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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES

Sixteenth Session

SUMMARY RECORD OF THE FOUR HUNDRED AND TWELFTH MEETING

Held at Headquarters, New York,
on Wednesday, 15 January 1964, at 3.10 p.m.

CONTENTS

Draft international convention on the elimination of all forms of racial discrimination (E/CN.4/Sub.2/234; E/CN.4/Sub.2/L.308 and Add.1/Rev.1 and Add.1/Rev.1/Corr.1, L.309, L.310, L.311, L.313, L.314) (continued)

PRESENT:

<u>Chairman:</u>	Mr. SANTA CRUZ	(Chile)
<u>Rapporteur:</u>	Mr. CAPOTORTI	(Italy)
<u>Members:</u>	Mr. ABRAM	(United States of America)
	Mr. AWAD	(United Arab Republic)
	Mr. BOUQUIN	(France)
	Mr. CALVOCORESSI	(United Kingdom of Great Britain and Northern Ireland)
	Mr. CUEVAS CANCINO	(Mexico)
	Mr. INGLES	(Philippines)
	Mr. IVANOV	(Union of Soviet Socialist Republics)
	Mr. KETRZYNSKI	(Poland)
	Mr. KRISHNASWAMI	(India)
	Mr. MATSCH	(Austria)
	Mr. MUDAWI	(Sudan)
	Mr. SAARIO	(Finland)
<u>Also present:</u>	Mrs. LEFAUCHEUX	Commission on the Status of Women

Observers from Member States:

Mr. ROBICHAUD	Canada
Mr. SINGH	India
Mr. BARROMI	Israel
Mr. SCHAAPVELD	Netherlands
Mrs. NASON	United States of America
Mr. MELOVSKI	Yugoslavia

Representatives of specialized agencies:

Mr. FARMAN-FARMAIAN	International Labour Organisation
Mr. SALSAMENDI	United Nations Educational, Scientific and Cultural Organization

<u>Secretariat:</u>	Mr. HUMPHREY	Director, Division of Human Rights
	Mr. LAWSON	Secretary of the Sub-Commission

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DRAFT INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION (E/CN.4/Sub.2/234; E/CN.4/Sub.2/L.308 and Add.1/Rev.1 and Add.1/Rev.1/Corr.1, L.309, L.310, L.311, L.313, L.314) (continued)

The CHAIRMAN said that the time had come for the Sub-Commission to decide how the debate on the draft convention would be continued. In his opinion the best solution would be to take one of the proposed drafts as a basis, members naturally being free to submit amendments.

Mr. MUDAWI said that informal meetings were extremely fruitful providing they were long enough, and that had not been the case so far. He therefore suggested that the experts should devote half a day or a whole day to drawing up a joint text in private.

He did not think it possible to take any particular text as a basis. The sponsors of other drafts might submit their own texts in the form of amendments and the Sub-Commission would be back where it started.

The CHAIRMAN agreed that informal meetings were useful especially when the purpose was to give the finishing touches to a particular text. But a working party could hardly produce a draft when its members were divided on important matters of substance.

Mr. IVANOV agreed with Mr. Mudawi that to take a particular text as a basis was not a practical solution. It was preferable for the Sub-Commission to continue as it had done at earlier meetings when the preamble and article I had been examined, considering all the drafts and suggestions together. The Secretariat might usefully prepare a document analysing the differences between the various drafts and provide its own drafting of those articles which were likely to raise difficulties. The experts would then hold an informal meeting to agree on a single text.

The CHAIRMAN observed that the Sub-Commission had been able to make fairly rapid progress in its examination of article I only because the three drafts before it contained provisions which were similar in substance.

He agreed that the discussion might have made more headway if the Secretariat had submitted a text of the kind that Mr. Ivanov had in mind. It would, however, have taken several days to produce such a document and the Sub-Commission's debates would have been greatly delayed.

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Mr. SAARIO said that the Sub-Commission would have some difficulty in choosing between several texts none of which was likely to be entirely satisfactory except in the eyes of its own sponsor. In his opinion the best thing would be to take as a basis the Declaration on the Elimination of All Forms of Racial Discrimination adopted by the General Assembly [A/Res/1904 (XVIII)] and to go through it article by article, redrafting its provisions for incorporation in a convention. A working party could afterwards give the finishing touches to the draft.

Mr. KETRZYNSKI felt that the Sub-Commission should go on to examine the general obligations which would be assumed by States parties to the future convention and to take from the various drafts the provisions relevant to that question. Afterwards it would study in the same way the specific measures to be taken by contracting States to protect the various rights enunciated in more or less detail in the drafts. The discussion on that last point should be quite easy, since there were no fundamental divergences among the sponsors.

The CHAIRMAN remarked that if Mr. Ketrzynski's suggestion was adopted, the discussion on the general obligations of States could centre on articles II and III of Mr. Abram's draft (E/CN.4/Sub.2/L.308), article II of Mr. Calvocoressi's draft (E/CN.4/Sub.2/L.309) and article II (1) and (2 a), (2 b) and (2 c) of the draft in document E/CN.4/Sub.2/L.314.

Mr. INGLES thought that it should not be difficult to combine the suggestions made by Mr. Saario and Mr. Ketrzynski. The examination of the question of the general obligations of States could be based on the relevant articles of the Declaration, which could be compared with the corresponding passages in the various draft conventions. The Sub-Commission would then decide which provisions of the Declaration should be reproduced or included in an amended form.

Mr. CUEVAS CANCINO agreed with the view expressed by the Chairman at the beginning of the meeting; that the Sub-Commission should have a definite starting point for the remainder of the debate. By merely juxtaposing extracts from various drafts it could not prepare a sufficiently strong and precise text. It was much harder to draft a convention than a declaration because it laid down

specific obligations which States parties to it must respect; it should therefore be drafted with an attention to detail that would not be possible under the proposed procedure.

Moreover, he did not think that the Declaration adopted by the General Assembly could be taken as a basis precisely because it did not go as far as a convention. Also, when the General Assembly had called for the preparation of a draft convention it had not asked for a draft modeled on the Declaration.

The defect of Mr. Abram's draft was precisely that it followed the wording of the Declaration too closely. It contained provisions which had no meaning in a convention because they concerned one country or one particular policy. He cited as a case in point article III of the draft in question which dealt with the need to put an end without delay to the policies of racial segregation and especially the policies of apartheid and all forms of discrimination resulting from such policies. He could not see how the law courts and parliament of a country such as Mexico could approve that clause, since apartheid did not exist in Mexico. The draft submitted by Mr. Ivanov and Mr. Ketrzynski, under which the Contracting Parties would undertake to prohibit or disband any racist, fascist and any other organizations practising or inciting to racial discrimination was in that respect far preferable.

In the circumstances he wondered whether a text combining Mr. Abram's draft and that of Mr. Ivanov and Mr. Ketrzynski might not be a good starting point for the discussion.

Mr. AWAD observed that several articles in the drafts submitted by Mr. Calvocoressi and by Mr. Ivanov and Mr. Ketrzynski concerned the implementation of the convention and other practical matters, whereas Mr. Abram's draft dealt exclusively with the substance of the problem. The latter text was therefore the one that should be taken for a start, and afterwards the Sub-Commission could consider the implementation clauses.

Mr. MUDAWI took the view that, as Mr. Ketrzynski had suggested, the Sub-Commission should examine successively the different questions of substance; it could then choose from among the drafts submitted the one which accorded best with its views.

Mr. BOUQUIN agreed with Mr. Awad. The draft which devoted most attention to questions of substance should serve as a basis for discussion. It so happened that Mr. Abram's draft had been submitted first. But there was nothing to prevent the Sub-Commission to consider the other drafts at the same time.

Mr. IVANOV recalled that the previous year the Sub-Commission had also had before it several drafts relating to an agenda item; it had not given preference to any one, but had examine them all before drafting a final text. Mr. Ingles' suggestion seemed by far the wisest.

Mr. KETRZYNSKI inquired in what order the Sub-Commission would examine the different articles if it decided to take Mr. Abram's draft as a basis.

The CHAIRMAN thought that it would be as well to take up the articles in the order in which they appeared in Mr. Abram's draft.

Mr. MATSCH said that to break the deadlock the sponsors of the various drafts should meet and exchange views on those questions which had been dealt with in all the drafts.

Mr. AWAD formally moved that Mr. Abram's draft should be taken as a basis. Each article would be examined in succession and redrafted as necessary.

The CHAIRMAN put Mr. Awad's motion to the vote.

Mr. Awad's motion was adopted by 7 votes to 2, with 5 abstentions.

Mr. ABRAM observed that article II of his suggested draft (E/CN.4/Sub.2/L.308), which would forbid all discriminatory practices on the part of the State, was based on the Declaration adopted by the General Assembly (A/RES/1904 (XVIII)), and that paragraph 3, which dealt with the protection of certain groups, rested on the conclusions reached by the Sub-Commission itself at its previous session. Mr. Krishnaswami's proposals (E/CN.4/Sub.2/L.310) had received his full attention.

Mr. MUDAWI said that he would prefer the words "certain racial groups" in paragraph 3 to be replaced by the words "all racial groups" in order to avoid any ambiguity.

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Mr. KETRZYNSKI said that article II, paragraph 1, of the draft submitted by Mr. Ivanov and himself (E/CN.4/Sub.2/L.314) had the virtue of defining the State's role and placing it under an obligation to intervene in cases of discriminatory practices by local authorities.

Mr. MUDAWI objected to the quotation marks around the word "nationality" in article II, paragraph 1, of Mr. Abram's draft and asked that the definition of that term, which in the context did not have the meaning attached to it in international law, should be given in article I. With regard to paragraph 2, he proposed that the words "through police action or otherwise" should be replaced by the expression "in any manner whatsoever" in order to avoid any reference to police interference.

Where paragraph 3 was concerned, it should be made clear that it related to exceptional and temporary measures for the benefit of certain racial groups, designed to permit their full development. It should be stated in article I that measures of that kind were not discriminatory.

Mr. ABRAM said that he would take note of Mr. Mudawi's comments whose cogency he recognized.

Mr. CAPOTORTI observed that the draft submitted by Mr. Ivanov and Mr. Ketrzynski (E/CN.4/Sub.2/L.314) went further than the corresponding article of the Declaration adopted by the General Assembly and article II of Mr. Abram's text (E/CN.4/Sub.2/L.308) which was based on that Declaration, since it imposed upon the State not only to refrain from practising and encouraging discrimination, but to forbid it and to adopt legislative measures to that end. While he recognized, like Mr. Ketrzynski, that a general approach must be adopted, he was afraid that the draft jeopardized freedom of thought, opinion and expression.

From a formal point of view, he thought that Mr. Abram's draft could be simplified by adopting, for example, Mr. Mudawi's suggestions and by avoiding the repetition in the body of article II of the definitions given in article I. He also felt that, bearing in mind that the essential purpose of article II was to lay down that the State must neither practise nor encourage discrimination, article II, paragraph 1, of Mr. Calvocoressi's text (E/CN.4/Sub.2/L.309) was briefer and more precise, and that was essential in a convention.

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The CHAIRMAN, after summing up the situation and drawing attention to the three drafts and theories before the Sub-Commission, observed that Mr. Calvocoressi (E/CN.4/Sub.2/L.309) went even further than Mr. Ivanov and Mr. Ketrzynski (E/CN.4/Sub.2/L.314) and Mr. Abram (E/CN.4/Sub.2/L.308), since article II, paragraph 3, in his draft provided that it should be an offence to commit, or to incite to commit, an act of violence against another person on the grounds of race, colour or ethnic origin.

Mr. IVANOV said that, from a legal point of view, article II as proposed by Mr. Abram was unacceptable as a working text. It represented a backward step in relation to the Declaration adopted by the General Assembly, since it would leave the door open to discrimination and racism by giving the State the role of a mere observer.

The draft of which he was a co-sponsor (E/CN.4/Sub.2/L.314), on the other hand, laid down that the State must "admit within its territory no acts or manifestations of racial discrimination of any kind ...". The State could not remain passive. It was not enough for the State itself to refrain from all acts of discrimination; others must also be prevented from committing such acts. In that regard, in reply to Mr. Capotorti, he pointed out that the draft submitted by Mr. Ketrzynski and himself (E/CN.4/Sub.2/L.314) did not constitute a departure from the Declaration on the Elimination of All Forms of Racial Discrimination, in which it was expressly said that racism must be ended; it was rather the logical sequel to that Declaration.

In conclusion, he asked that Mr. Abram's draft of article II (E/CN.4/Sub.2/L.308) should be replaced by article II as submitted by Mr. Ketrzynski and himself (E/CN.4/Sub.2/L.314).

Mr. KRISHNASWAMI proposed that article II, paragraph 1, of the draft submitted by Mr. Ivanov and Mr. Ketrzynski should be inserted after article II, paragraph 2, of Mr. Abram's draft, thus reconciling the two points of view.

Mr. CALVOCORESSI said that, unlike Mr. Krishnaswami, he did not think that the two viewpoints were reconcilable. Under article II, paragraph 1, of the draft of Mr. Ivanov and Mr. Ketrzynski, all acts and manifestations of racial discrimination must be prohibited by the State, a provision which - since the meaning of the terms was not defined - would endanger freedom of thought, opinion

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and expression, whereas under article II, paragraph 3, of his draft (E/CN.4/Sub.2/L.309), only commission of or incitement to commit "acts of violence" from discriminatory motives would be forbidden by law. That was the basic difference between the two schools of thought. The provisions which he proposed were based on legal principles and were mandatory in character.

Mr. INGLES felt that article II of the draft submitted by Mr. Ivanov and Mr. Ketrzynski was preferable to article II, paragraphs 1 and 2, of Mr. Abram's draft and to article II, paragraph 1, of Mr. Calvocoressi's draft in that it would place the State under the obligation of refraining from all acts of discrimination itself and forbidding such acts by others. He referred the members of the Sub-Commission to article 4 of the Declaration on the Elimination of All Forms of Racial Discrimination, which laid down that States "should pass legislation for prohibiting such discrimination ...", and pointed out that article 2, paragraph 2, of the Declaration mentioned States, institutions, groups and individuals.

With regard to Mr. Calvocoressi's text, he felt that paragraph 3, which would make it an offence to incite to commit an act of violence against another person on the grounds of race, colour or ethnic origin should be considered simultaneously with article IX of Mr. Abram's draft.

In conclusion, he proposed that article II, paragraph 3 of Mr. Abram's draft (E/CN.4/Sub.2/L.308) should be inserted in article I of that draft or made a separate article, and that there should be added in paragraphs 1 and 2 of article II the idea contained in article II, paragraph 1, of the draft submitted by Mr. Ivanov and Mr. Ketrzynski (E/CN.4/Sub.2/L.314), that the State should not confine itself to refraining from discrimination but should "prohibit" all discriminatory acts.

Mr. KETRZYNSKI expressed surprise at Mr. Calvocoressi's objections to article II, paragraph 1, of document E/CN.4/Sub.2/L.314. The expression "manifestations of racial discrimination of any kind" had been deliberately chosen by the sponsors because it was broad enough to be interpreted more or less restrictively by States in accordance with their needs and internal structures.

The CHAIRMAN, speaking as a member, pointed out that the Sub-Commission must not lose sight in its debates of the fundamental ideas set out in article 1 of the Declaration adopted by the General Assembly, nor forget that its task was to prepare a truly effective instrument, capable of achieving the purposes set out in the Declaration.

Article II of Mr. Abram's draft seemed sufficiently explicit with regard to the need to prevent States Parties to the Convention from practising discrimination in any form. It was, however, inadequate with respect to another important obligation of the State, that of preventing private individuals and groups from practising discrimination. He fully realized that the question was extremely complicated and could face certain States Parties to the Convention with many constitutional problems and problems of domestic legislation. Nevertheless, the Sub-Commission, which was a group of independent experts, should not be held back by such considerations, its one concern being to adopt a formula obliging States to undertake to prohibit all acts of discrimination in their territory.

Mr. KRISHNASWAMI felt that the Sub-Commission could refrain article II, paragraph 1, of the text of Mr. Ivanov and Mr. Ketrzynski, to which the expression "if appropriate" gave sufficient flexibility to enable the dividing line between the concept of State control and the concept of freedom of opinion to be shifted according to the structure of the States Parties to the Convention and the stage of development of society.

Mr. SAARIO recalled that article 2 of the Declaration on the Elimination of All Forms of Racial Discrimination dealt with both the obligation of States not to practise discrimination themselves and the measures which they undertook to adopt in order to prevent individuals from practising discrimination.

The first point was covered by article II in document E/CN.4/Sub.2/L.308, and the second point by article IX in document E/CN.4/Sub.2/L.308/Add.1, article II in document E/CN.4/Sub.2/L.314 and article II (3) in document E/CN.4/Sub.2/L.309. The second point was of course the one which presented the greatest amount of difficulty, since it raised for States the question of the penalties to be applied and obliged them to define clearly what acts were subject to penalties.

(Mr. Saario)

In article II, paragraph 1, of Mr. Abram's text, he would like the expression "of ethnic origin" to be replaced by the expression "of national or ethnic origin", and the rest of the paragraph to be deleted.

Mr. MUDAWI said that two trends had become apparent in the course of the discussion: on one hand, the trend reflected in the texts of Mr. Abram and Mr. Calvocoressi, calling for penalties only against acts capable of producing violence, and on the other hand a more clearly defined and categorical trend consisting in prohibiting all forms of discrimination, that being the approach taken in document E/CN.4/Sub.2/L.314.

As had already been pointed out, there was no profound difference between those two trends, and furthermore, the use of the expression "if appropriate" in article II of the text proposed by Mr. Ivanov and Mr. Ketrzynski should allay the fears of those who supported the less radical trend. A further step in that direction could be taken by inserting in article II, paragraph 1, of that text the expression "within the framework of article 19 of the Universal Declaration of Human Rights" after the words "of any kind".

Mr. CAPOTORTI recalled for the benefit of Mr. Ingles, who had referred to article 4 of the Declaration dealing with legislation for prohibiting discrimination, that in accordance with that article such legislation should be adopted; furthermore, the problem appeared in a different light according to whether a convention or a declaration was involved.

He considered that the time had come for the Sub-Commission to define its stand on the question of the obligations to be imposed on States in dealing with discrimination, and more particularly the question of the measures to be taken by the State against individuals who practised discrimination.

Several possibilities appeared feasible in connexion with the latter point. It could be provided, for example, that States would undertake not to tolerate in their territory any acts or manifestations of racial discrimination. That approach, which had been proposed in the text of Mr. Ivanov and Mr. Ketrzynski, was the broadest one possible, since it could cover a whole range of manifestations and acts including racist propaganda.

(Mr. Capotorti)

A second approach was to speak of acts of discrimination instead of manifestations; the question of propaganda and freedom of expression would then be left aside.

Another course was to confine the obligations of the State to non-encouragement of discrimination, that being the approach taken in article 2 of the Declaration and article II of Mr. Abram's text.

Finally, States could be asked to draw up a policy for the elimination of discrimination; that was envisaged in article II, paragraph 2, of the text proposed by Mr. Calvocoressi (E/CN.4/Sub.2/L.309).

Faced with those various possibilities, the Sub-Commission also had to cope with two opposing requirements: on the one hand, the desire to draw up an instrument which could be accepted by the greatest number of States, and hence the necessity to adopt as flexible a formulation as possible; on the other hand, the need to achieve real progress, a step forward, and thus to arrive at a more rigid and precise formulation.

As for acts by States, he was inclined to take an uncompromising stand forbidding States to commit any act tainted with discrimination. Where individuals were concerned, he would favour a more flexible approach. The Sub-Commission might request States to prohibit any act of discrimination, while discarding the idea of "manifestation", which went too far. The Sub-Commission might also, in conformity with document E/CN.4/Sub.2/L.309, request States to draw up a national policy designed to prevent discrimination.

Mr. IVANOV considered that article II of Mr. Abram's text was not strong enough to deal effectively with racial discrimination. To be content with not encouraging discrimination was not enough; one must go further. That was what article II, paragraph 1, in document E/CN.4/Sub.2/L.314 did, and it would be wrong to think that it provided only for penalties and prohibitions. Actually the necessary measures mentioned in that article did not inevitably imply legal or legislative measures; they might equally well be educational measures, e.g. films against the dangers of racialism.

He pointed out that article II in document E/CN.4/Sub.2/L.314 was of wider import than article IX in document E/CN.4/Sub.2/L.308/Add.1, since in

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(Mr. Ivanov,

the former article the range of acts and manifestations which the State should not tolerate as well as the range of measures envisaged to deal with them was much greater.

He felt that Mr. Abram's text would be better if strengthened by the text proposed by Mr. Ketrzynski and himself. By combining the two texts, the idea of obligation would be added to Mr. Abram's text. Also, the State would be released from the role of mere observer assigned to it by document E/CN.4/Sub.2/L.308, and it would be compelled to promise that it would adopt the necessary measures to deal with racial discrimination.

Mr. ABRAM observed that many of the criticisms directed against article II of the text which he had submitted were unwarranted if the document as a whole was taken into account. For instance, article III, by providing that any law which had the effect of creating racial discrimination would be rescinded or nullified, would meet Mr. Capotorti's concern. Furthermore, article VIII provided that the State should exercise a moral influence, e.g. through education, as Mr. Ivanov had advocated.

There was, however, one field in which he was profoundly convinced the State should not intervene, and that was the private lives of individuals. In his opinion, only the moral persuasion of the government, the influence of the norms set forth in the Declaration and the education of public opinion should be relied on in the attempt to abolish discrimination in that field, which, he was firmly convinced, should lie outside the control of the State.

Mr. INGLES said that Mr. Abram's last remarks went beyond the definition of discrimination which had been approved by the Sub-Commission. Consequently, although sympathizing with the idea expressed by Mr. Abram, he could not endorse the arguments on which the speaker had relied in presenting them.

Mr. CUEVAS CANCINO observed that the Sub-Commission, having decided after a vote to take Mr. Abram's text as a basis for its work, had successively based itself on other documents. If the members of the Sub-Commission decided to continue to employ that method, they should endeavour to read in its entirety

(Mr. Cuevas Cancino)

the text selected as the basis for discussion. He also pointed out certain inadequacies in the Spanish text of document E/CN.4/Sub.2/L.303.

The CHAIRMAN replied that the Secretariat was revising the Spanish version of that text.

Mr. CALVOCORESSI said that in document E/CN.4/Sub.2/L.317, which had just been circulated to the Sub-Commission, the sentence in brackets at the end of the paragraph beginning with the words "Convinced that the elimination of racial discrimination is a major contribution to international peace" should be deleted. The expression "as did the evil doctrines and practices of national socialism" in the paragraph beginning with the words "Concerned by manifestations of racial discrimination" should also be deleted.

The meeting rose at 6.10 p.m.