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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES

Sixteenth Session

SUMMARY RECORD OF THE FOUR HUNDRED AND ELEVENTH MEETING

Held at Headquarters, New York,
on Thursday, 16 January 1964, at 11 a.m.

CONTENTS

Draft international convention on the elimination of all forms of racial discrimination (E/CN.4/Sub.2/234; E/CN.4/Sub.2/L.308 and Add.1/Rev.1 and Add.1/Rev.1/Corr.1, L.309, L.310, L.311, L.313, L.314) (continued)

PRESENT:

<u>Chairman:</u>	Mr. SANTA CRUZ	(Chile)
<u>Rapporteur:</u>	Mr. CAPOTORTI	(Italy)
<u>Members:</u>	Mr. ABRAM	(United States of America)
	Mr. AWAD	(United Arab Republic)
	Mr. BOUQUIN	(France)
	Mr. CALVOCORESSI	(United Kingdom of Great Britain and Northern Ireland)
	Mr. CUEVAS CANCINO	(Mexico)
	Mr. INGLES	(Philippines)
	Mr. IVANOV	(Union of Soviet Socialist Republics)
	Mr. KETRZYNSKI	(Poland)
	Mr. KRISHNASWAMI	(India)
	Mr. MATSCH	(Austria)
	Mr. MUDAWI	(Sudan)
	Mr. SAARIO	(Finland)

Also present: Mrs. LEFAUCHEUX Commission on the Status of Women

Observers from Member States:

Mr. ROBICHAUD	Canada
Miss KRACHT	Chile
Mr. LEMA	Congo (Leopoldville)
Mr. SAJJAD	India
Mr. SCHAAFVELD	Netherlands
Mr. QUIAMBAO	Philippines
Mrs. NASON	United States of America
Mr. MELOVSKI	Yugoslavia

Representatives of specialized agencies:

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

PRESENT:(continued):

Representative of a non-governmental organization:

Category A: Mr. BARTON

International Confederation of
Free Trade Unions

Secretariat: Mr. HUMPHREY

Director, Division of Human Rights

Mr. LAWSON

Secretary of the Sub-Commission

DRAFT INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION (E/CN.4/Sub.2/234; E/CN.4/Sub.2/L.308 and Add.1/Rev.1 and Add.1/Rev.1/Corr.1, L.309, L.310, L.311, L.313, L.314) (continued)

The CHAIRMAN announced that the Working Group had reached agreement on the text of a preamble to the draft convention. He invited discussion of the three sets of draft articles submitted by members of the Sub-Commission (E/CN.4/Sub.2/L.308 and Add.1/Rev.1 and Add.1/Rev.1/Corr.1, E/CN.4/Sub.2/L.309 and E/CN.4/Sub.2/L.314).

Mr. KRISHNASWAMI drew attention to his amendment (E/CN.4/Sub.2/L.310, para. 4) to the definition stated in article I of Mr. Abram's text (E/CN.4/Sub.2/L.308). He would introduce the word "nationality" in quotation marks and explain its meaning for the purposes of the convention in a foot-note reading as follows:

"'Nationality', as the term is used in this convention, is different from the meaning of the term in public international law where it indicates a recognized link between an individual and a State to which he owes allegiance and which has an international responsibility for him. It is for that reason that this term is within quotation marks. Its meaning in the present context is that which it has in the case of States composed of groups of different origin."

With that explanatory foot-note, the article could not be interpreted as denying to a State its right to make special provisions regarding aliens within its territory.

Mr. MUDAWI, commenting on the definition of racial discrimination given in the three texts before the Sub-Commission, emphasized that it should be as broad and explicit as possible. Mr. Abram's text had the great merit of clarity, while Mr. Calvocoressi's (E/CN.4/Sub.2/L.309) would gain by including in the term "person", not only groups of persons, but corporate bodies or juridical persons.

Mr. CALVOCORESSI said he was prepared to accept Mr. Mudawi's suggestion. His definition was brief for emphasis, and it reproduced the wording adopted in the UNESCO and ILO Conventions (E/CN.4/Sub.2/234):

Mr. MATSCH felt that the definition in question was too brief; it would be better to err on the side of wordiness rather than brevity.

Mr. ABRAM, noting that his definition, like the Declaration adopted by the General Assembly, specified ethnic origin as one of the grounds for discrimination, stressed the importance, in drafting the convention, of assessing the nature and scope of ethnic discrimination in the contemporary world. Ethnic discrimination might well be directed towards obliterating the social and cultural differences which defined and gave life and significance to a particular ethnic group. That would also be true of a nationality group in a multi-national State. Recent events had once again reminded the world that there were two distinct groups in Cyprus, for example. Countries with multi-racial populations, such as the United States and the USSR, had very complex ethnic groups. The Nazis had used a system of grading ethnic groups as a basis for their genocide campaign. Since the defeat of Nazi Germany, while no State had pursued a policy of genocide, some States in which discrimination was prohibited by law were carrying out policies which might have the effect of obliterating an ethnic group.

Ethnic differences were absolutely dependent for survival on language, schools, publications and other cultural institutions often regarded as characteristic of a nationality. However well-treated in other respects a member of an ethnic group might be, if he were cut off from his tradition and culture, he would be the victim of discrimination and the right of his group to survive would be jeopardized. Consequently, all forms of discrimination which deprived an ethnic group of the means of continuing its culture and maintaining its traditions was a violation of the principle stated in the Declaration on the Elimination of All Forms of Racial Discrimination and should be made an offense under the Convention. He was not certain of the precise language that should be used but there was need to be specific with regard to nationality groups and national traditions.

Mr. CAFORTI, after making a comparative analysis of the three drafts under discussion, said that the text of the Convention should so far as possible convey the spirit of the Declaration adopted by the Assembly. Thus, it was proper for the definition of discrimination to include discrimination on ethnic grounds. However, the problem of ethnic discrimination should not be developed beyond the framework of the Declaration and should not be equated with discrimination on grounds of national origin or nationality. The problems of national origin and nationality were manifold, but they were outside the scope of

(Mr. Capotorti)

a convention designed to protect the rights of the individual, which was the purpose of all United Nations conventions in the field of human rights. Indeed, it might even be helpful to make that purpose explicit. The definition of "person" contained in Mr. Calvocoressi's article I, as amended by Mr. Mudawi, was also a useful one, and should be retained. Finally, paragraph 2 of that article had considerable merit in that it recalled the definition of discrimination contained in the Declaration of Human Rights and in the draft Covenants.

Mr. MUDAWI observed that in some African countries small backward groups were given preferential treatment by legislation. He suggested, accordingly, that the article in which racial discrimination was defined should also include a statement to the effect that preferences designed to assist backward groups within a country did not constitute racial discrimination.

Mr. SAARIO pointed out that the problem was covered by article II, paragraph 3, of Mr. Abram's text (E/CN.4/Sub.2/L.308); however, he saw no objection to the addition suggested by Mr. Mudawi.

He always preferred brevity in definitions, particularly when they would have to be translated into many languages. He thought the word "distinction" preferable to the word "differentiation", which had too fine a shade of meaning. The words "distinction, exclusion, preference and limitation" would cover all the aspects of discrimination which should be taken into account.

While, as UNESCO had shown, there was no such thing as race, the term "race" would have to be used in the draft convention. The words "race", "colour" and "ethnic origin" all meant much the same thing, but "nationality" was a different matter. The General Assembly had used the expression "national origin" in the preamble of the Declaration on the Elimination of All Forms of Racial Discrimination and the expression "ethnic origin" in the body of the Declaration; he wondered why it had changed from the one expression to the other. In any event, everyone understood what was meant by the term "national origin", and he would not object to its use in the definition.

Mr. KRISHNASWAMI recalled that Mr. Abram had accepted his proposal replacing the word "may" by the word "shall" in article II, paragraph 3 of his text (E/CN.4/Sub.2/L.308). That paragraph as amended, in directing States to take special measures to protect backward groups, went much further than the statement suggested by Mr. Mudawi. There would be no harm, however, in adding such a statement to the article defining racial discrimination.

There was some value in using the term "nationality" in quotation marks in the definition because in South Africa, for example, there was a problem of racial discrimination against persons of Indian national origin. "National origin" and "ethnic origin" were not synonymous.

Mr. AWAD was grateful to Mr. Mudawi for raising the problem of groups which the State had to favour in order to ensure their integration into the life of the country. The Sub-Commission must be very careful, however, to phrase any provision on that point in such a way as to leave no opportunity for abuse.

Mr. ABRAM said he preferred Mr. Krishnaswami's position on the question of nationality to Mr. Capotorti's.

Mr. BOUQUIN remarked that the three definitions before the Sub-Commission were not very different. Article 1, paragraph 1, of the text submitted by Mr. Ivanov and Mr. Ketrzynski (E/CN.4/Sub.2/L.314) contained some excellent ideas. He too preferred the word "distinction" to the word "differentiation", however, and he thought that, as the expressions "ban on access" and "exclusion" were synonymous, one of them should be omitted. The definition of the word "person" proposed in Mr. Calvocoressi's text (E/CN.4/Sub.2/L.309) should be retained. A reference to discrimination based on nationality or national origin in multi-national States might be helpful, but he wondered whether there would be any point in referring to such discrimination in States that were not multi-national. In all countries a distinction was made between nationals and aliens. The problem was a difficult one and should be carefully considered. On the question of special protective measures raised by Mr. Mudawi, he recalled

(Mr. Bouquin)

that the Sub-Commission, in drafting paragraph 11 of the Declaration on the Elimination of All Forms of Racial Discrimination, had inserted a proviso to the effect that such measures should not be maintained after the achievement of their objective. The Sub-Commission should continue to treat such special measures as exceptional and provisional.

Mr. MATSCH felt that the terms "ban on access" and "exclusion" were synonymous, as were the terms "distinction" and "differentiation". If, therefore, Mr. Abram would agree to add the word "limitation" to his definition (E/CN.4/Sub.2/L.308), the list of terms equated with discrimination would be identical in the three definitions before the Sub-Commission. On the question of national origin, he preferred the full explanatory text suggested by Mr. Abram in article I of his text (E/CN.4/Sub.2/L.308).

Mr. IVANOV pointed out that the text which he and Mr. Ketrzynski had suggested (E/CN.4/Sub.2/L.314) contained at the end of article I, paragraph 1, an essential element in the definition of discrimination, namely, a description of the purpose or effect of discrimination as "nullifying or impairing equality in granting or practising human rights and freedoms". That part of the definition not only complemented the first part, but might, he felt, dispel the concern of previous speakers with regard to the inclusion in the convention of a reference to special measures for the protection of certain groups. As such measures were usually designed to place such groups on an equal footing with other sectors of the population which might be more advanced from educational or other points of view, the formula he had quoted should have the effect of ensuring that any such measures could not but be in accordance with the convention.

Mr. ABRAM accepted Mr. Matsch's suggestion regarding the inclusion of the word "limitation" in article I of his own text.

Mr. CUEVAS CANCINO found the definitions of discrimination contained in the three texts before the Sub-Commission on the whole very similar.

He did not agree that the definition contained in article I of the text suggested by Mr. Ivanov and Mr. Ketrzynski (E/CN.4/Sub.2/L.314) was repetitious. For instance, the meaning of "ban on access" was not identical with that of "exclusion", as one meant that certain persons might be prohibited access to certain places, whereas the other would imply that certain people might be excluded from certain institutions and activities from which they were not in fact officially banned. The word "preference" acquired quite a definite meaning if it was considered in the context of the way in which whites were treated in the Republic of South Africa. Similarly, "limitation" had a perfectly definite meaning in the sense that it could refer to the prejudice to an individual's career caused by discrimination. A list of the various forms of discrimination in the article which defined the term was not only useful - it was absolutely necessary, because it would constitute the backbone of the convention, and he did not consider any of the terms used in the text suggested by Mr. Ivanov and Mr. Ketrzynski to be redundant.

With regard to the special measures which might be necessary for the protection of certain groups of the population, he still thought that the formula proposed by five Latin American countries in the Third Committee for article 2, paragraph 3 of the Declaration (A/5603, para. 66) was the most satisfactory. It was important to bear in mind that protection of certain groups did not constitute discrimination. Nor should such measures be abruptly discontinued. In some cases, they became part of national institutions, and a permanent means of securing rights which were in the interests of the country as a whole. As an example, he cited the case of Mexico, where the ownership of the land by the Indians had been originally recognized by the Spanish Crown, and subsequently, withdrawn on legal grounds, after the revolution of 1870, so that the Indian villages had been left entirely without land. It had required the revolution of 1910, with its ensuing land reform, to restore the original more equitable situation.

He was opposed to Mr. Krishnaswami's proposal to put the word "nationality" between quotation marks, and also against the insertion of a foot-note on the subject in the draft convention. Such an apparently special interpretation of

(Mr. Cuevas Cancino)

of the word might prove misleading, and could cause problems. The term "nationality" as used in Mr. Abram's text (E/CN.4/Sub.2/L.308) might be taken to mean persons who had not been integrated into the national life of the State because they had originally come from other countries, and the existence of such groups raised problems of jurisdiction in any case. The term "national origin", used in document E/CN.4/Sub.2/L.314, seemed to him more satisfactory.

Mr. CALVOCORESSI said that he would withdraw paragraph 1 (b) of article I of his text (E/CN.4/Sub.2/L.309) if the Sub-Commission agreed to retain parts of the other two clauses. He had some doubts about the use of the term "national origin" and preferred the term "nationality". He would like to see the last part of article I, paragraph 1 as suggested by Mr. Ivanov and Mr. Ketrzynski with its reference to discrimination with the purpose or effect of nullifying or impairing equality in the granting or practising of human rights, retained in the draft convention.

He also hoped that the Sub-Commission would retain his own version of article I, paragraph 2. With regard to article I, paragraph 2 of Mr. Ivanov and Mr. Ketrzynski's text, he had no objection to its inclusion in the convention, but did not think that the article defining discrimination was the right place for it.

The CHAIRMAN, speaking in his personal capacity, remarked that he found the text suggested by Mr. Ivanov and Mr. Ketrzynski satisfactory, particularly since Mr. Cuevas Cancino's arguments had convinced him of the need to include a diversity of terms in the definition. He also thought that a reference to the purposes of discrimination was valuable, and that the second part of article I, paragraph 1 in that text should therefore be retained, but he suggested the addition, at the end of the sub-paragraph, of a phrase along the following lines: "as well as equality of treatment or opportunity in respect of such rights".

He agreed with Mr. Cuevas Cancino that the term "national origin" was preferable to "nationality", and he would certainly not be in favour of putting that word in quotation marks or using a foot-note. Such a procedure would not make for clarity, a primary requirement in the convention.

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(The Chairman)

It was sometimes necessary for Governments to take special measures to protect certain sections of the population, and in that connexion he too still felt a preference for the formula proposed in the Third Committee by five Latin American countries (A/5603, para. 66).

Mr. BARTON (International Confederation of Free Trade Unions) thought that the basic definition of discrimination should include some indication that the differences of race, colour, etc., might be either real or presumed. There were many cases where the difference between groups of a population, which were being used as a pretext for discrimination, were in fact non-existent, or at least debatable. Ceylon was one case in point, and another was South Africa, where the population was arbitrarily divided into the categories of white, black and coloured, and where persons and families were often changed from one category to another merely by decision of the authorities.

While Mr. Krishnaswami's suggestions concerning the treatment of the word "nationality" were unconventional, they probably represented the only way of solving the complex problem involved. Like the word "race", the word "nationality" represented different concepts, some ethnic, some political, in different countries.

Where special protection of certain groups was concerned, he felt some misgivings about the wisdom of including in the convention a reference to individuals belonging to certain racial groups, as had been done in article II of Mr. Abram's text (E/CN.4/Sub.2/L.308). While presumably the reference did not imply special protection to every single member of a group, it made the provision less clear.

Mr. INGLES thought that the Sub-Commission had already expressed a consensus of opinion regarding the contents of article I of the draft convention. In the interests of precision and to take care of the point raised by the Chairman, he suggested that the phrase "of opportunity or treatment in the enjoyment of human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights" should be inserted in article I, paragraph 1, after the word "equality", to replace the words "in granting or practising human rights and freedoms" in the text suggested by Mr. Ivanov and Mr. Ketrzynski (E/CN.4/Sub.2/L.314).

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The CHAIRMAN, speaking in his personal capacity, said that he found Mr. Ingles's amendment more satisfactory than his own, which he would accordingly withdraw.

Mr. SAARIO remarked that the difference between the terms "nationality" and "national origin" was clear. In international law, the term "nationality" was frequently used to mean "citizenship". He accordingly felt that the use of the term "national origin" would avoid ambiguity.

Mr. AWAD, observing that it was difficult to draft a document on the basis of three separate texts, suggested that the Sub-Commission might work more effectively if it selected one of the proposed texts as the basis of its work. The other proposals could then be submitted in the form of amendments to the working text.

The CHAIRMAN favoured the suggestion. The Sub-Commission was proceeding very slowly by its present method of work.

Mr. IVANOV felt that such a procedure would give an unjustifiable preference to one text over the others. In the past the Sub-Commission had been successful in working with a number of texts, either in plenary or through a working group. While the Sub-Commission should try to accelerate its work, it must avoid undue haste.

The meeting rose at 1.5 p.m.