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COMMISSION ON HUMAN RIGHTS

Twentieth Session

SUMMARY RECORD OF THE SEVEN HUNDRED AND NINETY-FIRST MEETING

Held at Headquarters, New York,
on Monday, 2 March 1964, at 11.20 a.m.

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Draft international convention on the elimination of all forms of racial discrimination (A/5035, 5603; E/CN.4/865, 873; E/CN.4/L.679, L.681, L.688, L.699; E/CN.4/Sub.2/234 and Add.1-3) (continued)

PRESENT:

<u>Chairman:</u>	Mr. PONCE y CARBO	(Ecuador)
<u>Rapporteur:</u>	Mr. IGNACIO-PINTO	Dahomey
<u>Members:</u>	Mr. ERMACORA	Austria
	Miss AITKEN	Canada
	Miss KRACHT	Chile
	Mr. VOLLO	Costa Rica
	Mr. GRAULUND HANSEN	Denmark
	Mr. BENITES	Ecuador
	Mr. VEGA-GOMEZ	El Salvador
	Mr. BOUQUIN	France
	Mr. CHAKRAVARTY	India
	Mr. SPERDUTI	Italy
	Mr. HAKIM	Lebanon
	Mr. DOE	Liberia
	Mr. BEAUFORT	Netherlands
	Mr. QUIAMBAO	Philippines
	Mr. RESICH	Poland
	Mr. PANCARCI	Turkey
	Mr. NEDBALLO	Ukrainian Soviet Socialist Republic
	Mr. MOROZOV	Union of Soviet Socialist Republics
	Sir Samuel HOARE	United Kingdom of Great Britain and Northern Ireland
	Mrs. TREE	United States of America

Observers from Member States:

Mr. BARROMI	Israel
Mrs. WILLIAMS	Jamaica
Mr. KOSOSONKOLE	Uganda

PRESENT (continued):

Representatives of specialized agencies:

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

Secretariat:

Mr. HUMPHREY	Director, Division of Human Rights
Mr. LANDAU	Secretary of the Commission

DRAFT INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION (A/5035, 5603; E/CN.4/865, 873; E/CN.4/L.679, L.681, L.688, L.699; E/CN.4/Sub.2/234 and Add.1-3) (continued)

Article IV (continued)

Mr. NEDBAILO (Ukrainian Soviet Socialist Republic) supported the USSR amendments (E/CN.4/L.681) to article IV. The USSR proposal to insert the phrase "based on ideas or theories of the superiority of one race or group of persons of one colour or ethnic origin" after the word "organizations" in the beginning of article IV of the draft convention merely respected the will of the majority as expressed in the General Assembly, which had adopted that wording in the Declaration on the Elimination of All Forms of Racial Discrimination. He did not agree with the representatives of Italy and Costa Rica who had objected that the addition of the qualifying phrase would be a limitation on the obligations to be assumed by States parties. It would serve, on the contrary, to clarify the purpose of the paragraph. With regard to the insertion of the words "in any form" after the word "discrimination", he recalled that it was thanks to an Indian amendment (E/CN.4/L.669) that those words had been incorporated in article 9 of the draft Declaration. He could not agree with the Italian representative's view that the condemnation of "propaganda and organizations based on ideas or theories of the superiority of one race ..." was already contained in the preambular paragraph beginning "Convinced" and therefore need not be repeated in article IV. It should be remembered that article IV was in the body of the convention and specifically listed positive measures for the condemnation of racist propaganda and organizations. Its effect was therefore different from that of the preambular paragraph. His delegation would also vote both for the USSR amendments to sub-paragraph (b) of article IV and for the Polish amendment (E/CN.4/L.699) to that sub-paragraph.

Mr. RESICH (Poland) remarked that all members seemed to agree that the convention should be a document of historic importance in strengthening the cause of peace and humane concepts. Its scope should not be limited merely to ending racial discrimination and providing a guarantee of equality of treatment and

(Mr. Resich, Poland)

fundamental rights. It should also serve as a bulwark against racist attacks and policies of discrimination which had been the cause of wars in the past and might again cause wars in the future. The racist organizations were still active and gathering strength and military potential as they prepared for revenge. If they were not declared illegal, they would be able to expand, as the USSR representative had warned. Outlawing them would not place any restrictions on individual freedom, since murder was already a crime, and by the same token it should be a crime for organizations to promote racist doctrines and racial discrimination. Such organizations aimed to destroy fundamental freedoms and peace itself. His delegation's amendment (E/CN.4/L.699) sought to make participation in the activities of these organizations a punishable offence. If the convention was to achieve its purpose and serve as a weapon in the struggle against racial discrimination, it should call on States to do more than merely prohibit the administrative activities of racist organizations and impose minor penalties. All racist activities should be declared illegal and punished as criminal offences.

Miss AITKEN (Canada) said that her delegation would vote for the USSR amendments to the beginning of article IV (E/CN.4/L.681), because they followed the provisions of the Declaration on the Elimination of All Forms of Racial Discrimination. She agreed with previous speakers that the insertion of the word "severely" would not strengthen the text, but if the majority wished to add the word, she would not object.

Her delegation endorsed the Sub-Commission's text for sub-paragraphs (a) and (c). It supported the United States amendment (E/CN.4/L.688), but could not accept the USSR amendments to sub-paragraph (b) (E/CN.4/L.631), because they would impinge on well-established freedoms of press, association and expression. Prosecution should be for deeds, not thoughts. While incitement to or use of violence by individuals for any purpose was punishable under Canadian law, it was not the practice in Canada to prosecute or outlaw organizations as such, as that would infringe freedom of association. The USSR amendments would also open the door to abuses by administrative authorities.

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(Miss Aitken, Canada)

The International League for the Rights of Man, in a statement submitted to the Sub-Commission (E/CN.4/Sub.2/NGO/36), had made the following points:

1. Efforts to combat racial discrimination should not go so far as to violate articles 19 and 20 of the Universal Declaration; 2. However, acts or specific incitements to them were proper subjects for criminal law; 3. The Universal Declaration was as clear on penalizing incitements to discrimination (article 7) as it was on freedom of expression, calling for restraints on the former but not on the latter; 4. In applying the principle to organizations found to incite racial violence, the criminal penalties should apply to their responsible officials, but organizations themselves should not be the object of the criminal law, since guilt, by the standards of the Universal Declaration, was personal, and not by association; and 5. When the law departed from those principles and attempted to outlaw speech, publication and association in the absence of any acts, it paved the way to grave abuses by authorities in deciding which opinions were punishable and which not. Her delegation strongly supported those views.

The Commission should distinguish between the Declaration on the Elimination of All Forms of Racial Discrimination, which was essentially a political document, and the convention, which was essentially a legal document. It was impractical to include a provision such as article 9, paragraph 3, of the Declaration in a legally binding convention.

Miss KRACHT (Chile) supported the text of article IV submitted by the Sub-Commission. Her Government was prepared to adopt special measures, if necessary, to carry out the obligations laid down in that article.

Turning to the USSR amendments (E/CN.4/L.681), she said that the word "condemn" standing alone was forceful enough, but she would not oppose the addition of the word "severely" if the majority of the Commission wished it. She also favoured the USSR proposal to add the words taken from article 9, paragraph 1, of the Declaration on the Elimination of All Forms of Racial Discrimination after the word "organizations", and the first two USSR amendments to sub-paragraph (b). On the other hand, she would prefer the wording suggested by the Indian representative at the 790th meeting to the new sentence proposed by the USSR, and hoped that the Indian representative would present his suggestion as a formal amendment.

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(Miss Kracht, Chile)

With respect to the United States amendment to sub-paragraph (b) (E/CN.4/L.688), she shared the United States delegation's desire to keep intact extensive rights to freedom of expression and association. The Constitutions of most Latin American countries permitted the broadest exercise of freedom until there was abuse of freedom. The Chilean Constitution ensured to all the inhabitants of the Republic freedom to express their opinions without previous censorship, and the right of association without previous permission and in conformity with the law. However, in Chile any organization promoting or inciting racial discrimination was illegal. Thus, if the United States amendment were adopted, Chile would be in an absurd position: its laws would prohibit the organizations in question, whereas the convention would require it to prohibit only the activities of such organizations. Her delegation therefore could not vote for the United States amendment.

She did not know whether the United States and other countries adhering to the common law system would accede to the convention if the present text of article IV was maintained. In that connexion, she urged the representatives of those countries to consider a statement made by Marshall Smuts of South Africa at the San Francisco Conference, in which he had declared that the new Charter should not be simply a legal instrument to prevent war, but should proclaim to the world and to posterity that behind the struggle of brute force between nations there lay a struggle for moral order, a vision of an ideal, faith in justice and the determination to affirm fundamental human rights and to establish a better and freer world on those principles.

She suggested that the Polish amendment (E/CN.4/L.699) might receive wider support if the word "unlawful" were substituted for the expression "an offence punishable by law".

Mr. QUIAMBAO (Philippines) found the Sub-Commission's text of article IV acceptable on the whole. However, the addition of the words "in any form" after the word "discrimination", as proposed by the USSR (E/CN.4/L.681), would strengthen that text. On the other hand, he doubted that the insertion of the word "severely" was really necessary; indeed, it might destroy the balance between the various

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(Mr. Quiambao, Philippines)

articles of the convention. He thought that the addition of the phrase proposed by the USSR after the word "organizations" in the opening statement would weaken the text, and he would therefore abstain in the vote on that amendment. He saw no objection to the Indian representative's suggestion that the words "and support thereof in any form" should be inserted after the word "organizations" in sub-paragraph (b).

He doubted that the Polish amendment (E/CN.4/L.699) was necessary, since declaring an act illegal and prohibiting it implied that it was punishable by law. As he did not disapprove of that amendment in principle, however, he would abstain in the vote on it.

While the convention should include a statement reaffirming freedom of association and expression, the United States amendment (E/CN.4/L.688) was too restrictive and weakened the text. He would abstain in the vote on that amendment.

On the other hand, he would support the retention of the word "and" between the words "promote" and "incite" in sub-paragraph (b). Without sufficient guarantees of freedom of information, many States would find it difficult to eliminate racism in their territories.

Mr. IGNACIO-PINTO (Dahomey), commenting on the USSR amendments (E/CN.4/L.681), said that the word "severely" in the first line of article IV would not only be superfluous, but would prejudge the nature of the penalty to be imposed by the competent organs of the State. It was therefore unacceptable. Unlike the USSR delegation, he believed that the word "and" in sub-paragraph (b) before "incite" strengthened the text and should be retained. In connexion with that sub-paragraph, he found the Polish amendment (E/CN.4/L.699) redundant: from the moment that certain activities were declared illegal, it became the responsibility of the State to provide the appropriate penalties under the law for participation in such activities. With regard to the United States amendment (E/CN.4/L.688), while his delegation fully appreciated the concern not to restrict freedom of expression and association, it felt that the convention should go beyond penalizing activities inciting to racial discrimination and proscribe those organizations whose stated purpose and statutes manifestly indicated that they

(Mr. Ignacio-Pinto, Dahomey)

were engaged in promoting and inciting such discrimination. It would be retrogression as compared with the progress in the protection of human rights already achieved by the United Nations to allow organizations to preach racial hatred and discrimination and deliberately to prepare other activities for which it would be more difficult to prosecute them. In the circumstances, he could not support the United States amendment.

Sir Samuel HOARE (United Kingdom) had already advanced arguments for retaining the careful distinction made by the Sub-Commission between the expression "promote and incite" in sub-paragraph (b) and "promote or incite" in sub-paragraph (c). He wished now to reply to the Indian representative's contention at the previous meeting that the use of the words "promote and incite" in sub-paragraph (b) would place a difficult obligation on the prosecuting authorities to prove two separate offences instead of one. In fact, it was impossible to incite racial discrimination without promoting it, and if the facts in a case justified prosecution for incitement, they would do the same for promotion. Thus, the Sub-Commission's text would raise no difficulty in practice.

On the other hand, the adoption of the USSR amendment replacing "and" by "or" would create practical difficulties in his country. It, like the Scandinavian countries, depended on a healthy public opinion. There were no organizations of any importance promoting racial discrimination in the United Kingdom. Nevertheless, there might one day be a political party which advocated such mistaken views; his Government did not wish to be obliged to prohibit any political party.

He assured the Chilean representative that the absence of a requirement for prohibition of racist organizations in the convention should not prevent Chile from prohibiting such organizations.

The United Kingdom, for its part, would find it difficult to accept article IV unless the United States amendment was adopted, because the Sub-Commission's text would compel it to deal with the problem of combatting racial discrimination in a way different from that which it had always followed and which it considered to be good.

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Mr. BENITES (Ecuador) pointed out that article IV contained two distinct concepts: on the one hand, it made a general moral judgement by condemning propaganda and organizations promoting racial discrimination; on the other, in its sub-paragraphs, it specified the legal obligations to be assumed by States in order to eliminate those dangerous forms of discrimination. Thus, the word "severely" to qualify the condemnation in the opening paragraph did not strengthen the legal force of the article. Moreover, the phrase "based on ideas or theories of the superiority of one race or group of persons of one colour or ethnic origin" by which the USSR sought to qualify the organizations concerned actually weakened the article because, as recent experience had shown, many racist acts had been based not on theories or systematized ideas, but rather on emotion, on hatred stemming from deep-seated prejudice. Indeed, it was evident that the so-called theories expounded and propagated by such nazi theoreticians as Rosenberg and Spengler were nothing more than myths which could not withstand rational analysis. He would be prepared to accept the phrase "based on racism" and would abstain in the vote on the phrase proposed by the USSR. On the other hand, he favoured insertion of the phrase "in any form" after "discrimination" in the beginning of the article.

Since the three sub-paragraphs of the article sought to define those acts punishable under law, the criteria for making those acts punishable should be perfectly clear. Obviously, the first criterion was the existence of a law under which the act constituted an offence. The second was to define precisely what was to be punished: surely the intent of the article was to penalize activities or acts prohibited by the law, and not ideas, thoughts or intentions which had not led to acts. His delegation would therefore support the United States amendment to sub-paragraph (b). It would also support the USSR proposal to add the words "and any other" before "propaganda activities" in order to close a possible loophole, since States might argue that propaganda activities were not punishable because they were not organized. It would further vote for the USSR suggestion to replace the word "and" by "or" in the last clause of sub-paragraph (b). The promotion of racial discrimination, while less concrete than incitement, was none the less a positive act. Organizations engaging in such acts should be prosecuted.

(Mr. Benites, Ecuador)

The USSR and Polish amendments to add clauses at the end of sub-paragraph (b) achieved much the same purpose. Moreover, it was self-evident that if the activities of an organization were declared an offence under the law, support of those activities or participation in them would also be punishable. If a separate vote was taken on the portion of the USSR amendment reading "by Government organs, private individuals and associations or private individuals", he would abstain. If the USSR text was adopted, he would abstain on the Polish amendment; conversely, if the USSR text was not adopted, he would vote for the Polish amendment.

He cautioned the Commission to bear in mind, in elaborating a legal instrument which might eventually be embodied in the national legislation of the States parties, that the division of powers in most States made it impossible for a State to undertake to adopt certain measures which were properly within the province of the judiciary or of the legislative organs. The most that the State could undertake was to request its legislative organs to take certain measures.

Reverting to the reference to Marshal Smuts of South Africa, he emphasized that Mr. Smuts' liberalism in human rights matters had extended only to the white population. Indeed, he had invented the concept of separate treatment for the non-whites of Central Africa and had been the first to use the expression "apartheid" to describe the system of racial segregation in South Africa.

Mr. ERMACORA (Austria) said that it was necessary to strike a balance between guarantees of rights on the one hand and limitations of rights on the other. That applied particularly to the right of assembly, and each State would be under the obligation to find a way compatible with its own legal system to implement the provisions of the convention. With reference to what he had said at the previous meeting about the USSR proposal to insert the word "severely", he wished to add that whereas other delegations had rightly stated that the qualifying adverb would have moral value in a convention, his delegation felt that it would have juridical value as well if it meant that the penalties provided would be severe. His delegation would support that amendment and the other USSR amendments to the beginning of article IV. His delegation would also support the first two USSR amendments to sub-paragraph (b), and could not agree with the interpretation put upon the word "promote" by the representative of Ecuador. Nor could his delegation agree that the word "incite" by itself would suffice.

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(Mr. Ermacora, Austria)

There was, furthermore, a possibility that the wording "promote and incite" might encourage arbitrary action by the police authorities and magistrates. Nevertheless, he felt some doubts about the third USSR amendment to sub-paragraph (b). That USSR amendment and the Polish amendment were not mutually exclusive. Although there were examples in German law of participation in organizations contrary to public order being declared punishable, he did not think it was necessary to have such a provision in the convention as it might endanger the freedom of assembly. He would not support the Polish amendment.

With regard to the United States amendment (E/CN.4/L.688), proposing the insertion of the words "activities of" before "organizations" in sub-paragraph (b), he recognized the difficulties that would arise if only activities were declared illegal and punishable. Since neither the United States amendment nor the draft prepared by the Sub-Commission offered any safeguards for the right of peaceful assembly, his delegation would abstain in the vote on that sub-paragraph.

Miss KRACHT (Chile) stated in reply to the United Kingdom representative that her delegation would still support the convention even if the United States amendment (E/CN.4/L.688) was adopted.

The meeting rose at 1 p.m.