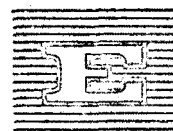


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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND
PROTECTION OF MINORITIES

Seventh Session

SUMMARY RECORD OF THE HUNDRED AND SIXTY-FIRST MEETING

Held at Headquarters, New York,
on Tuesday, 18 January 1955, at 3 p.m.

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PRESENT:

<u>Chairman:</u>	Mr. SORENSEN	(Denmark)
<u>Vice-Chairman:</u>	Mr. AWAD	(Egypt)
<u>Rapporteur:</u>	Mr. INGLES	(Philippines)
<u>Members:</u>	Mr. AMMOUN	(Lebanon)
	Mr. CASANUEVA	(Chile)
	Mr. CHATENET	(Chile)
	Mr. FOMIN	(Union of Soviet Socialist Republics)
	Mr. HALPERN	(United States of America)
	Mr. HISCOCKS	(United Kingdom of Great Britain and Northern Ireland)
	Mr. KRISHNASWAMI	(India)
	Mr. KULAGA	(Poland)
	Mr. ROY	(Haiti)

Representatives of specialized agencies:

Mr. MUNAND	International Labour Organisation
Mr. METRAUX	United Nations Educational, Scientific and Cultural Organization

Representatives of non-governmental organizations:Category B and Register:

Mrs. GIROUX	Catholic International Union for Social Service
Mr. NOLDE	Commission of the Churches on International Affairs
Mrs. DODD) Miss HITCHCOCK)	International Alliance of Women
Mr. LONGARZO	International Conference of Catholic Charities
Miss ROBB	International Federation of University Women

PRESENT: (continued)

Representatives on non-governmental organizations: (continued)

Category B and Register: (continued)

Mrs. WALSER	Women's International League for Peace and Freedom
Mr. JACOBY	World Jewish Congress
Mr. PENCE	World's Alliance of Young Men's Christian Associations
Mrs. POLSTEIN	World Union for Progressive Judaism

Secretariat:

Mr. SCHWELB	Deputy Director, Division of Human Rights
Mr. LAWSON	Secretary of the Sub- Commission

PROCEDURE TO BE FOLLOWED IN CARRYING OUT STUDIES OF DISCRIMINATION IN THE MATTER OF (a) POLITICAL RIGHTS MENTIONED IN THE UNIVERSAL DECLARATION OF HUMAN RIGHTS, (b) RELIGIOUS RIGHTS AND PRACTICES, AND (c) EMIGRATION, IMMIGRATION AND TRAVEL
(continued)

Preliminary report of the proposed study on discrimination in the matter of emigration, immigration and travel (E/CN.4/Sub.2/167)

The CHAIRMAN opened the discussion on the preliminary study of discrimination in the matter of emigration, immigration and travel submitted by Mr. Ingles (E/CN.4/Sub.2/167).

Mr. INGLES, introducing his report, said he had only a few comments to make on the document, which was self-explanatory.

The scope of his report was broader than that of the two other preliminary reports submitted at the same time; while the other reports dealt with discrimination in the matter of political rights and of religious freedom respectively, the present report covered discrimination in the whole field of emigration, immigration and travel, and not merely the narrower field of the right to emigration, immigration and travel. In that respect it resembled the reports on discrimination in education and in employment and occupation, which were not restricted to the right to education or the right to work. The reason was no doubt the same: in the matter of education, for example, the right to education - except primary education, which was free and compulsory - was no more universally recognized than was the right to emigration, immigration and travel.

Those terms were not defined in the report; he had supposed that when the Sub-Commission had included the topic in the list of its studies it had been fully aware of their meaning. The present might, however, be the proper time to make a brief attempt at definition. Starting from the dictionary definitions of the words "emigration" and "immigration", they were merely two aspects of a single phenomenon, that of migration, the act whereby a person definitely left one country in order to settle permanently in another. It

(Mr. Ingles)

was difficult, if not impossible, to dissociate the notion of immigration from that of emigration and to speak of emigration without bearing in mind that a person emigrated only in order to immigrate. In addition, the idea of permanence was inseparable from the notions of emigration and of immigration. Unfortunately, immigration laws were more concerned with the question of admission than with the question whether a person was entering a country permanently, temporarily, or in transit. That question went to the heart of the problem and should be dealt with in the study.

The term "travel" should be understood to mean the act of a person proceeding from one place to another, which for the purposes of the Sub-Commission must necessarily mean from one country to another. It was all the more necessary thus to consider travel from the international point of view because the Economic and Social Council had rejected an amendment under which the study would have related to the travel "within the borders of each State" referred to in article 13, paragraph 1, of the Declaration of Human Rights. Moreover, travel within the borders of each state was covered by "residence and movement" which was a separate topic in the Sub-Commission's Programme of work. The notion of "travel" in the present study thus covered all cases in which a person left one country and entered another without intending to stay there permanently.

The Sub-Commission must decide how urgent the study was. He felt, however, that it should be accorded a certain degree of priority: it bore upon problems which were urgent both for the countries of immigration and for the countries of emigration, which were sometimes the victims of discriminatory measures dictated in some cases by race prejudice.

He had found himself faced with a rather difficult problem when he had had to decide on the scope of the study. He had been faced with Economic and Social Council resolution 545 D (XVIII) in which the Council, after recalling in the preamble of the resolution the proposed study of discrimination in relation to emigration, immigration, and travel and article 13 of the Universal Declaration of Human Rights, requested the Sub-Commission to take as the objective of its study paragraph 2 of article 13 of the Universal Declaration of Human Rights, namely - the right of everyone to leave any country, including his own, and to return to his country. The question had arisen whether the Sub-Commission should continue its study of discrimination

(Mr. Ingles)

in the matter of emigration, immigration and travel, since the resolution, far from prohibiting it, explicitly referred to it, or whether it should restrict itself to a study of the principle proclaimed in article 13, paragraph 2, of the Declaration. The latter interpretation would have been obligatory if the proposal to delete the words "immigration and travel" from Resolution D of the Sub-Commission had prospered in the Commission on Human Rights. But that proposal was withdrawn and an entirely different proposal was submitted to the Economic and Social Council. He had not adopted a specific position in his report and had confined himself to pointing out the two possible courses. He felt, however, that the first should prevail: first because there was nothing in the resolution to prevent it and secondly because there were strong grounds for applying by analogy the interpretative rule established by the International Court of Justice in the matter of international agreements namely, that an argument derived from the preparatory work could not prevail against the formal terms of the final text. The procedure which he recommended in his report should be followed in carrying out the study could, moreover, be used regardless of the course the Sub-Commission adopted.

He concluded his remarks by a few comments on the question of sources. The Secretary-General had already assembled reference material on the relevant legal provisions in force in at least thirty-five countries, as well as bibliography that, while copious, was necessarily incomplete in view of the extensive research necessitated by the topic. The report also contained as an annex a memorandum by the Secretary-General on the activities of the United Nations, the International Labour Organisation and non-governmental organizations in the field under discussion.

So far as the writings "of recognized scholars and scientists" were concerned, he had preferred to use the term "experts", although the term "scientists" could be broadly interpreted to include specialists in the social sciences, just as it had been acknowledged that, in the case of political rights, specialists in the political sciences were meant to be included in the term "scientists". He further proposed that the Commission should leave it to its future Rapporteur to select experts who could be considered to be "recognized", as that notion was highly subjective.

Lastly, through its Permanent Migration Committee, the International Labour Organisation had carried out studies on migration and had recognized the existence of discrimination, particularly on racial grounds; but it had refrained from making recommendations, considering that racial discrimination had wider aspects which fell within the province of the United Nations. Recalling the facts mentioned in paragraph 28 of his report he said that the Permanent Migration Committee had explained its attitude in a resolution addressed to the Governing Body of the ILO; it asked the Governing Body to transmit that resolution to the Economic and Social Council so that the question could be considered by the Commission on Human Rights. Apparently the Economic and Social Council had not thought it necessary to act on the recommendation addressed to it, since, shortly afterwards, it had instructed the Sub-Commission on Human Rights to set up the Sub-Commission to which was entrusted the task of recommending measures to end discrimination.

Mr. ROY congratulated Mr. Ingles on his clear and informative report. He was particularly glad to note that on three important points, Mr. Ingles' conclusions were the same as those of the members of the Sub-Commission. In the first place, the author of the report proposed (paragraph 15) to adopt the same method as that adopted by the Sub-Commission for its study of discrimination in education. Furthermore, the report listed in paragraph 53 all the details and aspects of the study which the Sub-Commission must bear in mind, such as its world-wide, factual and objective character, the determination and analysis of factors of discrimination and the need to educate world public opinion. Lastly, with regard to the choice of the rapporteur, the report proposed (paragraph 55), in accordance with the wishes of the Sub-Commission, the nomination of a special rapporteur selected from among its members; it also provided for the possibility that the Chairman of the Sub-Commission should request the Fifth Committee of the General Assembly for the payment of honoraria to the special rapporteur, explaining that, as in the case of the International Law Commission, an exception should be made to the application of General Assembly resolution 677 (VII) in view of the special circumstances.

(Mr. Roy)

It was solely on the question of the scope of the study that the report revealed differences of opinion. Mr. Ingles, after giving the background of the question, had shown, without taking sides in his report, that the Sub-Commission was faced with two possible solutions. He himself would point out that to begin with the Commission on Human Rights and the Economic and Social Council had approved the working programme of the Sub-Commission, which, at its fourth and fifth sessions, was contemplating a study on immigration and travel. At its sixth session, the Sub-Commission had added immigration to its list. Since that time, a movement, for which the United States delegation was mainly responsible, had developed in the Commission on Human Rights and the Economic and Social Council, its aim being to reduce the scope of the study and even to restrict it to the principle set forth in article 13, paragraph 2 of the Universal Declaration of Human Rights. Although that movement had been partly successful, as could be seen from resolution 545 D (XVIII) of the Council, he himself had already decided to support the first solution mentioned by Mr. Ingles. He thought the arguments Mr. Ingles had put forward were both pertinent and adequate, but he reserved his right to revert to the matter when all his colleagues had expressed their views.

Mr. CASANUEVA associated himself with the tributes paid to Mr. Ingles for his study.

He observed that article 13, paragraph 2 of the Universal Declaration of Human Rights recognized that everyone had the right to leave any country and to return to his own country, but did not mention the right to enter any country. Nor did article 12 of the draft covenant on civil and political rights sanction the freedom to enter any country; article 12, paragraph 1 (b) of the draft covenant merely recognized that any person was free to "leave" any country including his own. Paragraph 2 (b) of the same article merely referred to the freedom to "enter his own country". Similarly article 14 of the Universal Declaration recognized the right of asylum but made it clear that it meant the right "to seek" or "enjoy" asylum in other countries. It made no reference to the right of finding asylum in other countries. A study would have to be made to determine whether article 14 imposed on States the legal obligation to grant asylum.

He thought it useful to distinguish between different types of emigration: voluntary emigration, the right to which was set forth in article 13 of the Universal Declaration, involuntary emigration, to which reference was made in article 14 of the Universal Declaration, and the voluntary emigration of persons who sought work and permanent residence in other countries.

That third type of immigration was of great importance to States such as Chile, which were known as immigration States. The potential right of emigration in such a case could be exercised only if a State permitted the holder of the right to enter its Territory and settle there.

Involuntary emigration raised the problem of refugees, which created international responsibilities. Chile and other Latin American countries had assumed their share of those responsibilities by accepting refugees from Trieste and the East. It was surprising that the High Commissioner for Refugees had not submitted a fuller report indicating whether the restrictions to which refugees were subject were due to discriminatory practices or to the inability, for material reasons, of the countries concerned to receive them.

While the problem of involuntary emigration should be viewed primarily from the humanitarian angle, the problem of voluntary emigration brought with it restrictions due to historical circumstances, economic and social conditions, the resources of the countries of immigration and their capacity to absorb immigrants. Countries with limited natural resources which had to protect their manpower when employment was low and when their economic development was not yet very advanced, were bound to exercise selective control of immigration. Caution was all the more necessary in that connexion since emigration had lost any element of adventure and of a search for the unknown which it might have had in the nineteenth century. In the twentieth century immigrants wanted the security of employment and the benefits of social security and to be absorbed into the mass of the population of the host country. The Latin American countries had encouraged the voluntary emigration movement and they could not be reproached with making any discrimination as to nationality or race. They had welcomed emigrants regardless of whether they were Italian, German or Dutch. The considerations which

(Mr. Casanueva)

governed agreements concluded with the Governments of the countries of emigration were professional qualifications and adaptability to the climate and the social and natural conditions of the country of immigration and the financial arrangements for the settlement of immigrants. None of those considerations could be regarded as discriminatory practices.

He regretted that the Inter-Governmental Committee for European Migration, which had been established at the 1951 Brussels Conference and had done remarkable work, had not furnished information on its activities. That tri-partite Committee was composed of representatives of countries of emigration such as Italy, Germany, Greece, representatives of immigration countries such as Australia and Canada and among the Latin American countries, Argentina, Brazil, Chile and Venezuela, and also of representatives of friendly countries, including the United States, France and Belgium.

He assured the Commission that the Latin American countries such as Chile, Colombia, Uruguay and others were in favour of greater migration and were prepared to welcome immigrants, for they needed men to speed up their economic and social development. However, their resources were limited; emigration called for capital, agricultural equipment, livestock, roads, markets and housing, etc., without all of which the immigrants could not successfully run a farm. Sometimes the agricultural production of a country was insufficient to feed the local population. Thus, the production of milk in Chile was too low and that country had had to ask for the assistance of the Food and Agricultural Organization to improve its agricultural production. Chile was therefore extremely interested in agricultural settlement. It was not enough for a country to be willing to admit immigrants; it must also have the necessary resources. The success of immigration also depended on other conditions: the immigrant must be in good health, must have the necessary skill, some professional qualifications, etc.

The countries of the American continent desired to make citizenship available to immigrants on terms of absolute equality with the nationals of the host country. The countries of Latin America were actively concerned with the integration of immigrants into the national community. They did not want those groups to form minorities which would not enjoy the protection of the law.

In the matter of immigration a country might practice discrimination not only by closing its borders to certain categories of immigrants but also by withholding the protection of law from categories of immigrants that it had agreed to accept. The Inter-Governmental Committee for European Migration was concerned with that problem and was endeavouring to persuade countries of immigration to grant immigrants such rights as the right to work, political rights and religious freedom, and freedom of education.

If the Sub-Commission decided to undertake a study of discrimination in the matter of emigration, immigration and travel it should take as a basis for its work the debates of the annual conferences of the Inter-Governmental Committee for European Migration and the important work carried out by the International Labour Organization, such as the Migration for Employment Convention, revised in 1949, and the recommendation regarding migrant workers. The study should also deal with discrimination in the matter of political rights, religious freedom and freedom of education wherever immigrants were subjected to such discrimination.

Mr. AMMOUN associated himself with the previous speakers who had praised Mr. Ingles for his objective and intelligent report. He preferred the first of the two solutions considered by the author of the report. Accordingly, the study should deal with discrimination in the matter of emigration, immigration and travel, and especially with measures relating to the right of everyone to leave any country, including his own, and to return to his country. The right to leave one's country was in fact an illusion if the person concerned was unable to go to another country.

He regarded the right to emigrate as one of the forms of the right to live. An emigrant did not leave his country for pleasure but very often out of necessity, because his country was too poor to support its inhabitants.

Consequently, the study should be broad in scope, but it should not include exiles, who were a special class of immigrants; their case should be considered in a study of political rights, and any discrimination to which they might have been subjected had nothing to do with discrimination in the matter of immigration. That being the case, the study should not be concerned with the application of article 12, paragraph 2 (a) of the draft covenant on civil and political rights.

(Mr. Ammoun)

The application of article 13 of that same draft covenant, which would allow an alien to lodge an appeal through the judicial or administrative channel against an expulsion order, came within the scope of the study under consideration by the Sub-Commission.

He would like to see the Inter-Governmental Committee for European Migration extend the field of its activity to include migration outside Europe. He associated himself with Mr. Casanueva in praising the work of that Committee.

He recalled that in his report on education he had noted the desire of a Latin American Government to assimilate immigrants to nationals, so far as schools and universities were concerned, in order to avoid the formation of artificial minorities. That observation was in line with those made by Mr. Casanueva.

He noted that Mr. Ingles had drawn attention in paragraph 48 of his report to the opinion that immigration was subject to the exercise of a sovereign right and was the object of selective control in all countries. While the admission of an immigrant to a country was a selective act, it was not necessarily tantamount to discrimination, as the advocates of that view held. That view notwithstanding, a State's decision in such questions was not a matter within its own sovereignty alone; it had to take into account the nature of things and the spirit of international solidarity and to follow the dictates of its own good sense and its awareness of its own interests. When a State implacably closed its borders to immigration, it thereby condemned certain peoples of the world to famine or want; to follow that course was - apart from humanitarian considerations - to ignore the fact that suffering was contagious and that no country was immune. Countries of immigration should understand that it was to their own advantage as well as to that of immigrants to lift restrictions on immigration. Naturally they had to take into account the resources, the opportunities, and the difficulty of adaptation to a different standard of living, and they should not forget that there was a saturation point which must not be exceeded, but it was through the understanding attitude and co-operation of all countries that it would be possible to attain the ideals which the United Nations pursued in its efforts to combat discrimination. The fate of a large part of mankind, for better or for worse, might well depend upon the attitude adopted by Governments.

Mr. HISCOCKS said that Mr. Ingles' task had been particularly difficult because he had been torn between desires both to adhere to his terms of reference and to follow the instructions of the Economic and Social Council. He believed that the Sub-Commission should adhere to the terms of Economic and Social Council resolution 545 D (XVIII) requesting the Sub-Commission to take as the objective of its study the principle stated in paragraph 2 of article 13 of the Universal Declaration of Human Rights, namely - the right of everyone to "leave any country, including his own, and to return to his country". Moreover, he found the arguments advanced by Mr. Ingles in support of the second solution much more convincing than those advanced in favour of the first solution in paragraphs 9 and 10 of the report.

The Sub-Commission's work had frequently been criticized, no doubt because it dealt with complex and delicate subjects. He would not wish to see the Sub-Commission criticized in the present instance for failure to comply with the instructions of the bodies to which it was responsible. Accordingly, if the Economic and Social Council instructed the Sub-Commission to undertake a limited study, the Sub-Commission should not consider broadening the scope of that study.

He did not see any particular reason for including "other inter-governmental organizations" in paragraph 34 concerning the collection, analysis and verification of information. It would be better to retain the list used for the study on discrimination in education particularly since, as Mr. Ingles had noted at the end of paragraph 34, the material should not be limited to those sources.

The study under consideration was not of such fundamental importance as the other two, but it had the advantage of being non-controversial and of being very useful.

Mr. FOMIN shared the views that Mr. Ingles had expressed regarding the scope of the study, for he believed that the first solution would enable the Sub-Commission to study the question as a whole more effectively. He agreed with Mr. Ingles that the Sub-Commission should study discrimination in the matter of emigration, immigration and travel and not emigration, immigration and travel per se. He agreed that the study must deal with the question on a worldwide

(Mr. Fomin)

scale and that it must be concerned with the grounds of discrimination enumerated in paragraph 1 of article 2 of the Universal Declaration of Human Rights.

However, he had a number of criticisms to make. He did not agree with Mr. Ingles' opinion that the de facto situation should also be studied and, on the basis of unofficial information, and he therefore could not accept that point of view.

He agreed with Mr. Hiscocks that it served no useful purpose to include "other inter-governmental organizations" in the sources of material, for he could see no advantage in having the rapporteur or the Secretariat apply to organizations that had no connexion with the United Nations. Moreover, it would be advisable to consider that agreement had been reached on the meaning of the words "writings of experts", in order to avoid reverting to that subject.

In his opinion the study in question should be undertaken by the Secretariat and it was therefore unnecessary for the Sub-Commission to ask the General Assembly to appoint a special rapporteur. For that reason, the original formula, "writings of recognized scholars and scientists" should be used.

The CHAIRMAN, speaking as a member of the Sub-Commission, pointed out that the Economic and Social Council resolution - although its terms might seem ambiguous - asked the Sub-Commission to limit its study to the principle stated in paragraph 2 of article 13 of the Universal Declaration of Human Rights. The debates of the Commission on Human Rights clearly showed that it was the intention of the authors of the resolution to delete the word "immigration" in the text of resolution D which the Sub-Commission had adopted. He did not regret that limitation. Of all discriminatory practices, discrimination in immigration was least objectionable, since it might have the purpose of preserving the homogenous character of the population.

As Mr. Casanueva had stated, the economic, social, cultural and geographical factors that determined a country's immigration policy had to be taken into account. The social structure of countries was no longer as flexible as it had been a century ago, so that Governments found it necessary to introduce restrictions on immigration. If the Sub-Commission insisted that discrimination in the matter of immigration should cease, it might foster the

formation of new minority groups. As Mr. Awad had pointed out, when a country admitted groups differing in ethnic origin from its own population, there was a possibility that hostility might be engendered towards those groups, and that discrimination in a number of various fields might ensue.

He agreed with Mr. Ammoun that in the case of those who emigrated out of necessity, the right to leave their country was often tantamount to the right to live. However, he regarded that as an economic problem, which should be solved through the effective development of the resources of the country concerned.

The meeting rose at 5.10 p.m.