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Twentieth Session

SUMMARY RECORD OF THE EIGHT HUNDRED AND SECOND MEETING

Held at Headquarters, New York,
on Monday, 9 March 1964, at 3.45 p.m.

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Draft international convention on the elimination of all forms of racial discrimination (A/5035, 5603; E/CN.4/865, 873; E/CN.4/L.679-L.681, L.693 and Add.1 and 2, L.700, L.701, L.705, L.707, L.709-L.712; E/CN.4/Sub.2/234 and Add.1-3) (continued)

Organization of work

PRESENT:

Chairman:

Mr. PONCE y CARBO (Ecuador)

Rapporteur:

Mr. IGNACIO-PINTO (Dahomey)

Members:

Mr. ERMACORA Austria

Miss AITKEN Canada

Miss KRACHT Chile

Mr. VOLIO)
Mr. REDONDO) Costa Rica

Mr. KOUKOUI Dahomey

Mr. GRAULUND HANSEN Denmark

Mr. BENITES Ecuador

Mr. VEGA GOMEZ El Salvador

Mr. BOUQUIN)
Mr. DE LA DURE) France

Mr. S.K. SINGH)
Mr. SAJJAD) India

Mr. SPERDUTI Italy

Mr. HAKIM)
Miss TABBARA) Lebanon

Mr. DOE Liberia

Mr. BEAUFORT)
Mr. VAN BOVEN) Netherlands

Mr. BRILLANTES Philippines

Mr. RESICH Poland

Mr. PANCARCI Turkey

Mr. NEDBAILO Ukrainian Soviet Socialist
Republic

Mr. MOROZOV)
Mr. OSTROVSKY) Union of Soviet Socialist
Republics

Sir Samuel HARE United Kingdom of Great
Britain and Northern
Ireland

Mrs. TREE)
Mr. BILDER) United States of America

Also present:

Mrs. TILLET Commission on the Status
of Women

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PRESENT (continued):Observers from Member States:

Mr. BELTRAMINO	Argentina
Mr. BARROMI)	
Mr. ROSENNE)	Israel
Mrs. WILLIAMS	Jamaica
Mr. KISOSONKOLE	Uganda

Representatives of specialized agencies:

Mr. FARMAN-FARMAIAN	International Labour Organisation
Mr. BEHRSTOCK	United Nations Educational, Scientific and Cultural Organization

Secretariat:

Mr. HUMPHREY	Director, Division of Human Rights
Mr. LANDAU	Secretary of the Commission

DRAFT INTERNATIONAL CONVENTION OF THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION (A/5035, 5603; E/CN.4/865, 873; E/CN.4/L.679-L.681, L.693 and Add.1 and 2, L.700, L.701, L.705, L.707, L.709-L.712; E/CN.4/Sub.2/234 and Add.1-3) (continued)

Article VI (continued)

Mr. DOE (Liberia) said that at the previous meeting he had listened very carefully to the comments and in some cases the objections put forward by many delegations on the subject of the amendments to article VI, and of the Lebanese compromise text (E/CN.4/L.712) in particular.

He considered for his part that the word "protection" should be retained, even if it was perhaps not in the right place, being of the opinion that even if a person was offered a remedy in the event of violation or denial of his rights under the convention, before attempting to obtain reparation from a tribunal, he must have the assurance that the latter would protect him. He consequently suggested that the Lebanese amendment should be reworded to read: "... effective protection and remedies ...".

He emphasized that some of the States parties to the convention would be developing or newly independent countries engaged in building up a legal and judiciary system, a process that would take some time. It should therefore be made plain which tribunals would hear the appeals of victims of racial discrimination. He would accordingly be in favour of adding the word "competent" and, to eliminate any ambiguity, the word "national". As regards the word "independent", he wondered whether it could really be assumed that all tribunals were independent; it would be wiser to retain that adjective, since those qualifications represented so many additional safeguards. On the other hand, the insertion of the words "to consider such cases" as suggested in the USSR amendment (E/CN.4/L.681) was superfluous.

With regard to the Ecuadorian representative's proposal to replace the word "obtain" in the Lebanese amendment by "seek", he thought that if the latter was felt to be too weak for the purpose, it could be replaced by the word "demand".

Mr. REDONDO (Costa Rica) trusted that article VI would soon be put to the vote, as all the delegations had already stated their views on it. The Lebanese representative had suggested a compromise wording which took all viewpoints into account, the only question still unsolved being that raised by the

(Mr. Redondo, Costa Rica)

Austrian representative (E/CN.4/L.711). That question could be settled by adding the words "or satisfaction" after "reparation". In Spanish, the word "satisfaction" related to moral redress and a tribunal might conceivably confine itself to awarding moral satisfaction to the injured party.

Mr. NEDBAILO (Ukrainian Soviet Socialist Republic) recalled that at the previous meeting the Indian representative had suggested that the last part of article VI should provide for the right to obtain a "just and adequate" redress from the tribunals. He suggested that the word "adequate" should be replaced by "legitimate", since the expression "just and legitimate", which was customary in Ukrainian legal practice seemed to represent a satisfactory legal criterion.

Mr. HAKIM (Lebanon) accepted the Liberian representative's suggestion to place the word "protection" before the words "and remedies", and suggested that in order to save time the other proposals which had been made, to which he had no particular objection, should be put to the vote.

Mr. LANDAU (Secretary of the Commission) read out the Lebanese compromise amendment (E/CN.4/L.712) as orally amended at the previous meeting.

Mr. ERMACORA (Austria) withdrew his amendment (E/CN.4/L.711) in favour of the Costa Rican proposal, which he preferred to those of India (E/CN.4/SR.801) and the Ukrainian SSR; he consequently submitted a sub-amendment to the Lebanese text, calling for the insertion of the words "or satisfaction" after the word "reparation".

Mr. NEDBAILO (Ukrainian Soviet Socialist Republic) said he would not press for a vote on his proposal to replace the word "adequate" by the word "legitimate", and was prepared to vote for the expression "just and adequate".

Mr. DOE (Liberia) stated that he would not press for a vote on the word "independent".

The CHAIRMAN put to the vote the oral sub-amendment of Austria and Costa Rica calling for the insertion of the words "or satisfaction" after the word "reparation".

The oral sub-amendment of Austria and Costa Rica was adopted by 19 votes to none, with 2 abstentions.

Sir Samuel HOARE (United Kingdom) asked for a separate vote on the words "and adequate".

The words "and adequate" were adopted by 13 votes to 4, with 4 abstentions.

Mr. ERMACORA (Austria) requested that the word "competent" should be put to the vote separately.

Mr. OSTROVSKY (Union of Soviet Socialist Republics) drew the Commission's attention to the fact that during the exchange of views which had resulted in the compromise text submitted by the Lebanese delegation (E/CN.4/SR.801), other words such as "independent" and "impartial", had been excluded from the text. A separate vote on the word "competent" therefore seemed uncalled for. However, he would not oppose such a procedure.

The word "competent" was adopted by 20 votes to none, with 1 abstention.

The Lebanese compromise amendment (E/CN.4/L.712 and E/CN.4/SR.801), as amended by the oral sub-amendment of Austria and Costa Rica, was adopted unanimously.

Article VI, as a whole, as amended, was adopted unanimously.

Sir Samuel HOARE (United Kingdom) said that his delegation had abstained in the vote on the proposal to add the words "or satisfaction" because although it was in favour of the expression "just satisfaction" it considered that it should be substituted for and not added to a reference to reparation. In its view the concept of adequate satisfaction was open to subjective interpretation; for this reason his delegation had voted against the words "and adequate". It had nevertheless voted for the article as a whole, which was appreciably better than the text submitted by the Sub-Commission.

Article VII

Sir Samuel HOARE (United Kingdom), introducing his delegation's amendment (E/CN.4/L.700), emphasized the importance of article VII for the achievement of the convention's purposes and observed that the Sub-Commission's text while referring to understanding and toleration did not give sufficient attention to racial discrimination itself. His delegation had wished to place further emphasis on that point and had also thought it necessary to make explicit reference to the widely recognized need to combat prejudices, which were at the root of many forms of racial discrimination.

Miss TABBARA (Lebanon) said she understood very well the reasons that had prompted the United Kingdom delegation to submit its amendment. She believed, however, that it would be possible to express the same idea, with the same force, in a form similar to that employed in article 8 of the Declaration on the Elimination of All Forms of Racial Discrimination (A/RES/1904 (XVIII)). She therefore suggested, if the United Kingdom representative did not object, that the words "with a view to eliminating racial discrimination and prejudice and promoting understanding..." should be inserted after the words "immediate and effective measures".

Sir Samuel HOARE (United Kingdom) replied that the Lebanese representative's proposal appeared to be acceptable, but he would like to see the words "particularly in the fields of teaching, education and information" retained, as they were of particular importance for the elimination of racial discrimination. Also, it should be made certain that the proposed changes did not necessitate alterations in the latter part of the article.

Miss TABBARA (Lebanon) said that she had no objection to the phrase mentioned by the United Kingdom representative. It was entirely possible to incorporate both the United Kingdom amendment and her own proposal without changing the end of the article.

Sir Samuel HOARE (United Kingdom) said that he preferred the text he had proposed - "to combat prejudices which lead to racial discrimination" - to the text in article 8 of the Declaration.

The CHAIRMAN suggested that the United Kingdom and Lebanese delegations should attempt to agree on a joint text.

Sir Samuel HOARE (United Kingdom) proposed that, to take account of the Lebanese proposal, the beginning of article VII should read as follows: "States Parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding..." the end of the article remaining unchanged.

Mr. BRILLANTES (Philippines) noted that the text proposed by the United Kingdom representative contained the expression "prejudices which lead to racial

(Mr. Brillantes, Philippines)

discrimination", which corresponded to the idea expressed in article 8 of the Declaration by the words "racial discrimination and prejudice", while article IV of the draft convention employed the words "racial hatred and discrimination". He asked whether the United Kingdom representative could explain that divergence of language.

Sir Samuel HOARE (United Kingdom) replied that in his view the differences between the various articles of the draft convention as adopted did not imply any differences of meaning. Article IV was the only one in which "racial hatred" appeared and then only in an introductory paragraph. His delegation had used the expression "racial discrimination" in article VII because that was the subject of the draft convention.

Miss TABBARA (Lebanon) said that the use of the word "prejudices" was to be explained by the fact that article VII dealt with mental attitudes and cultural relations - areas in which prejudices made themselves felt.

Mr. BENITES (Ecuador) pointed out that in the Spanish text of article VII the words "racial or ethnical" were redundant, and the word "racial" was furthermore a neologism in Spanish.

The CHAIRMAN invited the Commission to vote first on the joint United Kingdom-Lebanese amendment and then on article VII as a whole.

The joint United Kingdom-Lebanese amendment was adopted unanimously.

Article VII as a whole, as amended, was adopted unanimously.

ORGANIZATION OF WORK

Mr. ERMACORA (Austria) said that there appeared to be some question of extending the Commission's session and asked for clarification.

The CHAIRMAN replied that he had no official information on the subject. Some delegations indeed wished to have the session extended by a few days in order to enable the Commission to conclude certain essential parts of its work. According to its programme, the Commission had four more meetings, as Thursday, 12 March, would have to be set aside for the drafting of the report and Friday, 13 March, for its adoption. The main item on the agenda had not yet been completed, however. He recalled that the Economic and Social Council had requested the Commission to give absolute priority to the draft convention on the elimination of

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all forms of racial discrimination and to the preparation of a draft declaration on the elimination of all forms of religious intolerance. Members should therefore ponder the possibility of completing those important items in four meetings and decide what action to take on the remaining agenda items. If they considered that the Commission should hold additional meetings, the proper procedure would be to make a written request to that effect, to be transmitted to the Secretariat.

Mr. BRILLANTES (Philippines) said that he had stated at the very first meeting of the session that the Commission would require more time than was provided in order to consider the urgent and important questions on its agenda. His delegation did not intend to propose extending the session beyond 13 March. It would point out, however, that by holding night meetings on 10, 11 and 12 March, by deferring consideration of the report until Saturday, 14 March, and by meeting in the morning and afternoon of Friday, 13 March, the Commission would be able to hold nine more meetings, which would be most helpful. It could then examine the report of the Working Group on agenda item 4 and consider at least briefly a number of items that had been carried over for several years.

Mr. MOROZOV (Union of Soviet Socialist Republics) pointed out that the Commission had been specially authorized to meet in 1964 for the purpose of preparing the draft convention on the elimination of all forms of racial discrimination. Hence, it should try to complete the draft, or at least the most important articles, so as to be able to submit them to the Economic and Social Council and the General Assembly, but it was not required to consider all the items on its agenda, including certain new proposals. It obviously could not even think of doing so at the present stage, for it would have to obtain at least a two-week extension of the session for the purpose.

The members of the Commission should not demand too much of themselves. The drafting of the convention fully justified the holding of a special session, and even if it did not succeed in completing the entire draft at the present session the Commission would have made a major contribution to the cause of human rights.

He suggested that the question of the organization of work should not be considered further at meetings and that, instead, the members of the Commission should be given an opportunity to consult and decide among themselves which agenda items must be taken up at the present session. Following such consultations, the

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Commission could take a decision and, if necessary, ask the Secretariat for an extension of one or two days. Consideration of the draft convention now appeared to be progressing much more rapidly, and the Commission should wait until Tuesday or Wednesday so that it could take an informed decision.

Sir Samuel HOARE (United Kingdom) said that he agreed in principle with the Soviet representative. However, the Commission should take a decision on the organization of work on Tuesday, since by Wednesday it might be too late to do so. It should be decided which items must be considered at the present session, and a number of meetings should be set aside for that purpose so that discussion of the draft convention could be suspended at the proper time. Even if the convention was not completed at the present session, the Commission would have made great progress and any articles that it had not completed could be taken up by the Third Committee at the nineteenth session of the General Assembly.

Mr. S.K. SINGH (India) also thought it preferable to consider the question of the organization of work in private consultations. The Chairman of the Commission could take part in the consultations and proceed on the basis of what was decided.

The CHAIRMAN proposed that further consideration of the organization of work should be deferred until the 803rd or 804th meeting so that the members of the Commission could hold an exchange of views.

It was so decided.

DRAFT INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION (A/5035, 5603; E/CN.4/865, 873; E/CN.4/L.679-L.681, L.693 and Add.1 and 2, L.700, L.701, L.705, L.707, L.709-L.712; E/CN.4/Sub.2/234 and Add.1-3)
(continued)

Article VIII

Mr. NEDBAILLO (Ukrainian Soviet Socialist Republic), introducing his amendment to article VIII (E/CN.4/L.680), observed that the article referred on the one hand to non-nationals, i.e. aliens or stateless persons, and on the other hand to groups of persons which existed or might exist as distinct groups within a State, and that according to the article the provisions of the convention relating

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(Mr. Nedbailo, Ukrainian SSR)

to political or other rights were not applicable to such individuals or groups. If certain types of inequality could exist as between nationals and non-nationals, e.g. in the matter of political rights, the question arose whether that was also true with regard to different groups. And, to begin with, there was the question of what those different groups were. They were not "ethnic" but rather "ethnographic" groups, i.e. local groups which were sub-divisions of a particular national group or nation and which had retained certain cultural features, customs or a dialect peculiar to them, although belonging to the same race as the population of the country as a whole. In the Ukraine, for example, a distinction was made between northern and southern Ukrainians, and within those major subdivisions there were other, smaller ethnographic groups such as the Boikis. The formation of such groups, which could be regarded as relics, resulted from a nation's economic or religious development, from long isolation, or from the pursuit of a special occupation by the members of the group.

Those observations sufficed to show that non-nationals and members of the different groups referred to in article VIII could not be placed on the same footing. The provisions of the convention should apply to all nationals of a given State, regardless of the ethnic group to which they belonged, particularly since the concept of ethnic origin was akin to that of race and the object of the draft convention was precisely that of eliminating all forms of racial discrimination. To retain in article VIII the words which his delegation's amendment sought to delete would mean drafting a discriminatory provision which would be contrary to Ukrainian legislation. The Declaration of the Rights of the Peoples of Russia of 15 November 1917 proclaimed the equality of all the peoples of former Czarist Russia, the right of those peoples to self-determination, the abolition of all national or religious privileges, and the free development of minorities.

During the discussion of the draft in the Sub-Commission on Prevention of Discrimination and Protection of Minorities, Mr. Krishnaswami and Mr. Mudawi had proposed a text (E/CN.4/873, para. 107) specifying that States Parties were not required to grant special political rights to any group because of race, colour or ethnic origin, but there was nothing in the text adopted by the Sub-Commission to indicate that it was a question of special political rights.

Mr. BOUQUIN (France) said that his delegation's amendment (E/CN.4/L.707) was intended to fill a gap. Although article VIII was not drafted very explicitly, the object of its authors was nevertheless quite clear. The article specified the cases in which the draft convention was not applicable, i.e. that it did not apply to non-nationals or to groups of a common race, colour or ethnic or national origin which existed or might exist as distinct groups within a State Party.

The status of such persons or groups remained unchanged in so far as political or other rights were concerned. However, provision should be made for an additional category, that of naturalized persons. When article I had been adopted, his delegation had voted against the retention of the words "national origin" for the reasons which it had indicated at the 786th meeting (E/CN.4/SR.786, page 3). France had laws and regulations which temporarily limited the political rights of naturalized persons, e.g. the right to vote. Naturalized persons, who were often not very familiar with French politics, were in any case much less interested in political rights than in economic, social and cultural rights, at least during the first few years after their naturalization. In the general principles on freedom and non-discrimination in the matter of political rights which were set forth in annex I of the Study of Discrimination in the Matter of Political Rights prepared by Mr. Santa Cruz (E/CN.4/Sub.2/213/Rev.1), article XI stated that measures prescribed by law or regulation establishing a reasonable period which must elapse before naturalized persons could exercise their political rights should not be considered discriminatory, provided that they were combined with a liberal naturalization policy. Hence, article VIII of the draft should expressly provide for the case of naturalized persons and that was the purpose of his delegation's amendment.

The meeting rose at 6.15 p.m.