, the same body of experts, or a similar body, should undertake that task. His delegation agreed with others that the expenses of the conciliation body should be borne by the States parties to a given dispute.

7. Whatever method of reporting was chosen, it should be straightforward and should provide adequate safeguards for the interests of the States Parties to the Convention. With regard to financing, his delegation found it natural that the States parties to a dispute should bear the cost of the conciliation committee's work, but he was in favour of the fairness of asking States Parties to the Convention to bear the expenses of their nationals elected to the committee which was to consider reports on an international basis.

8. His delegation considered it very important that individuals and groups of individuals should have an opportunity to present petitions to a committee. It was in favour of the establishment of a national committee to hear petitions at the initial stage, as envisaged in article XII of the Ghanaian text (A/C.3/L.1274/Rev.1). However, a time-limit should be set after which, if the persons concerned had not obtained satisfaction from the national committee, they could bring the matter before a committee of the United Nations. As the Ghanaian representative had pointed out, it was the individual who fell victim to racial discrimination, especially if he was coloured; and when he suffered discrimination in violation of the provisions of the Convention, it was right that he should have the opportunity to apply to an impartial body if the national committee did not show the necessary objectivity in dealing with his case.

9. He was glad the Ghanaian draft had some affinities with the basic ILO texts. In his view certain features of that text needed elucidation, but it would form, together with the Philippine text (A/C.3/L.1221), a useful basis for discussion.

10. His delegation might have occasion to speak on the matter again at a later stage in the discussion.

11. Mrs. CABRERA (Mexico) said that the whole structure of the Convention rested on the implementation measures. The participants in the United Nations Conference on International Organization at San Francisco in 1945 had found it essential to define human rights, and the Charter proclaimed the necessity of protecting them, but it was essential to provide international machinery capable of ensuring that they were respected. At the San Francisco Conference, the Panamanian delegation had proposed^{1/} that a declara-

tion of the rights of the individual should be embodied in the Charter, but that idea had not been accepted. However, the need for a universal declaration, to be supplemented by agreements imposing specific obligations, had been recognized. Especially in time of crisis, it was difficult to reconcile individual interests with the general interest, and the developing countries should take care, in particular, that industrialization did not prejudice the rights of their citizens.

12. The Commission on Human Rights had made a very thorough study of the problem of measures of implementation. In view of the time it took international bodies to draft and adopt pacts or conventions, it was appropriate to make an historical approach and work with future generations in mind. Very serious difficulties would arise in establishing an international body to protect universal rights. For countries which already had a satisfactory national system, the sole incentive to incur new obligations was that other countries, which did not provide their citizens with the same safeguards, would also undertake to guarantee those rights. Where economic and social rights were concerned the greatest caution must be exercised, for any action taken to strengthen control measures might disrupt the internal structures of countries whose economy was still weak.

13. The covenants and conventions adopted by the ILO and UNESCO were of limited scope but were designed to guarantee respect for civil rights. With the exception of certain characteristics peculiar to those agencies, the machinery they had set up might serve as an example. It was possible to envisage procedures similar to those instituted by the two organizations, which would give each State Party to the Convention the possibility of lodging a complaint against another State Party with a permanent organ. Recourse to that type of international machinery was a somewhat delicate matter, and must be regulated if it was not to be misused. The middle course that had been contemplated did not entitle individuals or organizations to address petitions direct to the permanent executive organ. It had the advantage of eliminating groundless complaints but at the same time it set a serious limitation. It left it to the State to deal with complaints, and made the rights of the individual a matter for high-level political negotiation.

14. Her delegation had studied with interest the Saudi Arabian text, which might be said to contain a new element of protection for the individual and which at the same time precluded intervention by other States, particularly where there was no adequate national machinery for the individual's protection.

15. Her delegation urged the Committee to adopt texts which went to the core of the problem and which offered realistic and effective solutions.

16. Mr. K. C. PANT (India) said that the preparation of implementation measures was not a simple matter, as witness the fact that, despite extensive consultations, the Committee still had before it two detailed proposals and a number of amendments.

17. To judge from the statements made so far, the Committee strongly favoured the adoption of measures of implementation; that attitude was a logical sequel

^{1/} See United Nations Conference on International Organization, C/7 (2) (vol. 3, p. 265).

to its enthusiastic reception of the Convention. Apart from that, experience showed that it was useless to adopt texts unaccompanied by measures of implementation. Thus, despite the Universal Declaration of Human Rights of 1948, racial discrimination was still a scourge. At the first session of the General Assembly in 1946, the Indian delegation had raised the first protest against racial discrimination in South Africa. At the time India had been represented by Mrs. Pandit, who had been the only woman leading a delegation. The fact that many more women now represented their countries at the United Nations was a sign of progress at least in women's emancipation. There was no doubt that much ground had been covered since 1946: the conscience of mankind condemned racial discrimination, and in many countries legislative and other measures had been taken against it. Yet only a few days previously the Government of Southern Rhodesia, representing no more than a twentieth of the country's total population, had defied the world by showing that it was determined to keep almost the entire population under tutelage, and that its domination was based on racial discrimination. While it was important to adopt the Convention, its limitations must nevertheless be recognized. It would become binding only on States which ratified it. The adoption of such an instrument would undoubtedly create an international climate that would exert moral pressure on all States, but there was little chance that Governments such as those of the Republic of South Africa or Southern Rhodesia would ever accept the Convention or allow themselves to be disciplined by it. They would have to be disciplined by other means.

18. Since the States acceding to the Convention would be those wishing in good faith to eliminate racial discrimination, it was logical to assume that they would honour their commitments with regard to the implementation of the Convention. Those that had reservations would not become parties to it. Nevertheless, implementation measures were necessary because disputes might arise or decisions might be required as between differing interpretations; but implementation of the Convention by sovereign States would be essentially voluntary. It was very difficult to go further. Although the principle of international supervision could be said to flow logically from the adoption of an international convention, sovereign States were hesitant to accept the scrutiny and judgement of an international body over their actions. The difficulty started when an attempt was made to give shape and form to the idea. His delegation was grateful to those which had tried to do so. It had to be remembered that the present was the first time an attempt had been made to include far-reaching implementation measures in the body of a United Nations convention. To do so would create precedents, so the task must be approached with great care.

19. His delegation would have preferred the Committee to work on a text that had the prior approval of the Commission on Human Rights. The Third Committee was not a drafting committee, and it did not possess as much as would be desirable in the matter. Moreover it was disturbing to note that within the space of a few days the Ghanaian delegation had given the Committee two drafts (A/C.3/

L.1274 and L.1274/Rev.1) which differed substantially from each other. That fact underlined the difficulties of such drafting.

20. The two proposals (A/C.3/L.1221 and L.1274/Rev.1) before the Committee related to three levels of implementation: they provided for a reporting system; they set a procedure for the settlement of disputes between States; and they provided for the right of petition by individuals.

21. His delegation was in favour of the establishment of a body to examine reports from signatory States on the legislative, administrative, judicial or other measures they had adopted, and to make recommendations or suggestions concerning them. His delegation was not opposed in principle to the establishment of some machinery to deal with disputes between States; it was to be feared, however, that States might resort to that organ less in order to succour the oppressed than to pursue political ends. Furthermore the question arose how an *ad hoc*, non-judicial committee could exercise judicial functions. If two States wished in good faith to settle their differences, it would always be open to them to adopt the process of agreed conciliation. As to the *ad hoc* committee, if the solution it proposed was not binding, it could hardly be of any practical value; yet it would be difficult to make it binding. The freedom of an injured person to lodge a complaint would appear to be the natural and inalienable right of the individual. The idea of a national committee to deal with individuals' petitions was accordingly an attractive one. However, when an individual was given the right to appeal against his Government to an international body, the State must voluntarily surrender to that international body part of its jurisdiction over its citizens. The nature of such an international body to which individuals might submit their complaints, and the type of guarantees it was to give, would have to be very precisely defined.

22. Some delegations had referred to inter-governmental organizations in Western Europe and Latin America whose agreements included implementation provisions. However, those bodies were regional in character and served homogeneous areas, and had consequently been able to work out measures acceptable to all. The International Convention on the Elimination of All Forms of Racial Discrimination, on the other hand, would have to apply to every country in the world. From 1955, when the provisions relating to petitions of the European Convention for the Protection of Human Rights and Fundamental Freedoms had come into effect, until 1962, 1,749 petitions had been filed but only seven admitted, and in only one case had a decision been made in favour of the petitioner. His delegation therefore considered the establishment of a reporting system to be the essential minimum. As to the other measures, it would be advisable to bear in mind the Committee's ultimate goal, which was to ensure the widest possible acceptance of the Convention.

23. Mr. ABDEL-RAHIM (Sudan) said that his delegation, which had always acknowledged its involvement in the fight against all forms of racial discrimination and its willingness to do its utmost to bring that fight to a successful conclusion, strongly supported the principle of implementation and trusted

that all of the members of the Committee would do likewise.

24. With regard to the ways and means of implementation, his delegation considered that nothing should be left undone to guarantee the effective implementation of the Convention, including the institution of the proposed system of periodic reports and the establishment of a good offices committee. However, it also considered that, in elaborating the details of the various procedures contemplated, the Committee must be careful to avoid doing anything contrary to the accepted principles of the United Nations, especially that of the sovereignty of Member States, which was of basic importance, especially for the newly independent States, and which should in no way be compromised as a result of any action taken by the Committee.

25. Mr. ABDEL-HAMID (United Arab Republic) said that, in view of the seriousness of the issue dealt with by the Convention, it was most important to refrain from polemics and to act with the greatest vigour to put an end to racial discrimination. There were three possible ways of ensuring implementation of the Convention: by including measures of implementation in the body of the Convention; by drawing up a separate protocol containing measures of implementation; or by setting up machinery of implementation that would be generally acceptable as an important factor in the adoption of the Convention.

26. With regard to the first method, he observed that there were certain grave circumstances in which the machinery of the United Nations was not always equal to its task, despite all the powers of implementation which it enjoyed through some of its organs, and he gave his opinion that an organ of the kind which it was proposed to set up, whatever the powers that might be vested in it, would not be able to ensure that the provisions of a legal instrument would be carried out. It was necessary to count above all on the sincere devotion of the States Parties to the principles of the Convention. While paying a tribute to the efforts of the Philippine and Ghanaian delegations, he wondered whether it was really necessary to consider in detail all the legal questions raised by their proposals. In that connexion he remarked that the principle of the sovereignty of States was deeply rooted among Members of the United Nations, and that anything that might affect it should be examined with the greatest care. Consequently, those who were asking for more time to study the matter were quite right to do so.

27. Turning to the second possibility, and replying to those who felt that the fact of having a separate protocol for measures of implementation would reduce the Convention to a mere declaration of intentions, he said that his delegation based itself on the principle that Member States signed and ratified international instruments in order to apply them, and that the Convention would therefore lose none of its force, even if it contained only substantive articles. His delegation was convinced of the importance of international co-operation based on the principles of the Charter and therefore considered that the third method, which would consist in agreeing on measures of implementation, was the one best adapted to the

difficulties encountered by the Committee and most likely to make the Convention a generally acceptable international instrument. He set great store by that method of co-operation and was prepared to offer to co-operate in drafting measures of implementation together with the appropriate safeguards against abuses and excesses. He took the opportunity to express his astonishment at the sharp contrast between the resistance to certain matters of principle, shown by certain States where racial discrimination existed, and their insistence on measures of implementation.

28. Miss WILLIS (United States of America) joined those delegations that had urged the Committee to consider the measures of implementation as an integral part of the Convention. As the United Kingdom representative had said, implementation meant that the United Nations would be doing something practical about racial discrimination. She also agreed with the delegation of the USSR that in the first instance the elimination of racial discrimination must depend upon domestic measures, but that international measures played a very important role.

29. Her delegation was willing to work with other delegations as long as necessary for the adoption at the present session of a convention together with effective measures of implementation and final clauses.

30. The importance her delegation attached to the measures of implementation derived in part from the experience which the United States itself had had in its efforts to eliminate racial discrimination. Racial discrimination had persisted even though civil rights were guaranteed to all citizens by the Constitution. In taking measures to eradicate racial discrimination, the United States Government had paid particular attention to procedures and institutions, rather than to the further formulation of general principles and the proclamation of rights. It was in that spirit that it had adopted the Voting Rights Act of 1965, which established procedures for the implementation of existing rights.

31. The Netherlands representative had pointed out that there were three basic and complementary approaches to the implementation of the Convention: reports from States Parties on compliance; complaints by States Parties concerning non-compliance by other States Parties to the Convention; and petitions received from individuals and non-governmental organizations. The principle of a system of reports on compliance seemed to meet with general approval. The establishment of a committee to consider those reports and make recommendations should not give rise to any major difficulties.

32. With regard to the second basic aspect of implementation, the two texts before the Committee (A/C.3/L.1221, L.1274/Rev.1) revealed a somewhat different approach. The United States delegation would prefer the approach taken by the Philippines, but was confident that it would be possible to work out a single draft that could command a large majority. There were also differences in approach with regard to the third element in implementation, the right of petition. She was prepared to vote for a text providing for the right of petition where the States Parties had given their specific approval to the use of such a procedure.

33. The United States delegation reserved the right to go into the details of the various proposals at a later stage in the debate, and in particular to explain its amendments (A/C.3/L.1271) to the Philippine proposals. Like the Italian delegation, it hoped that the views of the Ghanaian and the Philippine delegations could be brought into harmony with each other, and her delegation would give its maximum co-operation to that end.

34. In her opinion, the draft measures of implementation provided an excellent basis to work from, and the Committee should spend whatever time was necessary to reach agreement on the implementation provisions. The Committee's work should be guided by three considerations: respect for the sovereignty of the States Parties to the Convention; the importance of effective measures; and the importance of their wide acceptability.

35. Mr. BLANCO (Argentina) observed that the members of the Committee agreed on the need to supplement the Convention with measures of implementation without which it would be no more than a declaration of intentions with no binding force upon any State.

36. During the discussion, the question had arisen whether the measures of implementation might infringe upon the sovereignty of States. In his opinion, once States had recognized the need to stamp out racial discrimination in their territory, they ought to accept the logical consequences of that position. Moreover, since they had exercised their sovereignty by adopting the Convention together with its measures of implementation, the execution of those measures could hardly infringe upon their sovereignty.

37. He wished to emphasize, as the French representative had done, the need for the Committee to pursue its work in an atmosphere of realism and objectivity. The aim was to prepare, not an ideal convention, but an instrument which the Committee had worked out, taking into account the points of view of the various States and which would be ac-

cepted by them. Each representative should therefore make his utmost contribution to the discussion, so as to produce the best and most complete synthesis of the various points of view represented in the Committee. In the course of their work, it had to be borne in mind, as the Tanzanian representative had emphasized, that, however important the idea of sovereignty might be, the Committee's work was aimed essentially at preventing violations of human rights and fundamental freedoms.

38. Mr. DAS (Secretary of the Committee) said that the Secretary-General wished to state that the revised amendments submitted by the Ghanaian representative in document A/C.3/L.1274/Rev.1 would not call for any revision of the statement on financial implications contained in document A/C.3/L.1278. He therefore drew the Committee's attention to paragraph 3 of the latter document, in which the relevant financial and other implications were set forth.

39. Mr. LAMPTEV (Ghana) suggested that representatives including those who had submitted amendments to the Philippine proposals, should come together the following day as a working group to prepare a text that would combine the delegations' various points of view and thus be likely to win the widest possible support.

40. After an exchange of views on the membership of the working group, in which Mr. ZULOAGA (Venezuela), Mr. OUEDRAOGO (Upper Volta), Miss FAROUK (Tunisia), Mr. CHKHIKVADZE (Union of Soviet Socialist Republics), Miss TABBARA (Lebanon), Mr. A. A. MOHAMMED (Nigeria), Mr. SHARAF (Jordan), Mr. KOCHMAN (Mauritania), Mr. CAPOTORTI (Italy) and Mr. COCHAUX (Belgium) took part, the CHAIRMAN proposed that the group should comprise the sponsors of amendments to the Philippine proposals, since a small group would be better able to work effectively.

It was so decided.

The meeting rose at 6.10 p.m.