

United Nations
**GENERAL
 ASSEMBLY**

TWENTIETH SESSION

Official Records

**THIRD COMMITTEE, 1350th
 MEETING**

Monday, 22 November 1965,
 at 11.15 a.m.



NEW YORK

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>	351
<i>Article VIII</i>	351

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, L.1292)

ARTICLES ON MEASURES OF IMPLEMENTATION
 (continued)

1. Mr. MUMBU (Democratic Republic of the Congo) commended the delegations of the Philippines, Ghana and Mauritania for the spirit of compromise they had shown in preparing a single text (A/C.3/L.1291) which greatly facilitated the Committee in its work. He was glad that the sponsors had met the wish of some delegations, including his own, that the articles relating to measures of implementation should follow 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) for in that way States acceding to the Convention would be obliged to accede also to the measures of implementation. It was necessary to avoid the possibility that some States might merely accede to the Convention without having any intention of implementing it. Under the formula which had been adopted, such evasion was no longer possible.

2. He thought that consideration, article by article, of the single text would not serve to expedite the Committee's work. It might be preferable to allow delegations which so desired to express their views on the draft as a whole, following which the text could be voted upon article by article.

3. The CHAIRMAN pointed out that following the conclusion of the general debate, the Committee had decided to consider the draft concerning measures of implementation (A/C.3/L.1291) on an article by article basis; he therefore invited delegations to comment on article VIII.

Article VIII

4. Mr. MUMBU (Democratic Republic of the Congo) considered that article VIII was too long and should be divided into two, particularly since it referred to two different matters: the submission of reports by States Parties to the Convention and the establishment of a committee of experts to deal with cases of non-observance of the Convention. Paragraphs 4, 5 and 8 could therefore form article VIII and paragraphs 1, 2, 3, 6 and 7 could form article IX, on the understanding that there would be consequential changes in the references in paragraphs 3, 4 (b), 5 and 8 of the former article VIII. In any event, even if the present form of the article was retained, it seemed more logical to place paragraphs 4, 5 and 8 at the beginning of the article. His delegation nevertheless preferred article 1 of the Philippine text (A/C.3/L.1221).

5. He would like to have some explanation of the exact meaning of the expression "the different forms of civilization" in article VIII, paragraph 1. The entire paragraph was unclear, moreover, and could usefully be clarified.

6. Lastly, since paragraph 5 provided that reports should be submitted to the Secretary-General, he thought that any contact between the committee of experts and the States Parties to the Convention should be made through the Secretary-General. That applied particularly in the case of article VIII, paragraph 6, but it applied also in the case of certain paragraphs of articles X, XI and XII.

7. Mrs. MANTZOULINOS (Greece) was glad to note the progress made in the field of implementation of international instruments. Her delegation congratulated the Philippine and Ghanaian delegations for the initiative they had taken in the matter and for the efforts they had made, together with the Mauritanian delegation, to develop a compromise text. Her delegation approved in general the text submitted, which provided for the establishment of an organ to supervise the implementation of the provisions of the Convention.

8. With reference to article VIII, she drew attention to the fact that, at the eleventh session of the General Assembly, ^{1/} her delegation had proposed, as a provisional measure pending the entry into force of the Covenants on Human Rights, that a committee should be established to examine objectively complaints made by a Member State against another Member State concerning violations of human rights. That proposal had been rejected by the Third Committee as being constitutionally unacceptable and

^{1/} See Official Records of the General Assembly, Eleventh Session, Annexes, agenda item 60.

impracticable. At that time, a procedure for dealing with violations of human rights outside the framework of the Covenants had seemed out of the question; the Third Committee had therefore preferred to give priority, at the eleventh session and for a number of further sessions, to consideration of the Covenants, until, at the eighteenth session,^{2/} following a very lively general discussion on the implementation clauses of the Covenants, the Committee had reached an impasse and had adopted a resolution requesting Governments to give their views concerning implementation procedures for the draft Covenants. Eight years had elapsed since the Committee had rejected the Greek proposal that a committee should be established as an interim measure, in order to serve the cause of human rights, and the draft Covenants had still not entered into force.

9. It was for that reason that her delegation had not participated in the general discussion on the implementation procedure for the Convention. However, it had listened carefully to the various comments which had been made and had been glad to note that the Committee appeared to be unanimous in recognizing the need to adopt measures of implementation on a human rights issue. Desiring to see the principles enunciated in the United Nations Declaration on the Elimination of All Forms of Racial Discrimination given legal status in a convention, the General Assembly had adopted a resolution (1906 (XVIII)) to that effect at the eighteenth session and in so doing had certainly taken into consideration the fact that States, in acceding to the Convention, would have to renounce a part of their sovereignty, as was always the case when they acceded to a treaty or international agreement.

10. Article VIII itself had been well thought out and carefully drafted and her delegation would support it. However, while she agreed with the representative of Ghana that the articles concerning measures of implementation should be drafted succinctly, she thought that the Committee should avoid excessive conciseness and should not hesitate to make certain points clear, even if that meant sacrificing brevity.

11. On those grounds, she wished to propose a number of changes intended to make the text clearer. She proposed the addition, after the word "Convention" in paragraph 1, of the words "by an absolute majority of votes", and the replacement of the words "amongst their nationals who shall" by the words "a list of names of national from all States Parties to". Lastly, she proposed the addition, at the end of the paragraph, of a sentence reading: "Each State Party shall put forward two candidates".

12. In paragraph 2, her delegation proposed the addition, after the first sentence, of a new sentence reading as follows: "A member of the Committee elected under the procedure provided in paragraph 1 to replace a member whose term of office has not expired shall hold office for the remainder of his predecessor's term".

13. With regard to paragraph 3 concerning the expenses of members of the committee of experts, her delegation, desiring not to burden the Organization

with additional expenses at a time when it was experiencing financial difficulties, endorsed the text proposed which provided that a State Party, a national of which was elected to membership of the committee, should be responsible for the expenses of that member.

14. Mr. NETTEL (Austria) thanked the delegations of the Philippines, Ghana and Mauritania for having prepared a joint text. His delegation wholeheartedly agreed with the principles enunciated in article VIII and hoped that the article relating to the right of petition would be worked out in the same spirit. However, it had some reservations with regard to the clarity of the text.

15. It too thought that the provisions of paragraph 1 concerning the election of members of the committee were not entirely clear. As it was worded at present, the paragraph appeared to mean that every Member State had to elect one of its nationals to serve on the committee, which was certainly not the intention of the sponsors. Their intention surely was that the eighteen members of the committee should be elected by representatives of the States Parties from among candidates nominated by the said States Parties and that each State could have only one of its nationals on the committee.

16. Mr. ZULOAGA (Venezuela) said that, in his opinion, the articles under consideration should be grouped under a heading such as "Measures of implementation". The committee which was to be established should perhaps be called the "Committee to Combat Racial Discrimination"; that was, of course, merely a suggestion. He agreed that the method of election and the status of the committee's members should be specified.

17. Mr. K. C. PANT (India) thanked the co-sponsors for their efforts; his delegation fully endorsed the idea of a system of reporting along the lines indicated in article VIII, paragraph 4. Although, in the Philippine draft (A/C.3/L.1221), the reports were to be submitted to a body of experts and, in the Ghanaian draft (A/C.3/L.1274/Rev.1), to a purely political body, the text under consideration (A/C.3/L.1291) proposed a compromise formula since it provided for a committee of experts elected by the States Parties; in theory, the formula was a satisfactory one, but in practice it might present some difficulties in that there was no absolute certainty that the States would appoint the persons best qualified for their task.

18. His delegation agreed that paragraph 1 was not very clear. It did not indicate who was to establish the committee of experts, although it would presumably be the General Assembly or the Third Committee. Furthermore, with regard to the question of geographical distribution, while there was probably little likelihood that two nationals of the same State would be elected, he thought it preferable to be somewhat more specific. The words "the different forms of civilization" expressed an important idea which he thought should be retained.

19. With regard to paragraph 3, which took into account the Organization's financial difficulties, there was a risk that the experts would cease to be impartial if they were paid by their respective States. Even

^{2/} Ibid., Eighteenth Session, Annexes, agenda item 48.

though that risk was slight, the possibility could not be excluded. Those delegations which had said that the Secretary-General could defray the experts' expenses until they were refunded by the States Parties should realize that there was some risk in that, since Governments could change.

20. Mr. COCHAUX (Belgium) said he would also like to know who was to establish the committee provided for in article VIII, paragraph 1; if the text was to have any legal value, it was essential to give that information. It was to be noted that the new text called for eighteen experts, whereas the Philippine draft had provided for only eleven; he wondered whether such a large membership might not impede the work of the Committee. The procedure by which the States Parties were to elect the experts should also be indicated.

21. With regard to paragraph 3, he felt that the word "expenses" was a poor choice because it was too vague; moreover, in order to ensure the impartiality of the committee's members, the experts' expenses should be covered by the United Nations, subject to reimbursement by the States Parties. In that connexion, it should be specified that the committee in question would be a committee of the United Nations rather than of the States Parties.

22. He would suggest that the words "if necessary" in paragraph 6 should be deleted, since experts and States might have different views about whether the necessity existed. The wording of the paragraph should be more categorical; for example: "The Committee shall request further information from the States Parties".

23. With regard to the last sentence of paragraph 7, the committee could possibly disregard the views of States when it submitted its suggestions to the General Assembly. If it submitted its recommendations to the Assembly and met with opposition from the States Parties at that stage, its authority would be gravely impaired.

24. Lastly, he felt that paragraph 8 should be deleted, since the States Parties were in any case always free to submit observations to the General Assembly.

25. Mr. KEITA (Mali) agreed with the Venezuelan representative that the committee provided for in article VIII should be given a name. It should be financed by the United Nations, since the Organization was to establish the committee.

26. His delegation had no comments to make on the other paragraphs of the draft but reserved the right to speak at a later stage.

27. Mrs. RAMAHOLIMIHASO (Madagascar) said she thought that in paragraph 2 of the French text the word "nom" should be in the plural and in paragraph 3 the word "ses" should be inserted before the word "fonctions".

28. She agreed that in paragraph 1 the procedure for electing the committee should be specified; in particular, it should be indicated who was to make nominations.

29. She shared the concern of the Belgian representative regarding paragraph 3. She questioned the impartiality of a committee whose expenses would

be the responsibility of the States Parties; a State could easily interfere with the functioning of the committee by refusing to meet its financial obligations. It was essential for the United Nations, which was to establish the committee, to assume financial responsibility for it.

30. She would like to know the exact meaning of the last sentence of paragraph 7, which stated that the committee was not to report its suggestions and recommendations to the General Assembly until it had consulted the States Parties concerned. Would the committee have to obtain the agreement of those States or merely their observations? She favoured the latter interpretation and felt that the end of paragraph 7 should read: "after observations have been received from the States Parties concerned". In the view of her delegation, paragraph 8 could be deleted.

31. Mr. LAMPTEY (Ghana) said he had listened to the various statements with particular interest because a number of points raised in the course of the discussion had received attention from the co-sponsors themselves when they had drafted the document now under consideration. Those comments would be taken into account in a new text that was to be prepared.

32. With regard to the question of financing, the Ghanaian representative had observed that experts who met the requirements laid down in paragraph 1 would normally display the necessary impartiality. The formula used by the sponsors of the single text (A/C.3/L.1291) was a compromise necessitated by the financial position of the Organization. If that position subsequently improved, it would always be possible to revise article VIII, paragraph 3.

33. As to the need to ensure that the different forms of civilization and the principal legal systems were reflected in the composition of the committee of experts, he would point out that that was the formula commonly employed; the co-sponsors had therefore used it even though it was not entirely satisfactory.

34. In reply to those delegations which had expressed concern at the fact that under paragraph 7 the committee was required to consult the States Parties concerned before reporting its suggestions and recommendations to the General Assembly, he wished to state that the committee would not, of course, have to obtain the authorization of those States but would merely request their views. The draft Convention had been drafted in a conciliatory spirit and in the hope of securing the co-operation of States. Hence, in order to allay legitimate fears on their part, it was suggested that provision should be made for consultations so that the report called for under paragraph 7 would give rise to political difficulties.

35. Mr. GARCIA (Philippines) recalled, in connexion with paragraph 3, that the original draft (A/C.3/L.1221) had provided for a committee of experts which would be elected by the General Assembly and financed by the United Nations. However, since under the new draft (A/C.3/L.1291) the committee of experts was to be elected by the States Parties and not all Member States would sign the Convention, it had seemed preferable to make the States Parties responsible for the expenses incurred by their experts. In reply to those delegations which feared that that approach

would impair the experts' impartiality, he would point out that the system of remuneration by States was no more dangerous than that of appointment by States.

36. In the new draft, the link between the committee and the Organization was ensured by the submission of a report to the General Assembly rather than to the Economic and Social Council, as provided in the original text.

37. Mr. WALDRON-RAMSEY (United Republic of Tanzania) said that in his opinion the committee provided for in article VIII, paragraph 1, should be established by the United Nations; he therefore suggested that the words "by the General Assembly" should be inserted between "be established" and "a Committee". The fact that, under paragraph 1, the members of the committee were to be elected by the States Parties to the Convention did not give rise to any difficulty, since those States had to meet the conditions laid down for any State Party to a United Nations instrument. Accordingly, paragraph 3 would be replaced by the following text: "The expenses of the Committee shall be borne by the regular budget of the United Nations".

38. He also suggested that the second sentence of paragraph 7 should be replaced by the following sentence: "However, such suggestions and recommendations shall be reported to the General Assembly together with comments, if any, from the States Parties concerned". That formula should meet with the satisfaction of those delegations, such as Madagascar, which regarded the present text as ambiguous.

39. Paragraph 8 was superfluous, since the States Parties could at any time submit observations to the General Assembly on the committee's report.

40. Mr. CAPOTORTI (Italy) said that he wished to make some observations on article VIII, mindful of the fact that the text under consideration represented a compromise and was the result of laborious work.

41. As far as relations between the committee and the United Nations were concerned, a number of representatives wished the former to be a body elected and financed by the Organization. However, the Convention was to enter into force upon the receipt of twenty ratifications, and it would be unfair if non-signatory States had the right to exercise influence in the proposed committee. Until the Convention was ratified by all Member States, it was proper that the committee should represent only the signatory States and that, accordingly, it should be elected and financed by them alone. Doubts had been expressed as to the impartiality of experts working under these conditions, but those doubts should now have been dispelled. To allay any fears, consideration could be given to the possibility of pooling the expenses and apportioning them among the signatory States instead of leaving it to each State to remunerate its own expert. However, that solution might cause technical complications, and the proposed formula seemed, on the face of it, to be the simpler.

42. As far as the machinery for elections was concerned, it seemed to be agreed that the committee would be elected by the States Parties, but it remained to be determined where and according to what pro-

cedure. Taking account of the useful suggestions made by the Greek and Austrian delegations, a paragraph could be added which would give those important details. In any event, it seemed that the members of the Third Committee were agreed that the question should be dealt with in article VIII and not in the final clauses. The concept of equitable geographical distribution, which was referred to in paragraph 1, might also be defined. As for the criterion of the different forms of civilization, to which reference was often made in the United Nations, it gave more flexibility to the somewhat too rigid criterion of geographical distribution and should be retained in a form that was acceptable to the majority of delegations.

43. His delegation saw no objection to giving the committee a name.

44. As far as the number of experts was concerned, experience showed that a small body was more likely to do useful work. However, since the principle of equitable geographical distribution had to be respected and the representation of different forms of civilization ensured, it was better to keep to the proposed figure. He shared the doubts expressed by various delegations regarding the consultation referred to in paragraph 7 and would welcome clarification of that point.

45. Mr. INCE (Trinidad and Tobago) said that despite the guarantees of impartiality required under article VIII, paragraphs 1 and 3, the experts would inevitably be concerned to some extent with the interests of the country of which they were nationals. For example, the members of the International Commission of Jurists, who could be regarded as experts and were expected to adopt decisions in a completely impartial manner, were nevertheless guided by the interests of their respective countries. Despite the financial difficulties of the United Nations, the experts' expenses should, in the interests of impartiality, be borne by the Organization.

46. Mr. SY (Senegal) said that even if the experts were persons of high moral standing, financial dependence on their Governments might make them vulnerable to certain pressures. If an expert was not permanently employed by the committee and continued to perform his normal duties in his country, it was unnecessary to state that his expenses would be borne by his Government, since his status remained unchanged. On the other hand, if he was seconded to the committee it was the United Nations which should remunerate him.

47. Mr. PASHA (Pakistan) said he agreed with the Venezuelan representative that the committee should be given a name worthy of its functions. He also felt that the way in which the committee was to be established was left rather vague, for it was not clear on what terms the experts would be elected; the document submitted by the Philippines (A/C.3/L.1221) had had the merit of stating clearly, in article 3, paragraph 2, that the members of the committee were to be elected by the General Assembly.

48. His delegation shared the view of the Greek and Austrian delegations that no country should be permitted to have more than one expert on the committee.

He felt that the system of reporting provided for in article VIII represented a minimum safeguard and should be bolstered by more effective measures of implementation.

49. Mr. HOVEYDA (Iran) said that, in its present form, article VIII constituted a coherent whole which should not be subjected to extensive redrafting.

50. The discussions which had produced that text had been very specific and thorough, and the desire for perfection should not be pushed too far. The Convention must have a certain measure of autonomy; it might be dangerous to make provision in it for intervention by the General Assembly.

51. Since other Committees of the General Assembly, particularly the Fifth and Second, sought to reduce expenses so that an increasing proportion of resources could be allocated for economic development, it would be completely improper to impose an excessive burden on the Organization's budget. His delegation therefore regarded paragraph 3 as wholly satisfactory; it did not feel that the principle of remuneration by Governments would in the least impair the experts' impartiality. He wished to conclude by expressing the hope that the sponsors would be able to work out a text that was free of any ambiguity.

52. Mr. BOZOVIC (Yugoslavia) said that the problem of implementation could be approached in two different ways: either the States which did not accept the obligations laid down in the Convention would have no say in the matter or non-signatory States would have the right to supervise the implementation of the Convention on the grounds that the protection of human rights was of general concern to all States. If the latter approach was adopted, a United Nations body, elected by the Organization, could be entrusted with the task of ensuring compliance with the Convention; in his view, moreover, questions of implementation should be dealt with by a political body rather than by a committee of experts. If, however, the Third Committee accepted the text as it stood, the committee of experts would be elected by the States Parties and the remainder of article VIII, paragraph 1, would have to be changed accordingly: reference would have to be made to equitable geographical distribution among the various States Parties.

53. On the other hand, if the General Assembly considered the reports and made recommendations in connexion with them, all States Members of the United Nations would be entitled to concern themselves with the implementation of the Convention in the different countries. He felt that the signatory countries should not be encouraged to form a bloc from which non-signatory States were excluded. As for the question of financing, everything depended on how the proposed committee was envisaged. He would like the Secretariat to submit a statement of the financial implications of article VIII in the event that the United Nations assumed responsibility for the expenses of the experts.

54. Mr. COMBAL (France) said that the provisions of article VIII were completely acceptable to his delegation. Moreover, the representatives of Ghana and the Philippines had answered various objections in terms which met with his delegation's approval. The Italian representative had given a very clear account of the fundamental problems posed by the relationship between the committee and the United Nations. In his opinion, the proposed text was in no way ambiguous: like any other convention, the Convention on the Elimination of All Forms of Racial Discrimination would enter into force upon receipt of the required number of ratifications and would be subject to the rules of international law. However, the task of ensuring its implementation should not be entrusted to the General Assembly until all States Members of the United Nations acceded to it. If the Convention was ratified by all Member States, certain aspects of the implementation provisions would have to be reconsidered. Expenses should be covered by the States Parties; there was no reason to include them in the United Nations budget, of whose limits everyone was aware. A number of delegations would have difficulty in accepting a text which made the United Nations responsible for the expenses of the experts. He did not think that the independence of the experts would be compromised in any way by the proposed arrangement. If a State Party to the Convention provided an expert, it would surely endeavour to respect his independence. However, to allay any fears on that score, he was prepared to accept the solution proposed by the Italian representative, who advocated the pooling of expenses and their apportionment among the States Parties. The United Nations could also advance funds.

55. Mrs. BERRAH (Ivory Coast) said she shared the view of the French and Italian representatives that the experts' expenses should be apportioned among the States Parties.

56. Mr. MONTENEGRO MEDRANO (Nicaragua) thought that the revised text was still extremely theoretical in character. It merely defined the procedure to be followed by the States Parties in order to avoid disputes and made no provision for effective action to prevent racial discrimination or punish States which failed to comply with the Convention. He favoured the establishment of a court of human rights with compulsory jurisdiction. In his opinion, mere declarations were ineffective.

57. He would also like to know who would take a decision after the committee had examined reports submitted by States Parties. No provision was made for measures of compulsion in the event that the latter refused to comply.

The meeting rose at 1.20 p.m.