

UNITED NATIONS
ECONOMIC
AND
SOCIAL COUNCIL



Distr.
GENERAL

E/CN.4/SR.792
28 April 1964
ENGLISH
ORIGINAL: FRENCH

COMMISSION ON HUMAN RIGHTS

Twentieth Session

SUMMARY RECORD OF THE SEVEN HUNDRED AND NINETY-SECOND MEETING

Held at Headquarters, New York,
on Monday, 2 March 1964, at 3.30 p.m.

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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. VOLIO	Costa Rica
	Mr. KOUKOU	Dahomey
	Mr. GRAULUND HANSEN	Denmark
	Mr. BENITES	Ecuador
	Mr. VEGA-GOMEZ	El Salvador
	Mr. BOUQUIN	France
	Mr. CHAKRAVARTY	India
	Mr. SINGH	
	Mr. SPERDUTI	Italy
	Mr. HAKIM	Lebanon
	Mr. DOE	Liberia
	Mr. BEAUFORT	Netherlands
	Mr. QULAMBAO	Philippines
	Mrs. SHAHANI	
	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
<u>Observers from Member States:</u>		
	Mr. BARROMI	Israel
	Mrs. WILLIAMS	Jamaica

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PRESENT (continued)

Representative of a specialized agency:

Mr. FARMAN-FARMAIAN

International Labour
Organisation

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.679-681, L.688, L.698-L.701; E/CN.4/Sub.2/234 and Add.1-3)(continued)

Article IV (continued)

Mr. VOLIO (Costa Rica) said that the Commission was called upon to elaborate a draft convention which would be acceptable to all States Members of the United Nations, with a view to putting an end to racial discrimination. It must therefore take into account the divergencies between the various national legislations without, however, losing sight of its main objective, namely, the elimination of racial discrimination.

The United States amendment (E/CN.4/L.688) tended to reconcile the requirements of the various legislations. It safeguarded freedom of thought and expression while providing a means of countering discrimination. In a spirit of compromise, his delegation suggested that sub-paragraph (b) should be replaced by the following text:

"(b) Shall declare illegal and prohibit organizations or the activities of organizations, as the case may be, which promote and incite racial discrimination, as well as propaganda organizations;"

That wording would permit States which were unable to prohibit organizations nevertheless to place a ban on discriminatory practices. The legislation of Costa Rica, for its part, was such that the text submitted by the Sub-Commission on Prevention of Discrimination and Protection of Minorities could be accepted by him as it stood; it was the Commission's duty, however, to draft a text which would be acceptable to all.

Mr. HAKIM (Lebanon) said that he was also ready to accept the Sub-Commission's text without amendment, since under Lebanese law organizations which incited racial discrimination or merely promoted it could be prohibited. He felt, however, that as many States as possible should be able to ratify the Convention, and if the text proposed by the Costa Rican representative met the wishes of the majority, he would support it.

With regard to the USSR amendments (E/CN.4/L.681), he felt that the insertion of the word "severely" would in no way strengthen the text, and that if it was added its absence in other articles might give rise to difficulties. He would

(Mr. Hakim, Lebanon)

therefore abstain from voting on that proposal. He was also unable to support the insertion of the words "based on ideas or theories of the superiority of one race or group of persons of one colour or ethnic origin", which would have the effect of adding another qualification and restricting the scope of article IV. On the other hand, his delegation could support the inclusion of the words "in any form", although they did not appear consistently after the words "racial discrimination" in the draft convention.

The USSR amendments to sub-paragraph (b) and the Polish amendment (E/CN.4/L.699) went too far, particularly if the organizations concerned confined themselves to promoting racial discrimination. The question, in sub-paragraph (b), was whether the States parties should agree to declare illegal and prohibit organizations as such or simply the activities of those organizations, and whether, for an organization and its activities to be banned, it must both promote and incite racial discrimination or whether either one of those practices was sufficient. Moreover, the two questions were allied. If it was decided that promotion alone was not enough and that it must be accompanied by incitement, it would no doubt be necessary not merely to ban the activities of organizations, but to prohibit the organizations themselves. His delegation was therefore unable to endorse the United States amendment (E/CN.4/L.688). The United Kingdom representative had said that the word "promote" might be interpreted as referring to the expression of ideas and that sub-paragraph (b) could have the effect of restricting freedom of expression and would thus be going too far. It was a matter of interpretation, and his delegation for its part considered that the word "promote" referred not only to the dissemination of ideas, but also to the pursuit of certain activities. If a narrow interpretation was to be placed on that word, however, it would become necessary to stipulate that organizations which both promoted and incited racial discrimination should be banned. Because of this uncertainty, his delegation would abstain on the USSR amendment (E/CN.4/L.681) to replace "and" by "or" in sub-paragraph (b).

Finally, he approved of the Indian representative's suggestion that the last USSR amendment (E/CN.4/L.681), which would make it illegal to provide financial or other assistance to organizations that encouraged racial discrimination,

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(Mr. Hakim, Lebanon)

should be retained in a different form. The idea was valuable, for in many cases such organizations could only exist to the extent they were able to obtain funds.

Mr. MOROZOV (Union of Soviet Socialist Republics) said that in response to the suggestions of the Indian representative, he would revise his amendment to sub-paragraph (b) (E/CN.4/L.681). Under the revised amendment, the following words would be added to the end of that sub-paragraph: "... as also the rendering of assistance to such organizations or activities, particularly in the form of financing". Thus amended, the USSR amendment would be more consistent with the Polish amendment (E/CN.4/L.699), which could be added after the words that he had just read out. The Polish amendment, for its part, would provide a radical cure for racial discrimination, for if there was a sincere desire to eliminate that evil, States should be required to take criminal proceedings against the guilty parties and not content themselves with half measures. He hoped that the views of the Polish delegation would receive the support they deserved.

Contrary to the opinion expressed by some representatives, the USSR proposal (E/CN.4/L.681) regarding the inclusion at the beginning of the paragraph of the words "based on ideas or theories of the superiority of one race or group of persons of one colour or ethnic origin" would not restrict the scope of article IV. Whether it actually said so or not, an organization which justified or promoted racial discrimination was necessarily based on ideas or doctrines of racial superiority. He did not think that the insertion of the proposed wording would have the effect of placing any of the organizations concerned operating in the territory of any State beyond the purview of article IV. Racial discrimination was necessarily founded on explicit or implicit concepts of racial superiority. Far from restricting the scope of article IV, the second USSR proposal filled a gap. As it stood, the article permitted organizations which proclaimed ideas of racial superiority but did not themselves engage in any activity to go scot-free. Article IV, in its present form, was aimed only at the agents and spared the instigators. That was certainly not the intended result and the meaning of the USSR amendment had been misunderstood.

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(Mr. Morozov, USSR)

With regard to his amendment relating to the replacement of "and" by "or" in the last line of sub-paragraph (b), he recalled that the word "or" appeared in article 9 of the Declaration on the Elimination of All Forms of Racial Discrimination, and he stressed that to require that an organization should both promote and incite racial discrimination would be unjustifiable leniency. That amendment, like the second USSR proposal, was designed to make the draft convention an effective weapon in the fight against racial discrimination. It would be wrong to believe that racism, facism and nazism had disappeared and no longer represented a threat to mankind. In that connexion, he wished to acquaint the Commission with the contents of a telegram sent to his delegation by the Government of the German Democratic Republic, which would be circulated as an official document of the Commission, in which that Government denounced the persistence of racist ideologies and the presence of nazi politicians and professors in top-level posts in the Federal Republic of Germany. The Government of the German Democratic Republic, which was following the Commission's discussions on the draft convention very closely, wished to draw attention to the existence of those pernicious forces, which represented a real threat to peace. Moreover, referring to the studies mentioned in the memorandum by UNESCO (E/CN.4/Sub.2/216), he noted that more than 130 organizations active in a number of countries, including countries represented on the Commission, consistently engaged in manifestations of racial hatred and jeopardized the maintenance of peace. In those circumstances, the members of the Commission must give evidence of their determination to put an end to racial discrimination by making the requisite amendments to the draft convention.

Mr. CHAKRAVARTY (India) observed that the USSR amendment (E/CN.4/L.681), in introducing the words "based on ideas or theories, etc." at the beginning of article IV, restricted the scope of the Sub-Commission's text (E/CN.4/873), which condemned in an unqualified manner all propaganda and organizations justifying or promoting racial hatred and discrimination. The USSR representative had said that an organization which carried on activities of racial discrimination necessarily based those activities on a theory of racial or ethnic superiority. He did not share that view. A building concern, for instance, having built a

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(Mr. Chakravarty, India)

group of houses, might find that the price of the dwellings tended to go down if they were offered to all buyers without distinction. To protect its interests, the concern might decide that only certain racial groups would be allowed to buy the houses. It could hardly be said in that case that the concern was motivated by ideas of racial superiority; it simply wanted to make the largest possible profit. Nevertheless, the concern was still guilty of racial discrimination, and its actions should be punishable by law. The Sub-Commission's wording made prosecution possible in such cases, but that would not be true if the USSR amendment was adopted.

At the same time, he realized that the USSR delegation wished to combat not only organizations which justified or promoted racial discrimination, but also organizations which, without pursuing that express purpose, were "based on ideas or theories of the superiority of one race, etc.". He accordingly suggested adding the word "or" before the words "which justify or promote ..." and following the wording proposed by the USSR delegation.

There might also have been some misunderstanding regarding sub-paragraph (b). Article IV began with a statement of principle and then proceeded to set forth a number of measures in sub-paragraphs (a), (b) and (c). Sub-paragraph (a) stated that all incitement to racial discrimination was an offence; sub-paragraph (b) declared organizations which incited racial discrimination to be illegal and prohibited; and sub-paragraph (c) prohibited public authorities from inciting racial discrimination. It therefore seemed unnecessary to have sub-paragraph (b) declare illegal activities that were already punishable under sub-paragraph (a); thus there seemed scarcely any difference between the United States amendment to sub-paragraph (b) (E/CN.4/L.688) and the provisions of sub-paragraph (a). For similar reasons he thought the Polish amendment (E/CN.4/L.699) difficult to justify.

If the convention was to be effective it must be ratified by the greatest possible number of countries. The oral amendment proposed by the Costa Rican representative might therefore be acceptable. His delegation would not oppose it if it obtained the support of the rest of the Commission.

As regards the words "which promote and incite racial discrimination", he agreed with the United Kingdom representative that the idea of promoting was

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(Mr. Chakravarty, India)

contained in the idea of inciting. Incitement was impossible without promotion. The opposite was not true, however; one could promote without inciting. The question was whether the Commission wished to put an end to promotion or to incitement. If it wished to prohibit only incitement, it was superfluous to refer to promotion; if it wanted to retain the idea of promotion, it might do better to replace "and" by "or".

Mr. DOE (Liberia) said that the word "severely", whose insertion was proposed in the USSR amendment (E/CN.4/L.681), added no legal weight to the meaning or scope of the word "condemn". Moreover, some words were sufficient in themselves, and were only weakened by qualification. He would therefore abstain during the vote on the word "severely". Concerning the USSR amendment to insert the words "based on ideas or theories of the superiority of one race, etc.", he felt that since that idea had already been expressed there was no need to repeat it. He would therefore abstain on that point too. He would, however, vote for the insertion of the words "in any form".

The United States amendment (E/CN.4/L.688) raised a problem which had been long and heatedly debated in the Third Committee during the discussion of a similar article in the Declaration. A number of speakers had then stressed that it was improper to write into a declaration legal language belonging in a convention. However, it was clear from a reading of article 9 (1) of the Declaration that it was the organizations themselves that were at issue. In his view, by adding the words "activities of" the Commission would be detracting from the Declaration on which the draft convention was based. It served no purpose, moreover, to prosecute a few members of an organization when those who were its mainstays remained at liberty. He was therefore unable to accept the United States amendment, the more so as the Liberian delegation had taken that same position in the General Assembly. He would abstain in the vote on the amendment.

Mrs. TREE (United States of America) indicated that in document E/CN.4/L.701, article X should read article IX. She thanked the Costa Rican representative for his compromise oral amendment, which she would support.

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(Mrs. Tree, United States)

With respect to the USSR amendment (E/CN.4/L.681), her delegation had only a stylistic objection to the insertion of the word "severely". She would therefore abstain in the vote on that point. She would vote for the insertion of "based on ideas or theories of the superiority of one race, etc.", but against the words "in any form", which, being too vague, would not improve the text.

She would vote against all three USSR amendments to sub-paragraph (b) and against the Polish amendment (E/CN.4/L.699) to it.

Governments should not punish individuals for their ideas, but only for their actions. Accordingly, the Commission should make certain that none of the provisions of the convention served to undermine freedom of speech. All members of the Commission wished to eliminate racial discrimination, and the only issue was how to achieve that end. In her view pernicious ideas could not be eliminated by forcing them underground. Everyone should be able to express himself openly; the ideas of an organization operating in secrecy readily became subversive for the very reason that they were not open to scrutiny.

Actions were another matter. They could be punished and declared illegal. That was also true of incitement, which could be stopped by appropriate legislation. The convention, which was a legal instrument, should therefore very carefully define the activities that were to be punishable by law.

Mr. BEAUFORT (Netherlands) endorsed the United States amendment to article IV (E/CN.4/L.688) and was also prepared to accept the compromise solution proposed by the Costa Rican representative.

The USSR amendment (E/CN.4/L.681) gave rise to concern, however, and he warned the Commission against the danger of sacrificing to a single fundamental right all other rights. Citing paragraph 145 of the Secretary-General's memorandum on the principal causes and types of discrimination (E/CN.4/Sub.2/40/Rev.1), he observed that the law should not be used to interfere unduly with individual freedom. That freedom did not of course include the right to commit acts which were clearly defined as offences, but in the case of freedom of speech there were zones in which it was very dangerous to draw a line between legitimate and illegitimate exercise of liberty.

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Mr. BOUQUIN (France) said that his delegation was one of those which had some difficulty in accepting the text of article IV submitted by the Sub-Commission. So far as concerned sub-paragraph (a) of that article, indeed, it had one difficulty which had not yet been referred to. The position was that, while French law certainly punished all "incitement to violence and all provocation to violence", it did not provide for measures against incitement which was merely "likely" to cause acts of violence. The French delegation regarded the wording of that sub-paragraph as very vague; it would therefore be obliged to ask for a separate vote, and would vote against it. France was seemingly the only country to experience any difficulties in that connexion. The inclusion of the word "severely" proposed in the amendments submitted by the Soviet delegation (E/CN.4/L.681) did not seem to him to be necessary. The French delegation considered that there was no reason why propaganda or an organization should be condemned more severely than racial discrimination itself, and it would therefore not support that amendment. Nor could it support the third Soviet amendment proposing the insertion in the same paragraph of the words "in any form", for apart from the fact that they added nothing to the sense, those words had the disadvantage, in the French text, of being ambiguous and capable of being interpreted as applying to the words "propaganda" and "organizations", which was certainly not the intention of the Soviet delegation. Since the idea involved was already contained in article 9 of the Declaration on the Elimination of all Forms of Racial Discrimination, it would be wise, so far as concerned the French text at all events, to see that the text of the amendment was brought into line with that of the Declaration.

The views of the French delegation on sub-paragraph (b) were very close to those already stated by the delegations of the United States, the United Kingdom and the Netherlands. He wished to add to the arguments in favour of a more flexible text already put forward by various delegations a further argument based on French law. The present French law of association, which dated from 1901, was very liberal, since while it conferred the status of a legal entity on declared associations, it also permitted the existence of undeclared associations. Thus, while an association could be dissolved, it was not in the French tradition to

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(Mr. Bouquin, France)

declare it illegal. Furthermore, he felt that a distinction should be drawn between associations which might occasionally commit acts encouraging racial discrimination and organizations whose aim was to encourage such discrimination so as to incite hatred among citizens. For that reason, Governments and courts should be left a certain amount of latitude in deciding on measures to be taken, since the power to declare an organization illegal for a given reason might, as the representative of the United Kingdom had already pointed out, lead to abuses. Thus, considering that some degree of flexibility was necessary, the French delegation was prepared to support the amendment submitted by the United States (E/CN.4/L.688). At first glance, it was also favourable to the compromise suggested by the representative of Costa Rica, but it could not take a definite decision on that new proposal until it had the official French text before it.

In connexion with the second Soviet amendment relating to sub-paragraph (b), it was to be noted that there was an error in the French text of that sub-paragraph, where the word "or" had been retained, contrary to an amendment adopted by the Sub-Commission. The Soviet amendment thus affected the French text equally with the other texts. Nevertheless, as the representative of the United Kingdom had pointed out, it was important to retain the word "and", unless the Commission adopted the Indian representative's suggestion to delete the words "promote and".

Finally, so far as the Polish amendment (E/CN.4/L.699) was concerned, the French delegation felt that it was impossible to prohibit an organization while at the same time declaring it to be a punishable offence to belong to it. The prosecution of those who re-formed a prohibited organization could certainly be provided for, but that did not seem to be what the Polish delegation had in mind. The French delegation could not, therefore, support that proposal.

Mr. NEDBALLO (Ukrainian Soviet Socialist Republic) said that the United States representative was clearly right in saying that individual opinions could not be made subject to legal regulations; it was an elementary truth that the law did not apply to thoughts but to acts. That fact could not be used, however, as an argument against the prohibition of an organization. The setting up of an organization encouraging racial discrimination was an act, just as the activities of such an organization were acts, and prohibition was justified in

(Mr. Nedbailo, Ukrainian SSR)

both cases. He wished to recall, in that connexion, that the Government of the German Democratic Republic had stated in the telegram it had sent to the Commission that the convention represented the best way of eliminating all forms of racial discrimination. Thus, there was good reason to demand the prohibition of all fascist and neo-fascist organizations, which were dangerous vehicles of racist propaganda and sources of hatred among peoples.

Before giving a final decision on the oral proposal of the representative of Costa Rica, he would like to have the written text before him. As he understood it, the proposal was to prohibit "organizations or the activities of organizations inciting to racial discrimination", while leaving each State free to interpret those words in accordance with its own legal system. But to give such latitude to States was in effect to create unequal obligations, which was contrary to the very spirit of a convention. The Ukrainian delegation could not accept a text which would introduce a subjective element into the struggle against racial discrimination.

Mr. SPERDUTI (Italy) said that the discussion of the Soviet amendments (E/CN.4/L.681) had not produced any new element which could induce the Italian delegation to change its position. The addition in the first paragraph of article IV of the words "based on ideas or theories of the superiority of one race or group of persons of one colour or ethnic origin" was unnecessary and might weaken the text, which, in the form in which it had been proposed by the Sub-Commission, was clear and concrete, and manifestly covered organizations based on ideas or theories of superiority, since it condemned "all organizations which justify or promote racial hatred and discrimination". The representative of India had suggested, by way of compromise, the wording "all organizations based on ideas or theories of the superiority ... or which justify or promote ...". But while that sub-amendment was an improvement over the Soviet text, it had the disadvantage of giving the impression that there were two distinct categories of organizations. Accordingly, the Italian delegation preferred the text drafted by the Sub-Commission, and while it was sure that the representative of the Soviet Union had been trying to strengthen rather than weaken the effect of article IV it would be obliged to abstain when the Soviet amendment was put to the vote.

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(Mr. Sperduti, Italy)

The Italian delegation would also be obliged to abstain from voting on the Soviet amendment proposing the addition of the words "in any form" in the same paragraph of article IV. If those words, which were taken from article IX of the Declaration on the Elimination of all Forms of Racial Discrimination, were to be included in the convention, then it would be necessary to make sure that the context was the same; and that was not so. In particular, the Declaration did not contain the word "hatred", while the convention, as modified by the Soviet amendment, would imply that several forms of hatred existed.

He wondered whether the expression "likely to cause" in the English text of sub-paragraph (a) of article IV might not be better translated in French by "de nature à provoquer" rather than by "risquant de provoquer". That was a question which could be considered by the Secretariat.

So far as sub-paragraph (b) was concerned, the Italian delegation was in favour of the oral amendment proposed by the representative of Costa Rica, which took account of the difficulties of certain delegations while retaining the basic elements of article IV. If that amendment was rejected, however, the Italian delegation would have to choose between the amendments put forward by the Soviet Union and Poland and the United States proposal: in other words, to choose between prohibiting the organizations themselves or prohibiting their activities. After a careful study of the various texts, the Italian delegation wished to point out, first of all, that the activities referred to in sub-paragraphs (a) and (b) were not the same. Under the terms of sub-paragraph (a), "all incitement to racial discrimination" had to "result in or be likely to cause acts of violence" in order to be punishable by the law - an important detail which rightly did not figure in sub-paragraph (b). Sub-paragraph (b) dealt exclusively with the acts of organizations, which were more serious than any other form of incitement, because they had much greater practical effectiveness. In the view of the Italian delegation, a distinction had to be drawn between the two types of activities, and it was entirely proper to prohibit and declare punishable by law all incitement to racial discrimination, whether it came from individuals or from organizations. It would be going too far, however, to declare an organization illegal and prohibit it on the pretext that its leaders had, on a single occasion, perhaps, incited to discrimination. It would be possible to go as far as that if

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(Mr. Sperduti, Italy)

sub-paragraph (b) related to organizations set up with the aim of committing acts of violence; but even in that case the Italian delegation would not consider such a provision necessary, for such organizations were covered by the Italian penal code, which punished all associations having as their objective the commission of unlawful acts.

Finally, the Italian delegation could not accept the Polish amendment (E/CN.4/L.699), under which a person could be punished simply because he belonged to an organization some of whose other members engaged in discrimination. If, therefore, the Italian delegation had to choose between the Soviet and Polish amendments on the one hand and the United States amendment (E/CN.4/L.688) on the other, it would vote for the latter. However, it would prefer a compromise solution acceptable to the majority of members of the Commission and based on the ideas expressed by the representative of Costa Rica.

Mr. MOROZOV (Union of Soviet Socialist Republics) said that if by doing so it could help to speed up the work of the Commission and dispel certain doubts, the Soviet delegation would be willing to add the word "or" before the words "which justify" in the text which it had proposed for the first paragraph of article IV (E/CN.4/L.681).

The CHAIRMAN said that the revised Soviet Union proposal would be circulated in the various working languages very shortly. The Secretariat had noted the French representative's observations regarding article IV of the draft convention and the United States delegation's remarks concerning document E/CN.4/L.701.

The meeting rose at 6.20 p.m.