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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 TWENTY-FIFTH MEETING

Held at Headquarters, New York,
on Monday, 27 January 1964, at 3.10 p.m.

CONTENTS

Draft international convention on the elimination of all forms of racial discrimination (E/CN.4/Sub.2/234 and Add.1; E/CN.4/Sub.2/L.308 and Add.1/Rev.1 and Add.1/Rev.1/Corr.1; L.309-L.311, L.314, L.320, L.322, L.325, L.329, L.330/Rev.1, L.333-L.335, L.337-L.341) (continued)

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PRESENT:

<u>Chairman:</u>	Mr. SANTA CRUZ	(Chile)
<u>Rapporteur:</u>	Mr. CAPOTORTI	(Italy)
<u>Mambers:</u>	Mr. ABRAM	(United States of America)
	Mr. AWAD	(United Arab Republic)
	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. KRISHNASWAMI	(India)
	Mr. MATSCH	(Austria)
	Mr. MUDAWI	(Sudan)
	Mr. SAARIO	(Finland)
	Mr. SOLTYSIAK	(Poland)

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

Observers from Member States:

Miss KRACHT	Chile
Mr. SAJJAD	India
Mr. SCHAAPVELD	Netherlands
Mr. QUIAMBAO	Philippines
Mrs. NASON	United States of America

Representatives of specialized agencies:

Mr. FARMAN-FARMAIAN	International Labour Organisation
Miss BARRETT	United Nations Educational, Scientific and Cultural Organization
Mrs. MEAGHER	World Health Organization

<u>Secretariat:</u>	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 and Add.1; E/CN.4/Sub.2/L.308 and Add.1/Rev.1 and Add.1/Rev.1/Corr.1, L.309-L.311, L.314, L.320, L.322, L.325, L.329, L.330/Rev.1, L.333-L.335, L.337-L.341) (continued)

Article V (E/CN.4/Sub.2/L.338)

Mr. IVANOV proposed insertion of the words "racial segregation and" before "apartheid" and the word "prohibit" before "and eradicate". Thus amended, the article would more accurately reflect article 5 of the Declaration on the Elimination of All Forms of Racial Discrimination.

Mr. ABRAM suggested the addition at the end of the phrase "in territories subject to their jurisdiction".

Mr. CALVOCORESSI pointed out that since "apartheid" could be interpreted as applying exclusively to the situation in South Africa. Mr. Abram's amendment would help to make it clear that States were not being obligated to act in any areas which were not subject to their jurisdiction.

The CHAIRMAN, supported by Mr. CAPOTORTI, suggested that Mr. Abram's amendment should be inserted after the word "eradicate". He further indicated that article V, as amended, would follow article II and become article III of the draft convention.

The various amendments were adopted.

Article V, as amended, was adopted unanimously.*

Article VI (E/CN.4/Sub.2/L.339)

Mr. CAPOTORTI, introducing the draft article on behalf of the sponsors, explained that it took into account the ideas contained in article 7 (2) of the Declaration, article VII of Mr. Abram's draft (E/CN.4/Sub.2/L.308) and article III (d) of the revised working paper presented by Mr. Cuevas Cancino and Mr. Ingles (E/CN.4/Sub.2/L.330/Rev.1). Those ideas had been expressed in the broadest terms in order best to reflect the intention of the article, namely, to ensure that the party responsible for causing injury as a result of racial

*/ Subsequently issued as document E/CN.4/Sub.2/L.342.

(Mr. Capotorti)

discrimination, whether it was the State itself or a private individual or organization, should provide effective remedy to the victim.

Mr. INGLES felt that the article was unduly restricted in scope: it limited the provision of effective remedy to persons suffering damages and made no provision for preventive action when there was good reason to believe that a person would suffer from an act of discrimination although the injury had not yet been sustained. In order to cover that aspect, he suggested the addition of a second sentence reading roughly as follows: "Every person suffering any damage or bodily harm as a result of acts in violation of this Convention shall have an effective remedy and the right to compensation".

Mr. CALVOCORESSI argued that the text sufficed to cover injunctions against anticipated injury as well as damages after the event. He accepted the idea of making provision for such relief whether the injury suffered was inflicted by a private individual or by a government official but he opposed provision for compensation (as opposed to damages properly so called) payable by the states in a case when the injury had been inflicted by a person not in government service. It would be wrong to require the State to compensate victims of racial violence, unless the principle of state compensation applied to the whole range of injuries under the law of the State concerned.

Mr. INGLES emphasized that the article should establish the general principle that the victim of racial discrimination or violence was entitled to compensation from the Government, where the harm suffered was a result of an act by the Government or its officials or organs, and from private persons or organizations where the damage resulted from the acts of such persons or groups. The State would thus be obligated to ensure that all persons enjoyed security of person and protection against bodily harm resulting from acts of discrimination.

Mr. IVANOV considered that the tribunals mentioned in the article should not only be "independent" but also "national", to ensure their total impartiality.

Mr. BOUQUIN said that the point was implicit in the draft article; clearly States could only to their nationals provide recourse on the national level and not through an international body.

Mr. CAPOTORTI, taking into account the points raised, proposed a redraft of article VI in English and French.*

Article VI, as amended by Mr. Capotorti, was adopted unanimously.

Article VII (E/CN.4/Sub.2/L.339)

The CHAIRMAN, speaking in his personal capacity, observed that the article was somewhat limited in scope, and proposed an expanded version of it.**

Article VII, as amended by the Chairman, was adopted unanimously.

Article VIII (E/CN.4/Sub.2/L.314, E/CN.4/Sub.2/L.340, E/CN.4/Sub.2/L.341)

Mr. CALVOCORESSI, introducing the text of article VIII proposed by Mr. Capotorti and himself (E/CN.4/Sub.2/L.340), said that some of the substantive and affirmative articles already adopted contained certain broad statements which required to be limited in order to make clear that the convention under consideration did not treat of matters outside its scope and should not be appealed to in such matters. That was a matter of drafting and interpretation. Paragraph 1 of the proposed text contained a list of possible pretexts for discrimination and made it clear that nothing in the convention was to be taken as sanctioning them. Paragraph 2 referred to a more specific case. Whereas, in general statements of human rights, it was necessary to declare that all individuals, whether nationals of a given State or aliens, should be allowed certain rights, no State could be required to grant equal political rights to both categories, and the first part of the paragraph made it clear that the convention would not require that. The second part, had been rendered necessary by article II, paragraph 2, which laid down the obligation for States to take special measures for the protection of under-developed groups. He thought it necessary to point out that that provision did not require States to extend to such groups anything more than protection against racial discrimination.

Mr. IVANOV was particularly anxious that the Convention should include the references to the ILO and UNESCO conventions in the form suggested in article III of the text proposed by himself and Mr. Ketrzynski (E/CN.4/Sub.2/L.314).

* Subsequently issued as document E/CN.4/Sub.2/L.343.

** Subsequently issued as document E/CN.4/Sub.2/L.344.

(Mr. Ivanov)

He saw no objection to paragraph 1 of article VIII as proposed by Mr. Calvocoressi and Mr. Capotorti, but paragraph 2 inspired serious doubts. As the draft convention clearly did not envisage extending to aliens the same rights as were granted by any State to its nationals, he saw no real need for the first part of the paragraph. To the second part, he objected strongly - the draft convention should not deny political rights to any group, but should ensure them to all. In some countries racial and ethnic groups had political autonomy, and special provision was made for that situation in the Constitution. If a limitation along the lines proposed was included in the draft convention, it might have the effect of depriving entire groups of their legitimate rights. At a time when peoples in many parts of the globe were striving for autonomy, such rights ought to be defended.

Mr. MATSCH also found the second part of paragraph 2 unacceptable. It seemed to have the unusual effect of restricting the solemnly announced principle of non-discrimination. In any case, such an arbitrary limitation must inevitably undermine the process of eliminating racial discrimination, and it could set a dangerous precedent. It might result in the granting of rights to one group and not to another basing their claims on the same merits and reasons, a procedure which in practice amounted to discrimination. He drew attention to Mr. Abram's remarks of 16 January 1964 (E/CN.4/Sub.2/SR.411, p. 5) to the effect that States should furnish the same guarantees and facilities for all ethnic groups within their population. The Austrian representative on the Economic and Social Council, at its thirty-sixth session, had drawn attention to the important consequences which would arise from restrictive wordings of declarations and conventions, and the United Kingdom Government apparently shared that view, to judge by its comments on the preparation of a draft convention (E/CN.4/Sub.2/234/Add.1).

He could see no justification for the inclusion of the second part of paragraph 2, and he appealed to the sponsors to withdraw it.

Mr. MUDAWI felt doubtful of the need for paragraph 1. The preamble and article I of the draft convention contained very detailed definitions of the forms of racial discrimination covered by the convention, whose aims were quite

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(Mr. Mudawi)

obvious. There seemed to be no reason to assume that a convention against racial discrimination could be taken as tacitly condoning other forms of discrimination, especially if it was specifically described as being in line with other United Nations instruments, such as the Charter and the Universal Declaration of Human Rights. It should be noted, moreover, that such other documents did not include a saving clause excluding discrimination in fields other than those dealt with. The inclusion of paragraph 1 in the draft convention could set a precedent, and States might then contend that documents which did not include such clauses authorized discrimination in fields not specifically covered by them. The first part of paragraph 2 was clear and precise, and was a useful addition to the draft convention, but he could not support the second part.

Mr. CAPOTORTI explained that the article was essentially an interpretation clause, and referred to the draft convention only, bearing no reference whatsoever to any other instrument. There was certainly no intention, as Mr. Ivanov had suggested, to infringe upon the political autonomy of any national groups. On the contrary, the article would make it quite clear that the convention did not in fact concern the political rights of any group.

The United Nations had always followed the policy of proclaiming individual human rights, rather than the rights of groups, and it was primarily with individual rights that the convention, too, should be concerned. Article II, paragraph 2 might give rise to some misunderstanding with regard to the rights of certain racial groups, and it called for clear interpretation. The convention could not enter into the details of group rights, or of unequal rights as between groups, to which Mr. Matsch had referred, because that was a matter within the jurisdiction of individual States.

Mr. ABRAM felt that paragraph 1 of the proposed article VIII was intended primarily to deny that application of the convention might limit action against discrimination in other fields. With regard to paragraph 2, he thought that its intention was to take no stand on the political rights of nationals, non-nationals, racial groups or multi-national States - it was simply to state that the convention did not deal with those matters. If his understanding was correct, he would have no difficulty in accepting the article as it stood.

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Mr. CALVOCORESSI confirmed that interpretation.

Mr. SOLTYSIAK agreed with Mr. Mudawi that paragraph 1 of the proposed article VIII was not really necessary. Paragraph 2 really consisted of two separate parts linked by the words "or a". The second part referred to a matter which lay within the domestic jurisdiction of States, and it should be deleted.

He felt that the best formula to use for article VIII of the draft convention would be article III of the text proposed by Mr. Ivanov and Mr. Ketrzynski (E/CN.4/Sub.2/L.314), and urged the Sub-Commission to do so.

Mr. CUEVAS CANCINO pointed out that the content of article VIII proposed by Mr. Calvocoressi and Mr. Capotorti (E/CN.4/Sub.2/L.340) and of article III in the draft convention proposed by Mr. Ivanov and Mr. Ketrzynski (E/CN.4/Sub.2/L.314) was entirely different. The first was intended to interpret the draft convention. The second was designed to ensure that the importance of other conventions was not diminished. That was an understandable concern: if progress was to be made, past achievements must be consolidated.

Paragraph 1 of the proposed article VIII seemed to him unnecessary, in view of the length and comprehensiveness of the preamble already adopted. Paragraph 2, however, was not in his opinion an interpretative clause. Its first part was redundant, as the convention obviously could not require States to grant equal rights to nationals and aliens. The second part raised a question as regards the kind of groups to which it referred. He could suggest some cases where political rights would have to be granted to distinct groups as such - the Turkish minority in Cyprus was a case in point. In fact, in some cases the denial of special political rights on such grounds might in itself constitute discrimination. He was therefore against the inclusion of the paragraph.

The CHAIRMAN, speaking in his personal capacity, remarked that neither article VIII paragraph 1, as proposed by Mr. Calvocoressi and Mr. Capotorti (E/CN.4/Sub.2/L.340) nor article III of the draft convention proposed by Mr. Ivanov and Mr. Ketrzynski (E/CN.4/Sub.2/L.314) was needed. No one who read the text of the convention would think that it authorized discrimination in other fields or that it diminished in any way the obligations undertaken by States under other international agreements. Why then include provisions which might create confusion?

Mr. MATSCH said that, as Mr. Calvocoressi and Mr. Capotorti were unwilling to withdraw the second part of paragraph 2 of their draft (E/CN.4/Sub.2/L.340), he would introduce an amendment (E/CN.4/Sub.2/L.341) to redress the balance disturbed by the inclusion of that phrase. However, he felt that as the question of granting political rights to ethnic or national groups was a political question which had been discussed inconclusively in the United Nations for eighteen years, the Sub-Commission should leave it to be settled by higher bodies. As Mr. Halpern had said (E/CN.4/703, para. 174) - and the Sub-Commission had endorsed that view - the General Assembly was the only organ of the United Nations empowered by the Charter to deal with the protection of minorities.

Whether the draft convention applied to the rights of groups as well as to the rights of individuals was a matter on which opinion in the Sub-Commission was divided. In his view, apartheid was an instance of discrimination against a group. Moreover, article I, paragraph 2, and article II, paragraph 2, of the draft convention referred specifically to measures giving preference to certain racial groups, and the definition of racial discrimination in article I, paragraph 1, did not limit that phenomenon to measures against individuals.

Mr. CALVOCORESSI assured Mr. Ivanov that paragraph 2 of Mr. Capotorti's and his own draft for article VIII (E/CN.4/Sub.2/L.340) was not intended to limit the rights to political autonomy held by racial, ethnic or national groups, and he assured Mr. Cuevas Cancino that it was not intended to affect the rights of such groups as the Turkish minority in Cyprus. The paragraph simply stated that nothing in the draft convention should be interpreted as granting such rights. He assured Mr. Matsch that the proposal was not intended to deal with political questions, which were outside the competence of the Sub-Commission. On the other hand, he had been impressed by the arguments of Mr. Mudawi and the Chairman against the inclusion of paragraph 1, and he and Mr. Capotorti would withdraw that paragraph.

He further suggested that the insertion of the words "by virtue of this instrument alone" following the word "implying" in paragraph 2 might make the meaning clearer.

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Mr. MATSCH did not think that that wording removed the ambiguity in the second part of paragraph 2. If the grant of political rights to a racial, ethnic or national group was not discriminatory, there was no need for that part of the paragraph; and if it was discriminatory, that passage would open the door to various exceptions to the prohibition of racial discriminations.

Mr. CAPOTORTI recalled that, in the drafting of other articles of the convention, the Sub-Commission had omitted explanatory phrases indicating that the rights granted by the convention did not apply to non-nationals and that they were vested in individuals belonging to groups rather than in groups as such, on the understanding that those points would be made clear in the final clauses. If it wanted the draft convention to be acceptable to a large number of States, the Sub-Commission should make it very clear that the text dealt only with the rights of individuals and not with the rights of groups or minorities.

Mr. MUDAWI observed that an alien might be denied rights other than political rights which were granted to nationals. To avoid an explanatory reference to political rights alone, which might be misleading, he suggested that paragraph 2 should be dropped, and that instead the words "nationality" and "national origin" in article I should be defined. The definition should state that the term "nationality" within the context of the draft convention did not refer to nationality as the term was used in international law, but rather to separate or autonomous groups within a country.

Mr. SAARIO shared the doubts which had been expressed concerning the need for paragraph 2. There were some areas other than political rights, e.g., the right to social security and the right to work, in which a distinction was made between nationals and aliens; accordingly, it might be unwise to single out political rights in the interpretative clause. Moreover, the rights of aliens were well established in customary international law. It therefore appeared unnecessary to raise the difficult question of their political rights. As he understood it, "political rights" were those defined in article 21 of the Universal Declaration of Human Rights. They were all individual rights, and could not be exercised by a group. Therefore, the second part of paragraph 2 was also unnecessary.

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Mr. IVANOV said that the Sub-Commission must defend the rights of racial, ethnic and national groups. There was no difference between racial discrimination practised against an individual and such discrimination practised against a group or minority. In South Africa, discrimination in the form of apartheid applied not only to individuals but also to entire racial, ethnic and national groups. He interpreted the draft convention as promoting the elimination of discrimination against such groups. Moreover, the Declaration on the granting of independence to colonial countries and peoples, which was mentioned in the preamble of the draft convention, dealt with peoples rather than with individuals. The draft convention, therefore, should not be described as limited solely to rights of individuals.

Mr. BOUQUIN felt that the substantive question whether the draft convention applied to individuals or to groups would have to be settled. In his view, the draft convention, which must remain within the framework of the Universal Declaration of Human Rights, was intended to grant equal rights to all the members of a racial or ethnic group, not to the group as such. On the matter of form, he thought that the wording of paragraph 2 might be improved.

The meeting rose at 6.15 p.m.