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Twentieth Session

SUMMARY RECORD OF THE SEVEN HUNDRED AND EIGHTY-FIFTH MEETING

Held at Headquarters, New York,
on Wednesday, 26 February 1964, at 11.10 a.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 KRACHET	Chile
	Mr. VOLIO)	
	Mr. REDONDO)	Costa Rica
	Mr. GRAULUND HANSEN	Denmark
	Mr. BENITES	Ecuador
	Mr. VERA-GOMEZ	El Salvador
	Mr. BOUGGIN	France
	Mr. CHAKRAVARTY)	
	Mr. SINGH)	India
	Mr. SPERDUTI	Italy
	Mr. HAKIM	Lebanon
	Mr. DOE	Liberia
	Mr. BEAUFORT	Netherlands
	Mr. BRILLANTES	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. ROSENNE	Israel
	Mrs. WILLIAMS	Jamaica

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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

Secretariat:

Mr. HUMPHREY

Director, Division of Human
Rights

Mr. LANDAU

Secretary of the Commission

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DRAFT INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION (A/5035, 5603; E/CN.4/865, 873; E/CN.4/L.679, L.680, L.681, L.687-L.694; E/CN.4/Sub.2/234 and Add.1 and 2) (continued)

Article I

Miss KRACHT (Chile) said that she whole-heartedly endorsed article I of the draft prepared by the Sub-Commission on Prevention of Discrimination and Protection of Minorities.

Her delegation could not support the United Kingdom amendments to article I (E/CN.4/L.689), especially the deletion of the words "inter alia". In that connexion, she agreed with the view expressed by the Canadian delegation at the 784th meeting (E/CN.4/SR.784).

The representative of Italy, in introducing the Italian-Netherlands amendment (E/CN.4/L.692) at the same meeting, had said that it was patterned on article 2, paragraph 3, of the Declaration on the Elimination of All Forms of Racial Discrimination. However, the sentence "These measures shall in no circumstances have as a consequence the maintenance of unequal or separate rights for different racial groups" had been included in the Declaration, on the proposal of the Latin American countries, for the protection of aboriginal communities and, more specifically, in order to prevent the separate development of various communities from being frozen into permanency. The Italian-Netherlands amendment differed substantially from the Latin American countries' proposal in its wording and purpose, and her delegation could not support it. It would, however, vote for the Lebanese-Polish amendment (E/CN.4/L.694), which used the exact wording of article 2, paragraph 3, of the Declaration.

Mr. BRILLANTES (Philippines) said that he had no very strong views on whether the words "inter alia" in paragraph 1 should be deleted or retained. He did not think that the deletion of those words, as proposed by the United Kingdom delegation (E/CN.4/L.689), would mean that all other instruments, and in particular the Declaration on the Elimination of All Forms of Racial Discrimination, were being thrust aside; as the United Kingdom representative had observed, the rights to which the Declaration on the Elimination of All Forms of Racial Discrimination and the present draft Convention related had been proclaimed in the Universal Declaration of Human Rights.

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(Mr. Brillantes, Philippines)

Replying to the objections raised by the representative of Ecuador at the 783rd meeting (E/CN.4/SR.783), he observed that failure to mention discrimination based on nationality or national origin would mean ignoring the existence of a form of discrimination which was as serious as racial discrimination. He favoured retaining the words "national ... origin" and the words in parentheses in article I, paragraph 1.

He endorsed the Italian-Netherlands amendment (E/CN.4/L.692) and the Lebanese-Polish amendment (E/CN.4/L.694) to article I, paragraph 2. He hoped that the sponsors of the two amendments would produce a joint text, since the Italian-Netherlands amendment contained an idea which was not in the Lebanese-Polish amendment, namely, that special measures were not to be maintained after the objectives for which they had been taken had been achieved. The objectives in question, as set out in article I, paragraph 1, which defined the term "racial discrimination", were the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms. He would suggest the following wording to the sponsors of the two amendments:

"2. The measures adopted for the sole purpose of securing adequate development or protection of individuals belonging to certain groups in order to ensure to them full recognition, enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided that such measures do not lead to the maintenance of unequal or separate rights for different racial groups and provided further that such measures shall not be maintained after the objectives for which they were taken have been achieved."

Mr. HAKIM (Lebanon) said that the Lebanese and Polish delegations, in their joint amendment to article I (E/CN.4/L.694), had taken up the idea, put forward by the representative of Ecuador at the 784th meeting (E/CN.4/SR.784), that not only individuals belonging to certain racial groups, but those racial groups as such, should be protected. That idea did not appear in the text drafted by the Sub-Commission on Prevention of Discrimination and Protection of Minorities. The sponsors understood "special measures" to mean certain measures adopted exclusively in respect of certain underprivileged groups and designed to place them on an equal footing with other groups. They had abandoned the idea of preferential measures suggested by the Sub-Commission.

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(Mr. Hakim, Lebanon)

He saw no need to repeat in article I, paragraph 2, a part of the definition of "racial discrimination" given in the preceding paragraph, as suggested by the Philippine representative. It was obvious that the definition applied throughout the text.

He agreed with the representative of Ecuador that the words in parentheses in article I, paragraph 1, should be deleted. Discrimination based on race and that based on nationality were two completely distinct forms of discrimination, which should not be dealt with in the same instrument. The notions of race and of nationality might sometimes coincide, but nationality could also be determined by other factors, such as language or culture. Individuals of the same race might be of different nationalities. It was only when the notions of race and of nationality coincided that provisions concerning the elimination of racial discrimination, in all its forms and manifestations, could apply. He also favoured the deletion of the words "national ... origin", which did not appear in the Declaration on the Elimination of All Forms of Racial Discrimination. It might be proper to include those words in a preambular clause reproducing the wording of article 2 of the Universal Declaration of Human Rights, but not in the operative part of a draft Convention devoted exclusively to the elimination of all forms of racial discrimination.

He believed that the United Kingdom delegation's intention, in calling for the deletion of the words "inter alia" (E/CN.4/L.689), was to avoid placing the Universal Declaration of Human Rights on the same footing as other texts which were more limited in scope. Yet, the draft Convention should surely make allowance for references to other instruments, such as the draft International Covenants on Human Rights or national constitutions. In order to reconcile the two approaches, he suggested that the words "set forth inter alia in the Universal Declaration of Human Rights" in article I, paragraph 1, should be replaced by the words "set forth in the Universal Declaration of Human Rights and other instruments".

With regard to the Italian-Netherlands amendment (E/CN.4/L.692), while he was not really convinced of the need for it, he would not oppose the inclusion in article I, paragraph 2, of the restrictive proviso put forward in the amendment. However, he would like the proviso contained in the Sub-Commission's text and reproduced in the Lebanese-Polish amendment (E/CN.4/L.694) to be retained as well.

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Mr. SPERDUTI (Italy), who had not had time to consult the Netherlands representative and therefore considered himself authorized to speak only on behalf of his own delegation, said that he would have liked, before taking the floor, to have the written text of the Philippine proposal before him. That proposal seemed worthy of adoption. His explanation of his delegation's position on the amendment which it had submitted jointly with the Netherlands delegation (E/CN.4/L.692) was also intended as a reply to the comments made by the representative of Chile.

The second part of the joint amendment was designed to clear up a point which was vague in the text proposed by the Sub-Commission (E/CN.4/873) and even in the Declaration adopted by the General Assembly (resolution 1904 (XVIII)). Article I, paragraph 2, of the draft Convention was designed to remedy past injustices and to enable persons belonging to certain racial groups to attain the level of development necessary for full enjoyment of the rights and freedoms guaranteed by the Universal Declaration on an equal footing with other persons. However, although it began by stating that special measures for that purpose were not to be deemed racial discrimination, the draft Convention went on to say that they should not lead to the maintenance of unequal rights. In his opinion, that was a glaring inconsistency. Measures designed to guarantee the enjoyment of certain rights to persons who had previously been deprived of them could scarcely produce the opposite effect at the same time and create unequal or separate rights. He therefore felt that the Italian-Netherlands amendment, which clearly specified that the special measures in question should not be maintained after the objectives for which they had been taken had been achieved, was preferable. The maintenance of such measures would mean going to the opposite extreme by placing in a privileged position persons who had previously been in a position of inferiority. Although he thought that the Italian-Netherlands amendment expressed that idea effectively, his delegation would have no objection to the use of some other formula, if that was possible. If, on the other hand, some delegations were in favour of retaining the last clause in paragraph 2 of the Sub-Commission's text ("provided however that such measures do not, as a consequence ..."), his delegation would be prepared to accept that, although it would want it made clear that the special measures should not be maintained after their objectives had been

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(Mr. Sperduti, Italy)

achieved. Accordingly, he was prepared to accept any new text submitted by the Philippine or another delegation which, while retaining that clause, embodied the idea contained in the joint amendment, even in different terms.

His delegation felt, however, that the wording of the Lebanese proposal (E/CN.4/L.691) and, in particular, that of the Lebanese-Polish amendment (E/CN.4/L.694), which stressed the idea of different racial groups, were not in keeping with the Declaration adopted by the General Assembly, which, by contrast, emphasized the need to ensure that individuals belonging to certain racial groups were given the means of enjoying fundamental rights and freedoms. The contention that consideration should be given to racial groups as such, rather than to individuals, was a new idea which puzzled his delegation. The Commission should not seek to emphasize the distinctions between different racial groups but rather to ensure that persons belonging to such groups could be integrated into the community. His delegation had therefore always supported the adoption of measures designed to remedy injustice and help persons belonging to under-developed social groups to attain a standard of living that would ensure their full enjoyment of the rights proclaimed in the Universal Declaration.

On the other hand, he fully supported the United Kingdom amendment (E/CN.4/L.689) calling for the deletion of the words "inter alia" from paragraph 1. The provisions of an international convention became, as such, a part of the domestic law of each Contracting State. They should therefore indicate the course to be followed by the organs of the State concerned and by the various authorities called upon to apply the convention. Article I of the present Convention was a basic article which defined rights and set forth objectives. The words "inter alia" introduced an element of uncertainty, giving the impression that there were other, unspecified rights and instruments and that the convention was leaving it to some domestic body to find out what they were. Moreover, an explicit reference to the Universal Declaration did not in any sense mean that other instruments which had been or might be adopted by the United Nations in order to give effect to the Declaration could not be taken into consideration in interpreting and applying the Convention. If, for example, the draft International Covenants now under consideration should, in the form in which they were eventually adopted, define the nature of some right set forth in the Universal Declaration, there was

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(Mr. Sperduti, Italy)

no reason why reference should not be made to them, if necessary, in applying or interpreting the Convention. His delegation therefore supported the United Kingdom proposal for the deletion of the words "inter alia".

Mr. ERMACORA (Austria) did not think that the Italian delegation's interpretation of the term "inter alia" was correct. The Commission should take into account not only the Universal Declaration but also other declarations or conventions drafted in the future and those already in force (e.g. the Convention on the Political Rights of Women [General Assembly resolution 640 (VII)], the Declaration of the Rights of the Child [resolution 1386 (XIV)] and the Convention on the Prevention and Punishment of the Crime of Genocide [resolution 260 (III)]). He was therefore in favour of retaining the words "inter alia".

Mr. BEAUFORT (Netherlands) said that he had little to add to the statement made by the representative of Italy. He noted, however, that the Lebanese delegation had no objection to the restrictive clauses embodied in the last part of the new paragraph 2 of article I proposed by Italy and the Netherlands (E/CN.4/L.692), provided that it was placed after that proposed by Lebanon and Poland (E/CN.4/L.694). The special measures in question were not intended to maintain unequal or separate rights but, on the contrary, to ensure the development or protection of individuals belonging to certain racial groups and hence their equality with others; once that objective was attained, the measures could be discontinued. He was, however, prepared to accept the Lebanese-Polish amendment; although he regarded as essential the specific provision proposed by his own and the Italian delegation.

Mr. RESICH (Poland) agreed with the Lebanese representative regarding the last part of the Italian-Netherlands amendment (E/CN.4/L.692). Although the idea embodied in it seemed already to have been expressed in the last part of the Lebanese-Polish amendment (E/CN.4/L.694), he saw no reason why it should not be added to that amendment in the way suggested by Italy and the Netherlands. He also thought that the Philippine delegation had expressed the same idea in its compromise amendment.

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Sir Samuel HOARE (United Kingdom) expressed the hope that agreement would be reached on article I, paragraph 2, of the draft Convention, which appeared to involve only a problem of drafting. With regard to the United Kingdom amendment to article I, paragraph 1 (E/CN.4/L.689, para. 3), he was pleased to note that some members of the Commission shared his objection to the term "inter alia". However, since other members were opposed to the deletion of those words, he would be prepared to accept an alternative formula that was agreeable to the members of the Commission. Bearing in mind the Lebanese representative's suggestion, he would therefore propose a revised amendment, which would delete the words "inter alia" but would add after the words "set forth in the Universal Declaration of Human Rights" the words "and other international instruments based thereon, and any further rights and fundamental freedoms granted by the Constitution or law of the State Party concerned". It seemed to him that that wording should meet the objections that had been raised. The term "further rights" was intended to indicate that no State Party whose domestic legislation granted rights less extensive than those set forth in the Universal Declaration would be free to substitute the former rights for the latter.

Furthermore, his delegation had proposed (E/CN.4/L.689, para. 1) that the words "in political, economic, social, cultural or any other field of public life" should be transferred so that the words "of human rights and fundamental freedoms" were followed immediately by the words "set forth" which related to them.

Lastly, he wished to associate himself with the observations of the Lebanese representative regarding the term "national origin", which merely tended to confuse the issue. In the matter of nationality, for example, such a provision would do away with the special facilities given by States to those of their nationals who, having changed their nationality, subsequently wished to recover their original nationality (as in the case of a woman who had married an alien) as compared with aliens desiring to acquire that nationality by naturalization. Yet, that preference was quite usual.

Mr. MOROZOV (Union of Soviet Socialist Republics) said that he wished to state his delegation's views at once on the first part of the United Kingdom's oral amendment to article I, paragraph 1, of the draft Convention.

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(Mr. Morozov, USSR)

His delegation had already stated that it found the Sub-Commission's text acceptable, even though it could be improved in some respects. Moreover, the experts in the Sub-Commission had unquestionably tried to find a wording which met the objections raised by the United Kingdom. His delegation felt that the rights of individuals must be determined with reference, firstly, to the national legislation of the State concerned and, secondly, to the Universal Declaration of Human Rights. Those were the foundations on which the Convention must rest, and that was also the idea implied in the Sub-Commission's text. To the extent that the United Kingdom representative now recognized that the Convention must be based on two sources of law, i.e. national legislation and international obligations, there was no difference between his position and that of the Soviet delegation. However, the United Kingdom proposal to replace the words "set forth inter alia in the Universal Declaration of Human Rights" by "set forth in the Universal Declaration of Human Rights and other international instruments based thereon" was likely to create difficulties. If that wording was accepted, the question of whether or not a particular treaty or convention was based on the Universal Declaration would constantly be raised; in all likelihood, opinions would differ and the problem would then arise of finding a judge competent to decide the issue. In his opinion, the adoption of the wording proposed by the United Kingdom would give rise to the same objection as the deletion of the term "inter alia", namely, that only the Universal Declaration was taken into account. His delegation was therefore unable to endorse such an amendment.

Mrs. TREE (United States of America) thanked the United Kingdom representative for revising his amendment to article I. The mere omission of the term "inter alia" would not have been acceptable to her delegation, but, since it now had the assurance that the further rights and fundamental freedoms granted by the Constitution or law of States would also be safeguarded, her delegation could support all the United Kingdom amendments. It would also vote for the amendment to article II submitted by the Australian delegation (E/CN.4/L.687).

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(Mrs. Tree, United States)

With regard to article I, paragraph 2, she preferred the Sub-Commission's text but would be willing to accept either the text submitted by Lebanon and Poland (E/CN.4/L.694) or that submitted by Italy and the Netherlands (E/CN.4/L.692). In view of the similarity between the last two, the sponsors would do well to agree on a single amendment.

Lastly, her delegation felt that, in view of the volume of work which the Commission had to complete by the end of the session, a vote should be taken as soon as possible.

Miss AITKEN (Canada) thanked the United Kingdom representative for taking account of the objections which she had voiced at the previous meeting concerning the deletion of the words "inter alia"; her delegation could endorse the revised text of the United Kingdom amendment.

Mr. MOPOZOV (Union of Soviet Socialist Republics) said that, notwithstanding the request made by the United States representative, his delegation could not agree to an immediate vote on the first two articles of the draft Convention. If the Commission wished to speed its work, it could do so by beginning its meetings on time, but not at the expense of the document it was called upon to draft.

His delegation found the United Kingdom proposal unacceptable. Its adoption would result in the omitting of many international instruments which had to be referred to in determining the rights of the individual, and that would inevitably give rise to much controversy. It would clearly be necessary to include the Declaration on the granting of independence to colonial countries and peoples, the Declaration on the Elimination of All Forms of Racial Discrimination, the Convention on the prevention and punishment of the crime of genocide, various instruments relating to the rights of women and of the child, various ILO and UNESCO conventions, and perhaps the draft Covenants now being prepared. Such a list could not be exhaustive, however, and would have to be kept constantly up to date. In the end, the Committee would therefore find it necessary to reinsert the words "inter alia".

Hence, it would be preferable to request the United Kingdom representative to withdraw that particular part of the oral amendment which he had just submitted and to consider the possibility of working out a compromise text.

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Mr. EFMACORA (Austria) observed that the words "set forth in the Universal Declaration of Human Rights and other international instruments based thereon" proposed by the United Kingdom representative were more restrictive than the term "inter alia", since they excluded the peace treaties concluded in 1945, which contained clauses relating to human rights, and even the Convention on the prevention and punishment of the crime of genocide, which was one day older than the Universal Declaration. He therefore suggested that the wording proposed by the United Kingdom delegation should be replaced by the words "based on the spirit of the Charter and of the Universal Declaration of Human Rights".

Sir Samuel HOARE (United Kingdom), replying to the objections raised by the Soviet representative, observed that although it was difficult to determine which international instruments were based on the Universal Declaration, it was equally difficult to determine what was meant by the term "inter alia". The question might be asked, for example, whether or not the peace treaties referred to by the Austrian representative were to be taken into consideration if the Sub-Commission's text was adopted.

The wording proposed by his delegation was surely the least obscure. Moreover he found it difficult to think of any instrument dealing with human rights and fundamental freedoms which was not based upon the Universal Declaration. The proposed wording clearly covered all the instruments referred to by the Soviet representative, including the ILO and UNESCO conventions. The Convention on the prevention and punishment of the crime of genocide had no relevance, since that Convention was an absolute prohibition of genocide which excluded all possibility of racial discrimination.

Mr. MOROZOV (Union of Soviet Socialist Republics) observed that the United Kingdom representative's criticisms were directed not at the objections he had made to the United Kingdom proposal but at the Sub-Commission's text. Although the use of the term "inter alia" could be questioned, to refer only to the Universal Declaration of Human Rights, which was already fifteen years old, was clearly not adequate. It might be possible to prepare a list of international instruments to be taken into account, but the best solution was obviously to work out a compromise.

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Mr. CFAKRAVARTY (India) observed that the term "inter alia" and the expression "based thereon" were equally vague. However, it was impossible to be more specific without drawing up a list of international instruments. His delegation therefore suggested that the words "and other relevant instruments" should be used instead of either of those expressions, which could give rise to controversy, the rest of the United Kingdom amendment being left unchanged.

Mr. ERMACORA (Austria) supported that suggestion.

The CHAIRMAN requested the delegations that had suggested compromise wordings to submit their proposals to the Secretariat in writing.

The meeting rose at 1 p.m.