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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.1292, L.1305, L.1307, L.1308, L.1313 to L.1315)

ARTICLES ON MEASURES OF IMPLEMENTATION (continued)

Article XIII (continued)

1. The CHAIRMAN said that the Third Committee had before it the revised text of article XIII (A/C.3/L.1308) drafted jointly by the delegations of Ghana, Mauritania, the Philippines and a number of Latin American countries. The Lebanese delegation had submitted amendments (A/C.3/L.1315) to that text.

2. Miss TABBARA (Lebanon) said that her delegation had noted, during the general debate on measures of implementation for the Convention on the Elimination of All Forms of Racial Discrimination, that many delegations favoured the establishment of a system of petitions, but it had not wished to take a formal position on the matter before knowing what form that system would take.

3. The revised text of article XIII (A/C.3/L.1308) prepared by the co-sponsors, who had shown a most praiseworthy conciliatory attitude, provided for an optional clause so that delegations could adopt that text without committing their Government to recognize the competence of the proposed committee.

4. Her delegation favoured an effective international petition system, which would constitute a first step towards the establishment of machinery guaranteeing the rights of the individual at the international level.

5. The revised text of article XIII, which was a compromise text, however, would introduce a system of very limited scope which would not meet the desired

objective of imposing on States a moral obligation to eliminate all forms of racial discrimination in their territory. The committee envisaged in the revised text would in fact be little more than a post office which would receive petitions, bring them to the attention of States, and summarize them in its annual report. A committee operating along those lines already existed under the European Commission of Human Rights, but it was not very effective. The delegation of Lebanon had submitted its amendments with the aim of introducing a permanent system which could produce positive results. The optional nature of the undertakings provided for in article XIII and the fact that it did not set any time-limit for the accession of Governments would encourage States to give it favourable consideration.

6. In her view, it would be futile to establish a system which met with universal approval if that system were totally ineffective. It would be better to have a system which would not be accepted by all but which would prove really effective. In any case, most of the countries which did not want any international petition system objected that it would impair their national sovereignty and was therefore out of the question. Thus, even the considerably weakened draft submitted by the co-sponsors would seem unacceptable to them.

7. There were several contradictions in the revised text of article XIII. Thus, in two places, in paragraphs 1 and 4, it was stated that the committee would consider communications addressed to it, but perusal of the other paragraphs showed that that would not be the case at all. The Lebanese proposal, in contrast, provided for the establishment of an effective system under which the committee would in fact consider the complaints submitted to it and would make its own suggestions.

8. The proposal submitted by her delegation in its third amendment to replace the words "complaints or alleged violations" in paragraph 5 by the word "petitions" was designed to bring the wording of that paragraph into line with that of paragraph 2. In her delegation's view it was of primary importance that the committee should be able to decide on the receivability of the communications submitted to it. Some communications might duplicate others, while others might be frivolous or even the work of mentally unbalanced persons. Furthermore, the State should be under obligation to reply to any petition sent to it by the committee. That was the purpose of sub-paragraph (b) of the new paragraph 6 proposed by the Lebanese delegation, which was similar to a sentence in article X already adopted by the Third Committee.

9. Paragraph 7 stated a principle to which her delegation attached great importance: namely, that the committee should, in its opinion, consider communications only when it had received the reply from the State and had made sure that all other remedies had been exhausted. The new feature of her delegation's paragraph 8 was that it provided for the committee to make suggestions and recommendations.

10. Mr. HEDSTRÖM (Sweden) recalled that in the general debate he had given full support to the principle of the right of petition, but what he then had in mind was quite different from the revised text before the Committee. In its present form, article XIII did not provide a right of petition worthy of the name. His delegation had therefore first of all considered abstaining in the vote on that article. It had finally decided to support the text, however, in spite of the fact that it found neither its substance nor its form satisfactory, solely in order to make it clear that it approved the principle of the right of petition as such. Any attempt to introduce that right into the international field was a step in the right direction and was evidence of an effort to introduce effective measures against racial discrimination.

11. He welcomed the amendments submitted by the delegation of Lebanon which were, on the whole, entirely acceptable to the Swedish delegation. If those amendments were adopted, States Parties which accepted the optional procedure would assume certain obligations, but the obligations imposed on them would not be very onerous, since all that they were asked to do was to provide explanations if a complaint of violation of the rights guaranteed by the Convention was submitted to the committee. It was his delegation's firm hope that those amendments would be unanimously adopted by the Third Committee, since otherwise no State would be bound by those provisions unless it made an express declaration to that effect.

12. He considered that, as provided in the Lebanese amendments, the proposed committee should be allowed to decide on the receivability of communications addressed to it; any pointless communications could thus be eliminated.

13. The Swedish delegation wished to propose, as a formal amendment,^{1/} the insertion in article XIII of a new paragraph reading:

"The Committee shall be competent to exercise the functions provided for in this article only when at least ten States Parties to this Convention are bound by declarations in accordance with paragraph 1 of this article."

14. The European Convention for the Protection of Human Rights and Fundamental Freedoms contained a similar clause; such a provision would help to overcome the reluctance of certain Governments which might not like to be the first and only one to assume the obligations provided for in the article.

15. He hoped that article XIII, as amended by the Lebanese delegation and with the addition of the paragraph proposed by the Swedish delegation, would be adopted by a very large majority, bearing particularly in mind that all its provisions were optional.

16. Lady GAITSKELL (United Kingdom) asked whether it might not be more logical to place the last sentence of the Lebanese paragraph 7 (a), at the end of paragraph 6.

17. Miss TABBARA (Lebanon) said that the committee's consideration of a communication would take place after its consideration of the information provided by the State concerned, in which that State would indicate whether the matter was the subject of any proceedings. It was therefore logical that the sentence referred to should be in paragraph 7 (a).

18. Miss AGUTA (Nigeria) welcomed the first Lebanese amendment which would bring paragraph 1 of article XIII into line with paragraph 2. Since the two paragraphs were closely related, that adjustment was necessary. Paragraph 2 provided for the establishment of a national body to receive and consider petitions from individuals or groups of individuals, but the establishment of such a body was made contingent on recognition by the State Party of the competence of the committee in accordance with paragraph 1.

19. If the State recognized the competence of the committee, it was logical, all other available local remedies having been exhausted, that it should give the committee the power to make suggestions and recommendations concerning the communications transmitted to it, as provided in the Lebanese amendments.

20. Her delegation hoped that the members of the Third Committee would give favourable consideration to the Lebanese amendments, for they had the basic merit of clarifying the original text.

21. Mr. RAO (India) observed that the provision in article XIII calling for the establishment of a national body to receive and consider petitions might create difficulties in States such as India where the fundamental rights of the individual were guaranteed by a complex and integrated legislative, juridical and administrative system.

22. The machinery set up by India to guarantee the rights of its nationals was based on the Constitution, which had taken four years to draft after independence, and represented a labour in which many distinguished jurists had participated. The Constitution guaranteed, in particular, the right of the individual to equality and to freedom in all fields—religious, cultural and educational. It guaranteed the right of citizens to acquire property in any State of India, to seek constitutional redress of grievances and in particular, to appeal to the Supreme Court. Moreover, the Supreme Court, whose decisions could not be appealed, was empowered to rule not only on cases brought by one individual against another, but by one province against another or by a province against the central Government.

23. The right of petition was also recognized in India. Individuals could send petitions to a petitions committee established in the national Parliament, of which Mr. Rao himself was Chairman. The Parliament drew the attention of governments to the wrongdoing, of which they were accused so that they could apply appropriate remedies. The petitions committee drew

^{1/} Subsequently circulated as document A/C.3/L.1316.

up a periodic report on the action taken by governments in pursuance of the Parliament's observations.

24. There were also a number of bodies to which Indian citizens could bring their complaints, and, in particular, a national "watchdog" committee to deal with cases of corruption.

25. It was therefore understandable that India, with a Constitution which guaranteed the fundamental rights of the individual and machinery designed to protect them effectively in all fields, would be reluctant to accept article XIII of the Convention if it were an optional clause. However, since the article was worded in such a way as to dispel its fears regarding its national sovereignty, India supported it in principle out of a desire to contribute to the prevention of racial discrimination.

26. He expressed the hope that when the United Nations had succeeded in eliminating the scourge of racial discrimination, it would devote its full attention to the prevention of religious discrimination, which prevailed in many areas of the world, and particularly in one of India's neighbouring countries.

27. With reference to article XIII, paragraph 1, his delegation considered that individuals who had lost their nationality should not have the right to petition against the State of which they were no longer nationals, because the provision should not be allowed to operate in favour of agitators or disturbers of the peace.

28. He wondered whether it was wise to include in paragraph 6 a provision stating that the identity of the individual or groups of individuals concerned should not be revealed.

29. Mr. PASHA (Pakistan), referring to the Indian representative's observations concerning religious intolerance, felt compelled to recall the régime of terror which prevailed in various parts of India as a result of the religious intolerance and discrimination practised by that country. The Minister for Foreign Affairs of Pakistan had drawn the attention of the United Nations to the fate of the freedom fighters engaged in a struggle for liberation from Indian rule. He had requested the Security Council to establish an investigating committee which would go to India and Pakistan to see how minorities were treated. He had made that suggestion because he was well aware that many Muslims were persecuted in Kashmir and were forced to seek refuge abroad.

30. He reserved the right to speak again at a later stage in the discussion.

31. The CHAIRMAN urged representatives to confine their remarks to article XIII and avoid exacerbating the debate by making irrelevant observations.

32. Mr. RAO (India) said that he had merely wished to remind the Committee of the existence of certain theocratic States practising religious intolerance. He once again wished to request that, when the United Nations had succeeded in eliminating racial discrimination, it should tackle the problem of religious discrimination.

33. Mr. WALDRON-RAMSEY (United Republic of Tanzania) suggested that the last sentence of article X, paragraph 3, namely: "This shall not be

the rule where the application of the remedies is unreasonably prolonged", should be added at the end of paragraph 7 (a), proposed by Lebanon (A/C.3/L.1315).

34. Mr. LAMPTEY (Ghana) said that he wished to make two suggestions which, if they were accepted, would enable his delegation to support the Lebanese amendments.

35. In paragraph 6 (a), his delegation wished to delete the words "if it considers it to be receivable". If those words remained in the text, it would be necessary to specify the criteria to be applied by the committee in deciding whether a petition was receivable.

36. His delegation also wished to delete paragraph 7 (b), proposed in the Lebanese amendments. If it were retained, some delegations would vote against it for fear that it might impair the sovereignty of States.

37. Miss TABBARA (Lebanon) said that she had no objection, and was, in fact quite willing, to have paragraph 7 (a), of article XIII brought into line with article X, paragraph 3, as suggested by the Tanzanian representative, particularly since article X had already been adopted by the Committee. Consequently, her delegation accepted that proposal.

38. She had some doubts concerning the Ghanaian suggestion to delete "if it considers it to be receivable" in paragraph 6 (a), and would like a little time to consult with the delegations which had helped to draft the text.

39. Mr. MACDONALD (Canada) said that he could support paragraph 7 (b) proposed by Lebanon. However, he appreciated the reasons for the Ghanaian delegation's request that it be deleted.

40. With regard to the Ghanaian suggestion to delete the words "if it considers it to be receivable" in paragraph 6 (a), he thought it natural and logical that the committee itself should establish the procedure for deciding whether or not a petition was receivable. However, the English text might be improved and the phrase "any communication referred to it, if it considers it to be receivable" in paragraph 6 (a) might be replaced by the words "such communication as it considers receivable".

41. He further suggested that the words "through appropriate channels" in article XIII, paragraph 5, (A/C.3/L.1308) should be deleted; that detail was unnecessary and might encourage delaying manoeuvres.

42. Mr. LAMPTEY (Ghana) said that his delegation could not agree to the Canadian representative's last proposal.

43. Mrs. MANTZOULINOS (Greece) supported the Ghanaian suggestion to delete the words "if it considers it to be receivable" in paragraph 6 (a), since, in her delegation's opinion, the discretionary powers conferred upon the committee by the Lebanese draft of the paragraph was too broad. Her delegation would accept the paragraph, however, if the latter specified, inter alia, the criteria on which the committee would base its rejection of petitions. It would also be useful to know whether the committee would be

required to give particulars of its method of sorting the various petitions and whether its decisions would be final.

44. Mr. WALDRON-RAMSEY (United Republic of Tanzania) fully shared that view. He too favoured the deletion of the words "if it considers it to be receivable" in paragraph 6 (a).

45. Mr. KIRWAN (Ireland) enquired whether the period of six months specified in paragraph 4 of article XIII (A/C.3/L.1308) would be reckoned from the date of transmission of the petition to the national body or from the date on which a final decision was taken on the petition by that body.

46. The CHAIRMAN suggested that the meeting should be suspended to enable the Lebanese delegation to study, in consultation with the delegations concerned, the suggestions which had been made during the debate.

It was so decided.

The meeting was suspended at 12.5 p.m. and resumed at 12.25 p.m.

47. Mr. BELTRAMINO (Argentina) said that the co-sponsors warmly welcomed the Lebanese amendments (A/C.3/L.1315) which improved the original text. However, paragraph 7 (b), might be altered and made more general by stating, for instance, that "The Committee shall inform the State Party concerned and the petitioner of the results of its deliberations".

48. Miss TABBARA (Lebanon) accepted that proposal but she thought it might be necessary to make a similar change in paragraph 8 as proposed by her delegation.

49. The CHAIRMAN, reviewing the texts before the Committee, said that the first Lebanese amendment had been accepted by the co-sponsors of the text of article XIII appearing in document A/C.3/L.1308. There were no amendments to paragraphs 2 and 3 of the proposed article in that document. Paragraph 4, as proposed by Lebanon, would become paragraph 5 with the last sentence deleted.

50. All the Lebanese amendments to paragraph 5 had been accepted by the co-sponsors. Discussion was still proceeding on paragraphs 6, 7 and 8. He invited the representative of Lebanon to state her delegation's position.

51. Miss TABBARA (Lebanon), referring to paragraph 6 (a), said that after hearing the comments of the representatives of Ghana and of Greece, her delegation agreed to delete the words "if it considers it to be receivable". Since the proposed committee would adopt its own rules of procedure, it would be able in any case to select from among the requests addressed to it those which it considered to be receivable. She acknowledged that the retention of that form of wording might possibly lead to abuse.

52. Mr. CAPOTORTI (Italy) proposed that the meeting should be adjourned and the voting postponed until the next meeting. Delegations would thus have more time to examine the various amendments and proposals and they would then be able to take informed decisions.

53. Miss FAROUK (Tunisia) supported that proposal. She too felt that it would be desirable to have an opportunity to examine the amendments more closely. For example, she did not think that the wording proposed by Argentina for paragraph 7 (b), could be used in paragraph 8 which dealt with matters to be included in the proposed committee's annual report.

54. Mr. LAMPTEY (Ghana) said that his delegation wished to request a separate vote on paragraph 8 proposed in the Lebanese amendments. It supported the Italian representative's motion.

55. Mr. BOŽOVIĆ (Yugoslavia), referring to paragraph 8, said that while it was natural for the committee to inform the General Assembly and the States Parties concerned on the communications which it had received, it was not necessary that it should transmit a summary of all the communications considered by it and of the explanations and statements of the States Parties. In his opinion, if a dispute had been settled to the satisfaction of the Parties concerned, there was no need to mention it in the report.

56. Mr. WALDRON-RAMSEY (United Republic of Tanzania) said that in view of the difficulties created by paragraph 8 it would certainly be preferable to adjourn the meeting. His delegation associated itself with the Yugoslav representative's observations. He too felt that it would be difficult to use in paragraph 8 the formula proposed by Argentina for paragraph 7 (b).

57. With regard to the Swedish amendment, he wished to know what would happen if the ten States which had declared that they recognized the competence of the committee withdrew their declaration, as they were entitled to do under paragraph 3 of the article under consideration.

58. Mr. BELTRAMINO (Argentina) said that by "results of its deliberations" his delegation meant the results of the examination of the petitions and of the replies from Governments. There would be no need for the committee to submit observations on each case examined and it might deal with several petitions at once.

59. Miss TABBARA (Lebanon) invited delegations which had put forward proposals and amendments to collaborate with her delegation and the co-sponsors of the text of the article in drawing up a new joint text.

60. Miss FAROUK (Tunisia) proposed, as a compromise solution that, in paragraph 8, the following form of words might be used: "...as well as its suggestions and recommendations, if any."

61. The CHAIRMAN declared the debate on article XIII closed and asked the co-sponsors of the draft article (A/C.3/L.1308) to submit a revised text on which the Committee could vote at the next meeting. Amendments to the next text would be put to the vote immediately. Explanations of vote could be given before the vote.

The meeting rose at 1 p.m.