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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 NINTH MEETING

Held at Headquarters, New York,
on Wednesday, 15 January 1964, at 10.50 a.m.

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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 MOHAMMED	(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)
<u>Also present:</u>	Mrs. LEFAUCHEUX	Commission on the Status of Women

Observers from Member States:

Mr. ROBICHAUD	Canada
Mr. S.K. SINGH	India
Mr. BARROMI	Israel
Mr. SCHAAPVELD	Netherlands
Mr. QUILMBAO	Philippines
Mr. MATSEIKO	Ukrainian Soviet Socialist Republic
Mrs. NASON	United States of America
Mr. MELOVSKI	Yugoslavia

Representatives of specialized agencies:

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

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PRESENT (continued):

Representative of a non-governmental organization:

<u>Category A:</u>	Mr. BARTON	International Confederation of Free Trade Unions
<u>Secretariat:</u>	Mr. HUMPHREY	Director, Division of Human Rights
	Mr. LAWSON	Secretary of the Sub-Commission

INVITATION TO THE COMMISSION ON THE STATUS OF WOMEN

The CHAIRMAN suggested that, in accordance with paragraph 5 of Economic and Social Council resolution 48 A (IV), Mrs. Lefauchaux, the representative designated by the Commission on the Status of Women, should be invited to participate in the Sub-Committee's deliberations when items relating to discrimination based on sex were to be discussed.

It was so decided.

Mrs. LEFAUCHEUX (Commission on the Status of Women) thanked the Sub-Commission for its invitation. The Chairman of the Commission on the Status of Women attached particular importance to receiving reports of the Sub-Commission's work at the present session, since the Commission would not meet in 1964 and its members should be kept informed of the current work of the United Nations in the field of human rights.

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, E/CN.4/Sub.2/L.309) (continued)

Mr. CAFORTORTI announced that Mr. Calvocoressi and he would submit a text of a preamble* to the draft convention which would take into account the opinions expressed in the discussions. The text referred to the fundamental documents on which the draft convention would be based - Article 55 of the United Nations Charter; the Universal Declaration of Human Rights; the Declaration on the granting of independence to colonial countries and peoples; the Declaration on the Elimination of All Forms of Racial Discrimination; and the Conventions on discrimination adopted by the ILO and UNESCO. It stated the convictions on which the draft convention was based, pointed out the connexion between the elimination of racial discrimination and international peace and security, and specifically mentioned policies of apartheid, segregation or separation. The text also expressed the desire to secure the adoption by States of practical measures to eliminate racial discrimination.

* The text was later circulated as document E/CN.4/Sub.2/L.313.

Mr. INGLES was pleased that the Sub-Commission was attempting to prepare a draft convention as the best way of reflecting the consensus of opinion in the Sub-Commission. The presentation of an agreed text to the Commission on Human Rights would also facilitate that body's task. The instructions given by the General Assembly were very clear: the draft convention was to be based on the text of the Declaration on the Elimination of All Forms of Racial Discrimination. Indeed, the Sub-Commission was required to include all the principles of the Declaration in the draft convention. Moreover, the General Assembly in its resolution 1906 (XVIII), after characterizing the Declaration as "an important step" towards the elimination of racial discrimination, had stressed the necessity of taking further action towards that goal. It had felt that a convention on racial discrimination was needed because the Declaration imposed only a moral, not a legal, obligation. Consequently, the Sub-Commission, in preparing the draft convention, should seek to provide effective measures of implementation for the provisions of the Declaration. In drafting the convention, it should interpret the Declaration strictly, since a loose construction would produce loopholes in the enforcement of its provisions. The policy which the General Assembly had adopted in preparing the draft International Covenants on Human Rights to implement the Universal Declaration of Human Rights should furnish the necessary guidance concerning the difference between a declaration and a convention. In drafting the measures of implementation, the Sub-Commission should refer to the provisions in the draft Covenants concerning the reporting procedure and the settlement of disputes arising out of the interpretation and application of the text, and to the ILO Convention on discrimination in respect of employment and occupation and the UNESCO Convention against discrimination in education. Noting that the Constitutions of the ILO and UNESCO established procedures for implementing the conventions and recommendations prepared by those organizations, he suggested that the Sub-Commission should provide a similar procedure for the draft convention, so that the latter would not be less strictly enforced than the conventions on discrimination produced by those agencies.

The texts submitted by Mr. Abram and Mr. Calvocoressi (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) did not, in his opinion, establish effective measures of implementation. He hoped, therefore,

(Mr. Ingles)

that, when the Sub-Commission had selected a text as a working basis or had appointed a working group to draw up such a text, members would be given an opportunity to propose measures of implementation.

Mr. KETRZYNSKI, recalling the arguments which had been advanced by members of the Sub-Commission in the past against the drafting of the International Covenants on Human Rights, was gratified to note that there was no opposition to the preparation of a draft convention on racial discrimination. In those circumstances, he was hopeful that the Sub-Commission could arrive at a text acceptable to all.

The text submitted by Mr. Calvocoressi (E/CN.4/Sub.2/L.309) had the great merit of brevity and conciseness; it would be easy for States to accept such a text. It was, however, too general and vague. If the draft convention was to be merely an agreement among States proclaiming their intention to combat racial discrimination, such a text would be suitable. What was really needed, however, was a legal tool for fighting racial discrimination, which would define precisely not only general aims but also means of implementation. The text suggested by Mr. Abram (E/CN.4/Sub.2/L.308 and Add.1/Rev.1 and Add.1/Rev.1/Corr.1) included some valuable provisions; but there were some gaps, and some of the articles were inadequate. Nevertheless, the text showed that there was a common basis for agreement.

Several problems were involved in the preparation of the draft convention. One problem was the connexion between the Declaration on the granting of independence to colonial countries and peoples and the draft convention. There was a relation of cause and effect between the phenomenon of colonialism, past and present, and the continued existence of racial discrimination. The only weapon left to colonialism today was the idea of racial superiority, and the remaining pockets of colonialism were the stronghold of the racist forces. It was essential that the link between colonialism and racial discrimination should be stressed in the draft convention. In that connexion, he expressed interest in Mr. Krishnaswami's proposal that a reference to the Declaration on the granting of independence to colonial countries and peoples should be included in the body of the draft convention. The Declaration must also be mentioned as a fundamental document in the preamble of the draft convention.

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(Mr. Ketrzynski)

Another problem with which the Sub-Commission would have to deal was the connexion between fascism and racial discrimination. Some members of the Sub-Commission seemed reluctant to use the word "fascism", either because they considered fascism a thing of the past or because they felt that the term referred to mobilized masses in a fascist State and had no relation to racial discrimination. Unfortunately, however, fascism was still very much alive. It was a doctrine of oppression and hatred, of the domination of the weak by the powerful; it was the common denominator of all the racists of the world. The racists of South Africa, of the Portuguese colonies and of the southern states in the United States of America had all been influenced by fascism. In view of fascism's sinister history, the inclusion of the word "fascist" beside the word "racist" in the draft convention was a political necessity.

The most difficult problem before the Sub-Commission was to reconcile the need to respect the right of expression and political activity proclaimed in the United Nations Charter and in the Universal Declaration of Human Rights with the need to provide effective sanctions against the advocacy of racial discrimination. That problem had not been treated forcefully enough in the texts before the Sub-Commission. Article IX of Mr. Abram's text (E/CN.4/Sub.2/L.308/Add.1/Rev.1 and Corr.1) was inadequate, for it might be construed as giving the State the right to intervene only when an act of violence was committed or was likely to be committed. Thus State intervention would be delayed, and at times difficult or impossible. But a State should take forceful and long-term measures against persons advocating racist doctrines; racist activities should not be permitted to reach the stage of imminent violence. Hitler had advocated racist doctrines long before he had passed to action, and when at last he had resorted to violence, the Weimar Republic, which had failed to take measures against him earlier, had fallen. Another example of the need for long-term measures against racist propaganda was the apartheid faction in South Africa. It had engaged in racist propaganda for many years and had conducted political campaigns for that

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policy, and during that period it probably could not have been convicted of inciting to acts of violence. Then it had come to power and had proceeded to enforce a policy which infringed all human rights.

Mr. MATSCH thought that all the principles included in the Declaration on the Elimination of All Forms of Racial Discrimination should be included in the draft convention, and proposed that the Sub-Commission should take a decision to that effect.

The CHAIRMAN agreed that all the principles contained in the Declaration were suitable for inclusion in the draft convention, but thought that the suggested texts before the Sub-Commission made it clear that the Sub-Commission was already proceeding on that assumption.

Mr. IVANOV, commenting on the text suggested by Mr. Abram (E/CN.4/Sub.2/L.308 and Add.1/Rev.1 and Add.1/Rev.1/Corr.1), said that although Mr. Abram had attributed all due importance to the problem with which he was dealing, his proposed article IX, paragraph 3 was too narrow in scope. By limiting the application of the article to organizations supported in whole or in part by government funds, the text allowed organizations financed by other sources to carry on incitement to racial hatred. Racism was known to be a tool of colonialism, and there might well be organizations financed by monopolies whose interests were furthered by the domination of subject peoples, which would thus be able to carry on their undesirable activities unchecked. Fascism, with all its attendant manifestations of racial hatred, was far from being dead, and the draft convention should take that fact into account. Article 9 of the Declaration referred to "organizations" without any limiting qualification, and he thought that the convention should, if anything, go further than the Declaration.

Mr. ABRAM appreciated Mr. Ivanov's point, but thought that much of his difficulty arose from a failure to differentiate between what might be asked of individuals and what a Government might lawfully require of its own employees and of organizations which it was supporting. Private individuals had considerable latitude to express their opinions, and to curtail such freedom of expression would, in his view, mean infringement of another United Nations instrument, the Universal Declaration of Human Rights, article 19 of which he read out in support of his thesis. The fact that a Government did not prohibit individuals from expressing certain views did not mean that the Government itself condoned those views - but citizens must still be allowed the right to be wrong, and article 19 of the Universal Declaration surely meant that anyone must be free to express ideas with which the authorities disagreed. The Government could, nonetheless, insist on certain standards of behaviour for its own employees.

He agreed that a convention explicitly prohibiting all incitement to racial hatred would be the ideal, but great difficulties arose in connexion with the practical application of judicial doctrine. It might not always be interpreted by the authorities responsible for implementation in the spirit in which the drafters of the convention had intended - there could never be any guarantee that such authorities would themselves be perfect, and he would feel reluctant to produce a provision conferring on the State the right to judge all opinions.

He had been interested to hear Mr. Ivanov's view that the convention should take account of fascism, and was of course open to any suggestions for the possible improvement of article IX.

Mr. KRISHNASWAMI thought that Mr. Abram was to be congratulated on his handling of what was admittedly a difficult article (E/CN.4/Sub.2/L.308/Add.1/Rev.1 and Add.1/Rev.1/Corr.1). He would, however, like to suggest certain amendments to the text. Franchises or licences might be granted by bodies other than States, and he would accordingly propose the addition of the words "or public authority" after the words "No State Party". He also thought that forms of permission were not confined to franchise or licence, and would like to have the words "or permit" included after the word "licence".

(Mr. Krishnaswami)

With regard to paragraph 3, there were cases where individual members of organizations acted in a manner which would be contrary to the convention, but under the article as it stood there would be no possibility of prosecuting them. To cover all such eventualities, he would suggest the addition of the words "or their officials" after the words "government funds", and of the words "or to aid and abet such activities by others" at the end of the paragraph. It was important to ensure that not only no organization but no person paid out of public funds could engage in any activities likely to promote racial hatred.

In paragraph 4, the States Parties were required to establish a national policy designed to eradicate all incitement to discrimination. Establishment of a policy might not be enough, and he would suggest that the paragraph should be strengthened by the addition of the words "and pursue" after the words "shall establish".

With regard to paragraph 5, he thought that provision should be made not only for remedial relief for the victims of racial violence, but also for preventive relief, so that matters could be settled, before any harm had actually been caused, by some procedure swifter and less cumbersome than the ordinary remedies, such as a court injunction, now available in many countries. He accordingly suggested the addition of the words "effective preventive and" after the word "provide" and of the words "is in danger of suffering or who" after the word "who".* In that connexion, of course, various States must be left free to choose their own individual methods.

Mr. PARSONS (International Confederation of Free Trade Unions) thought that the Sub-Commission should bear in mind the new situation which constituted the background to its work. Until recently the fight against discrimination had been conducted almost entirely by humanitarian organizations and individuals. Now the lead had been taken by the victims themselves, a positive development which gave great impetus to the work. There was, however, a real danger that the victims of discrimination might, owing to their lack of experience, advocate the taking of

* These amendments were later circulated as document E/CN.4/Sub.2/L.311.

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measures which, desirable as they might seem, would prove impracticable. Members of the Sub-Commission should not therefore abdicate their responsibilities as experts, but, in the interests of ensuring that the convention was an advance on the Declaration on the Elimination of All Forms of Racial Discrimination, should make full use of their specialized knowledge, going so far as to question the wisdom of larger bodies, such as the General Assembly, if they thought it appropriate.

The Sub-Commission was fortunate in that the texts suggested by Mr. Abram and Mr. Calvocoressi represented an excellent working basis for the elaboration of a convention. There was no real conflict between them and they could easily be consolidated into a single effective document. On the other hand, they did not adequately cover several points which should be clear beyond question in a convention. For example, the definition of racial discrimination in both texts, while sound as far as it went, might gain by the inclusion of the notion of discrimination based on the presumption of racial difference. It was commonly held, for example, that the two major groups of the population in Ceylon were racially different, whereas the only real difference arose from historical accident: they had both come to Ceylon from India, but at different epochs. Similarly, neither of the texts before the Sub-Commission prohibited the form of racial discrimination which consisted of requiring members of minorities so to identify themselves in official documents. The convention should specifically provide that such persons should not be required to identify themselves as belonging to any particular racial or ethnic group in their contacts with individuals or public authorities.

Drawing attention to other inadequacies of the texts under consideration (E/CN.4/Sub.2/L.308 and E/CN.4/Sub.2/L.309), he said that a convention designed to eliminate discrimination should bind States to prohibit discrimination not only in their proclaimed official policy and in their legislative measures, but in all their activities, including administrative practices and public administration. Articles III (1) of Mr. Abram's text and II (2) of Mr. Calvocoressi's draft should be amended accordingly. Those texts should also specify that discrimination could result not only from policies based on racist principles, but often

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from policies based on other considerations. For example, by denying to illiterates in the Portuguese African territories the right to exercise civil rights, Portugal was practising racial discrimination against the vast majority of the population. But perhaps the most important omission in the two texts before the Sub-Commission was failure to establish any specific machinery for implementation. UNESCO had provided such machinery in its Convention against Discrimination in Education in articles 7 and 8 and in the Protocol instituting a Conciliation and Good Offices Commission. For its part, the ILO had a permanent implementation procedure applicable to all its conventions. The United Nations must design such a procedure for the draft convention or the document would remain a dead letter. In that connexion, he supported Mr. Mudawi's proposal for regional tribunals (E/CN.4/Sub.2/SR.407), but felt that they should represent only part of the implementation machinery. Finally, he suggested that the actual text of the draft convention should be prefaced by a proclamation similar to that which introduced the Universal Declaration of Human Rights. Such a prefatory statement would have the merit of stressing that the elimination of all forms of racial discrimination was a common standard of achievement for all peoples and nations, and that it could not be attained by Government action alone.

Mr. BOUQUIN, commenting on certain points raised in the discussion, endorsed Mr. Ingles' remarks concerning the clear distinction to be drawn between the Declaration and a convention: the language of a convention would necessarily be quite different, and should not automatically reproduce all the principles embodied in the Declaration adopted by the Assembly. In its drafting, the Sub-Commission should be guided by the conventions adopted by the ILO and UNESCO and should constantly bear in mind that the text which it finally produced would not be effective unless it was signed by the greatest number of States, and, in particular, by those States in which racial discrimination existed.

He could not agree with Mr. Ketrzynski and Mr. Ivanov that there was a cause and effect relationship between colonialism and fascism on the one hand and racial discrimination on the other, or that the elimination of all forms of racial discrimination could be reduced to the abolition of colonialism. While it was a matter of common knowledge that racial discrimination existed in certain colonial

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(Mr. Bouquin)

countries, there had been manifestations of racial hatred, such as the pogroms in the early part of the century, which had been entirely unrelated to colonialism, and there were countries which had never been colonies in which discriminatory practices were still wide-spread. Similarly, while it was true that the doctrine of fascism - by which he presumed Mr. Ketrzynski meant national socialism - was in particular though not exclusively based on racism and that it was by exploiting racist ideas that the Nazis had been able to seize power, there was nothing to prove that fascism and racism always went hand in hand. Indeed, in some countries which had proclaimed themselves as anti-fascist or anti-totalitarian there had been manifestations of racial discrimination. Finally, if the Sub-Commission was to produce an effective convention, it should accept as a premise that, as the preamble to the Constitution of UNESCO stated, racial discrimination, like prejudice, was born in the minds of men and must be eliminated in the minds of men.

Mr. IVANOV said that he was not satisfied with Mr. Abram's reply to his objection that article IX, paragraph 3 (E/CN.4/Sub.2/L.308/Add.1/Rev.1/Corr.1) was too narrow in scope. He supported the amendments suggested by Mr. Krishnaswami. However, the convention should go further and provide a solution for the complicated problem of preventing incitement to racial discrimination by fascist and racist organizations which were neither licensed nor subsidized by the Government.

Mr. INGLES pointed out that Mr. Abram's attempt to incorporate article 9 of the Declaration in his article IX illustrated the problems inherent in any endeavour to translate the provisions of a declaration into those of a convention. While the Declaration, in article 4, enjoined upon all States to pass legislation prohibiting racial discrimination, the draft conventions prepared by Mr. Abram and Mr. Calvocoressi contained no provision prohibiting the practice of discrimination, i.e., acts of discrimination per se. The omission was a serious one, particularly since the Sub-Commission, in its original draft of the Declaration on the Elimination of All Forms of Racial Discrimination, had defeated by a vote of 6 to 5 a proposal to insert the provision regarding legislation prohibiting discrimination. The proposal had subsequently been restored by the Commission on Human Rights and embodied in article 4. Surely, the Sub-Commission was not thinking of reverting to its previous position; on

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the contrary, as Mr. Calvocoressi had said, it should regard itself as bound by the formulation ultimately adopted by the General Assembly. Mr. Calvocoressi had come closer to an outright prohibition of discrimination in article II, paragraph 2, of his text when he advocated the pursuit of a national policy designed to prevent discrimination, but that provision, taken together with article IX, paragraph 4, of Mr. Abram's text prohibiting incitement to discrimination, still fell far short of the Assembly's formulation. The convention could not effectively prohibit racial discrimination unless it called for sanctions. It should stipulate that the States parties must not only prohibit but also penalize such discrimination. The Sub-Commission should not be too prone to assume that States which had voted for the Declaration, and had thus endorsed article 4 of that document, would be unwilling to vote for an equally strong provision in the convention.

The meeting rose at 1 p.m.