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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.1237, L.1239, L.1241, L.1249, L.1262, L.1272, L.1291 and Add.1, A/C.3/L.1292, L.1297 to L.1299)

ARTICLES ON MEASURES OF IMPLEMENTATION (continued)

Article XI (concluded)

1. Mrs. CABRERA (Mexico) reminded the Committee that in the Spanish text of article XI, paragraph 1 (a), she had requested the replacement of the words "a base del" by the words "sobre la base del".

2. The CHAIRMAN said that, since that proposal affected only the Spanish text, it need not be put to the vote.

3. Mr. MOVCHAN (Union of Soviet Socialist Republics), referring to the Tanzanian amendments (A/C.3/L.1299), said that he did not understand the proposal to insert the words "from time to time" after the words "shall appoint" in paragraph 1 (a). Since the conciliation commission would be established whenever a dispute arose, it was not clear what was intended by that idea of periodicity. He asked whether the commission was to render periodic reports even if there were no disputes.

4. Mr. WALDRON-RAMSEY (United Republic of Tanzania) maintained his amendment; since the commission would meet only when there was a case before the eighteen-member committee, it would certainly meet "from time to time".

5. He was replacing his amendment to paragraph 6 by the following revised version:

"The States Parties shall be responsible for the expenses of the members of the Commission

while they are in performance of Commission duties."

6. Mr. LAMPTEY (Ghana) said it was unthinkable that some of the costs of a dispute between two countries should be charged to other countries; the States parties to the dispute should cover such expenses.

7. Mr. DAS (Secretary of the Committee), amplifying the information he had given at the previous meeting on the financial implications of article XI, paragraph 7, pointed out that under paragraph 6 the States parties to the dispute were to share equally all the expenses of the members of the commission in accordance with estimates to be provided by the Secretary-General.

8. The Secretary-General understood that it was the intention of those paragraphs, first that upon the coming into being of the conciliation commission, the Secretary-General would present to the States parties concerned an estimate of the expenses of the members of the commission based on prevailing rules and regulations covering payments to members attending meetings of the United Nations and serving in their individual capacity.

9. Secondly, the Secretary-General further understood that the States parties concerned might or might not pay their shares of the estimated expenses upon presentation of the estimate referred to above. In the latter case, the Secretary-General would disburse funds of the Organization to meet those expenses initially pending reimbursement by the States parties in accordance with rule 114.6 (b) of the Financial Rules of the United Nations, and, upon receipt of reimbursement would liquidate the outstanding obligations in the relevant suspense account. The Secretary-General also assumed that, although he would present estimates of the expenses of members of commissions whenever a commission was established, he would be able to present supplementary estimates if circumstances so warranted, for example if the commission continued for a longer period than planned or if it had to hold meetings away from Headquarters more often than envisaged.

10. The CHAIRMAN invited the Committee to vote on article XI (A/C.3/L.1291) and the amendments thereto. He reminded members of the Committee that the sponsors had accepted the revised text of paragraph 1 (a) proposed by Canada (A/C.3/L.1298). They had also accepted the revised text of paragraph 2 proposed by the United Republic of Tanzania in its amendments (A/C.3/L.1299), as well as the oral amendment by Pakistan to insert the word "other" before the words "convenient place" in paragraph 4.

Since there were no amendments to paragraphs 3, 5 and 8—and no further amendments to paragraph 4—those paragraphs would not be put to the vote separately.

Paragraph 1

The amendment of the United Republic of Tanzania (A/C.3/L.1299), to insert the words "from time to time" after the words "shall appoint" in the revised text of paragraph 1 (a), was rejected by 67 votes to 2, with 13 abstentions.

The oral proposal of Mexico to delete paragraph 1 (b) was rejected by 54 votes to 10, with 16 abstentions.

The amendment of the United Republic of Tanzania (A/C.3/L.1299), to insert the words "by secret ballot" before the words "by a two-thirds majority vote in paragraph 1 (b)", was adopted by 45 votes to 6, with 33 abstentions.

Paragraph 1, as a whole, as amended, was adopted by 84 votes to none, with 4 abstentions.

Paragraph 2

The revised text of paragraph 2 (A/C.3/L.1299) was adopted by 86 votes to none, with 2 abstentions.

Paragraph 6

The amendment of the United Republic of Tanzania (A/C.3/L.1299), as orally revised, was rejected by 45 votes to 7, with 34 abstentions.

Paragraph 6 (A/C.3/L.1291) was adopted by 67 votes to none, with 17 abstentions.

Paragraph 7

The oral proposal of Mexico and the amendment of the United Republic of Tanzania (A/C.3/L.1299), to delete paragraph 7, were rejected by 46 votes to 2, with 37 abstentions.

Additional paragraph 9

The amendment of the United Republic of Tanzania (A/C.3/L.1299), to add a new paragraph at the end of article XI, was rejected by 26 votes to 6, with 54 abstentions.

Article XI as a whole

At the request of the Mexican representative, the vote on article XI as a whole was taken by roll-call.

Burma, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Burma, Byelorussian Soviet Socialist Republic, Cameroon, Canada, Ceylon, Chile, China, Colombia, Congo (Democratic Republic of), Costa Rica, Cuba, Czechoslovakia, Denmark, Dominican Republic, Ecuador, El Salvador, Ethiopia, Finland, France, Gabon, Ghana, Greece, Guatemala, Guinea, Haiti, Hungary, India, Iran, Iraq, Ireland, Israel, Italy, Jamaica, Jordan, Kenya, Lebanon, Liberia, Libya, Madagascar, Malaysia, Mali, Mauritania, Mongolia, Morocco, Netherlands, New Zealand, Nicaragua, Nigeria, Norway, Pakistan, Panama, Peru, Philippines, Poland, Portugal, Romania, Rwanda, Saudi Arabia, Senegal, Spain, Sweden, Thailand, Trinidad and Tobago, Tunisia, Turkey, Uganda, Ukrainian

Soviet Socialist Republic, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America, Yemen, Yugoslavia, Zambia, Afghanistan, Algeria, Argentina, Australia, Austria, Belgium, Brazil, Bulgaria.

Against: None

Abstaining: Japan, Mexico, Sudan, United Arab Republic, United Republic of Tanzania, Venezuela.

Article XI, as a whole, as amended, was adopted by 81 votes to none, with 6 abstentions.

11. Mr. BOŽOVIĆ (Yugoslavia) said that paragraph 1 (b), was not clear. It appeared to mean that the members to be elected to the commission were precisely those not agreed upon by the States parties; that was utterly paradoxical.

12. The CHAIRMAN warned the Committee against re-opening discussion on a text which had just been adopted. If a serious mistake had been made, the only possible way out was to take another vote. He hoped the Committee would not go to that extreme.

13. Mr. BOŽOVIĆ (Yugoslavia) said that he had refrained from raising the matter earlier because he had been anxious to co-operate. There was nothing wrong with the spirit of the text; the form alone left something to be desired.

14. Mr. COMBAL (France) agreed with the Yugoslav representative. In his opinion the text which the Committee had just adopted bore the stamp of the conditions in which the sponsors had worked. When all the articles had been put to the vote, the drafting would have to be revised on terms to be settled at that stage. An international convention was bound to undergo very close examination by the Government and parliament of various countries, and everything possible must be done to make it as nearly perfect as possible.

15. Mr. COCHAUX (Belgium) said that he too had noticed that some parts of the text read awkwardly, and he regretted not having mentioned the matter earlier. He endorsed the Yugoslav representative's observations and the French representative's proposal.

16. Mr. CAPOTORTI (Italy) said that on several occasions he had noticed clumsy phrasing in texts submitted to the Committee, and especially in the French version of such texts, which was not always entirely satisfactory. He asked the translation service to ensure that the texts in the various languages always corresponded strictly to the original.

17. Mr. KOCHMAN (Mauritania) supported the Italian representative's request.

18. The CHAIRMAN took note of the wish expressed by the French representative and supported by other delegations. The Committee might consider appointing a committee to revise the drafting of the articles when the whole text had been adopted.

Article XII

19. Mr. RESICH (Poland) said that article XII, which described the last stage in the procedure, was of great importance, for the efforts made up

to then would depend for their success on the effectiveness of the measures provided for in article XII. The proposed report and recommendations would derive their value from the authority of the commission and from the moral sanction conferred on the report through its publication by the Secretary-General. Under paragraph 2, however, only the commission's report was to be published. In view of the nature of the sanction conferred by publication it would also be appropriate to publish the declaration of the States concerned. That would put the subject of the dispute and the moral effects of the eighteen-member committee's recommendations in a more accurate perspective, would encourage States to take the recommendations into account and, more particularly, would give every State an opportunity to make its arguments known before the report was published. He therefore suggested that paragraphs 2 and 3 should be replaced by the following:

"2. The Chairman of the Committee shall communicate the report of the Commission to each of the States parties to the dispute. These States shall, within three months, inform the Chairman of the Committee whether or not they accept the recommendations contained in the report of the Commission.

"3. After the period provided for in paragraph 2 of this article, the Chairman of the Committee shall communicate the report of the Commission and the declarations of the States related to this report to the Secretary-General of the United Nations for publication."

20. Mrs. CABRERA (Mexico) requested that the word "complaint" in article XII, paragraph 1, should be replaced by the word "case".

21. Mr. COMBAL (France) said he had certain reservations to make with regard to the procedure in paragraph 2, according to which the report of the commission would be communicated to the Secretary-General for publication. It was questionable whether such publicity was really in conformity with the spirit of the reconciliation procedure and there was a risk that it might disturb the serene atmosphere in which the institutions responsible for carrying out the Convention should work. He therefore requested the co-sponsors to re-examine those provisions bearing in mind their possible effects.

22. Mr. LAMPTEY (Ghana), on behalf of the co-sponsors, accepted the Polish delegation's proposed amendment, subject to the insertion of the words "Parties concerned" after the words "declarations of the States", in paragraph 3. He pointed out that it was necessary to publish the report, because all the States Parties to the Convention would wish to know how the dispute had been settled.

23. Mr. BECK (Hungary) proposed inserting in article XII the paragraph that the United Republic of Tanzania had proposed adding at the end of article XI (A/C.3/L.1299), to read: "The recommendations of the Commission shall be made public, but not necessarily the evidence received in camera by the Commission."

24. Mr. LAMPTEY (Ghana) said he found it difficult to accept that amendment.

25. Mr. WALDRON-RAMSEY (United Republic of Tanzania) queried the meaning of the words "for publication" which did not make it clear whether the members of the General Assembly, the States Parties or the general public were to be informed. In any case, it seemed to him that any evidence received in camera should not be made public and a clause to that effect should be inserted in the text.

26. Mrs. BEN-ITO (Israel) said she understood that the report to be communicated to the Secretary-General by the chairman of the committee would not contain any evidence and would merely submit the commission's views; she suggested that the co-sponsors might provide some information on the matter.

27. Mr. LAMPTEY (Ghana) replied that the commission's report would obviously only contain whatever the commission wished to put in it.

28. Mr. SY (Senegal) asked whether the Tanzanian delegation's proposal was admissible since the commission had just rejected a similar amendment by that delegation to article XI.

29. The CHAIRMAN said that the Tanzanian proposal was admissible since it dealt with the commission's report and not with the recommendations; it was therefore similar to but not identical with the amendment that had just been rejected.

30. Mr. BOŽOVIČ (Yugoslavia) recalled that he had supported the Tanzanian amendment to article XI, and asked the representative of the United Republic of Tanzania if he would be willing to withdraw his amendment now that his position was known.

31. Mrs. MANTZOULINOS (Greece) said with reference to paragraph 1 that the Commission's task would not only be to consider complaints and that the wording of the paragraph did not fully convey the commission's functions; she therefore suggested using the word "case" or "matter" or any other expression with a wider meaning than "complaint".

32. Mr. WALDRON-RAMSEY (Tanzania) supported the Greek representative's remarks. He proposed wording the beginning of article XII to read "When the Commission has duly considered the matter and received all the evidence".

33. The principle involved in the Yugoslav representative's request was one that was dear to him and he could not therefore withdraw his proposal. His proposed amendment to the new version of paragraph 3 consisted of deleting the words "for publication" and, inserting the words "but not necessarily evidence received in camera to the Secretary-General of the United Nations for transmission to the General Assembly".

34. Mr. ZULOAGA (Venezuela) pointed out that in the Tanzanian representative's text the optional aspect of his amendment to article XI on the same subject was mission. The Venezuelan delegation had supported that amendment because of its optional nature, which, in its view, was very useful.

35. Mr. RAO (India) said he would like to have the texts of the amendments that had been submitted. Furthermore, it seemed to him that the words "when

the Commission has duly considered" were sufficiently general in scope to meet the requirements of the Greek representative.

36. The CHAIRMAN suggested that a revised version of article XII incorporating the proposed amendments should be drawn up and voted on at the following meeting.

It was so decided.

Article XIII

37. The CHAIRMAN invited the Third Committee to proceed to the consideration of a new article XIII (A/C.3/L.1291/Add.1), the former article XIII (A/C.3/L.1291) to be renumbered article XIV.

38. Mr. LAMPTEY (Ghana) said that the new article XIII had been drafted after much thought as it was one of these most likely to lead to controversy.

39. It had been necessary to take into account the sincere wish of many delegations to use the right of petition and communication as an effective weapon against discrimination. It was also essential not to lose sight of the fact that many States were jealous of their sovereignty and were reluctant to acknowledge that right. The only way to reconcile those opposite points of view was to make optional any measures intended to provide an effective guarantee of that right. It was also necessary to take into account the preference of delegations regarding the mechanism to be set up; some would in fact have liked it to be on an international scale from the very beginning; others preferred to limit it to a national committee; and there were others who recommended prior consideration of the petitions and communications by a national committee before resorting to an international institution. The sponsors of draft article XIII had endeavoured to draw up a text which would reflect the various opinions.

40. Analysing that draft paragraph by paragraph, he pointed out that paragraph 1 offered as much choice as it possibly could, since it provided that a State Party to the Convention could at any time declare that it recognized the committee's competence to receive and consider communications from individuals. That paragraph was based on a provision of the Statute of the International Court of Justice.

41. With regard to paragraph 2, the sponsors had begun by adopting the Saudi Arabian amendment. It had, however, emerged from the discussion that some countries might already have competent institutions to consider the petitions and it would be difficult to ask them to set up a new institution for that purpose. Paragraph 2 therefore confined itself to stipulating that a State Party could appoint a national committee.

42. In paragraph 3, the sponsors had found it necessary to provide that, for the information of States Parties, any State that decided to set up a national committee would communicate its name and any changes in the committee's composition to the Secretary-General.

43. A national committee which, in accordance with paragraph 4, in appropriate cases sought redress from States Parties concerned could, if it had suf-

ficient authority or influence, help those States to save face in the international community. If, however, it failed to obtain redress, according to the same paragraph, the petitioner would be able to communicate the matter to the committee.

44. The Saudi Arabian representative had furnished a sufficient explanation of paragraph 5; paragraphs 6 and 7 did not call for any comment.

45. Mr. MOMMERSTEEG (Netherlands) said that his delegation took the view, based on principle and practice, that the right of individual petition was the most effective means of giving effect to human rights in general and the present Convention in particular. As a matter of principle, it was desirable that the human being whose rights were violated or who was the victim of discrimination should be able to obtain redress without depending on the goodwill of the State. It was impossible to speak of human rights unless the possessor of those rights had the means of defending them. His delegation believed that the State and its organs had a primary duty in safeguarding human rights. However, if the State failed to fulfil that duty, the international community must serve in its stead, as was evident from Article 55 and 56 of the Charter.

46. In practical terms, his delegation thought that complaints by one State against another, or State-to-State communications, did not offer a sufficient guarantee of the safeguard of human rights. States were little inclined to occupy themselves with individual cases which did not affect them or their citizens, or to lodge complaints against other States, especially those with which they had friendly relations—political, economic or other. In other words, States would tend to formulate complaints only for political reasons. Moreover, if the individual's right of communication was not recognized and it was left to States to adopt the necessary measures of redress, aggrieved citizens might try to secure the assistance of foreign Governments, which might create tension and conflict and thus harm the cause of human rights and anti-discrimination.

47. In the view of his delegation article XIII as proposed by the delegations of Ghana, Mauritania and the Philippines was a bare minimum. His delegation would prefer a much stronger article recognizing the right of individual petition which would lead to a semi-judicial procedure before an international body. The proposed article referred only to communications and was therefore far from answering his delegation's expectations. Nevertheless, in view of the position taken by a large number of countries, he would not press the point.

48. His delegation had pointed out earlier that States Parties could not be forced to recognize the competence of the committee to receive petitions or communications from individuals; it therefore welcomed the fact that the proposed draft article was formulated as an optional clause. The text should be acceptable to States which were convinced of the need to defend the right of individual petition, while at the same time, because of its optional nature, reassuring those that had reservations in the matter.

49. Another optional element was the establishment of a national committee independent of the Government, or other national body, which would be competent to receive and consider petitions and to communicate the matter to the committee if the State failed to provide satisfactory redress. Some delegations considered such a method of implementation to be useful; others were uneasy that a national committee might raise difficulties of a constitutional order. There again, the proposed text was sufficiently flexible to allow States the necessary latitude.

50. His delegation thought that the proposed article would be of limited effectiveness, but considered it a progressive development for the application of human rights and would therefore support it.

51. Mr. BELTRAMINO (Argentina) reaffirmed the importance his delegation attached to the inclusion in the Convention of provisions granting to individuals the right to address communications to the committee to be established under article VIII. The committee should base its activities on the information transmitted to it by Governments, but full effect could not be given to the Convention unless individuals and groups of individuals could address communications to the committee. For the purposes of human rights it was important to open as many avenues of redress as possible, for individuals and groups of individuals had a fundamental role to play in the fight against racial discrimination and it was for them to make the competent authorities aware of cases of discrimination and to suggest ways of remedying them.

52. His delegation realized that much remained to be done to achieve the universal safeguard of human rights. The Virginia Bill of Rights had been adopted in 1776 and the Declaration of the Rights of Man and of the Citizen in 1789; but it had been necessary to wait until 1948 before the Universal Declaration of Human Rights had been adopted under the auspices of the United Nations.

53. Some might think that the time had not yet come to include the right of petition in the Convention, but they had no doubt forgotten the long strides taken in recent years and they might well be surprised by what had been called "accelerating history". Indeed, few would have thought, at the founding of the United Nations, that the process of decolonization would be so rapid. Those who did not yet accept the right to submit individual communications or petitions under the present Convention nevertheless realized that that right was fully recognized in the United Nations

in the context of other fundamental rights. His delegation therefore hoped that it would be possible to find a formula that would recognize the right of individual petition in the Convention.

54. His delegation believed that such a wording, if it was to obtain majority support, should be based on such ideas as: States Parties should recognize the competence of the eighteen-member committee to receive individual petitions; they would undertake to communicate to the United Nation the name and the membership of the organ or organs competent to consider cases involving violation of the Convention's provisions; some States would merely have to indicate the competent judicial machinery already existing in their territory, while others would have to establish one or more special bodies to consider cases of racial discrimination; State sovereignty and the constitutional and administrative systems of States would not be impaired, since it was natural that the eighteen-member committee should be informed of the machinery in which the States Parties vested responsibility for supervising the Convention's implementation. Moreover, the competent national organs would not only receive and consider the complaints of individuals and groups of individuals with respect to racial discrimination but would also indicate the magnitude and scope of the action to be taken; the committee would keep a register of the complaints and might possibly make the register available to the United Nations. Lastly, provisions would be included regarding the consideration of the complaints by the eighteen-member committee.

55. His delegation believed that it might be possible to elaborate those ideas in a realistic, reasonable and generally acceptable text on individual communications and petitions.

56. The text set forth in document A/C.3/L.1291/Add.1 proposed only one method for the consideration of communications and petitions at the national level, and all its provisions were centred about that method.

57. It was illogical to state, as did paragraph 2, that the committee would be "competent in the first instance" to receive petitions from persons "who have exhausted other available local remedies".

58. Furthermore, his delegation believed that the establishment of a national committee far from being optional should be compulsory, and it intended to submit an amendment based on the considerations he had stated.

The meeting rose at 1 p.m.