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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 FOURTEENTH MEETING

Held at Headquarters, New York,
on Friday, 17 January 1964, at 3.15 p.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 L.317, L.318, L.319, L.320) (continued)

PRESENT:

<u>Chairman:</u>	Mr. SANTA CRUZ	(Chile)
<u>Rapporteur:</u>	Mr. CAPOTORTI	(Italy)
<u>Members:</u>	Mr. AWAD	(United Arab Republic)
	Mr. BOUQUIN	(France)
	Mr. CALVOCORESSI	(United Kingdom of Great Britain and Northern Ireland)
	Mr. CUEVAS CANCINO	(Mexico)
	Mr. FERGUSON	(United States of America)
	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
Mr. LEMA	Congo (Leopoldville)
Mr. SAJJAD	India
Mr. BARROMI	Israel
Mr. SCHAAPVELD	Netherlands
Mr. QUIAMBAO	Philippines
Mrs. NASON	United States of America
Mr. MELOVSKI	Yugoslavia

Representative of a non-governmental organization:

<u>Category B:</u>	Mrs. CASS	World Federation of Catholic Young Women and Girls
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<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; 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, L.317, L.318, L.319, L.320) (continued)

Mr. CUEVAS CANCINO proposed that Mr. Abram's amendment to the sixth paragraph of the preamble (E/CN.4/Sub.2/L.317) should be put to the vote again. Although the rules of procedure of the Sub-Commission did not contain any provision for the reconsideration of a proposal already voted on, he felt, like the Chairman, that the Sub-Commission could base itself on rule 124 of the rules of procedure of the General Assembly in order to reconsider Mr. Abram's proposal. Personally, he considered that it would be preferable not to amend the paragraph.

Mr. IVANOV was also in favour of the original text. Not having been in possession of the Russian version of Mr. Abram's amendment until after the vote, he did not consider that he had been able to act with full knowledge of the facts.

Mr. FERGUSON thought that he was expressing the views of Mr. Abram, whom he was replacing for the time being, as well as his own views in saying that he did not object to the reconsideration of Mr. Abram's amendment.

The CHAIRMAN said he took it that the Sub-Commission was willing to reconsider Mr. Abram's amendment without a prior vote on the question of reconsideration. He recalled that Mr. Abram's amendment consisted in replacing the beginning of the sixth preambular paragraph (E/CN.4/Sub.2/L.317), which read "Convinced that any doctrine based on racial differentiation or superiority is scientifically false ...", by the words "Convinced that any doctrine of superiority based on racial differentiation is scientifically false, ...".

He did not think it necessary to recapitulate in detail the discussions which had already taken place on the question. He recalled that the wording of the original text was based directly on the conclusions of a UNESCO group of experts, indicating that, while biological differences between the various races existed, they were not great enough to affect the moral life and relationships between human beings, or the domain of social and political organization. It followed from these conclusions that all doctrines based on racial differentiation,

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(The Chairman)

whether a doctrine proclaiming the superiority of one race over another, such as nazism, or a doctrine based solely on the notion of difference, such as apartheid, were equally pernicious. He recalled in that connexion that the Special Committee on the Policies of Apartheid of the Government of the Republic of South Africa had censured the doctrine of apartheid as presenting a danger to peace and being contrary to the dignity of the human person.

It was in the light of those various considerations that the original text of the paragraph under consideration condemned all doctrines based on racial differentiation and not only doctrines based on the idea of the superiority of one race over another.

Mr. FERGUSON thought that the wording proposed by Mr. Abram, which laid stress on doctrines of superiority based on racial differentiation, had the virtue of dealing specifically with the aspect of the question on which the Sub-Commission should concentrate.

Mr. BOUQUIN drew the Sub-Commission's attention to a document dated 9 January 1964 (E/CN.4/Sub.2/240) prepared for the Commission on Human Rights in which UNESCO described its recent activities in the field of combating discrimination in education and in race relations. That document reported that the secretariat of UNESCO was now busy preparing for an interdisciplinary conference on the race concept, which would review the statement drawn up under UNESCO auspices by a group of specialists in 1951 and would try to reformulate it in the light of the scientific progress made since then in the different fields which had a bearing on that concept. The question was thus not as simple as some members of the Sub-Commission seemed to think.

The CHAIRMAN put to the vote the amendment proposed by Mr. Abram.

The amendment proposed by Mr. Abram was rejected by 5 votes to 3, with 5 abstentions.

The CHAIRMAN invited the Sub-Commission to vote on the preamble as a whole.

Mr. INGLES said that the combination of the fourth and sixth paragraphs of the preamble had resulted in a text which did not seem to him entirely satisfactory from the point of view of the logical progression of ideas, since one paragraph was introduced by the word "Considering" and the other by the word

(Mr. Ingles)

"Convinced". He thought that the transfer of the fifth paragraph to the end of the preamble had sufficiently solved the problem of sequence between the fourth and sixth paragraphs.

Mr. KRISHNASWAMI stated that he would have no objection to the paragraphs remaining separate, provided that they were placed consecutively.

Mr. IVANOV said that, on account of certain inaccuracies in the Russian version of the text under discussion, he would be obliged to vote on the English version.

The CHAIRMAN invited the members to vote on the preamble, noting that it was agreed that the fourth paragraph would be divided into two distinct paragraphs.

The draft preamble submitted by the Working Group (E/CN.4/Sub.2/L.317), as amended by the Sub-Commission, was adopted unanimously.

Mrs. CASS (World Federation of Catholic Young Women and Girls) said that her organization, which numbered 10 million young women and girls, took the greatest interest in the Sub-Commission's work. It was because young people had already benefited by the efforts made in recent decades to eliminate racial discrimination that they were to be found in the forefront of the movements for the elimination of that particular form of discrimination wherever it existed. Without wishing to belittle the scope of the legal instruments applied by Governments to combat the various forms of discrimination, she maintained that the best antidote to discrimination was education, since the spirit of discrimination was not inborn in children. It was for that reason that for years the Federation had been arranging study cycles and seminars, world congresses and exchange programmes in order to train leaders aware of the inherent dignity of all men. In that connexion she stated that the world congress to be held in April would deal with solidarity, including solidarity among nations and men of different races, its value, its repercussions and the obstacles to be overcome. Furthermore, education taught individuals to know their rights and duties towards the society in which they had the privilege of living and thus provided a solution for the most acute problem encountered by democratic societies - that of striking a balance between the rights of the individual and those of society so as to avoid tyranny on the one hand and anarchy on the other, and promoting general welfare without infringing individual rights. Each right was accompanied by an obligation and although for too many centuries the

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(Mrs. Cass, World Federation of
Catholic Young Women and Girls)

obligations of individuals had prevailed over their rights, the obligations entailed by those rights should not now be forgotten.

That was the type of education which would give a meaning to the draft convention on the elimination of all forms of racial discrimination and, by putting principles into practice, would one day render the convention unnecessary. A few thousand years ago no one would have dreamt of nation States, and only a century ago no one could have foreseen the establishment of international organizations. There was hope for the future of a unified human community in which there would be no racial or any other kind of discrimination but only legitimate differences.

Article VIII, in document E/CN.4/Sub.2/L.308, was thus of the greatest importance. The non-governmental organizations, particularly the youth organizations, would support any step taken by Governments "through educational and other means ... to promote ... the elimination of racial discrimination in any form and to promote understanding, tolerance, and friendship among all nations and all peoples". Only the support of the non-governmental organizations in setting on foot appropriate educational programmes, however, would enable Governments to eliminate discrimination no longer only de jure but de facto and to create the united human community towards which all efforts and all aspirations were directed.

Mr. CAPOTORTI said that he had been absent when the vote had been taken. He associated himself with his colleagues who had voted in favour of the text of the preamble, which had been unanimously adopted.

The CHAIRMAN invited members to turn their attention to document E/CN.4/Sub.2/L.319, containing the draft for article I proposed by the Working Group. He noted that the text had been drafted on the basis of the one proposed by Mr. Calvocoressi and Mr. Capotorti, and in the light of the debate which had taken place in the Sub-Commission.

Mr. MUDAWI supported the text. He recalled that he had requested the addition to paragraph 1 of a sentence to the effect that in the convention the term "persons" should cover not only groups of persons but corporate bodies or juridical persons.

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Mr. SAARIO feared that that definition exceeded the scope of the subject. In his view the term "group of persons" would cover all cases.

Mr. CALVOCORESSI observed that the convention when completed might not include a section applying to juridical persons. He therefore felt that it would be better to wait before deciding whether the definition proposed by Mr. Mudawi should be included in the text.

Mr. CAPOTORTI, replying to Mr. Saario, pointed out that a juridical person might be guilty of discrimination, in which case the convention would be applicable to that person. On the other hand, a juridical person might be the object of discrimination because, for example, it consisted of people of certain races. He therefore considered that the point should be clarified and supported Mr. Mudawi's proposal. The definition which Mr. Mudawi had proposed might become paragraph 3 of article I.

Mr. CUEVAS CANCINO supported that proposal.

Mr. INGLES said that he would have no objection to the inclusion of a definition of persons in article I. He emphasized, however, that his agreement was only provisional, and would depend on the text that would be finally adopted.

Referring to the objections raised by Mr. Saario to the inclusion of a definition of persons, he agreed with Mr. Capotorti that juridical persons, even if they were not subject to discriminatory measures because of their status, might nevertheless be subject to them on account of the race of the individual members.

He preferred the text of article I, paragraph 1, as it appeared in document E/CN.4/Sub.2/L.318 because it defined racial discrimination as having the purpose or effect of nullifying or impairing the equality of treatment or opportunity of individuals; document E/CN.4/Sub.2/L.319, by relinquishing that idea, eliminated the connexion between that which the Sub-Commission was trying to prevent and the content of racial discrimination. He would vote in favour of article I, paragraph 1 of the latter document if that notion of equality was inserted.

With regard to article I, paragraph 2, the Working Group's text was an improvement on paragraph 3 of the text proposed by Mr. Calvocoressi and Mr. Capotorti, which merely reiterated the text of the Declaration. It would be well, however, to stress the special nature of measures giving preference to

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(Mr. Ingles)

certain racial groups, either by making it clear that temporary measures were envisaged or by adding at the end of the paragraph the idea that they should be terminated when the need no longer arose.

The CHAIRMAN thought that if juridical persons were to be the subject of the convention the rights of physical persons might be indirectly impaired; and it was those rights which the provisions of the Universal Declaration of Human Rights, the Charter and the Declaration on the Elimination of All Forms of Racial Discrimination sought to protect. In any event he agreed with Mr. Ingles that the examination of the question should be postponed.

Mr. KRISHNASWAMI did not agree with Mr. Ingles's suggestions on the subject of paragraph 2. The temporary nature of the measures giving preference to certain racial groups was clear from the last part of the sentence; obviously those measures would end automatically as soon as the groups in question had reached the same stage of development as the rest of the society.

With reference to the other point raised by Mr. Ingles, he suggested that the word "equal" should be inserted before the word "exercise".

Mr. FERGUSON thought that the discussion of the definition of persons should be postponed.

He suggested that in paragraph 2 of the English text the word "should" should be replaced by "shall", which was stronger.

Mr. MUDAWI considered that the question of the definition of persons was fundamental and could be decided without further delay. A juridical person could not only be guilty of racial discrimination, as Mr. Capotorti had rightly pointed out, but could also suffer from it. If, for example, a State introduced a law prohibiting a company most of whose members belonged to the same racial group from buying land in a certain area, there would be nothing in the convention to prevent that State from exercising such discrimination if the word "person" was not understood to include juridical persons.

Mr. KETRZYNSKI, supported by Mr. IVANOV, proposed that the words "on an equal footing" should be inserted between the words "exercise" and the words "of human rights".

Mr. CAPOTORTI said he gathered that all the experts were agreed on mentioning the concept of equality of rights in paragraph 1, as Mr. Ingles had requested. Secondly, he observed that the word "fundamental" should be inserted before the word "freedoms" in order to conform to the accepted wording used in all documents. Thirdly, he agreed with Mr. Ferguson that "should" should be replaced by "shall" in paragraph 2. Finally, he suggested that if Mr. Ingles insisted upon it the word "permanent" should be inserted before "maintenance" although the text as it stood seemed to him quite explicit.

The CHAIRMAN pointed out for the benefit of Mr. Ingles that the word "discrimination" implied the idea of inequality of rights. The suggested elucidation of paragraph 1 seemed to him superfluous, since condemnation of discrimination necessarily included inequality.

Mr. INGLES replied that paragraph 1 of the article under consideration contained no condemnation of discrimination but simply a factual statement.

Mr. MUDAWI felt that it would be inadvisable to insert the word "permanent" before the word "maintenance", for if so amended the text might appear to sanction implicitly the principle of inequality of rights for different racial groups.

Mr. INGLES withdrew his amendment to paragraph 2.

Mr. CAPOTORTI suggested that, in accordance with the wording of Article 55 c of the Charter, the word "fundamental" should be inserted before the word "freedoms" and "for all" added after it.

Mr. INGLES agreed to the amendments proposed by Mr. Ketrzynski and Mr. Capotorti.

Mr. KETRZYNSKI did not consider it satisfactory.

Mr. SAARIO agreed with Mr. Ketrzynski. To define racial discrimination as "any distinction, exclusion, restriction or preference based on race, colour, national or ethnic origin ... which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise of human rights and fundamental freedoms for all" might suggest that any distinction of that kind which might impair the exercise of those rights and fundamental freedoms for certain people only did not constitute "racial discrimination" within the meaning of article I.

Mr. BOUQUIN wondered whether the best solution would not be to insert after the word "impair" the words "in the case of any individual".

Mr. KETRZYNSKI said that he would prefer the wording he had previously proposed.

Mr. BOUQUIN, supported by Mr. SAARIO, considered that that wording had the slight defect of not referring to the persons affected by the article. Nevertheless, he was prepared to accept Mr. Ketrzynski's suggestion.

Mr. LAWSON (Secretary of the Sub-Commission) read out the text of article I as amended during the meeting. The words "on an equal footing" would appear after the word "exercise"; the word "fundamental" would be inserted before the word "freedoms"; in paragraph 2, the word "should" would be replaced by "shall".

The CHAIRMAN put the text of article I, as amended, to the vote.

The text of article I, as amended, was adopted unanimously.

The CHAIRMAN invited the members of the Sub-Commission to examine the text of article II proposed by Mr. Abram (E/CN.4/Sub.2/L.308).

Mr. CAPOTORI said that it was essential to set forth clearly in article II the fundamental and general obligations of the State - as had been done to some extent by Mr. Calvocoressi in his proposed text of article II (E/CN.4/Sub.2/L.309) and by Mr. Ivanov and Mr. Ketrzynski in their proposed texts of paragraph 2 of article I and of article II (E/CN.4/Sub.2/L.314) - in such a way as to establish in the succeeding articles the various fields in which the State would be called upon to intervene, i.e. the political, social, cultural and all other fields of public life. There was a lack of progression in article II as submitted by Mr. Abram, which followed the lines of the United Nations Declaration on the Elimination of All Forms of Racial Discrimination (A/RES/1904 (XVIII)). He therefore proposed in the first place a provision that the State should undertake to "refrain" strictly from any discriminatory act or practice and to ensure that such a rule would be respected by its legislative, administrative and judicial bodies and by local authorities and public services; after that negative rule there would be a further provision

(Mr. Capotorti)

that the State should take effective measures to rescind any discriminatory laws and regulations, as indicated in paragraph 1 of article III of the text submitted by Mr. Abram (E/CN.4/Sub.2/L.308) and in the Declaration (A/RES/1904 (XVIII)). Finally, he suggested that it should be made clear that the State would adopt the requisite measures to prohibit any acts of racial discrimination by individuals.

Mr. IVANOV agreed with Mr. Capotorti that the obligations of the State must be clearly defined in article II if the convention was to be an effective instrument. It should therefore be laid down in principle, with reference to the preamble to the Declaration (A/RES/1904 (XVIII)), that any manifestation of racial discrimination was dangerous and should be prohibited, that consequently the State "shall undertake to admit within its territory no acts or manifestations of racial discrimination of any kind ..." (E/CN.4/Sub.2/L.314, article II, paragraph 1) and to implement legislative or any other necessary measures with a view to speedy elimination of racial discrimination. In order to do so it would be sufficient to incorporate in paragraph 1 of article II, which he and Mr. Ketrzynski had submitted (E/CN.4/Sub.2/L.314), certain phrases taken from documents E/CN.4/Sub.2/L.308 and L.309, submitted by Mr. Abram and Mr. Calvocoressi respectively. He considered that all the members of the Sub-Commission agreed with the substance of his views and that it was now only a question of agreeing on the form.

Mr. KRISHNASWAMI considered that, subject to the amendment which he had submitted (E/CN.4/Sub.2/L.310, paragraph 5), substituting the words "no State shall discriminate or support any discrimination whatsoever" for the words "no State shall make any discrimination whatsoever", the whole text of article II submitted by Mr. Abram (E/CN.4/Sub.2/L.308) deserved to be retained, and that paragraph 1 of the draft for article II submitted by Mr. Ivanov and Mr. Ketrzynski (E/CN.4/Sub.2/L.314) should be inserted between paragraphs 2 and 3.

In order to allay the fears of those members who had protested against the adoption of the draft for paragraph 1 of article II submitted by Mr. Ivanov and Mr. Ketrzynski (E/CN.4/Sub.2/L.314) on the grounds that freedom of thought,

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(Mr. Krishnaswami)

opinion and expression might thereby be threatened, he pointed out that the scope of the terms which had been criticized - "manifestations" and "acts" - was limited by the definition given in article I (E/CN.4/Sub.2/L.319), which stated that the acts must be based on "race, colour, national or ethnic origin" which had "the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise on an equal footing of human rights and fundamental freedoms in political, economic, social, cultural or any other field of public life set forth inter alia in the Universal Declaration of Human Rights".

In reply to another objection, he pointed out that paragraph 1 of article II in document E/CN.4/Sub.2/L.314 imposed no obligation which was not already laid down in the Charter, and that a meaning which the verb "to undertake" ("s'engager" in the French version) did not possess should not be attributed to it. The wording of the remainder of the text, which included the phrase "if appropriate" ... "implement necessary measures", clearly indicated that the obligation was not absolute.

Thus constituted, article II of the draft convention would form a logical and coherent whole.

Mr. KETRZYNSKI requested that, if Mr. Krishnaswami's proposal regarding article II was adopted, paragraph 1 of the draft for article III submitted by Mr. Abram (E/CN.4/Sub.2/L.308) "Each State Party shall take effective measures ..." should be added after paragraph 1 of article II as amended. The reason for his request was that, contrary to what Mr. Capotorti thought, paragraph 1 of article II of the draft submitted by Mr. Ivanov and himself (E/CN.4/Sub.2/L.314) was too weak when dissociated from paragraph 2, which, indeed, began with the word: "Accordingly".

Mr. FERGUSON, although not objecting in principle to the proposals of Mr. Krishnaswami and Mr. Ketrzynski, reserved his position in the absence of Mr. Abram.

Mr. CUEVAS CANCINO doubted whether Mr. Ketrzynski's proposal that paragraph 1 of article III of the text proposed by Mr. Abram should be inserted

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in article II of the draft convention was appropriate in view of the adoption of paragraph 2 of article I (E/CN.4/Sub.2/L.319) as amended.

The CHAIRMAN proposed that a working group should be set up to prepare a basic text for article II in order to expedite the work of the Sub-Commission.

The meeting rose at 5.45 p.m.