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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-SECOND MEETING

Held at Headquarters, New York,
on Thursday, 23 January 1964, at 2.55 p.m.

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PRESENT:

Chairman:

Mr. SANTA CRUZ (Chile)

Rapporteur:

Mr. CAPOTORTI (Italy)

Members:

Mr. ABRAM (United States of America)

Mr. AWAD (United Arab Republic)

Mr. BOUQUIN (France)

Mr. CALVOCORESSI (United Kingdom of Great Britain and Northern Ireland)

Mr. CUEVAS CANCINO (Mexico)

Mr. INGLES (Philippines)

Mr. KETRZYNSKI (Poland)

Mr. KRISHNASWAMI (India)

Mr. MATSCH (Austria)

Mr. MUDAWI (Sudan)

Mr. SAARIO (Finland)

Mr. IVANOV (Union of Soviet Socialist Republics)

Mr. TITOV)

Also present:

Mrs. LEFAUCHEUX Commission on the Status of Women

Observers from Member States:

Mr. SAJJAD India

Mr. PARROMI Israel

Mr. SCHAAPVELD Netherlands

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 United Nations Educational, Scientific and Cultural Organization

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

DRAFT DECLARATION AND DRAFT CONVENTION ON THE ELIMINATION OF ALL FORMS OF RELIGIOUS INTOLERANCE (E/CN.4/Sub.2/235 and Add.1; E/CN.4/Sub.2/L.312, L.315, L.316; E/CN.4/Sub.2/NGO/32, 34, 35) (continued)

Mr. TITOV, restating his position for Mr. Abraham's benefit, explained that he had not criticized the draft declaration for authorizing the church to engage in politics; he had merely deplored the absence of special provisions forbidding the church to use its influence for political purposes.

He did not understand why Mr. Calvocoressi opposed his proposal. In his opinion the solution rested in the separation of church and State and school and State and he would reserve the right to return to that topic later.

Mr. BOUQUIN, referring to the draft declaration on the elimination of all forms of religious intolerance submitted by Mr. Calvocoressi (E/CN.4/Sub.2/L.316), said that he was not satisfied with the first two paragraphs. He felt, on the one hand, that the passages in paragraph 1 in which it was stated that "religions or beliefs" were "concerned with man's place in the universe" and that they were "fundamental manifestations of the human spirit" would not be acceptable to the followers of certain religions, and on the other hand that the idea of "tolerance" evoked in paragraph 2 was subjective and outdated. The problem from now on was no longer toleration but acceptance on an equal footing.

Referring to the draft declaration on the elimination of all forms of religious intolerance submitted by Mr. Krishnaswami (E/CN.4/Sub.2/L.315), he drew attention to the fifth preambular paragraph which, in his opinion, was historically inaccurate. While it was true that "disregard of human rights and fundamental freedoms through discrimination because of religion" inflicted grievous suffering on those who were its victims, as Mr. Mudawi also had pointed out, it did not necessarily ultimately destroy those who were responsible for it, although it did them moral and at times material harm.

Turning next to the consideration of the various articles, he supported Mr. Capotorti's remarks concerning article I. He suggested next that the word "their" should be inserted before the words "religion" and "belief" in article II. Article III seemed to him to be a duplication of article II, and he pointed out

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that a distinction must be established in the matter of education between instruction provided in seminaries and other institutions with a view to training those who were to perform practices or rites and instruction provided in public or church schools. On that matter he shared the view expressed previously by Mr. Cuevas Cancino to the effect that the State should be able to control the quality of the teaching in church schools, without laying itself open to charges of discrimination. He pointed out also that the fact that certain countries excluded priests and ministers from access to public office, except for elective office, did not per se constitute discrimination against them.

As regards article IV, he would like to see included in it the provision of article 18 of the Universal Declaration of Human Rights stipulating that everyone also had the right to change his religion or belief.

It would be best to redraft article VI entirely, on the one hand, because the present wording was more appropriate for a convention than for a declaration and also because all the rights set out in the various paragraphs could not be put on the same level. Turning to matters of detail, he suggested that in paragraph 2 a full stop should be placed after the word "institutions" and the next sentence should begin with the words "Guarantees shall be accorded concerning ...". The word "improved" in paragraph 5 seemed to call for an explanation. As regards paragraph 6, he expressed some doubts concerning the wisdom of asking the State to sanction by law holy days and days of rest prescribed by all religions. To meet the situation in various countries, he suggested that in paragraph 7 the word "congregation" should be replaced by "community" or "association". Lastly, he joined Mr. Ketrzynski in asking for the deletion of the last sentence of paragraph 9.

With respect to the performance of marriages and their dissolution dealt with in article VII, he felt that the subject was too complex and difficult to be treated in the text of the declaration. Articles XI and XII would be more appropriate in a convention.

He would like the wishes of the family also to be taken into account in article VIII, the word "beliefs" to be added at the end of article IX, and the

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words "the rights and freedoms enunciated in" to be inserted before the words "the Universal Declaration of Human Rights" at the end of the second sentence of article XIII.

Lastly, he expressed reservations concerning article XIV, paragraphs 1 and 3. In his view, the words "All publications" at the beginning of paragraph 1 must be deleted so as not to restrict freedom of opinion. Moreover, the wording of that article should be based on the draft convention for the elimination of all forms of racial discrimination.

Mr. INGLES, after recalling that the General Assembly had approached racial problems from the angle of discrimination and religious problems from that of intolerance, said that the difference in approach was more apparent than real. During the preparation of the Declaration on the Elimination of All Forms of Racial Discrimination, the Assembly had also dealt with measures to eliminate racial prejudice. Similarly, the Sub-Commission should not concern itself exclusively with religious intolerance. Racial prejudice has been scientifically demonstrated to be grounded on false premises; but the scientific approach was not possible in the case of religious intolerance because religion was a matter of faith. The State could not legislate on matters of faith so long as religious practices did not endanger public order or the common weal. Therefore, the Sub-Commission could usefully devote its attention to the broader field of freedom and non-discrimination in the matter of religious rights and practices in the drafting of a declaration on the elimination of all forms of religious intolerance.

Some confusion arose from the fact that freedom of thought was dealt with together with freedom of religion in Article 18 of the Universal Declaration of Human Rights, and not together with freedom of opinion in Article 19 of the Declaration. That was why he thought that when article 18 used the words "religion or belief" it meant to refer only to religious belief. Atheism as a philosophy and way of life was nevertheless protected by the "freedom of opinion" clause in article 19. At any rate, the main point as Mr. Calvocoressi had stressed was to assure to everyone the freedom to adhere, or not to adhere, to a religion or belief, as Mr. Krishnaswami did in article IV of his draft declaration (E/CN.4/Sub.2/L.315). Mr. Krishnaswami was right in devoting the remaining

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articles to questions of religious practice, worship, ritual, etc. It was true that some provisions, such as article VI, paragraph 8, and article X, also protected persons who did not adhere to any religion, but that protection was only a corollary of the protection accorded to those who adhered to a religion or religious belief.

It was evident that while the protection provided for in the draft declaration to persons adhering to a religion or religious belief could also be extended to persons without religious belief, the emphasis in any declaration on the elimination of religious intolerance should be to protect religious belief. It would be a contradiction in terms if the declaration were to concentrate on non-religious belief. In the past, the atheists had to be protected, but the situation was reversed and today it was religion which must be protected from militant atheism. For that reason he supported paragraphs 1 and 2 of the article XIV which prohibited acts curtailing religious freedom as well as incitement to religious hatred and violence. That would include anti-religious propaganda aimed at the destruction of organized religion and places of worship.

Since the Declaration on the Elimination of All Forms of Racial Discrimination (A/RES/1904 (XVIII)) prohibited discrimination as well as incitement thereto which led to acts of violence, the draft declaration on the elimination of all forms of religious intolerance must do the same.

Mr. SAARIO thanked Mr. Krishnaswami for having taken account of his observations. Nevertheless, despite the changes made, he still had some remarks to make about Mr. Krishnaswami's text of the draft declaration on the elimination of all forms of religious intolerance (E/CN.4/Sub.2/L.315). He would like to merge the three preambular paragraphs that referred to the Universal Declaration of Human Rights into one and to combine articles II and III. As regards article VI, it would be best either to combine paragraphs 1 and 2 or to provide a special article dealing with measures or protection. That comment also applied to paragraph 5. In paragraph 6, it was sufficient, in his opinion, to guarantee everyone's right to observe the holy days and days of rest prescribed by his religion without asking the State to legislate on the matter. Like Mr. Bouquin, he hoped that Mr. Krishnaswami would prepare a new text for article VII and that he would make article XIV conform to article III of the draft convention on the elimination of all forms of racial discrimination.

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Mr. BARTON (International Confederation of Free Trade Unions) remarked that the free trade unions had played a signal role in the fight against religious intolerance. The Confederation was itself composed of active members with different opinions, philosophies and political tendencies. Moreover, every trade union member set aside his religious, philosophical and political convictions where his trade union activities were concerned.

With regard to the draft declaration on the elimination of all forms of religious intolerance, he stated that although religious intolerance was on the decline in many areas, there were still some exceptions. Moreover, new phenomena appeared as a result of the rise to power of political regimes with an official ideology which embraced, inter alia, views on religion. Separation of Church and State was not sufficient to cope with the problems created by this new phenomenon. Where it existed, there could still be discrimination against persons - including atheists - whose beliefs were incompatible with the ideology of the State.

He therefore suggested that the wording in the draft declaration should be as broad as possible and that it should refer not only to "belief" and "religion", but to attitude towards religion, so as to safeguard the rights of all.

With regard to discrimination based on religion in the fields mentioned in article III of Mr. Krishnaswami's draft (E/CN.4/Sub.2/L.315), the words "access to citizenship" should be replaced by "citizenship", because the article should also prevent the withdrawal of citizenship.

Article IX of Mr. Abram's draft (E/CN.4/Sub.2/L.312), which Mr. Krishnaswami had retained, was extremely important because it defined the respective responsibilities of the various international, national, governmental and non-governmental bodies. In view of the special role played by trade unions in combatting religious intolerance, it would be highly desirable for trade unions to be specifically mentioned in the article.

The CHAIRMAN, speaking in his personal capacity, said that he would reserve his comments until he saw Mr. Krishnaswami's redraft. He was certain that the redraft would take into account views expressed during the discussion, without losing sight of the complexity of the problem. It was an extremely intricate and controversial issue, as shown by the divergence of views manifested in the Sub-Commission.

He stressed that Mr. Krishnaswami should bear those facts in mind in his revised draft. It would also be useful to refer to the principles drafted by

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the Sub-Commission and to be guided further by article 18 of the Universal Declaration of Human Rights, which proclaimed freedom of thought, conscience and religion. He felt that article 26 of that Declaration, in particular paragraphs 2 and 3, contained provisions regarding education which might well be reflected in the draft declaration on religious intolerance.

He declared the debate on item 5 of the agenda closed.

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.313, L.314, L.320-L.323, L.324/Rev.1 and Add.1, L.325-L.329) (continued)

The CHAIRMAN invited the Sub-Commission to go back to item 4. The Sub-Commission had before it document E/CN.4/Sub.2/L.330/Rev.1, submitted by Mr. Cuevas Cancino and Mr. Ingles.

Mr. INGLES explained that the document represented a compromise text in which the authors had tried to take into account the ideas contained in the other texts on the same item. For example, in the introduction, the idea of racial hatred had been taken from Mr. Abram's text. In the light of Mr. Matsch's comments, the authors had not repeated the phrase "States Parties" in each sub-paragraph.

The brackets in the text had been used to draw attention to points of disagreement. They did not represent the authors' views, and were intended solely to facilitate the debate by suggesting alternatives.

Mr. IVANOV regretted the deletion of the words "and prohibit" which were in the previous document and would like them to be reintroduced in sub-paragraph (b) of the revised text, which would then read: "Shall declare illegal and prohibit organizations ...".

In sub-paragraph (c), he requested deletion of the phrase "supported in whole or in part by government funds". He had said earlier that those words might be interpreted as allowing a monopoly or a finance agency to provide funds for racist organizations.

He felt that that idea should be given greater weight, for example, by introducing a phrase in sub-paragraph (a) to the effect that States undertook to prohibit the financing of the activities of organizations inciting or promoting racial discrimination and to take all necessary steps towards that end.

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Mr. KETRZYNSKI supported the amendment suggested by Mr. Ivanov to sub-paragraph (b) on the understanding that the words "and prohibit" would come after the words "Shall declare illegal," from which the idea logically followed. He would delete the brackets in that sub-paragraph and replace the word "or" before "organized propaganda activities" by "and also". The concept of organized propaganda which he had suggested as a compromise would reassure those who feared that the individual right of free speech might be jeopardized. As revised, sub-paragraph (b) would make it clear that only groups organized for the sole purpose of disseminating ideas which might have the effect of jeopardizing racial equality should be prosecuted.

Mr. MUDAWI felt that the word "penalize" in sub-paragraph (a) was not precise enough from the legal point of view, and would like to amend the beginning of the sub-paragraph to read: "Shall regard as an offence punishable by law".

He thought that sub-paragraph (c) would be more precise if it included a reference to public authorities and public institutions, since the latter term covered establishments which, although independent and possessing their own financial resources, nevertheless were public in nature.

He preferred sub-paragraph (d) of the text submitted by Mr. Cuevas Cancino and Mr. Ingles to the corresponding paragraphs suggested by Mr. Ketrzynski, who placed greater emphasis on procedure than on the substance of the question. Moreover, by obligating a State to provide remedial relief to persons who had suffered harm as a result of racial discrimination, the text failed to take into account instances where the State might be justified in its reluctance to institute remedial proceedings. Sub-paragraph (d) of the text under study had the advantage of leaving it to each State to decide the matter.

Mr. INGLES said that the word "penalize" in sub-paragraph (a) covered the ideas of both prohibition and punishment. However, the text suggested by Mr. Mudawi for the sub-paragraph was entirely acceptable.

On the other hand, if the phrase "supported in whole or in part by government funds" in sub-paragraph (c) were deleted, there would no longer be any distinction between State-controlled organizations and private organizations, which had already been dealt with in sub-paragraph (b). If Mr. Ivanov's suggestion regarding sub-paragraph (c) were accepted, the sub-paragraph would have to state that the State should prohibit its agencies and services from inciting or promoting racial discrimination.

Mr. CAPOTORTI said that even with Mr. Ivanov's amendment, sub-paragraph (b), which dealt with organizations, could also include State organizations. Sub-paragraph (c) concerning officials or agencies of the State should come before the present sub-paragraph (b) to bring it into line with the decision taken by the Sub-Commission at the beginning of its debate to consider the problem of discrimination from two basic aspects: first, the prohibition placed on the State not to practise discrimination, and secondly, the obligation assumed by the State to take the necessary steps to prevent individuals and institutions within its territory from practising such discrimination.

Mr. SAARIO remarked that there were organizations supported in whole or in part by government funds in whose activities the State could not intervene and that, consequently, the passage in sub-paragraph (c) which Mr. Ivanov wished to delete was in any case inadequate. He found the wording suggested by Mr. Ingles for that sub-paragraph satisfactory. Mention might be made in that sub-paragraph of "State-controlled organizations".

The CHAIRMAN, speaking in his personal capacity, thought the Sub-Commission might well use the terms employed in article II, which it had already adopted.

Mr. INGLES said that he had no objections to using that article as a basis. He would merely point out that the document he had submitted jointly with Mr. Cuevas Cancino had been a compromise text drawn up in an endeavour to reconcile various proposals.

He pointed out to Mr. Capotorti that a governmental agency could not be declared illegal by the Government. The distinction must therefore be retained between the organizations mentioned in sub-paragraph (b), which could be declared illegal, and the governmental organizations mentioned in sub-paragraph (c), which the State would not permit to engage in discrimination. Moreover it would make the Sub-Commission's task easier to use the word "agency", which covered both private and State-financed organizations. If the Sub-Commission decided to retain the phrase "supported in whole or in part by government funds" in sub-paragraph (c), the word "organization" could be deleted, since governmental organizations would be covered by the word "agency".

Mr. CALVOCORESSI accepted the proposed amendments to sub-paragraph (b).

However, he maintained the objections he had raised to the use of the word "promote". He would have no objection to the use of that word in sub-paragraph (c) in relation to governmental organizations; he wanted it deleted only from sub-paragraph (b). He reserved the right to comment on sub-paragraph (d) at the appropriate time.

Mr. CUEVAS CANCINO preferred the wording for sub-paragraph (c) proposed by Mr. Ingles to that suggested by Mr. Capotorti. It followed more logically on article II, which condemned racial discrimination in general terms.

The CHAIRMAN wondered whether sub-paragraph (c) could not be redrafted in accordance with Mr. Ingles' suggestion, using the wording: "its officials, organizations or instrumentalities".

Mr. SAARIO said he had no objection to Mr. Ingles' suggestion. However sub-paragraph (c), if so worded, would be pointless, for it would add nothing new to article II but would simply reiterate the same idea in a different form. That procedure was undesirable in a legal instrument.

Mr. CAPOTORTI withdrew his proposal. There was a vital difference between article II and article III: article II related to acts and practices of racial discrimination, whereas article III dealt only with incitement to racial discrimination. He therefore saw no objection to using the same phrasing in both articles.

Mr. INGLES suggested, in order to satisfy Mr. Capotorti, that the words "its officials, or any agency or organization supported in whole or in part by government funds" should be replaced by "all public authorities and public institutions, national and local", which appeared in article II, paragraph 1 (a).

The CHAIRMAN thought that suggestion might satisfy all the experts. He invited the members of the Sub-Commission to comment on the amendment

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submitted by Mr. Ketrzynski to sub-paragraph (b), replacing the expression "(or organized propaganda activities)" by "and also organized propaganda activities".

In reply to a question from Mr. CALVOCORESSI, Mr. KETRZYNSKI explained the purpose of his amendment. Apart from racial propaganda by organizations, there were forms of organized propaganda carried on by groups which did not possess the status of organizations. Such activities were dangerous and should be declared illegal in the same way as organizations proper which incited racial discrimination.

Mr. CALVOCORESSI said that after hearing Mr. Ketrzynski's explanation he was prepared to accept that amendment.

Mr. INGLES and Mr. CAPOTORTI also accepted Mr. Ketrzynski's amendment.

Mr. BOUQUIN pointed out that the correct translation of "organized propaganda activities" was "activités organisées de propagande".

The CHAIRMAN called upon the Sub-Commission to vote on Mr. Abram's amendment (E/CN.4/Sub.2/L.332), which related to the first draft of Article III (E/CN.4/Sub.2/L.330) but which was also applicable to the text in document E/CN.4/Sub.2/L.330/Rev.1 provided that the brackets were deleted.

Mr. KETRZYNSKI said that he would vote against the amendment.

The CHAIRMAN put Mr. Abram's amendment to the vote.

Mr. Abram's amendment was adopted by 7 votes to 2, with 2 abstentions.

The CHAIRMAN invited the experts to comment on sub-paragraph (d) of the text submitted by Mr. Ingles and Mr. Cuevas Cancino (E/CN.4/Sub.2/L.330/Rev.1).

Mr. CALVOCORESSI said that he was not entirely clear about the meaning of the text, which was vaguely worded and would be difficult to apply in practice, particularly in common law countries. Sub-paragraph (d) could be read as establishing a right to damages for a tort which did not exist in some countries. Alternatively, it could be read as establishing a right to compensation from the State and it seemed illogical to seek to establish such a right in respect of racial discrimination in countries which had no system of compensation out of public funds for any wrongs at all. If, however, the clause merely asserted a right to damages, properly so called, for injuries to the person, then it was oticse since such remedies already existed universally.

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Mr. KETRZYNSKI considered that sub-paragraph (d) was limitative, for it provided relief only for persons who had suffered harm caused by racial violence or discrimination. Paragraph 3 of his own text (E/CN.4/Sub.2/L.331) had a wider scope and should therefore be adopted by the Sub-Commission in preference to the text submitted by Mr. Ingles and Mr. Cuevas Cancino.

The CHAIRMAN considered that it would be better to include in the draft convention a special article dealing in general terms with the remedies open to a victim of racial discrimination in any form, whether political rights, economic rights or other rights were involved.

Mr. CAPOTORTI agreed with the Chairman that the notion of remedial relief for victims of racial discrimination was out of place in article III, which dealt only with incitement to or promotion of racial discrimination. The problem of relief should be considered by the Sub-Commission after it had completed its work on the detailed provisions relating to the various fields in which racial discrimination was practised.

Mr. SAARIO agreed with the two preceding speakers. Moreover he thought the phrase "remedial relief" too vague. The question of relief should be dealt with in a separate article drafted in more precise terms than sub-paragraph (d) of the text under consideration.

Mr. INGLES stated that he had included sub-paragraph (d) in his working paper purely in a spirit of compromise; Mr. Abram had included a similar provision in his draft of article IX (E/CN.4/Sub.2/L.308/Add.1/Rev.1 and Corr.1). He was entirely willing to make the principle of relief the subject of a separate article to be placed among the final clauses of the draft convention.

In reply to a question from Mr. IVANOV, the CHAIRMAN stated that the words "and prohibit" would be included in sub-paragraph (b).

He put article III, as amended, to the vote.

Article III, as amended, was adopted unanimously.

Mr. KETRZYNSKI expressed regret that Mr. Abram's amendment to sub-paragraph (b) had been adopted, for it made the text harder to read and to interpret. It meant that, if a State Party could prove only that an organization was inciting to racial discrimination but not that it was promoting it, or vice versa, it would be unable to declare it illegal.

Mr. IVANOV said he would have preferred article III to stipulate clearly that any incitement which produced or might produce acts of violence should be punished by the law. Mr. Ketrzynski's text (E/CN.4/Sub.2/L.331) had therefore appeared to him more satisfactory than the text that had been adopted. He also regretted keenly that fascist organizations had not been expressly mentioned in article III.

The CHAIRMAN expressed the hope that the sponsors of the three basic texts (E/CN.4/Sub.2/L.308, L.309 and L.314) would meet in private and draft a compromise text for the next article of the draft convention.

The meeting rose at 5.50 p.m.