



CONTENTS

Agenda item 58:

	Page
<i>Draft International Convention on the Elimination of All Forms of Racial Discrimination (continued)</i>	
<i>Article IV (continued)</i> . . . . .	137
<i>Proposed new article to follow article VI</i> . . . . .	138
<i>Article IV (continued)</i> . . . . .	140

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.1208, L.1210, L.1220, L.1221, L.1223, L.1226 and Corr.1, A/C.3/L.1228, L.1237, L.1239, L.1241 to L.1243, L.1245, L.1249)

ARTICLE IV (continued)

1. Miss AGUTA (Nigeria) said that her delegation had prepared a new draft of article IV<sup>1/</sup> with which the authors of the amendments of the original text agreed in principle.
2. Mr. JERNSTROM (Finland) said that he was prepared to accept the new draft.
3. Mr. MOMMERSTEEG (Netherlands) regarded article IV as the key article of the Convention: it would make it a universal instrument. Consequently, a balance should be maintained between the two fundamental rights likely to come into conflict: the right to be protected against discrimination and the right to freedom of expression.
4. In the text it had adopted (A/5921, annex), the Commission on Human Rights had tried to avoid providing an absolute guarantee of one right to the detriment of others; it had tried to view human rights as a whole. Consequently he preferred the original text of article IV. The five-Power amendment (A/C.3/L.1245), as sub-amended by France, proposed a new text which satisfactorily covered the points raised by the Netherlands delegation. Before deciding on the Nigerian amendment, he would await the results of the consultations in progress. For the time being, he would merely draw attention to a few principles very clearly stated in the memorandum submitted by the Secretary-General in 1949 and which contained the following passage:

<sup>1/</sup> Subsequently circulated as document A/C.3/L.1250.

"The law should not, however, be used to interfere unduly with individual freedom. Important as is the prevention of discrimination, individual freedom is at least equally important. Individual freedom does not of course include the right to commit acts which are clearly and unequivocally defined as offences. But in the case of freedom of speech and all the other forms of expression of opinion, there are zones in which it is both very difficult and dangerous to draw the line between legitimate and illegitimate exercise of liberty."<sup>2/</sup>

5. Mr. MUMBU (Democratic Republic of the Congo) hoped that the draft proposed by the Commission on Human Rights would be adopted unanimously after having been amended where necessary, and that all Member States would accede to the Convention. The Democratic Republic of the Congo condemned racial discrimination, which was unknown in its territory. The Congolese delegation would vote in favour of the Ukrainian amendment (A/C.3/L.1208) which strengthened the original text, the fourth Polish amendment (A/C.3/L.1210) and the ninth of the sixteen-Power amendments (A/C.3/L.1226 and Corr.1). It would support part (b) of the second Czechoslovak amendment (A/C.3/L.1220) only if it took into account the resolution adopted by the Committee at its 1312th meeting (A/C.3/L.1244) and merely proposed the insertion in sub-paragraph (a) of the words "dissemination of racist ideas and doctrines". On the other hand, it would unreservedly support parts (a) and (c) of the amendment. It would also vote in favour of the five-Power amendment (A/C.3/L.1245), as sub-amended by France, and of the United States amendment (A/C.3/L.1242). Since the French text of the Nigerian amendment had not yet been circulated, he reserved the right to revert to it at a later stage.

6. Mr. K. C. PANT (India) referring to the Nigerian amendment, expressed gratification that the Committee had succeeded in drafting a single text on which a great many delegations agreed.

7. Article IV dealt with the condemnation of racist propaganda and the basic problem it raised was that of overlapping between various human rights. Several amendments sought to solve the difficulty. The United States amendment might have the effect of weakening the text. The five-Power draft (A/C.3/L.1245) which referred to "the civil rights expressly set forth in article V" might possibly restrict the scope of article IV; article V guaranteed to all the right to freedom of expression and might be interpreted to imply that it also granted the right to preach discrimination.

<sup>2/</sup> The Main Types and Causes of Discrimination (United Nations publication, Sales No.: 49.XIV.3), para. 145.

8. The Indian delegation had supported the fourth Polish amendment (A/C.3/L.1210) and part (c) of the second Czechoslovak amendment (A/C.3/L.1220) because they would enable a larger number of countries to ratify the Convention. The important thing was to lay down the main lines of the subject, while at the same time leaving it to States to enact legislation in accordance with their Constitution or their statutory or customary law; the number of accessions to the Convention would depend on the latitude which States enjoyed.

9. He questioned the juridical value of inserting a reference to the Universal Declaration of Human Rights, as suggested by France, inasmuch as a declaration was not a binding instrument. Since, however, some delegations felt that a reference to the Universal Declaration of Human Rights would have a definite moral impact, the Indian delegation would not press the point. It did consider, however, that those questions should be discussed more thoroughly.

10. He noted that the new sub-paragraph (b) proposed in the Nigerian amendment, as also the original text, referred to activities "which promote and incite racial discrimination". Was there not a danger that the courts might conclude that there had to be both incitement and promotion of racial discrimination before the offence could be deemed punishable by law? Consequently, the Indian delegation proposed that the word "and" should be replaced by "or".

11. Mr. RODRIGUEZ FABREGAT (Uruguay) emphasized that a document of great moral value like the Convention should be adopted unanimously and therefore the precise significance of its provisions should be quite clear. In that respect, the five-Power amendment was not entirely satisfying.

12. Further, there should be nothing in the Convention which might be used to justify incitement to racial discrimination, but at the same time, care should be taken not to jeopardize the very core of human dignity, that is, freedom of expression and freedom of thought. Finally, it should not be forgotten that discrimination was not necessarily directed against persons of another colour or ethnic origin; it might also be practised against persons of the same colour or the same ethnic group. In the latter event, it was based on social and economic differences.

13. The CHAIRMAN said that he would be grateful if those delegations which had submitted amendments to the original text of article IV were to inform him whether they were prepared to withdraw them in favour of the text put forward by Nigeria. In order to give them time to think about it, he suggested that the Committee should direct its attention to the amendment submitted by the delegation of Jamaica (A/C.3/L.1223).

#### PROPOSED NEW ARTICLE TO FOLLOW ARTICLE VII

14. Miss KING (Jamaica) pointed out that the dominant idea of the article (A/C.3/L.1223) which her delegation proposed to insert after article VII was by no means new, since it was substantially the same as article IX, as amended by the delegations of the Ukrainian Soviet Socialist Republic and Costa Rica,

which had been considered by the Commission on Human Rights at its twentieth session, (see E/3873, paras. 257-270).

15. The Jamaican delegation suggested the reintroduction of that article, which, in its opinion, did not impose any additional obligations on States but simply stated in clear terms those already laid down in the other articles of the Convention, because the text of the Convention did not seem to be sufficiently explicit on certain points to which the Jamaican delegation attached great importance. Thus, for example, the Jamaican delegation considered that protection against racial discrimination should be ensured through constitutional and legislative provisions; it thought that if a country possessed a written Constitution, it should contain provisions against racial discrimination, although that obligation would naturally not apply to countries which did not have a written Constitution. For that reason the phrase "in conformity with their legal systems" had been included. A State, however, could not guarantee that its Constitution would be amended: all they could do was to take the necessary steps to make such reforms possible, after which their ordinary legislative procedures would be followed. That was why the article proposed that States Parties should "take steps...to secure the enactment...". If the Constitution did not specifically guarantee the right to protection against discrimination, the State should take steps to introduce such a guarantee.

16. Regardless of whether it possessed a written Constitution or not, each State should take steps to ensure that its legislative and administrative provisions against racial discrimination were adequate. Unless it could show that its existing laws were adequate in that regard, therefore, it should undertake, when it signed the Convention, to pass new laws or amend old ones.

17. From the practical point of view, the Jamaican delegation considered it desirable that there should be within each State some organ or department of the Government responsible for the enforcement of those laws, and that no citizen should be left in doubt as to which organ of his Government would see that his freedom from racial discrimination was protected.

18. Finally, the Jamaican delegation considered that each Member State should identify the courts or judicial tribunals to which citizens might have recourse in order to secure redress for loss or damage suffered as a result of racial discrimination.

19. She thought that the members of the Committee would agree with her that the objectives which she had just described were among those which the Convention should make it possible to achieve, so that the only question which remained was whether those objectives should be defined as specific undertakings in compliance with the general obligation of States to ensure effective freedom from racial discrimination.

20. The Committee would soon be considering measures for the execution of various conventions, in particular the draft Covenants on Human Rights, as well as the question of establishing an international executive authority with certain minimal functions

regarding human rights. She wished to stress the fundamental principle, to which all States subscribed, that every citizen should be required to exhaust the internal remedies available to him before being allowed to have recourse to an international authority. In view of that principle, it was important that during the next few years the United Nations programme on human rights should concentrate on measures to improve domestic machinery for safeguarding human rights. The four points covered in the Jamaican amendment—constitutional guarantees, legislation, designation of the organ responsible for enforcing that legislation, and designation of the courts competent to grant redress—had an important role to play in that respect.

21. Mr. TANG (China) considered that the Jamaican amendment constituted an important and positive contribution to the work of the Committee in that it sought to impose on States the obligation to take steps to guarantee protection against racial discrimination to all persons while at the same time leaving it to States to decide whether their legislation needed to be amended or strengthened for that purpose.

22. As article II of the draft Convention concerned the obligation of States Parties to pursue a policy designed to eliminate racial discrimination in all its forms, it might be possible—although that might be rather complicated in view of the fact that article II had already been adopted—to incorporate the text proposed by Jamaica in that article, perhaps as a new paragraph.

23. Mrs. VILLGRATTNER (Austria) said that in accordance with the fundamental principle of international law of *Pacta sunt servanda* every State Party to a treaty or convention was bound to fulfil its obligations and take account of them in its internal legislation. That fundamental principle had never been specifically mentioned in any international instrument, however, and there was no reason why it should be mentioned in the draft under consideration. In any case, the draft was sufficiently explicit regarding the obligations of Member States for further emphasis on that point to be unnecessary.

24. Moreover, if the text proposed by the delegation of Jamaica were adopted it might create difficulties for countries like Austria whose legislation was based on the principle of equality of all persons before the law but did not contain any specific provisions regarding racial discrimination which was unknown in their territory. Under the proposed new article, such countries would be obliged to adopt such provisions and also establish administrative and judicial responsibility for the violation of those provisions—a very complicated task where there was not a well-defined distinction between the administrative and the judicial order.

25. Thus, the Jamaican amendment, as well as being superfluous from the point of view of international law, would result in interference in the domestic jurisdiction of States.

26. Mr. AL-RAWI (Iraq) considered, like the representative of Austria and for the same reasons, that there were no grounds for the amendment proposed by the Jamaican delegation, particularly as article II, VI and VII of the draft, to mention only those three,

were already very explicit regarding the obligations of States Parties.

27. Mr. SPERDUTI (Italy) asked whether the Jamaican delegation's intention in proposing the new article was to oblige States to take suitable constitutional and legislative measures to ensure the achievement of the aims of the Convention, or whether the proposed new article concerned the individual's right to effective protection against all discrimination, whether racial or not.

28. If the Jamaican proposal concerned the obligations of States, then it was not really necessary, since the draft already contained provisions which explicitly or implicitly imposed such obligations: in particular sub-paragraph (a) of article II was very close to the text proposed by Jamaica, and article IV, which, stating as it did that the States Parties condemned all racist propaganda and organizations and undertook to adopt measures to eradicate such evils, implied an obligation to take legislative measures to that end. Perhaps it would be possible, in order to meet the Jamaican delegation's concern, to state specifically that States should take such measures in order to achieve the aims of the Convention.

29. If the aim of the proposed new article was to guarantee the right of individuals to receive protection against racial discrimination and seek redress for any prejudice caused to them by such discrimination, then he did not see any particular objections which could be made to it. In that case, however, it would be better to insert the provision in question after article VI, which dealt with the protection owed by States Parties to everyone with their jurisdiction. Even from that point of view, however, he found it difficult to see the need for the Jamaican amendment.

30. Moreover, by calling upon States Parties to establish administrative and judicial responsibility that text might oblige States which already provided their nationals with reliable and effective judicial redress to provide a similar guarantee in administrative affairs.

31. Mr. SAKSENA (India) agreed with the Austrian representative that the amendment proposed by Jamaica was superfluous since all States Parties to a convention were automatically bound to fulfil the obligations laid down by that convention.

32. He recalled that the original text of the draft, which had been submitted to the Commission on Human Rights by the Sub-Commission on Prevention of Discrimination and Protection of Minorities, had included an article IX the provisions of which called for inclusion in the constitutions or fundamental laws of the signatory States, of provisions prohibiting all forms of racial discrimination. Thus the purport of that proposed article was different from the suggestion put forth by Jamaica. But the draft article of the Sub Commission had also included the phrase "as far as appropriate" which made the article less categorical and at the same time ambiguous. To improve the text, the Ukrainian SSR and Costa Rica had submitted a new draft—similar to the one proposed by Jamaica. However, it was criticized as ambiguous and superfluous and was finally rejected by the Commission on Human Rights (see E/3873,

paras. 257-270). Those arguments could be asserted just as validly against the Jamaican amendment.

33. Miss KING (Jamaica) thanked the delegations that had submitted suggestions for improvement of the text proposed by her delegation.

34. The Austrian representative had observed that once a convention was ratified, it became an integral part of the legislation of the signatory States and that the Jamaican amendment was therefore superfluous. But the purpose of that amendment was to define and sum up the obligations set out in article II, paragraph I (c), and article VI and to state them clearly at the end of the draft Convention.

35. The Austrian representative seemed also to fear that the amendment would result in interference in the domestic jurisdiction of States. She wished, however, to point out that, by specifying that States should take steps in conformity with their legal systems, the new article gave States all the necessary latitude.

36. As to whether the legislation of States should include specific provisions against racial discrimination, Jamaica considered that the question of racial discrimination was important enough to be made the subject of an express clause in the Constitution or laws of the various countries.

37. The Italian representative had suggested a specific statement that States should take measures to ensure the achievement of the aims of the Convention. Her delegation did not see any objection to that suggestion. It was prepared also to agree that the text it proposed should come after article VI or be incorporated in article II of the draft Convention.

#### ARTICLE IV (continued)

38. The CHAIRMAN invited the Committee to turn again to article IV. He asked the delegations that had submitted amendments to the original article IV whether they were prepared to withdraw their proposals.

39. Mr. JERNSTROM (Finland), on behalf of the sponsors, withdrew the five-Power amendment (A/C.3/L.1245), Mrs. SEKANINOVA (Czechoslovakia) withdrew her delegation's second amendment (A/C.3/L.1220), Mr. CHERNIAVSKY (Ukrainian Soviet Socialist Republic) withdrew the Ukrainian amendment (A/C.3/L.1208), Mr. RESICH (Poland) withdrew the fourth Polish amendment (A/C.3/L.1210), Mr. ELMENDORF (United States of America) withdrew the two United States amendments (A/C.3/L.1242 and L.1243) and Mr. BELTRAMINO (Argentina), on behalf of the sixteen Powers, withdrew their ninth amendment (A/C.3/L.1226 and Corr.1).

40. Mr. A. A. MOHAMMED (Nigeria) said that in the new draft of article IV submitted by his delegation, account had been taken of the suggestion that there should be a reference, at the end of the introductory paragraph, to the principles embodied in the Universal Declaration of Human Rights.

41. Mr. RIOS (Panama) requested a Spanish version of the new draft article IV.

42. Mr. RODRIGUEZ FABREGAT (Uruguay) supported the request of the Panamanian representative.

The new text was complex was raised important legal problems which he, for his part, would like to study in his own language.

43. The CHAIRMAN regretted that, because of the objections made by the representative of Uruguay, the Committee could not vote without further delay on article IV and continue its work in the regular way.

44. Mr. CHKHIKVADZE (Union of Soviet Socialist Republics) deplored the fact that some representatives seemed to wish deliberately to complicate the Committee's task and he appealed to them to abandon their delaying actions and allow the Committee, in accordance with the wish of the majority, to proceed with its work.

45. In reply to a question put by Mr. SPERDUTI (Italy), the Chairman confirmed that both the original article IV and the new draft submitted by Nigeria were before the Committee.

46. Mr. KOCHMAN (Mauritania) said that he regarded the new draft article IV as entirely acceptable, but wished to point out that the article IV adopted by the Commission on Human Rights, which satisfied those delegations that were anxious to have specific steps taken against manifestations of racial discrimination, should not, in view of article V, inspire any fear in those who were apprehensive about violations of fundamental freedoms such as the freedom of expression.

47. Mr. RODRIGUEZ FABREGAT (Uruguay) protested against the statement of the representative of the Soviet Union; he did not see why he was accused of acting in bad faith or of wishing to delay the Committee's work simply because he, like the Panamanian representative, had asked to have the Spanish version of the document under discussion; that request was perfectly legitimate and his delegation was entirely within its rights in making it.

48. Mr. CHKHIKVADZE (Union of Soviet Socialist Republics) pointed out that he had not mentioned any country by name and that, if the Uruguayan representative felt that he had been criticized, the Soviet delegation was not responsible for that.

49. Mr. RIOS (Panama) explained that his delegation did not wish to prolong or to drag out the discussion on that matter; however, in view of the importance of the document on which the Committee was to vote, it felt that it had to study the document in its own language in order not to vote without due consideration.

50. The CHAIRMAN suggested that, to avoid losing too much time and needlessly reopening the discussion, it might be preferable to wait until the draft article had been issued in the various working languages.

51. Mrs. VILLGRATTNER (Austria) asked whether it would be possible to vote first on the text transmitted by the Commission on Human Rights.

52. The CHAIRMAN explained that, in accordance with rule 131 of the rules of procedure, the Committee should vote first on the amendments to the original

proposal; it could vote directly on the original text only if the amendments had been withdrawn.

53. Mr. SANON (Upper Volta) moved the adjournment of the meeting.

*The motion for adjournment of the meeting was adopted by 66 votes to 13, with 9 abstentions.*

54. The CHAIRMAN stated that, in accordance with the decision taken at the 1290th meeting, the present meeting was the last which the Committee was to devote to the item of racial discrimination; that item

accordingly could be discussed again only if the time needed was available at a later date.

55. Beginning with the next meeting, the Committee would consider, as planned agenda item 66 (Draft Declaration on the Promotion among Youth of the Ideas of Peace, Mutual Respect and Understanding between Peoples); he recalled that it had also been decided at the 1290th meeting not to have a general debate on that item.

The meeting rose at 5.55 p.m.