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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 SEVENTEENTH MEETING

Held at Headquarters, New York,
on Tuesday, 21 January 1964, at 10.40 a.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.310, L.311, L.314, L.324/Rev.1, L.326, L.327, L.328) (continued)

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PRESENT:

<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. BCUQUIN	(France)
	Mr. CALVOCORESSI	(United Kingdom of Great Britain and Northern Ireland)
	Mr. CUEVAS CANCINO	(Mexico)
	Mr. INGLES	(Philippines)
	Mr. IVANOV	(Union of Soviet Socialist Republics)
	Mr. KETRZYNSKI	(Poland)
	Mr. KRISHNASWAMI	(India)
	Mr. MATSCH	(Austria)
	Mr. MUDAWI	(Sudan)
	Mr. SAARI	(Finland)

Observers from Member States:

Mr. ROBICHAUD	Canada
Mr. LEMA	Congo (Leopoldville)
Mr. SAJJAD	India
Mr. BARROMI	Israel
Mr. SCHAAPVELD	Netherlands
Mr. QUIMBAO	Philippines
Mr. MATSEIKO	Ukrainian Soviet Socialist Republic
Mrs. NASON	United States of America
Mr. MELOVSKI	Yugoslavia

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

PRESENT (continued):

Representatives of specialized agencies:

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

Representative of a non-governmental organization:

<u>Category B:</u> Mr. KATZ	Coordinating Board of Jewish Organizations
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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.310, L.311, L.314, L.324/Rev.1, L.326, L.327, L.328) (continued)

The CHAIRMAN invited the Sub-Commission, taking as a basis the revised text of article II submitted by Mr. Calvocoressi and Mr. Capotorti (E/CN.4/Sub.2/L.324/Rev.1), to consider the amendments presented by Mr. Ivanov (E/CN.4/Sub.2/L.327), Mr. Ferguson (E/CN.4/Sub.2/L.326) and Mr. Mudawi (E/CN.4/Sub.2/L.328) respectively.

Mr. IVANOV remarked that the beginning of his first amendment should read: "Each Contracting State undertakes to condemn and prohibit ..." The amendment consisted in introducing the words "and prohibit" after "condemn" and inserting after "in all its forms" the clause beginning "since racial discrimination ..."

Mr. SAARIO observed that the prohibition of racial discrimination was to be found in sub-paragraph (c) of the joint text, where it logically belonged, and that it would be redundant in the opening sentence.

The amendment to add the words "and prohibit" was rejected by 6 votes to 4, with 3 abstentions.

The amendment to insert an additional clause was rejected by 5 votes to 2, with 5 abstentions.

Mr. ABRAM, referring to paragraph 1, sub-paragraph (a) of the joint text (E/CN.4/Sub.2/L.324/Rev.1), said that the purpose of Mr. Ferguson's first amendment (E/CN.4/Sub.2/L.326) was to ensure that the word "public" did not embrace private as well as governmental authorities and institutions.

Mr. CAPOTORTI assured Mr. Abram that the "public institutions" referred to in sub-paragraph (a) were quite different from private organizations which were dealt with in sub-paragraph (c). Indeed, sub-paragraph (a) was intended to cover all public activities and sub-paragraph (c), all private activities. Sub-paragraph (a) encompassed not only organs which depended directly on the central Government, but also such autonomous entities as State railways, public power authorities and local institutions. It established the State's obligation not to practise discrimination and should be read together with sub-paragraph (c), which was a statement of the State's obligation to prohibit the practice or manifestation of discrimination by individuals and private groups.

Mr. KETRZYNSKI, supported by Mr. IVANOV, remarked that the words "shall abstain" were neither specific nor positive enough. They might even be interpreted to mean "shall not take part in", whereas they should express a clear prohibition.

Mr. MUDAWI also considered the phrase too weak; it implied indifference towards the consequences of the acts or practices which the State was obligated not to permit. He preferred the words "shall not commit" because they conveyed a sense of dislike or condemnation of such acts or practices.

Mr. IVANOV was prepared to support the words "shall not commit" in preference to his own wording (E/CN.4/Sub.2/L.327, para.2).

Mr. DOUQUIN, supported by Mr. CAPOTORTI, emphasized the importance of selecting some wording which would draw a clear distinction between "acts" of discrimination, which were usually manifestations of the will of the State, and "practices" of discrimination which need not be formal acts.

Following a brief discussion, Mr. INGLES proposed that sub-paragraph (a) should be amended to read: "(a) Each State Party undertakes to engage in no act or practice of racial discrimination, and to ensure that all public authorities and public institutions ..."

It was so decided.

The CHAIRMAN said that, as Mr. Ferguson's amendment (E/CN.4/Sub.2/L.326) to paragraph 2 of the revised draft for article II (E/CN.4/Sub.2/L.324/Rev.1) and Mr. Mudawi's amendment (E/CN.4/Sub.2/L.329) were virtually identical, the Sub-Commission would consider only Mr. Mudawi's amendment, which had been submitted first.

Mr. CAPOTORTI said that the basic elements of paragraph 2 of the revised draft and of Mr. Mudawi's amendment were exactly the same, but that in the revised draft the order of the ideas had been reversed with a view to stressing the purpose for which special measures might be adopted. In Mr. Mudawi's text, States were required to take special measures "in appropriate circumstances", but it was left to them to judge whether such circumstances existed. Paragraph 2 of the revised draft, on the other hand, imposed an unconditional obligation upon States to secure adequate development and

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protection for individuals belonging to under-developed racial groups. It was, therefore, the stronger text. Moreover, by stressing the purposes of special measures, it made it clear that such measures should not be used to keep under-developed racial groups apart from the rest of the community.

The CHAIRMAN, speaking as a member of the Sub-Commission, said that paragraph 2 of the revised draft not only covered all the points included in Mr. Mudawi's amendment but also added a new element by stressing the State's obligation to secure adequate development and protection for under-developed racial groups. It would thus give greater emphasis to what was the aim of most Latin American States - the integration of such backward groups through economic development.

Mr. MUDAWI thought that his amendment was the stronger text, because it imposed an obligation upon States to take concrete measures. Of course, that obligation was not absolute: such measures were to be taken in appropriate circumstances, as defined by the State through its legislative or judicial organs.

Mr. CUEVAS CANCELINO found paragraph 2 of the revised draft completely satisfactory, since it imposed an absolute obligation on each State to secure adequate development and protection for racial groups which had remained outside the main stream of development. In contrast, Mr. Mudawi's amendment made the State's obligation conditional on a finding by the State that circumstances were appropriate for action. Such an obligation was meaningless and was not suitable for inclusion in a convention.

Mr. Mudawi's amendment (E/CN.4/Sub.2/L.328) was adopted by 6 votes to 4, with 4 abstentions.

Mr. INGLES requested that, when article II was voted on as a whole, a separate vote should be taken on the second part of paragraph 1, sub-paragraph (c), beginning with the words "and undertakes". He would vote against that passage because it was redundant. It was obvious that the only way in which a State could perform the duty imposed by the first part of sub-paragraph (c) was to adopt legislation, and in any case the obligation to adopt all necessary measures was already imposed in the beginning of paragraph 1.

The second part of paragraph 1, sub-paragraph (c) (E/CN.4/Sub.2/L.324/Rev.1) was adopted by 13 votes to 1, with no abstentions.

Mr. BOUQUIN said that he had voted in the affirmative by mistake. He shared the doubts expressed by Mr. Ingles and had intended to abstain.

Draft article II as a whole (E/CN.4/Sub.2/L.324/Rev.1) as amended was adopted by 13 votes to none, with 1 abstention.

Mr. ABRAM explained that he had voted for sub-paragraph (c) in the belief that it did not prohibit expressions of opinion, because the meaning of the term "racial discrimination" in that sub-paragraph excluded any conflict with article 19 of the Universal Declaration of Human Rights.

Mr. KETRZYNSKI did not give sub-paragraph (c) such a restrictive construction. The sub-paragraph should be read in the context of the whole Universal Declaration, including article 29 (3).

Mr. IVANOV explained that he had voted for draft article II as a whole so as not to delay the Sub-Commission's work, but he did not find the text entirely satisfactory. Paragraph 1 should place greater stress on the condemnation of racial discrimination and should state that racial discrimination was an infringement of the rights and an offence to the dignity of the human person. He also gave sub-paragraph (c) a broader construction than did Mr. Abram. In his view it prohibited all forms and manifestations of racial discrimination, including propaganda.

Mr. BOUQUIN said he had voted for the first part of sub-paragraph (c) on the understanding that it covered acts or practices of racial discrimination, and not questions of propaganda.

Mrs. LEFAUCHEUX (Commission on the Status of Women) stated that the Commission would welcome the adoption of article II, particularly as the provision favouring under-developed racial groups would have great significance for the women in such groups.

Speaking on the invitation of the CHAIRMAN, Mr. KATZ, (Coordinating Board of Jewish Organizations) remarked that the Sub-Commission was approaching the crucial stage of defining the positive steps which the Contracting States must take to rid society of the scourge of racial bigotry. The existence of de facto discrimination in States where measures aimed at securing equality of rights to racial and ethnic groups had already been enacted into law bespoke the need for implementation machinery in the draft convention. As Mr. Ivanov had said, the State must not be neutral in the fight against discrimination on racial or ethnic grounds; it must be a positive exponent of equality of rights. That was all the more true of those States in which the machinery of government greatly affected the everyday life of the individual. Yet there were States which spoke repeatedly of equality of rights but failed to implement that principle. In one State, for example, a Yiddish-speaking community of almost 500,000 persons had virtually no means of cultural expression, although article 5, paragraph 1, of the UNESCO Convention against Discrimination in Education recognized the right of national minorities to carry on their own educational activities.

A convention must be enforceable if it was to be effective. The ILO Convention concerning Discrimination in respect of Employment and Occupation and the UNESCO Convention against Discrimination in Education both had implementation provisions which made them more enforceable. His organization welcomed Mr. Ingles's proposed measures of implementation (E/CN.4/Sub.2/L.321), but urged that they should be amended, along the lines of the ILO system, to provide for the receipt and use by the suggested fact-finding and conciliation committee of information submitted by qualified non-governmental sources.

Because of the experience of the Jewish people, who for centuries had felt the whiplash of discrimination and one-third of whom had been destroyed in the gas chambers, the Coordinating Board urged that the strongest and most practicable measures should be included in the proposed article IX of the working text (E/CN.4/Sub.2/L.308/Add.1/Rev.1 and Corr.1). Incitement to hatred and violence must be placed beyond the pale of civilized society.

Mr. KETRZYNSKI much regretted that any reference should have been made to the policies of actions of Governments in a statement made by the representative of a non-governmental organization.

The CHAIRMAN also thought that such references were out of place, especially in an expert body engaged in drafting a general legal text. He acknowledged the value of the work done by the non-governmental organizations, which could bring the fruits of their experience to help in many of the economic and social activities of the United Nations, but he felt that such contributions should always be positive in nature.

He invited discussion on the working text for article IX proposed by Mr. Abram (E/CN.4/Sub.2/L.308/Add.1/Rev.1 and Corr.1), article II of the draft proposed by Mr. Ivanov and Mr. Ketrzynski (E/CN.4/Sub.2/L.314) and the amendments to Mr. Abram's draft proposed by Mr. Krishnaswami (E/CN.4/Sub.2/L.311).

Mr. KETRZYNSKI said that the article now under discussion was undoubtedly the most important part of the convention, and should be placed at the beginning of that document, immediately after article II. It should be based on the essential principles set forth in article 9 of the Declaration, which was quite explicit - it prohibited not only direct violence, but also all propaganda and all kinds of incitement to racial hatred. It was now the duty of the Sub-Commission to insert in the draft convention an article giving very specific directives concerning the obligations of States in that connexion. The principles involved had been explicitly stated in the preamble, and in the body of the draft convention the statement should be carried further - it must be made clear that in matters of racial discrimination the principles of the Charter and of the Universal Declaration of Human Rights were being infringed, and that they must be defended. It was quite clear from article 30 of the Universal Declaration that anyone who engaged in any activity aimed at the destruction of the human rights set forth in that instrument was not entitled to invoke any other articles of the Universal Declaration in his defence. There could be no valid reason for denying the right of a State to intervene by all legal and juridical means to prevent violation of human rights in the form of racial discrimination.

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In the light of those considerations, Mr. Ivanov and he had produced a clear and very precise text fully in accordance with the Universal Declaration. For once no compromise solution would be acceptable - there must be a full confrontation of principles.

Mr. ABRAM agreed that the time had come for a confrontation of different points of view, but emphasized the identity of aim behind them. Racial discrimination was a bane of society, and he felt that all were united in thinking that every effort should be made to eliminate it.

Nonetheless, he must take his stand on certain fundamental principles, and so could not accept the text suggested by Mr. Ivanov and Mr. Ketrzynski. He found particular difficulty in accepting the idea expressed by Mr. Ketrzynski that no one who violated any provision of the Universal Declaration might claim the protection of any of the other provisions. That was a dangerous notion, which would presumably result in depriving offenders of all their rights as human beings. Article 29 of the Universal Declaration, as he understood it, did not cancel out article 19, but rather reinforced it. A man deprived of the right to freedom of expression ceased to be a man. Article 9 of the Declaration on the Elimination of All Forms of Racial Discrimination was in keeping with the character of that document, but the draft convention was by its very nature different, and should include only such provisions as were practicable and hence appropriate.

He thought that his own version of article IX (E/CN.4/Sub.2/L.308/Add.1/Rev.1 and Corr.1) went far in dealing with the problem. It did not infringe freedom of expression, but made it clear that any incitement to acts of violence would be in fact put on the same footing as the acts themselves. Furthermore, by including measures for the relief of individuals who had suffered harm as the result of racial violence, it went further than other texts. There must be some limitation on the prohibition of all expressions of opinion on race matters - for instance, scholars should not be prohibited from published works containing anthropological theories with which the State was not in agreement.

Paragraphs 1 and 2 of his text seemed to him adequate to ensure that there should be no physical harm caused by racial discrimination, while at the same

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time they would not have the effect of prohibiting free expression of opinion on the subject. The effect of paragraph 3, with its reference to organizations supported in whole or in part by government funds, should be to prevent the use of such funds for racist purposes. Paragraph 4 established the responsibility of the State to educate its citizens up to the standards of the convention, and placed the State definitely on the side of equal treatment. Paragraph 5 represented a new departure, in that it provided for remedial relief for persons who had suffered harm as the result of racial discrimination.

He felt that if his article had been incorporated in the substantive internal law of every state in the United States, racial discrimination would have been stamped out by now. With the basic principles which it covered, the punishment of acts of violence, the proper use of State machinery, the education of citizens and the right to obtain a remedy from the courts in cases where harm had been suffered - which should in itself prove a powerful instrument for the removal of discrimination - it should produce the desired result without destroying basic freedoms. The State should certainly be able to prevent any conduct by individuals and by any of its own organs, which would cause any injury to the personality of any human being. But the totalitarian approach seemed to him a monstrous mistake, and he could never support it.

The meeting rose at 1.5 p.m.