

SUMMARY RECORD OF THE ONE THOUSAND TWO HUNDRED AND THIRTY-FIFTH MEETING

Held on Monday, 2 April 1973, at 10.55 a.m.

Chairman:

Mr. RAMPHUL

Mauritius

ELIMINATION OF RACIAL DISCRIMINATION (COMMISSION RESOLUTION 2 (XXVIII))
(agenda item 4) (continued*):

- (b) DRAFT CONVENTION ON THE SUPPRESSION AND PUNISHMENT OF THE CRIME OF
APARTHEID (GENERAL ASSEMBLY RESOLUTION 2922 (XXVII)) (continued*)
(A/8880; E/CN.4/L.1252, E/CN.4/L.1259)

Mr. DIAZ CASANUEVA (Chile) explained that, in the absence of Mr. Inglés, the Chairman-Rapporteur of the Working Group set up by the Commission at its 1202nd meeting to consider the draft convention on the suppression and punishment of the crime of apartheid, he was introducing the Working Group's report (E/CN.4/L.1252). After studying the text of the revised draft convention submitted by Guinea, Nigeria and the Soviet Union in the report of the Third Committee of the General Assembly at the Assembly's twenty-seventh session (A/8880); together with the amendments submitted to that draft, the Working Group had agreed on a new text, which was reproduced in its report. He congratulated the members of the Working Group on their spirit of collaboration and thanked the representatives of Senegal and the Philippines, who had presided over its proceedings, and the representatives of Austria and the Netherlands, who, while not official members of the Working Group, had attended the meetings as observers and had taken part in the work by submitting amendments. The new draft convention was indeed well timed, coming as it did just after the report of the Ad Hoc Working Group of Experts (E/CN.4/1111). That report, which no one could read without a feeling of anguish and impotence, should prompt the international community to seek a way of freeing thousands of men from an inhuman system which was systematically applied with implacable logic. States would never be able to eliminate apartheid unless they shouldered their obligations on the basis of an effective legal instrument; it was precisely that legal weapon which was proposed to them in the draft convention on the suppression and punishment of the crime of apartheid.

The new text of the draft convention (E/CN.4/L.1252, para. 8) was an improvement on the original text (A/8880, para. 42) in both substance and form. The preamble of the new text cited the international instruments referred to in the original text, i.e. the Charter of the United Nations, the Universal Declaration of Human Rights, the Declaration on the Granting of Independence to

* Resumed from the 1222nd meeting.

(Mr. Diaz Casanueva, Chile)

Colonial Countries and Peoples, the International Convention on the Elimination of all Forms of Racial Discrimination and the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, with slight changes in the wording and order of the paragraphs; the Working Group had considered it imperative to mention also the Convention on the Prevention and Punishment of the Crime of Genocide, which had not been mentioned in the original text.

Articles I, II and III had been redrafted and were now clearer from both the legal and the conceptual point of view. Article IV had been reduced to two basic sub-paragraphs, and paragraph 2 of the former article IV had become article V. Article VI reproduced the former article V, with a few changes. In article VII, the Working Group had not stated what organ would have to establish the scheme for the submission of periodic reports on the measures adopted by States parties to give effect to the provisions of the Convention. That point would have to be settled later by the Commission, the Economic and Social Council or the General Assembly. The Working Group had not had time to consider the former article VII, which had become article VIII. It had slightly improved the former article VIII, which had become article IX, but had not changed the former articles IX to XIV, which were now articles X to XV. Article XVI was new; the former articles XV and XVI had become articles XVII and XVIII.

The Working Group was convinced of the need to adopt the draft convention as soon as possible, since it would constitute an effective weapon against apartheid; any delay would strengthen the position of the partisans of that system. That was why draft resolution E/CN.4/L.1259 recommended the General Assembly at its twenty-eighth session to consider and approve the draft convention. He himself saw no reason why the Commission should not adopt the draft convention at the current session, since the text was not new: the Economic and Social Council and the General Assembly had already considered it and Governments had had an opportunity to submit comments and amendments. In his delegation's view, its adoption would be a decisive step in the struggle against apartheid.

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Mr. LAVIÑA (Philippines) agreed with the Chilean representative and thought that the Working Group had put the finishing touches to the draft convention. He hoped that the Commission would unanimously adopt the draft resolution, which recommended the General Assembly to approve the draft convention at its twenty-eighth session.

Mrs. MENON (India) said that she had taken an active part in the meetings of the Working Group, which was to be congratulated on its efforts to reconcile diverging points of view. She approved of the draft convention, because it appeared to be the logical outcome of the decisions and measures already adopted by the United Nations and would no doubt deal the death blow to apartheid.

Mr. van BOVEN (Netherlands) said that his delegation's position on the draft convention had not changed. Nevertheless, while maintaining his reservations regarding the efficacy of such an international instrument, he recognized that the Working Group had done constructive work and that, technically, the new text was an undoubted improvement on the earlier draft. With regard to the important question of the implementation machinery, he would prefer the task of supervising the execution of the convention to be entrusted to a special committee rather than to the Commission on Human Rights. He thought that the General Assembly could hardly be recommended to approve the draft convention at its twenty-eighth session, since the text had not been sufficiently studied and the essential question of how its provisions were to be put into effect had not yet been settled. His delegation would therefore have to abstain in the vote on draft resolution E/CN.4/L.1259.

Mr. ALVARADO (Venezuela) said he would support the draft resolution, but he had not had time to make a thorough study of the draft convention and to undertake the necessary consultations with his government. He therefore reserved his delegation's right to state, in other bodies, its final position on the various provisions of the draft convention.

Mr. YOKO (Zaire) thanked the delegations which had taken the initiative in submitting a draft convention on the suppression and punishment of the crime of apartheid and those which had taken part in the work of the Working Group.

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(Mr. Yoko, Zaire)

He was glad to note that at the current session the Commission had devoted a great deal of time and money to the preparation of the draft convention and that its efforts had not been in vain. In his view, the new text represented a marked improvement on the old text, not only from the technical point of view but also in substance, although it did not go as far as his delegation would have wished. The text, however, was not entirely new, but merely a revision; a first draft had already been submitted to Member States, which had had an opportunity to submit their comments and amendments. It was essential that a convention on the suppression and punishment of the crime of apartheid should be adopted, in order to supplement the Charter of the United Nations, which had been drawn up at a time when apartheid had not been as widespread as it had since become. The convention would reinforce the legality of the struggle against apartheid and would give the peoples who were victims of that system the support of a legal instrument. He hoped that the Commission would adopt draft resolution E/CN.4/L.1259 unanimously.

Mr. SEKVIAMAH (Ghana) said that his delegation would support the draft resolution. It reserved the right to speak on the subject in the Economic and Social Council, in order to state its position on the substance of the draft convention and on the clause regarding the implementation machinery.

Mr. DIAZ CASANUEVA (Chile) drew attention to two corrections to be made in the draft resolution: in operative paragraph 1 of the draft resolution for adoption by the Commission, the numeral "VII" should be replaced by the numeral "VIII", and the words "contained in document..." by the words "annexed to the present resolution".

Draft resolution E/CN.4/L.1259 was adopted by 21 votes to 2, with 5 abstentions.^{93/}

Mr. HOFFMAN (United States of America), explaining his vote, said that he had voted against the resolution, although the Working Group had improved the draft convention slightly. His Government was prepared to support

^{93/} For the final text, see resolution 16 (XXIX).

(Mr. Hoffman, United States)

any action which was calculated to suppress and eliminate the crime of apartheid, but the draft convention drawn up by the Working Group did not meet that objective. It was superfluous, in view of the existence of numerous other international legal instruments, enumerated in the preamble of the draft convention, some of the provisions of which were more or less directly aimed at the policy of apartheid. Moreover, several delegations of African States which had approved the earlier draft had expressed doubts about its effectiveness and had drawn attention to its vague, ambiguous and unjuridical character. Nor had the Working Group made the concept of the crime of apartheid any clearer. Lastly, he doubted the legal value of the draft convention, since there was no provision for any international tribunal to supervise its implementation.

He could not agree with the Chilean representative that the draft convention represented progress. It was merely a mirage for the African countries, like all the promises which the United Nations made and could not keep.

Mr. SAYAR (Iran), explaining his vote, said that his delegation approved, in principle, of any initiative which was designed to penalize and eliminate apartheid and had voted in favour of the resolution. Nevertheless, since any juridical instrument which created obligations for States must be considered in detail by those States, Governments should be given an opportunity for a more thorough study of the text adopted.

Mr. BOURGOIN (France), speaking in explanation of vote, said that his delegation recognized the efforts that the Working Group had made to improve the text, but it had been obliged to abstain in the vote, because the text proposed still raised difficulties of a juridical nature. Moreover, his delegation was not convinced of the desirability of the convention, since there was already a whole battery of international legal instruments whose provisions were applicable to the cases covered by the draft convention. Finally, his delegation would have liked to be able to consult its Government.

Sir Keith UNWIN (United Kingdom), speaking in explanation of vote, said that he had voted against the resolution, for he could neither approve the draft convention nor recommend its adoption to the Economic and Social Council.

(Sir Keith Unwin, United Kingdom)

His delegation condemned all the manifestations of apartheid mentioned in the draft convention, which, moreover, were regarded as crimes in the majority of States. It felt, however, that the preparation of a convention was not an effective way of penalizing and eliminating apartheid, for it was liable to create confusion if the conventions already in force were disregarded and to raise legislative difficulties in many countries.

Mr. CASSESE (Italy), explaining his vote, said that he had been forced to abstain in the vote because the misgivings of a juridical nature which his delegation had expressed on the subject of the earlier draft had not been dispelled.

Mr. CESKA (Austria), explaining his vote, acknowledged that the text of the draft convention had been improved, but he felt that it should be further considered by Governments. He had therefore been unable to accept it and to recommend its adoption to the Economic and Social Council.

Miss CABRERA SILVA (Mexico), explaining her vote, said that she had voted in favour of the resolution, but wished to enter a reservation on the sixth preambular paragraph of the draft convention, where it stated that "in the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, 'inhuman acts resulting from the policy of apartheid' are qualified as crimes against humanity". In her delegation's view, that assertion was not in accordance with the spirit of the convention. It would have been preferable to adopt the wording proposed by the Netherlands delegation. She pointed out that her country had not ratified the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against humanity, because it was contrary to its domestic legislation.

The CHAIRMAN pointed out that there was no provision in the Commission's rules of procedure which prevented it from authorizing the sponsor of a proposal or of an amendment to explain his vote on his proposal or his amendment. Accordingly, he called upon the representative of the Soviet Union, who had asked to explain his vote.

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Mr. MAKEYEV (Union of Soviet Socialist Republics) said that his country was convinced of the need to step up the campaign against apartheid, as was shown by the position it had adopted in various United Nations bodies, in particular in the General Assembly, at the twenty-sixth session of which it had submitted a first draft convention to that effect. The efforts made at the current session had enabled the Commission to adopt the draft convention by an overwhelming majority, thus taking a really historic decision.

His delegation was glad that so many delegations had voted in favour of the draft convention and had thus made a most useful contribution to the struggle against apartheid. It was common knowledge, however, that the effectiveness of an international juridical instrument depended upon the will of States to achieve its objectives. He therefore appealed to the delegations which had voted against the draft convention, or which had abstained, to co-operate nevertheless in the implementation of the future convention. He hoped that the draft convention would be adopted unanimously, without delay, by the Economic and Social Council and by the General Assembly.

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION AND OF APARTHEID, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES (agenda item 10) (continued**), INCLUDING:

- (a) REPORT OF THE AD HOC WORKING GROUP OF EXPERTS (COMMISSION RESOLUTION 7 (XXVII)) (continued**) (E/CN.4/1111, E/CN.4/L.1258, E/CN.4/1264)

Mr. JINADU (Nigeria), introducing draft resolution E/CN.4/L.1258 entitled "Report of the Ad Hoc Working Group of Experts" on behalf of the sponsors, said that Ghana and Nigeria, whose names had been omitted in the document, were also sponsors.

He drew attention to the importance of the problems dealt with by the Ad Hoc Working Group of Experts and pointed out that man had not been created to dominate, or to be dominated by, man, and that he must be able to move freely on the earth. Colonialism, however, had brought domination, compelling the inhabitants of the occupied regions to emigrate. In Africa, colonialism had been implanted through evangelization, which had given birth to the idea of racial superiority.

** Resumed from the 1233rd meeting.

(Mr. Jinadu, Nigeria)

Racism was characterized by the existence of a group which refused to recognize reality and forcibly erected social barriers between the privileged and the deprived. The privileged endeavoured to retain their ascendancy over the others by excluding them from the main sectors of social life. That situation had been brilliantly portrayed by the Chairman of the Commission in his address (1219th meeting) on the occasion of the observance of the International Day for the Elimination of Racial Discrimination.

In its excellent report (E/CN.4/L.1111), the Ad Hoc Working Group of Experts had dared to inform the world of what was happening in southern Africa.

With respect to South Africa, he noted, for instance, in the Working Group's conclusion (3) (ibid., chap. VI), based mainly on paragraphs 46-48 of the report, that the non-whites condemned to death and executed were far more numerous than the whites.

The Working Group referred also to atrocities committed in Namibia; the police had opened fire on a group of people leaving a religious service (conclusion (33)). The Vice-President of the South West Africa People's Organization, arrested in 1964 and imprisoned without trial, was reported to have been deported to the north of the country and to be there still (conclusion (42)).

The situation in Southern Rhodesia was equally deplorable. That territory was supposed to be administered by the United Kingdom, but the political prisoners and freedom-fighters there suffered treatment of the worst kind, as was described in conclusions (67) and (68) and paragraphs 263 to 265 of the report.

In the African territories under Portuguese domination, freedom-fighters were subjected to inhuman treatment and were tortured and murdered, according to paragraphs 334, 335, 341 and 360 of the report.

Draft resolution E/CN.4/L.1258 was thus based on facts reported by the Ad Hoc Working Group of Experts. It was also based on the great principles proclaimed by the United Nations. According to Article 1, paragraph 3 of the Charter one of the purposes of the United Nations was "to achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character" and Article 2, paragraph 2, provided that Members of the United Nations should fulfil in good faith the obligations assumed by them in accordance with the Charter; Articles 55 and 56 laid down the conditions in which

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(Mr. Jinadu, Nigeria)

international economic and social co-operation was to be realized. Several of those great principles were set forth in the Universal Declaration of Human Rights. According to article 2 of that Declaration, no distinction should be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belonged, whether it was independent, trust, non-self-governing or under any other limitation of sovereignty, and according to article 7 all were equal before the law and all, without exception, were entitled to equal protection against any discrimination in violation of the Declaration and against any incitement to such discrimination. There were yet other international standards, referred to in paragraphs 30-39 of the report, which should be respected by all; according to the Working Group, they were not respected in the territories in question.

The seven preambular paragraphs of the draft resolution were clear and required no explanation. Reference was made in particular to three resolutions of the General Assembly, which had repeatedly condemned the torture and inhuman treatment inflicted on prisoners and detainees in the South African prisons, and to the programme for the Decade for Action to Combat Racism and Racial Discrimination which the Commission itself had adopted in its resolution 1 (XXIX).

He did not think that operative paragraph 1 could give rise to any objection. In paragraph 2, the Commission expressed grave concern about the violations of human rights in southern Africa and, on the basis of the report of the Ad Hoc Working Group of Experts, it was impossible to deny that detainees in that region had been subjected to inhuman treatment. Paragraph 3 (a) referred to conclusion (75), paragraph 3 (b) to conclusion (90), and paragraph 3 (c) to conclusion (68) of the Working Group's report. Paragraph 4 noted the observations submitted in the Working Group's recommendations (19) to (22) and (101), which the Commission could not ignore. Paragraph 5 echoed the Working Group's recommendation (107). Paragraph 6 called on the United Kingdom Government to live up to its obligations in Southern Rhodesia, of which it was the legal Government. That was not the first appeal to the United Kingdom on the matter, but previous appeals had failed to bring about any change in the situation over the last six or seven years. Paragraph 7, confirming what had already been incorporated in the draft programme for the Decade for Action to Combat Racism and Racial Discrimination, asked

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(Mr. Jinadu, Nigeria)

Governments to give no further assistance to the racist régimes. Paragraph 8 recalled the content of General Assembly resolution 2440 (XXIII) concerning the treatment of political prisoners in South Africa. It was especially important to consider the concrete proposals which had been made for combating oppression, such as the establishment of a fund for aid to the victims of the situation in territories under a racist régime. Paragraph 9 was an appeal to the United Nations Council for Namibia, which constituted, as it were, a provisional government. Paragraph 10 took note of aerial bombardments and the use of poisonous chemical substances; the Commission should not hesitate to urge the cessation of such barbarous methods. Paragraphs 11 to 15 needed no explanation. Paragraph 16 requested the Ad Hoc Working Group of Experts to draw up a report on its findings for submission at the thirty-first session of the Commission and to present an interim report to the Commission at its thirtieth session, so that it could consider the situation periodically. Paragraph 17 presented no difficulty. Paragraph 18 would probably necessitate a statement by the Director of the Division of Human Rights. Lastly, paragraph 19 invited the Secretary-General to give the widest publicity to the report of the Working Group.

The Nigerian delegation would have liked to add that the Working Group's report should be considered at the International Conference of Experts for the Support of Victims of Apartheid and Colonialism in Southern Africa, to be held at Oslo, but it had had to abandon that idea, because the Conference was to take place in April 1973, well before the fifty-fourth session of the Economic and Social Council. Wide publicity should, however, be given to the report at the Conference.

All Governments had therefore a most important task and they should consider the matter, not from a political point of view, but from the point of view of human rights. In his address delivered on the occasion of the International Day for the Elimination of Racial Discrimination (1219th meeting), the Chairman had said that action to combat racism was an urgent task requiring vision, courage and, above all, honesty, but that it could be a rewarding task if, once the ideas of racism and privilege had been abandoned, all men were free to build, within and across the nations, the new world for which the young generations hoped. All States should renounce their prejudices in order to contribute to the happiness of all mankind. The world must not continue towards disaster. The members of

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(Mr. Jinadu, Nigeria)

the Commission should take the opportunity of their meeting to draw up the necessary measures, for otherwise they would be condemned by future generations. It must be made possible for Africans to live in dignity. That was the task which devolved upon the Commission and which it should carry through in the name of mankind and in accordance with the principles set forth in Articles 55 and 56 of the Charter. As the President of the Supreme Court of Senegal had said, Africans should embark upon a crusade not only for themselves but for all mankind. The Africans still hoped that reason would prevail before it was too late. It was the Commission's duty to adopt the draft resolution before it in order to contribute to establishing a world where all would be equal and where dignity and equality would prevail between men and women, as between all States, large and small.

The meeting rose at 1.10 p.m.