

UNITED NATIONS
ECONOMIC
AND
SOCIAL COUNCIL



Distr.
GENERAL

E/CN.4/SR.790
28 April 1964

ORIGINAL: ENGLISH

COMMISSION ON HUMAN RIGHTS

Twentieth Session

SUMMARY RECORD OF THE SEVEN HUNDRED AND NINETEETH MEETING

Held at Headquarters, New York,
on Friday, 28 February 1964, at 3.30 p.m.

CONTENTS

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 and 2) (continued)

(11 p.)

64-09223

/...

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. 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
<u>Observers from Member States:</u>		
	Mr. BARROMI	Israel
	Mr. KISOSOIVKOLE	Uganda
	Mr. MELOVSKI	Yugoslavia

PRESENT (continued):

Representatives of specialized agencies:

	Mr. FARMAN-FARMAIAN	International Labour Organisation
	Mr. SALSAMENDI	United Nations Educational Scientific and Cultural Organization
	Mrs. KALM	World Health Organization
<u>Secretariat:</u>	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 and 2) (continued)

Article III (continued)

Mrs. TREE (United States of America) withdrew the oral amendment she had suggested at the previous meeting (E/CN.4/SR.789) and said that she would introduce a new article, specifically condemning anti-semitism, for insertion at some other place in the convention.

Mr. BARROMI (Israel) speaking at the invitation of the Chairman, expressed his country's appreciation to those members of the Commission who had supported an explicit condemnation of anti-semitism in the convention and had recognized the need to adopt vigorous measures to eradicate it. He expressed confidence that the Commission would succeed in reaching agreement on a formulation of those ideas suitable for inclusion in a legal instrument, bearing in mind that it was feasible to eradicate anti-semitism without impairing freedom of expression. The reference to anti-semitism should be accompanied by an explicit mention of nazism, which constituted a real and present danger. Indifference to the existence of those manifestations of racial discrimination represented the greatest danger to democratic institutions, human ideals and civilization itself. He hoped that the Commission would not forfeit the opportunity to repudiate those doctrines and practices and thus provide encouragement to millions of persons.

Mr. MOROZOV (Union of Soviet Socialist Republics) expressed doubts regarding the retention in article III (E/CN.4/873) of the phrase "in territories subject to their jurisdiction". It was normal for States to take action in the territory over which they exercised sovereignty. However, attempts had been made in the past to represent the situation as though the jurisdiction of some States extended not only to their own territory, but to lands seized by them during the period of colonial expansion. In reality, they had no sovereign rights over such territories and the convention should not appear to grant them. He would prefer the phrase "in their territory", but would not press the matter unless the representatives of Latin America, Asia and Africa were equally disturbed by the present wording.

/...

Mr. HAKIM (Lebanon) remarked that so long as there were still territories under colonial rule, the Powers responsible for administering them were obligated to eliminate racial segregation and discrimination, and, in particular, apartheid in those territories. They will assume that obligation from the moment they signed the convention.

Mr. BENITES (Ecuador) shared that view. An examination of Article 73 of the Charter showed that while the colonial Powers did not exercise sovereignty over the Non-Self-Governing Territories, they were responsible for the administration of those Territories until such time as the latter had attained self-government or independence. Moreover, the General Assembly had defined the territories to be regarded as non-self-governing within the meaning of the Charter and signatories of the convention assumed responsibility under article III for eliminating racial discrimination there as well as in the metropolitan country.

Mr. DOE (Liberia) said that by enjoining upon the Powers which still administered Non-Self-Governing Territories to eradicate racial discrimination in those areas, the convention would not be dignifying or perpetuating the evil of colonialism. It was recognizing a reality, namely, that although colonialism was dying out, it still existed in some parts of the world. There was good reason to anticipate that the anomaly would disappear before very long and that the convention would in future apply exclusively to fully sovereign, independent States.

Mr. IGNACIO-PINHO (Dahomey) failed to understand why the reference to territories subject to the jurisdiction of the States parties to the convention should alarm the USSR representative. There had been numerous precedents for a colonial Power undertaking to extend the application of a convention to the territories under its administration. Subsequently, when those territories had attained their independence, they had been only too glad to become parties in their own right to the same convention. He urged a vote on article III.

Article III (E/CN.4/873) was adopted unanimously.

Mr. MOROZOV (Union of Soviet Socialist Republics) said that he had voted for the article, but reserved the right, at a later stage in the consideration of the convention, to submit amendments to it.

/...

Article IV

The CHAIRMAN drew attention to the amendments submitted by the Soviet Union (E/CN.4/L.681), the United States (E/CN.4/L.688) and Poland (E/CN.4/L.699).

Mr. RESICH (Poland) pointed out that article IV was the first provision of the convention to define the legal responsibilities assumed by States parties to it. Thus, sub-paragraph (a) declared all incitement to racial discrimination to be an offence punishable by law. Logically, sub-paragraph (b), which prohibited organizations and propaganda activities inciting to racial discrimination, should also specify the legal consequences of participation in such organizations and activities. The Polish amendment (E/CN.4/L.699) was intended to achieve that end. A convention whose historic purpose was to eliminate racial discrimination in all its forms throughout the world should provide for penalizing those engaging in propaganda activities which encouraged such discrimination, for such activities were particularly dangerous to the peaceful development of nations.

Mr. MOROZOV (Union of Soviet Socialist Republics), introducing his delegation's amendments to article IV (E/CN.4/L.681), said that they were based on a study of the views of his colleagues and designed to bring article IV into line with article 9, paragraph 1, of the Declaration on the Elimination of All Forms of Racial Discrimination by restoring certain words and phrases which had been omitted from the draft convention. His delegation interpreted sub-paragraph (b) of article IV as meaning that only "organized propaganda activities" were to be classed as illegal. His delegation felt that it would be better to condemn "organized and any other propaganda activities", since both types of propaganda activities, having similar results, should fall within the purview of article IV.

In the Third Committee there had been a divergence of views whether sub-paragraph (b) should read "... promote and incite ..." or "... promote or incite ...". His delegation had argued in favour of "or" rather than "and" because it believed it was not sufficient to place upon States the obligation to prohibit and declare illegal organizations and propaganda activities that committed the double offence of promoting and inciting. Various hypothetical cases could be imagined: a racist organization might call on its members to

(Mr. Morozov, USSR)

commit murder and so long as it did not name any particular persons to be murdered that might be called promoting, whereas if it named the persons who were to be murdered that might be considered promoting and inciting. It was intolerable that in one case the organization would be condemned, and in the other it would be able to carry on its activities with impunity.

With regard to his delegation's last amendment, proposing the addition of a sentence at the end of sub-paragraph (b), he recalled that the nazis had been financed by big industrialists and monopolies. Long after the destruction of hitlerism, neo-nazism was springing up with the financial backing of the same groups which had helped Hitler. With regard to the Polish amendment, which was on the whole acceptable, his delegation reserved the right to propose the addition of some such form of words as: "and shall provide legal penalties for participation in such activities".

Mr. SPERDUTI (Italy) said that he had doubts about adding the word "severely" before the word "condemned" in the first paragraph of article IV, since the word "condemned" stood unqualified in both article II and article III, which had already been adopted. It seemed better to omit the word "severely" in the present instance, lest it should have the effect of weakening articles II and III. He also wondered whether the effect of the second USSR amendment might not be to limit the applicability of article IV by adding another qualification. He was sure that the USSR representative had no such intention, and drew his attention to the fact that the preambular paragraph beginning "Convinced" explicitly condemned "any doctrine based on racial differentiation or superiority".

Mr. VOLIO (Costa Rica) found the USSR amendment (E/CN.4/L.681) generally acceptable as they would strengthen the text, but agreed with the representative of Italy that the wording of article IV as it stood gave States parties greater latitude to condemn racist propaganda and organizations. His delegation feared that the insertion of the further qualifying phrase proposed by the USSR might enable certain organizations to escape condemnation by concealing their intentions with claims based on cultural differences or nationalist aspirations.

/...

Mr. ERMACORA (Austria) said that his delegation experienced no such difficulties in accepting the USSR amendments to article IV. He felt, however, that it was not clear what was the antecedent of the words "such discrimination" either in those amendments or in the original text of article IV.

Mrs. TREE (United States of America), introducing her delegation's amendment to sub-paragraph (b) (E/CN.4/L.688), said that under the law of the United States and other countries, organizations as such could not be prohibited, although persons who engaged in illegal activities could be prosecuted for their actions. She hoped that the convention would not weaken the right to freedom of association recognized in article 20 of the Universal Declaration of Human Rights. If the United States amendment was adopted, sub-paragraph (b) would strike at the heart of the problem without curtailing freedom of association. Indeed, where all the activities of an organization were directed towards the promotion and incitement of racial discrimination, there would be no substantial difference between the Sub-Commission's text and the United States proposal.

Mr. MOROZOV (Union of Soviet Socialist Republics) emphatically opposed the United States amendment, which was based on an entirely misunderstood conception of freedom of association. By submitting that amendment, the United States delegation was, in effect, proposing that the States parties to the convention should stand idly by while fascist organizations secured financial support, solicited members, and planned their activities, until they became so powerful that they could not be repressed. Because of the policies adopted by certain countries, revanchist organizations were now active in various lands. Nobody could grant such freedom of association to nazi, fascist and neo-colonialist organizations dedicated to activities prohibited by the convention itself. His Government considered that, if an organization engaged in such activities, not only the persons who actually perpetrated the prohibited acts but also the leaders of the organization and its financial backers, should be held responsible. Under the United States amendment, such persons and the organization itself would be exempt from prosecution. If its laws did not provide for prohibiting racist organizations, the United States would simply have to revise its legislation to bring it into line with the convention: that was an obligation which would devolve on all Contracting States.

Sir Samuel HOARE (United Kingdom) wholly supported the United States amendment. His country, which had always preserved freedom, also had no laws under which it could prohibit organizations and, in any event, would not wish to do so. At present there were in his country a few organizations favouring racial discrimination; one of their members had been arrested and convicted of the offence described in sub-paragraph (a). In fact, that sub-paragraph covered most of what was necessary. His Government would not undertake an obligation to prohibit organizations as such; it would be absurd to require a country to combat racial discrimination by a method which was contrary to everything it stood for and which would arouse opposition among its people.

He opposed the USSR representative's proposal (E/CN.4/L.681) to replace the word "and" by "or" in sub-paragraph (b). At the beginning of article IV, the States parties undertook to adopt measures to eradicate all incitement to racial discrimination; that should be the dominant criterion in the three sub-paragraphs, which spelled out that obligation. Also, incitement was a conscious and motivated act, whereas promotion might occur without any real intention or endeavour to incite. On the other hand, it was reasonable to require, in sub-paragraph (c), that public authorities should not promote or incite racial discrimination.

He agreed with the Italian representative that the insertion of the word "severely" before "condemn" at the beginning of the article would not improve the text. The idea of establishing degrees of condemnation in a convention was not a happy one.

Mr. CHAKRAVARTY (India) shared the Italian representative's view that the insertion of the qualifying phrase proposed by the USSR representative (E/CN.4/L.681) after the word "organization" would weaken the text, which at present made an absolute statement.

The introduction of the word "severely" before the word "condemn" in the beginning of article IV was not appropriate; the word "condemn" stood alone in article II, and racial discrimination was a broader idea than that of organizations justifying or promoting such discrimination.

(Mr. Chakravarty, India)

In sub-paragraph (b) he preferred the expression "promote or incite", as proposed by the USSR delegation, since it was very difficult to prove both promotion and incitement, and since article 9, paragraph 3, of the Declaration on the Elimination of All Forms of Racial Discrimination used that expression.

He suggested that the objective of the new sentence proposed by the USSR delegation might be accomplished by inserting the words "and support thereof in any form" after the word "organizations" in sub-paragraph (b).

Turning to the United States amendment (E/CN.4/L.688), he pointed out that the Sub-Commission's text of sub-paragraph (b) would prohibit, not organizations as such, but organizations "which promote and incite racial discrimination". Article 20 of the Universal Declaration had been cited, but the rights proclaimed by that article were subject to the limitations mentioned in article 29, paragraph (2), of the same Declaration. He could not believe that the laws of the United States and the United Kingdom allowed unlimited liberty equalling licence.

Mr. GRAULUND HANSEN (Denmark) said that Denmark held the same view of article IV as it had maintained concerning article 9, paragraph 3, of the Declaration on the Elimination of All Forms of Racial Discrimination. The Finnish representative, explaining the vote of the Scandinavian countries, including Denmark, on article 9, paragraph 3 (A/PV.1261), had stated that a society where liberty, equality and the dignity of man were effectively upheld provided protection against discrimination and effective remedies against any denial of equal rights, and that acts of violence and incitement to violence were punishable under law, but that the mere expression of views was not punishable, however, much such views might be disliked. In the Scandinavian countries it would be considered a serious step backward if the laws were changed in order to make it possible to prosecute organizations for expressing opinions.

Article 19 of the Universal Declaration assured to everyone the right to freedom of opinion and expression and article 20 the right to freedom of peaceful assembly and association. Article 4 dealt with a collision between conflicting human rights. It was not only a question of revising existing national law; it was also a question of principle. Consequently, his delegation could not vote for the Sub-Commission's text of sub-paragraph (b). It found the United States amendment (E/CN.4/L.688) acceptable.

(Mr. Graulund Hansen, Denmark)

He preferred the Sub-Commission's text of the first sentence of article IV without the amendments proposed by the USSR, because it was shorter and in line with Danish law.

Mr. MOROZOV (Union of Soviet Socialist Republics), replying to the comments on his amendments, assured the Indian representative that he would consult with him and with other interested delegations to find the best form in which to express the idea that the financing of prohibited activities and organizations should also be prohibited.

However, he could not agree that his proposal to insert a phrase after the word "organizations" (E/CN.4/L.581) at the beginning of the article would weaken the text. The amended text would clearly cover all organizations justifying or promoting racial hatred and discrimination. The text would thus be made much stronger and no loopholes would be left for any racist organizations.

He drew the Danish representative's attention to article 17 of the Treaty of Peace with Italy, in which Italy undertook not to permit the resurgence in Italian territory of fascist organizations. Those who defended the United States amendment apparently used two different criteria, depending on which countries and organizations were concerned.

The meeting rose at 6.5 p.m.