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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 SIXTEENTH MEETING

Held at Headquarters, New York,
on Monday, 20 January 1964, at 3.10 p.m.

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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.311, L.314, L.319-L.323, L.324/Rev.1)(continued)

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PRESENT:

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| <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) |
| | <u>Mr. CALVOCORESSI</u> | (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:

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| Miss KRACHT | Chile |
| Mr. SINGH | India |
| Mr. BARROMI | Israel |
| Mr. SCHAAPVELD | Netherlands |
| Mr. QUIAMBAO | Philippines |
| Mrs. NASON | United States of America |
| Mr. MELOVSKI | Yugoslavia |

Representatives of specialized agencies:

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

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| Mrs. MEAGHER | World Health Organization |
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| <u>Secretariat:</u> | Mr. LAWSON | Secretary of the Sub-Commission |
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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.311, L.314, L.319-L.323, L.324/Rev.1 (continued)).

The CHAIRMAN announced that Mr. Calvocoressi and Mr. Capotorti had agreed to make several amendments to their text (E/CN.4/Sub.2/L.324), namely, to add "and without delay" after "appropriate means" in the first sentence of paragraph 1 and to insert "and to this end" at the end of that sentence; to make paragraphs 2, 3 and 4 sub-paragraphs (a), (b) and (c) of paragraph 1; to delete from the new sub-paragraph (a) the words "rigorously", "legislative, executive, administrative and judicial" and "private" and to replace "individual" by "person"; to insert in sub-paragraph (b) the words "take effective measures to revise governmental and other public policies, and to" after "Each Contracting State shall"; and finally, in sub-paragraph (c), to reverse the order of the sentence so that it would read "Each Contracting State shall prohibit racial discrimination by any person, group or organization, and undertakes to adopt all necessary measures, including legislation, if appropriate".

The insertion of a clause regarding the adoption of special measures by the State remained to be considered.

Mr. KFI SHNASWAMI, after asking again that "Contracting State" should be replaced by "State", pointed out that, in the interest of legal precision, the words "or practice" could be deleted from sub-paragraph (a) as they were superfluous. In addition, he wished to propose the deletion of the second sentence of sub-paragraph (a), which was superfluous by reason of the existence of sub-paragraph (c), and the replacement of sub-paragraph (b) by article III, paragraph 1 of Mr. Abram's text (E/CN.4/Sub.2/L.308), which had the merit of being more precise.

Where special measures were concerned, he considered that it was not enough to define them in article I of the draft convention: a definite provision should also be included calling on States to eliminate social injustices and redress the errors of the past by aiding under-privileged groups. The insertion of article II, paragraph 3 of Mr. Abram's text (E/CN.4/Sub.2/L.308 as sub-paragraph (b) of the revised version of article II put forward by

(Mr. Krishnaswami)

Mr. Calvocoressi and Mr. Capotorti (E/CN.4/Sub.2/L.324) was thus highly desirable, particularly as the obligation imposed on States under the terms of that paragraph was not an absolute one, but was linked to the existence of "appropriate circumstances".

Mr. MUDAWI strongly supported Mr. Krishnaswami's proposals. He too was sure that the addition of article II, paragraph 3 of Mr. Abram's draft (E/CN.4/Sub.2/L.308) would strengthen the article II put forward by Mr. Calvocoressi and Mr. Capotorti and ensure the effectiveness of the convention. Such a clause would have the effect of reminding the colonialists that they should help the colonial peoples not only in order to reduce the gap separating them, but also in order to prevent such imbalance from being perpetuated in the world.

Mr. BOUQUIN suggested that the words "Each Contracting State" in the first sentence of article II should be replaced by the words "States Parties to the present Convention".

Mr. CAPOTORTI accepted that drafting change on Mr. Calvocoressi's and his own behalf.

Mr. KETRZYNSKI thought that the wording used in the introductory sentence was too weak, and suggested that the words "undertake to pursue by all appropriate means and without delay" should be replaced by the words "undertake to condemn without delay and pursue by all appropriate means...".

Mr. CAPOTORTI proposed as an alternative: "condemn racial discrimination and undertake to pursue by all appropriate means and without delay".

Mr. MUDAWI suggested that in the various sub-paragraphs the words "Each Contracting State" should be replaced by the words "Each State Party".

Mr. FERGUSON remarked that, in order to avoid the difficulties raised by the use of the expressions "local authorities" and "public institutions" in sub-paragraph (a), it would be desirable to replace the first sentence of that sub-paragraph by the following: "Each State Party, including all its organs of whatever nature, shall abstain from any act of racial discrimination". Such an amendment would have the advantage of making the clause applicable to all public and private bodies, which were sometimes so difficult to define, and to such

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public authorities as the Tennessee Valley Authority, which belonged to the State or were run by it. Because it deleted the words "within its territory", such an amendment would also have the advantage of implying that the responsibility of the State extended to all areas in which it exercised authority. If the expressions "local authorities" and "public institutions" were to be retained, it would be necessary to define them in article I of the draft convention, a procedure which would be sure to lead to various difficulties, and as several members of the Sub-Commission had already pointed out, if the convention was to be effective, it must be drafted in clear and precise language.

Finally, he associated himself with the point of view expressed by Mr. Krishnaswami, and proposed the inclusion of Mr. Abram's article II, paragraph 3 (E/CN.4/Sub.2/L.308), provided that the words "may take" were replaced by the words "shall take".

The CHAIRMAN reminded members that they should not lose sight of the fact that the convention should be ratified by the greatest possible number of countries, and that generally applicable phrasing must therefore be used.

Mr. IVANOV stated, in reply to Mr. CAPOTORTI, who had pointed out that sub-paragraph (c) already contained one prohibition, that the sub-paragraph in question was too weak, and unless the convention was to remain a dead letter and be exploited by racists and colonialists, it was necessary to "prohibit" discrimination in the first sentence of the text, which should read: "Each Contracting State undertakes to prohibit racial discrimination and to carry out by all possible measures a policy of eliminating it in all its forms, since racial discrimination is an infringement of the rights and an offence to the dignity of the human person and a denial of the rules of international law and of the principles and objectives set forth in the United Nations documents mentioned in the preamble of the present Convention."

Likewise, in order not to leave any loophole, it should be clearly stated in sub-paragraph (a) that each State Party "undertakes in no circumstances to permit" any act or practice of racial discrimination, instead of using the words "shall abstain", as at present proposed.

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Mr. BOUQUIN suggested that, in the interests of clarity and coherence, sub-paragraph (a) should be amended to read as follows: "Each State Party shall abstain from any act or practice of racial discrimination and undertakes that all public authorities and public institutions, national and local, shall act in conformity with this obligation."

In addition, in order to take account of the objections raised by Mr. Ferguson, he suggested that in sub-paragraph (c) the word "organization" should be replaced by the word "institution".

Mr. FERGUSON said that, while he preferred his own amendment, he was willing to accept Mr. Bouquin's.

Mr. CALVOCORESSI accepted Mr. Bouquin's amendment, and remarked that it should give satisfaction to Mr. Ferguson, as it did not contain the words "within its territory".

Mr. CUEVAS CANCINO said that he was satisfied with the text in document E/CN.4/Sub.2/L.324, the clauses of which seemed to follow each other in a perfectly logical manner, to draw additional strength from each other, and to cover practically all possibilities. Paragraph 2, in particular, which dealt with public institutions of all kinds, seemed to him to be particularly satisfactory in the latter respect. He was aware, of course, that loopholes could always be found, but he considered that the Sub-Commission should work on the principle that the States signing the convention would be guided by sincere convictions and firmly resolved to wipe out discrimination within their territory.

Mr. KRISHNASWAMI proposed that sub-paragraph (b) should be replaced by article III, paragraph 1 in document E/CN.4/Sub.2/L.308.

Mr. CAPOTORTI asked what was the distinction between the terms "rescind" and "nullify".

Mr. FERGUSON explained that, in common law countries, only bodies which had the power to make laws were entitled to rescind them. Parliaments, for example, were so entitled. Bodies such as courts, however, which did not have the power to make laws, were entitled to nullify them.

Mr. IVANOV proposed that sub-paragraph (c) of the text under examination should be worded as follows: "Each contracting State undertakes to prohibit racial discrimination and to carry out by all possible measures a policy of eliminating it in all its forms, since racial discrimination is an infringement of the rights and an offence to the dignity of the human person and a denial of the rules of international law and of the principles and objectives set forth in the United Nations documents mentioned in the preamble of the present Convention."

Mr. KETRZYNSKI, supported by Mr. IVANOV, said that members should have before them all the amendments which had just been submitted before proceeding to the vote.

Mr. BARROMI (Israel), speaking at the invitation of the Chairman, said that he had followed the work of the Sub-Commission with great attention. In his opinion, the original drafts submitted by Mr. Abram (E/CN.4/Sub.2/L.308), by Mr. Calvocoressi (E/CN.4/Sub.2/L.309) and by Mr. Ivanov and Mr. Ketrzynski (E/CN.4/Sub.2/L.314), and also the various amendments and suggestions to which they had given rise, deserved to be included in the final draft of the convention. He welcomed the unanimous agreement which had emerged on many points and which had enabled the Sub-Commission to adopt the preamble and article I.

He was entirely satisfied with the form in which the preamble had been cast and welcomed particularly the definition of racial discrimination in article I, paragraph 1. He referred in particular to the list of grounds for discrimination, namely, race, colour and national or ethnic origin and in the case of States composed of different nationalities discrimination based on such difference, and to the expression "nullifying or impairing the recognition, enjoyment or exercise of human rights and freedoms in political, economic, social, cultural or any other field of public life".

There was every reason to believe that so complete a list constituted an adequate guarantee against all discriminatory practices. Nevertheless, it must be remembered that racial discrimination was an extremely complex social phenomenon. For instance, in some parts of the African continent it assumed a particularly odious form which had been universally condemned. In that connexion he wished to recall the forthright stand which his Government had always taken against all forms of racial discrimination and colonial oppression, and the active part played by the Israel delegation to the United Nations General Assembly in the joint effort to secure racial equality and national self-determination.

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(Mr. Barromi, Israel)

The activities of neo-nazi groups which spread racial hatred and incited racial violence constituted another form of racial discrimination. He noted that the crimes of nazism had been mentioned in the preamble, and he sincerely hoped that means would be found in other articles of the convention to prevent and to punish the acts of neo-nazi organizations which in many countries enjoyed freedom of action which enable them to pursue their wicked designs and poison the minds of young people.

It must not be forgotten either that racial discrimination was often manifested less directly. The fact that article I defined racial discrimination as "any distinction, exclusion, restriction or preference" justified the hope that those more subtle forms of discrimination would be effectively dealt with.

On the other hand, he felt that provision should be made for additional guarantees of the collective rights of nationalities and ethnic groups and communities. For that purpose an article along the following lines might be included: "The spiritual heritage and the cultural values of a group of persons of a particular ethnic origin are entitled to legal protection as such. No discrimination shall be permitted against them and other spiritual heritages and cultural values on the sole ground that they are those of persons of a particular race, colour or ethnic origin."

He wished to make that proposal because racial discrimination against ethnic groups, far from being a hypothetical danger, was a sad reality, as shown by the case already referred to during the debate in the Sub-Commission, of a certain Jewish community which had been deprived of its fundamental cultural rights. As was well known, that community's schools and cultural institutions had been closed, and the teaching of the national languages and the study of the historical, philosophical and moral writings of its ancestors had been forbidden. The rich cultural life of that Jewish community had been stifled. It might be said that many of those cultural manifestations were in the nature of religious intolerance. But it was a well-known fact that the ideas of race, national or ethnic origin and religion were intimately associated, as stated in the preamble just adopted by the Sub-Commission. That was particularly true of the Jewish people, whose members, having a common racial and ethnic origin, had developed under the powerful influence of a religion which had played an essential part in the creation of a very pronounced national identity.

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For that very reason, it was not always easy to isolate the motives for discrimination practised against a Jewish community; for instance, criticisms directed against the Jewish religion might sometimes be accompanied by contemptuous and sarcastic remarks about Jews, and the names of Jews accused of economic crimes might be published on such occasions in the Press.

It was deplorable that the Government of the country in question, which exercised complete control over the Press and had at its disposal legal means to deal with discrimination, had thus far ignored the situation and had taken no steps to remedy it effectively. It was such a state of affairs which had led the great philosopher Bertrand Russell to declare on 6 April 1963 that he was greatly concerned by the knowledge that there were newspapers in the Soviet Union which expressed that country's hostility towards the Jewish people as such.

The cultural and social rights which an ethnic group should enjoy had been recognized by the Sub-Commission as coming within the purview of the convention; that meant that an ancient and sacred tradition was entitled to a place of honour, that free access to spiritual sources should be guaranteed so that the heritage could be passed on to the rising generation, and that the group in question should be fully protected in its legitimate pride. He hoped that the Sub-Commission would take his remarks into consideration.

Mr. IVANOV deplored that the observer from Israel, by making clear and unambiguous allusions to the Soviet Union, forced him to reply, and by so doing to interrupt the Sub-Commission's work. It was regrettable that Mr. Barromi had indulged in such remarks before a body whose members had always shown much objectivity, irrespective of their differences of opinion.

He recalled that the head of the USSR Government, replying to Mr. Bertrand Russell's letter which the Israel observer had mentioned, had stated that the campaign which had been started over the alleged anti-Semitism of the Soviet Union was outright slander against the people of that country. Furthermore, the bourgeois Press had been forced to admit that the individuals sentenced for economic crimes belonged to a great many different nationalities. They were individuals who exploited the work of others, contrary to Soviet law under which speculation was a crime against the workers. The penalties imposed

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upon them were for their crimes and not their ethnic origin. As the reply by the head of the Government had stressed, Soviet law, which was the expression of the will of the people, was based on different principles from the law of the Western world. If the West failed to understand it that was no reason to criticize it. It was galling that Western bourgeois propaganda distorted the true nature of the Soviet system, and by presenting a deliberate travesty of the facts ascribed to the USSR Government motives alien to it, particularly where the Jews were concerned.

In his view that was a most serious matter. No one was entitled to charge the USSR Government with anti-Semitism when the USSR Constitution stipulated that any discrimination based on racial or ethnic origin was punishable by law. Furthermore, the Soviet Union, which was composed of many peoples of different origin, was less open to an accusation of that kind than any other country.

The Israel observer could serve his cause better by refraining from interrupting the Sub-Commission's work.

The CHAIRMAN expressed the hope that such a situation would not arise again. He pointed out that the Sub-Commission was composed of a group of experts who served as individuals, in complete independence, and did not represent their own countries.

Mr. CUEVAS CANCELINO said that if the obligation to adopt special measures with regard to certain racial groups was imposed on States Parties, that might create serious difficulties for some countries and reduce the convention's chances of ratification. Nevertheless, he appreciated the position of those who wished to include paragraph 3 of article II of Mr. Abram's text (E/CN.4/Sub.2/L.308) in article II of the draft convention in order to complete the wording of paragraph 2 of article I. If that suggestion was adopted, however, it would be logical for the new paragraph to begin with the words "Each State Party shall take...measures..." and for the phrase "in appropriate circumstances" to be deleted; only in that way would the paragraph state a real obligation. For the same reason it would be better to omit the second sentence in Mr. Abram's text.

Mr. MUDAWI thought that that sentence should be retained. Its purpose was to prevent States from oppressing certain racial groups under the pretext of protecting them and, consequently, from maintaining unequal rights for different racial groups. That was the attitude adopted by the Government of the Republic of South Africa.

With regard to Mr. Cuevas Cancino's suggestion that the words "in appropriate circumstances" should be deleted, he would point out that he had accepted that phrase as a compromise. Like Mr. Cuevas Cancino, however, he would prefer it not to appear in the paragraph.

Mr. FERGUSON said that he too was convinced that the second sentence of Mr. Abram's text should be retained, for the reason Mr. Mudawi had given. Furthermore, that provision was designed to prevent a State from taking only half-measures for the development of the groups concerned which would actually be a return to the former discriminatory practices.

On the other hand, a State might consider that a private organization was in a better position to fight against discrimination in a particular field; it should therefore preserve a certain freedom of judgement and action in the matter. That was the object of the phrase "in appropriate circumstances" and he strongly urged that it should be retained.

Mr. BOUQUIN said that he favoured the inclusion of paragraph 3 of article II proposed by Mr. Abram in article II of the draft convention and, like Mr. Fergusson, he felt that the phrase "in appropriate circumstances" should be retained.

He did not, however, agree with Mr. Mudawi's view that the words "may take" should be replaced by the words "shall take", for it seemed to him essential that States should be allowed every latitude to decide whether or not they should adopt special measures to secure the development of certain racial groups. Furthermore, that problem did not arise in the majority of the countries that would ratify the convention.

Mr. MUDAWI felt that the obligation to be placed upon States would not be so strict if the words "in appropriate circumstances" appeared in the paragraph in question; it would have no force whatever if the words "Each State Party may take" were retained.

Mr. CAPOTORTI agreed with Mr. Cuevas Cancino that, if the experts really wished to impose on States Parties the obligation to take special measures in favour of certain racial groups, the words "in appropriate circumstances" were not suitable.

He felt, however, that it was possible to put the question on a different footing by drafting an article the essential aim of which would be to ensure the adequate protection of persons belonging to certain under-developed racial groups. Such protection could be achieved without special concrete measures being taken for that purpose. That being so, he suggested that the order of the wording of paragraph 3 of article II proposed by Mr. Abram should be changed, so that it would read:

"Each State Party shall secure the adequate development and protection of individuals belonging to under-developed racial groups with the object of ensuring the full enjoyment by such individuals of human rights and fundamental freedoms. Special concrete measures to this end may be taken in appropriate circumstances. These measures shall in no circumstances have as a consequence the maintenance of unequal or separate rights for different racial groups."

Mr. KRISHNASWAMI stressed the need to impose on States Parties the strict obligation to take measures, if necessary, to secure the integration of certain racial groups in the nation in order to attain the objective of equal development for all citizens. That aim should be clearly stated; otherwise, as Mr. Mudawi had rightly remarked, a Government could continue to keep certain racial groups separate from the rest of society under the pretext of protecting them. For example, it was known that the educational measures which the South African Government had taken with regard to the Bantu had had the result of separating them more sharply from their fellow-countrymen.

In his opinion, the expression "in appropriate circumstances" allowed Governments sufficient latitude in the field in question. The paragraph was therefore not likely to raise too many difficulties for States Parties.

Mr. INGLES thought that it would be better to define the racial groups referred to in the paragraph which the experts proposed for insertion in

article II. He noted that in his latest suggestion Mr. Capotorti had used the expression "under-developed racial groups"; he found that formula acceptable.

The CHAIRMAN, speaking as an expert, said that he would prefer the text of the paragraph to leave States some freedom of action and not to impose an absolute obligation on them to take special measures in favour of certain groups. His position in the matter was dictated by the situation in the South American continent. Contrary to the situation in many countries, racial groups which were economically and socially backward in comparison with the rest of society constituted the majority in South America. There were two conflicting schools of thought in South America: according to some people, those groups could only be integrated through measures of special protection; according to others, to adopt special measures with regard to those groups only served to maintain and perpetuate their separation from the rest of the population and it was necessary to tackle the problems of under-development itself without making any distinction between groups. That was the policy which was gaining ground in South America at the present time.

Mr. MATSCH asked whether Mr. Mudawi and Mr. Krishnaswami would agree to the paragraph in question starting with the words: "The developing States shall take ...".

Mr. KRISHNASWAMI felt that it was inappropriate to attach to the words "certain racial groups" an epithet which might place a stigma upon them for a long time. That was why at the previous meeting he had opposed the insertion of the word "backward". He pointed out, moreover, that in highly developed countries, such as the United States, there were racial groups of the kind referred to in the proposed paragraph.

He was particularly anxious that paragraph 3 of article II of the text submitted by Mr. Abram should be included without change in article II of the draft convention.

Mr. FERGUSON said that the wording proposed by Mr. Capotorti greatly weakened Mr. Abram's text, the main purpose of which was to put an end to the

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injustices committed in the past against particular groups. There were many other developed countries besides the United States which should take measures in favour of racial groups which were backward in comparison with the rest of the population.

He would shortly submit an amendment which would replace the words "may take" at the beginning of the paragraph by "shall take". That amendment would be in accordance with the views expressed by Mr. Mudawi.

Mr. CUEVAS CANCINO agreed with the opinion expressed by the Chairman. The wording proposed by Mr. Capotorti was the only one that he found acceptable.

The CHAIRMAN called the attention of the experts to the revised wording of draft article II submitted by Mr. Calvocoressi and Mr. Capotorti (E/CN.4/Sub.2/L.324/Rev.1). He suggested that the discussion on article II should be continued at the following meeting; the experts would then have before them, in writing, the various amendments that had been submitted.

Mr. KETRZYNSKI thought that when it had completed its consideration of article II the Sub-Commission should turn to the problem of substance dealt with in article IX of Mr. Abram's text (E/CN.4/Sub.2/L.308/Add.1/Rev.1 and Corr.1) and in the second part of article II of the text appearing in document E/CN.4/Sub.2/L.314.

Mr. CALVOCORESSI supported that suggestion. He pointed out that the texts mentioned by Mr. Ketrzynski contained, though in a somewhat different form, a list of the specific rights the exercise of which States Parties would undertake to secure as part of their general obligations. He thought it would be useful if Mr. Abram, Mr. Ivanov and Mr. Ketrzynski could confer together in order to draw up a joint revised list, so far as agreement might go.

The CHAIRMAN hoped that the authors of the two documents in question would accept Mr. Calvocoressi's suggestion.

The meeting rose at 5.50 p.m.