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SUMMARY RECORD OF THE SEVEN HUNDRED AND NINETY-SIXTH MEETING

Held at Headquarters, New York,  
on Wednesday, 4 March 1964, at 3.35 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. KOUKOUTI	Dahomey
	Mr. GRAULUND HANSEN	Denmark
	Mr. BENITES	Ecuador
	Mr. VEGA-GOMEZ	El Salvador
	Mr. BOUQUIN	France
	Mr. CHAKRAVARTY )	India
	Mr. S.K. SINGH )	
	Mr. SPERDUTI	Italy
	Mr. HAKIM	Lebanon
	Mr. DOE	Liberia
	Mr. VAN BOVEN	Netherlands
	Mr. QUIAMBAO	Philippines
	Mr. RESICH	Poland
	Mr. PANCARCI	Turkey
	Mr. NEDBAILO	Ukrainian Soviet Socialist Republic
	Mr. MOROZOV	Union of Soviet Socialist Republics
	Sir Samuel HOARE	United Kingdom of Great Britain and Northern Ireland
	Mr. MEANS )	United States of America
	Mr. BILDER )	
<u>Observers from Member States:</u>		
	Mr. BARROMI	Israel
	Mr. KISOSONKOLE	Uganda

PRESENT (continued):Representatives of specialized agencies:

Mr. FARMAN-FARMAIAN

International Labour  
Organisation

Miss BARRETT

United Nations  
Educational, Scientific  
and Cultural OrganizationRepresentative of a non-governmental organization:Category A: Mr. CONVOILYWorld Federation of Trade  
UnionsSecretariat: Mr. HUMPHREYDirector, 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.698-L.704; E/CN.4/Sub.2/234 and Add.1-3) (continued)

Article IV (conclusion)

The CHAIRMAN invited the members of the Commission to explain their votes on article IV.

Mr. CHAKRAVARTY (India) said that if the USSR amendment (E/CN.4/L.681) calling for the substitution of the word "or" for the word "and" between the word "promote" and "incite" in article IV, sub-paragraph (b), had been adopted, his delegation would have voted differently on the Costa Rican amendment (E/CN.4/L.702), as well as on other sub-amendments and, for that matter, on sub-paragraph (b) as a whole). The retention of the word "and", with the adoption of the Costa Rican amendment, had made the wording of sub-paragraph (b) weaker than that of either the Sub-Commission's draft or the corresponding article of the Declaration adopted by the General Assembly. As a consequence his delegation had been unable to support sub-paragraph (b) in the form in which it had been adopted.

Mr. QUIAMBAO (Philippines) said that although his delegation had expressed certain doubts regarding the compromise formula suggested by the Indian representative for paragraph (a), preferring the Sub-Commission's text, the improvements the Indian delegation had subsequently made in its proposal had enabled him to vote for it.

Mr. NEDBAILLO (Ukrainian Soviet Socialist Republic) said that he had voted against the Costa Rican amendment because it was inconsistent with his delegation's views on the subject of the role of international law, and the role of law, in life in general. The insertion of the expression "as appropriate" left States free to take whatever decisions they liked, and made the conclusion of a convention futile. It was a negation of law and of legal principles: States were given free rein to do what they pleased, when they pleased. The Costa Rican amendment was a breach of the principle of the equality of all before the law and of the equality of States; for certain States would prohibit racist organizations, others would prohibit the activities of such organizations, and others would do neither.

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(Mr. Nedbailo, Ukrainian SSR)

He had abstained in the vote on sub-paragraph (b) as a whole and reserved the right to submit specific proposals when the draft convention, as adopted by the Commission, was submitted to the General Assembly. He would endeavour then to see that the rule of law prevailed.

His delegation had nevertheless voted for article IV as a whole, while regretting that it had been modified by the Costa Rican amendment.

Mr. RESICH (Poland) said that his delegation had abstained from voting on sub-paragraph (b) because as it now stood it left States Parties free to refrain from banning racist organizations; responsibility would be limited to their officers, who could be let off on payment of a small fine. In those conditions, racist organizations would be able to pursue and expand their activities unhampered; and that could prove dangerous to world peace, and especially to the country he represented.

Mr. BOUQUIN (France) said that he had explained his vote in advance, in his preceding statements. He had voted for India's oral amendment because it resembled the Danish amendment (E/CN.4/L.704) and embodied the same ideas. He wished to point out that his delegation had voted on the basis of the English text, and hoped that it would be more accurately translated in the final French text. He had not participated in the voting on the third USSR amendment (E/CN.4/L.681), aimed at adding the words "in any form" after the word "discrimination", for as he had already pointed out, the French translation of the corresponding Russian word completely altered the sense of the paragraph.

His delegation had voted in favour of inserting the expression "as appropriate" in sub-paragraph (b) because it considered that those words were needed to give the Costa Rican amendment its full significance (E/CN.4/L.702). He did not consider that the various amendments that had been adopted weakened the text of the convention; the latter's effectiveness would depend on the extent to which it was accompanied by provisions to secure its implementation.

Mr. MOROZOV (Union of Soviet Socialist Republics) said that he had voted for article IV as a whole because it contained certain positive elements based on the text of the Declaration, with certain other provisions which represented an improvement.

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(Mr. Morozov, USSR)

However, he wished to emphasize that his vote in favour of article IV should not be taken to mean that his delegation would refrain from any further endeavours to improve the text. On the contrary, the Soviet delegation would oppose any attempt to reduce its effectiveness. Nor did his vote signify approval of those of the article's provisions which were inadequate.

His delegation had abstained from voting on sub-paragraph (b), the text of which was unsatisfactory and represented a retrograde step as compared with the corresponding passage in the Declaration adopted by the General Assembly. He had tried to have the Costa Rican amendment changed; his efforts having been unavailing, he had voted against it.

His delegation had also tried to improve the text by introducing a sub-amendment (E/CN.4/L.703) to the Polish amendment (E/CN.4/L.699) which would have had the effect of prohibiting not only propaganda by the organizations themselves but any other propaganda as well. It had tried to produce a precise text which would not have been open to various interpretations. The rejection of the USSR amendment aimed at preventing any financial or other assistance to such organizations had left an important gap in the text of article IV. The rejection of the Polish amendment itself was symptomatic of the equivocal attitude of countries which while paying lip-service to the need to fight racial discrimination had in practice found themselves unable to approve a text which would enable that fight to be waged effectively.

His delegation had voted in favour of the Indian oral amendment to sub-paragraph (a) because that had been the only way to prevent the Sub-Commission's text from being weakened by the adoption of the Danish amendment (E/CN.4/L.704).

However it reserved the right not to leave matters as they stood and to endeavour, in a higher forum, to have the text brought into closer conformity with the Sub-Commission's draft. He pointed out in that connexion that the latter - aside from the passages in it which his delegation had sought to amend - was in many respects more effective than the text that had been adopted so far.

#### Article V

Mr. RESICH (Poland), submitting his amendment to article V (E/CN.4/L.699), pointed out that the Sub-Commission's draft contained a detailed list of certain rights in respect of which the States Parties were to prohibit

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(Mr. Resich, Poland)

racial discrimination.. He felt, however, that there was no reason to include the right to equality before the law in sub-paragraph (a), for that right was a general principle which the others merely served to illustrate; what was important in the exercise of the rights embodied in the other sub-paragraphs was that there should be no inequality before the law. It would accordingly be better to state the general principle before those other rights, which were important examples but by no means exhaustively enumerated.

The second Polish amendment, to add the right to inherit to those already listed, filled a gap which should not be allowed to persist.

Mr. ERMACORA (Austria) presenting his amendment (E/CN.4/L.698), said that it would be advisable to ascertain first whether article V and the list of rights contained in it were acceptable to the Commission. The Commission was in that article seeking primarily to prevent not so much discrimination in practice as discrimination before the law. Austria's amendment would serve its purpose only if the Commission approved the wording of article V. That amendment was not contrary to the Polish proposal (E/CN.4/L.699), which laid down a general rule applicable to article V as a whole and might well be placed at the beginning of the article.

In his view the phrase "the right to equal justice under the law" was too vague and should be made more specific, along the lines he had suggested, and in keeping with the provisions of the Universal Declaration of Human Rights. Finally, the idea should be spelled out, because the right to equal justice did not in all States entail the right to a fair trial.

The CHAIRMAN proposed that the Commission should hear the representative of the World Federation of Trade Unions, who had asked to make a statement.

It was so decided.

Mr. CONNELLY (World Federation of Trade Unions) drew the Commission's attention to the importance which his organization attached to some of the provisions of article V. The effectiveness of the convention would depend to a large extent on its implementation by signatory States. But, although the basic obligations that they would assume were set out in article II, which had already been adopted, it was article V which listed those particular human rights in respect of which special measures of implementation might be rendered necessary on account of anti-racial policies of the signatory Governments. In that

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(Mr. Connelly, WFTU)

connexion, the World Federation of Trade Unions hoped that the list of economic, social and cultural rights appearing in sub-paragraph (e) (i) would be retained, as it primarily affected workers and their trade unions.

Historically, racism had been an effective instrument for the exploitation of the workers. It remained such an instrument, in varying forms and in many parts of the world. The World Federation of Trade Unions accordingly thought that the Sub-Commission had been right to include the list contained in sub-paragraph (e)(i). However, the wording of sub-paragraph (e) (ii) (the right to form and join trade unions) was adequate only if it was read in conjunction with the rights listed in sub-paragraph (e) (i). That right, in present-day circumstances, must include the freedom to carry out trade union activities at the place of work or on a national or international scale, to secure enjoyment of the rights listed in sub-paragraph (e) (i).

Not all legislation purporting to grant trade union rights to workers could be accepted as adequate. He quoted Mr. Salliant, General Secretary of the World Federation of Trade Unions, who had pointed out that "everywhere there are trade union laws, everywhere there are trade union 'rights'. They are not everywhere profoundly democratic".

The rights mentioned in sub-paragraph (e) (v) (education and training) should also be taken in conjunction with the rights of workers set forth in sub-paragraph (e) (i). Lack of training facilities for racial minorities was in many instances at the root of job discrimination, unemployment, etc. The right to "training" must be broadly interpreted and effectively implemented by signatory States if those forms of racial discrimination were to be eliminated.

The World Federation of Trade Unions accordingly considered the detailed list of economic, cultural and social rights given in article V to be an essential adjunct to guaranteeing effective implementation of the convention by the signatory States.

Mr. HAKIM (Lebanon) said that the Sub-Commission had obviously been concerned to list in article V the rights set forth in the Universal Declaration of Human Rights, and to guarantee that they should be exercised equally by all persons without distinction as to race or colour. The list was

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(Mr. Hakim, Lebanon)

certainly not exhaustive; his delegation, however, was satisfied with the Sub-Commission's text, and felt that responsibility for deciding an amendment or additions should be left to the Third Committee of the General Assembly. His delegation was also prepared to accept, with a minor change, the Polish amendment (E/CN.4/L.699) to replace the text of the introductory paragraph and sub-paragraph (a) of that article. The right to equality before the law, set forth in article 7 of the Universal Declaration of Human Rights, like the right to protection against discrimination, were general in character and affected the exercise of all other rights. It was therefore perfectly appropriate to set it out in the introductory paragraph to article V. The only criticism he would make of the Polish amendment referred to the use of the word "citizen". If the convention was to be effective, it must protect not only citizens, but also aliens and non-citizens against racial discrimination. He accordingly suggested that the words "of each citizen" should be deleted. If that slight change was made, his delegation would be prepared to support the Polish proposal. It would also vote for the second Polish amendment, calling for the inclusion in article V of the right to inherit.

The Austrian amendment (E/CN.4/L.698) also seemed fully relevant. The right to a fair trial was enunciated in articles 8 to 12 of the Universal Declaration, and although that right was implied in the right to equality before the law, it was none the less useful to refer to it expressly in order to stress its importance.

Mr. QUIAMBAO (Philippines) found the text submitted by the Sub-Commission for article V entirely satisfactory. The rights set forth in it had long been recognized by the Constitution and laws of the Philippines. They appeared for the most part in the Universal Declaration of Human Rights and had been reaffirmed in those articles of the draft International Covenants on Human Rights which had been adopted by the Third Committee. Although the list did not cover all the rights set forth in the Universal Declaration, article V none the less mentioned all the rights which most frequently suffered as a result of racism.

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(Mr. Quiambao, Philippines)

Moreover, the phrase "in particular" was used at several points, making it clear that the list was not exhaustive. His delegation would accordingly have been prepared to accept the article as it stood; but on consideration, it had decided that the amendments submitted by Poland and Austria would improve the text. With regard, however, to the first Polish amendment (E/CN.4/L.699), it agreed with the opinion expressed by Lebanon concerning the word "citizen". The convention should indeed apply not only to citizens but also to permanent residents who, although they did not have full political rights, were none the less entitled to be protected against racial discrimination. In that connexion it was well to remember that the word "citizen" was not used either in the Universal Declaration or in those articles of the draft Covenants which had already been adopted. If the Polish representative was prepared to modify his amendment as suggested by the representative of Lebanon, the Philippine delegation would be able to vote for article V with the Polish and Austrian amendments.

Mr. VOLIO (Costa Rica) stated that his delegation, too, was prepared to support the Polish amendment provided that the word "citizen" was deleted. It also endorsed the Austrian amendment (E/CN.4/L.698), which made a very valuable addition to sub-paragraph (a), and was fully in keeping with the Polish amendment.

Mr. RESICH (Poland) thanked the representatives of Lebanon, the Philippines and Costa Rica for drawing attention to the objections to the phrase "each citizen", and said that he was prepared to delete it.

Mr. BENITES (Ecuador) suggested that the word "citizen" might be replaced by the word "person", which was a legal term quite acceptable in the context.

He thought that the Austrian representative, in submitting his amendment (E/CN.4/L.698), had approached the problem from the right angle. The Sub-Commission's text mentioned only the right to equal justice. But, although the word "justice" in the broadest sense meant the obligation to render to everyone his due, in its more limited sense it meant the court which administered justice. The Austrian representative's amendment thus served to clarify the issue. It might, however, be clearer still to use the formula, "the right of every person to appear before the courts and to demand justice in accordance with the law". He was not making a formal proposal, but only a ... suggestion.

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(Mr. Benites, Ecuador)

With regard to article V, sub-paragraph (c), he thought that the phrase "the right to participate in elections" was too weak. He would accordingly suggest the form "the right to participate in elections and to be elected". Finally, he thought that the reference to a right to nationality in sub-paragraph (d) (iii) might cause difficulties: not only did the nationality laws vary from country to country, but some Constitutions provided for the loss of nationality in special circumstances. Although he did not think that all reference to that right should be omitted, he felt the need for further elucidation of that point in a later article of the draft convention.

In conclusion, he suggested that sub-paragraph (d) (v) might be strengthened if it contained some mention of the right to protection of property.

Mr. SPERDUTI (Italy) said that while he approved of the general tenor of the Polish amendment (E/CN.4/L.699), which strengthened the first sentence of article V, he nevertheless felt that the deletion of the word "citizen" and its replacement, in accordance with the Ecuadorian suggestion, by the word "person" might raise difficulties. The word "citizen" was much more appropriate than the word "person" where sub-paragraph (c), which dealt with political rights, was concerned. In order to overcome that difficulty, he suggested that the second part of the text proposed by Poland should read: "and to guarantee to every person equal protection of the law in his enjoyment of human rights and fundamental freedoms". The wording he was suggesting was close to that of article 7 of the Universal Declaration of Human Rights; however, he was not submitting a formal proposal, but was simply making a suggestion which might help to avoid certain difficulties.

His delegation was also in favour of the Austrian amendment (E/CN.4/L.698). It considered, however, that the words "jugement équitable" in the French text did not adequately translate the English expression "fair trial". As that expression had no exact equivalent in French, perhaps the translation difficulties might be solved by reproducing the wording of article 10 of the Universal Declaration of Human Rights.

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(Mr. Sperduti, Italy)

As regards the wording of the article as a whole, he would have preferred a shorter and more general text. The listing of a number of rights involved the double risk of omitting important rights and defining others badly. Thus, the Sub-Commission's text could be criticized for omitting the right to seek and enjoy asylum from persecution, and also for using the expression "right to nationality" and including that right, which was manifestly political, among civil rights. Finally, it seemed rather inappropriate to use the expression "Other civil rights" in sub-paragraph (d) when only political rights had been enumerated in the preceding sub-paragraphs.

In the opinion of the Italian delegation the Commission should ask itself whether there were any fields of social life, such as those mentioned in sub-paragraph (f), which were insufficiently protected against racial discrimination by existing international instruments, and should take special measures to protect them.

Mr. BOUQUIN (France) said that although it would have preferred a more general text, his delegation had no difficulty with the text of article V drawn up by the Sub-Commission. That text was a list of rights in respect of which there was no discrimination in France, French legislation being generally based on the principle of non-discrimination. If he might make a suggestion rather than a formal proposal, however, it might be desirable to make a reference in the first paragraph of the article to the need for preventing any possible recrudescence of discrimination in countries in which it did not exist at present.

Subject to a few reservations, he considered the Polish amendment (E/CN.4/L.699) to be acceptable. The reason why the representative of Italy had drawn attention to the difficulty raised by the use of the word "person" in connexion with political rights was similar to that which had led the French delegation to ask for the deletion of the words "national origin" in article I. It should nevertheless be possible to include in article VIII a form of words which would enable those amendments to be taken into account. In addition, the French delegation considered that it would be desirable to insert the words "without distinction as to race or colour" after the word "guarantee" in

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(Mr. Bouquin, France)

the Polish amendment. That addition was justified on three grounds: firstly, if the text was amended in that way it would be more in the spirit of the convention; secondly, the difficulties resulting from the deletion of the word "citizen" would be partly solved; and thirdly, the nature of the equality envisaged by the convention in respect of the right to inherit would be made clearer. If the Polish representative was willing to accept those amendments, the French delegation could support the two amendments in document E/CN.4/L.699. He pointed out, however, that in the French translation of sub-paragraph (a), as modified by the Polish amendment, the words "au nom de la loi" should be replaced by "devant la loi".

Where the Austrian amendment was concerned, he had no reservations to make about the English text, but he had a serious objection to the French translation. The expression "fair trial" could not in any circumstances be translated by "jugement équitable", as that would be tantamount to casting doubts on the honesty of the judges. The French translation of that amendment should therefore be revised.

Mr. BENITES (Ecuador) stated that his remarks regarding the right to equal justice under the law applied to the text prepared by the Sub-Commission, and not to the Polish amendment (E/CN.4/L.699).

Concerning the substitution - which did not affect the Spanish text - of the words "each person" for the words "each citizen" in paragraph 1 of the Polish amendment, he observed that national provisions regarding political rights were not involved, as article V had to be interpreted in the light of article VIII of the draft.

Mr. NEDBAILO (Ukrainian Soviet Socialist Republic) said that he approved of the text of article V as drawn up by the Sub-Commission, but considered that the Polish amendment (E/CN.4/L.699) would make it even better. The principle of equality before the law was a general principle which had to be stated at the very beginning of the article, the rights listed after it serving only as examples. Indeed, the elimination of discrimination consisted essentially of ensuring the equality of all persons before the law. He could not

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(Mr. Nedbailo , Ukrainian SSR)

accept the wording "equal protection before the law" suggested by the representative of Italy, as it was the law itself which was responsible for protecting the individual; moreover, the Universal Declaration of Human Rights used the words "equal protection of the law".

The Polish representative had announced that he agreed to replace the words "each citizen" by the words "each person" in paragraph 1 of his amendment. That amendment could hardly have the repercussions in the field of political rights mentioned by some delegations, however, as article VIII of the convention provided that nothing in the convention could be interpreted as implicitly recognizing or denying political or other rights to non-nationals. Article VIII also permitted the retention of the right to nationality among the civil rights listed in article V. The principle of equality before the law meant, in effect, that no members of any race could enjoy preferential treatment regarding the granting of nationality.

In connexion with the Austrian amendment (E/CN.4/L.698), he said that the notion of "fair trial" was contained in the principle of equality before the law and in the right to equal justice under the law, so that there was no need to press the point further.

Mr. SPERDUTI (Italy) explained that he had used the words "equal protection of the law", which appeared in article 7 of the Universal Declaration of Human Rights, and not "equal protection before the law".

He was grateful to the representatives of Ecuador and of the Ukrainian SSR for having drawn the Commission's attention to article VIII of the draft convention. In view of the provisions of that article, he no longer had any objection to the use of the words "each person", and withdrew his suggestions regarding paragraph 1 of the Polish amendment (E/CN.4/L.699).

Mr. ERMACORA (Austria) agreed to the incorporation of his amendment (E/CN.4/L.698) in the Polish amendment (E/CN.4/L.699), the sub-paragraph (a) proposed in which would then read "(a) The right to equal justice under the law and in particular the right to a fair trial;".

He fully shared the views of the representative of Ecuador concerning the right to be elected.

He wished to make a reservation concerning sub-paragraph (d) (ii) of article V, as there was a law in his country prohibiting the return to Austria of the members of the former Austrian Royal Family.

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Mr. GRAULUND HANSEN (Denmark) stated that he could accept article V as drawn up by the Sub-Commission, although, like the French representative, he would have preferred a general formulation to a detailed list of the rights in question. He could also accept the Polish (E/CN.4/L.699) and Austrian (E/CN.4/L.698) amendments.

He suggested the deletion of the words "in particular" after "Other civil rights" and "Economic, social and cultural rights" in sub-paragraphs (d) and (e) respectively.

In sub-paragraph (d) (iii), he would prefer the phrase "the right to nationality" to be replaced by the phrase "the right to citizenship", which was more precise and was in closer conformity with article 3, paragraph 1 of the Declaration on the Elimination of All Forms of Racial Discrimination.

Mr. VAN BOVEN (Netherlands) said that the difficulties which arose for some delegations were largely due to the fact that their national legislation did not enable them fully to guarantee the rights listed in article V. But the purpose of the article was not to proclaim that the rights which it enumerated must be fully respected, but merely to prohibit racial discrimination with regard to their enjoyment.

Mr. BOUQUIN (France) agreed with the Netherlands representative.

Mr. HAKIM (Lebanon) supported the French representative's suggestion that in paragraph 1 of the Polish amendment the words "regardless of race or colour" should be inserted after the word "guarantee". He recommended that the words "or ethnic origin" should be added also, as that was the formula generally used in the other articles of the draft convention.

Mr. SPERDUTI (Italy) supported the suggestions of the French and Lebanese representatives. As it was worded at present, article V was so broad in scope that it raised some difficulty for the Italian delegation. The Italian Constitution contained a provision, similar to the Act mentioned by the Austrian representative, which prohibited the return to Italy of members of the House of Savoy.

Mr. PANCARCI (Turkey) said that he had no difficulty in approving article V as drafted by the Sub-Commission, and he also approved the amendments submitted by Poland (E/CN.4/L.699) and Austria (E/CN.4/L.698). However, he would support the suggestions put forward by the French and Lebanese representatives as they would make the text clearer.

For sub-paragraph (a), he suggested the wording "(a) The right to equal justice under the law and equity in the application of the law", which would make it possible to combine the amendments submitted by Poland (E/CN.4/L.699) and Austria (E/CN.4/L.698).

Mr. RESICH (Poland) agreed to the addition, in paragraph 1 of his amendment (E/CN.4/L.699), of the words "regardless of race, colour or national or ethnic origin" after the word "guarantee".

Mr. S.K. SINGH (India) pointed out that neither the French representative nor the Lebanese representative had requested the addition of the words "national origin". The use of those words would give rise to the same problem as the words "each citizen".

Mr. RESICH (Poland) said that he would accept, for the text of paragraph 1 of his amendment (E/CN.4/L.699), the formula suggested by the French and Lebanese representatives; in other words, the insertion, after the word "guarantee", of the words "regardless of race, colour or ethnic origin".

Mr. S.K. SINGH (India) said that the Constitution and legislation of his country were such that he had no difficulty in approving the text of article V as it had been drafted by the Sub-Commission. However, he felt that the Austrian amendment (E/CN.4/L.698) and the Polish amendment (E/CN.4/L.699) made the text clearer and would facilitate its implementation. He would therefore vote in favour of those amendments.

The meeting rose at 6 p.m.