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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES

Eleventh Session

SUMMARY RECORD OF THE TWO HUNDRED AND SEVENTY-FOURTH MEETING

Held at Headquarters, New York,  
on Monday, 19 January 1959, at 3.15 p.m.

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PRESENT:

Chairman:

Mr. AWAD (United Arab Republic)

Rapporteur:

Mr. SAARIO (Finland)

Members:

Mr. BEYHUM (Lebanon)

Mr. CHAYET (France)

Mr. FOMIN (Union of Soviet Socialist  
Republics)

Mr. HALPERN (United States of America)

Mr. HISCOCKS (United Kingdom of Great  
Britain and Northern  
Ireland)

Mr. INCLES (Philippines)

Mr. KRISHNASWAMI (India)

Mr. MACHOWSKI (Poland)

Mr. ROY (Haiti)

Mr. SANTA CRUZ (Chile)

Representatives of specialized agencies:

Mr. METALL )  
Mr. PAYRO ) International Labour  
Organisation

Mr. GAGLIOTTI United Nations Educational,  
Scientific and Cultural  
Organization

Secretariat:

Mr. HUMPHREY Director, Division of  
Human Rights

Mr. LAWSON Secretary of the  
Sub-Commission

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FUTURE WORK OF THE SUB-COMMISSION, INCLUDING FURTHER STUDIES IN THE FIELD OF DISCRIMINATION (E/CN.4/Sub.2/195, 197)(continued)

Mr. KRISHNASWAMI thought that the members of the Sub-Commission were entitled to make suggestions to their successors on further studies to be undertaken. As a national of an under-developed country, he quite understood why Mr. Fomin wanted the Sub-Commission to study discrimination in the matter of economic and social rights. As a rule a people could not exercise its civil and political rights unless it were first enabled to enjoy its economic and social rights. He wondered, however, whether in embarking on that subject, the Sub-Commission would not be led to change its approach. The main problem would seem to lie not in discrimination proper, but in the fact that a people, for lack of natural resources, capital or technicians, could not attain the minimum level of prosperity required, for example, for a satisfactory social security system. It would therefore be more important to study the content of the various rights and the means of guaranteeing them than to combat the discriminatory practices which might hamper the exercise of those rights.

If the Sub-Commission decided to embark on so vast a task, it would have to take into account certain financial considerations. In particular, the Division of Human Rights would have to be reinforced by some officials fully conversant with economics and public health, in case the Sub-Commission took up Mr. Fomin's suggestion for a study of discrimination in the matter of medical services in connexion with the International Public Health Year in 1961. He favoured a study of discrimination in the matter of economic and social rights, provided that the future Special Rapporteur could rely on a sufficiently large staff of competent assistants. He also advocated a close co-operation with the specialized agencies and hoped that the Sub-Commission would formulate its intentions clearly, so that the Commission on Human Rights might make its decision with a full knowledge of the facts.

Mr. CHAYET pointed out, first, that the Sub-Commission had three studies in process respectively of preparation, revision and completion, which would require considerable time for their conclusion, and secondly, that the term of office of its members expired on 31 December 1959. The Sub-Commission should therefore be realistic in planning its future work, particularly as the facilities made available to it by the Secretariat were not likely to be substantially

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(Mr. Chayet)

increased. Moreover, the Sub-Commission's studies had generally been the more fruitful the more limited they had been in scope. While recognizing the usefulness of a study of discrimination in the matter of economic and social rights, he therefore thought the subject was too general to be entirely covered by one study. He personally would prefer the Sub-Commission to make a choice among the three subjects proposed to it by the Secretary-General (E/CN.4/Sub.2/195, paragraph 21 (d) and (e)).

Mr. MACHOWSKI thought the proposals made by the Secretary-General in paragraph 21 of his note were so clear that they hardly called for comment. However they were insufficient. Economic and social rights were extremely important, and experience showed that their exercise was hampered by discriminatory practices. Perhaps Mr. Krishnaswami was wrong to concern himself at the present stage with the practical difficulties which the Sub-Commission might encounter in its future work. Such concern was natural where work was in progress, but in the case of long-term projects, the Sub-Commission should confine itself to informing the Commission on Human Rights in general terms of its interest in a study of discrimination in the matter of economic and social rights, and other proposed topics.

Mr. SANTA CRUZ thought that Mr. Krishnaswami had brought out a very important aspect of the study which the Sub-Commission might undertake in the matter of economic and social rights. The exercise of such rights depended on economic and social development, and the Sub-Commission's task would be less to denounce discriminatory practices than to study the possibility of enabling the largest possible number of persons to enjoy such rights. The Sub-Commission would then approach a borderline which the Commission on Human Rights appeared to have already crossed; beyond that line, a study of discrimination in the matter of a particular right merged with the study of that right as a whole. The Chairman had, moreover, expressed the view that the Sub-Commission should concentrate on protecting the exercise of a right by all the members of a community rather than confine itself to combatting discrimination. Mr. Santa Cruz hoped that the members of the Sub-Commission would be able to exchange views on that complex question again and that a precise formula would emerge which could be submitted to the Commission on Human Rights.

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The CHAIRMAN remarked that the Sub-Commission, although consisting of experts, could not lay claim to equal competence in all subjects. Discrimination had extremely varied features, whose study sometimes required specialized knowledge. For his study of discrimination in education, Mr. Ammoun had been able to rely on the help of the United Nations Educational, Scientific and Cultural Organization, but that had been a very exceptional case. The Sub-Commission might therefore ask the higher organs for authority to use the temporary services of consultants to be selected according to the nature of the subject under review. However, it might be advisable to ask for the Secretary-General's opinion on that point first.

Mr. HISCOCKE thought that in any discussion on the future work of the Sub-Commission the subjects referred to in paragraphs 21 (d) and (e) of the Secretary-General's note should be considered. On the other hand, the debate on a possible study of discrimination in the matter of economic and social rights had been very confused and the statements of some members might give the impression that the Sub-Commission had neglected those rights completely. The fact was that the Sub-Commission had already studied discrimination in education and in respect of employment and occupation, and might in future undertake a study of discrimination against persons born out of wedlock or discrimination in the right to choose a spouse. He was also concerned to note that several members of the Sub-Commission were proposing to leave the field of discrimination proper. The Sub-Commission still had plenty of work before it, and would also have periodically to pay attention to the questions which had already been the subject of studies. There was also the possibility that it would again be called upon to deal with the matter of minorities. The chief difficulty with which it had to contend was not the limitation imposed on its activities, but the inadequacy of staff. That was why it should perhaps consider simplifying its working methods in preparing future studies. In any event, it was not for the Sub-Commission to take the initiative in asking for a modification of its terms of reference, and it should refrain from embarking on over-ambitious projects, since its membership would be changed for the twelfth session.

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Mr. FOMIN said that no substantive objection had been offered to his proposal for a study of discrimination in the field of economic and social rights. The main criticisms directed against it related to methods and to material difficulties. However, on the one hand there was no reason why certain particularly important rights could not be treated separately, and, on the other hand, the Sub-Commission would surely be able to obtain assistance from the Department of Economic and Social Affairs and several specialized agencies. That did not mean that the Sub-Commission must undertake an exhaustive study of the rights in question. It would have enough to do if it remained within its own sphere of competence. It was necessary, of course, for countries to possess certain minimum resources and to develop their economies, but, if those resources were distributed on an equitable basis, the matter did not fall within the province of the Sub-Commission but, essentially, within that of the Technical Assistance Administration. The Sub-Commission should concern itself with the cases - which were all too frequent, particularly in the Non-Self-Governing Territories - where individuals were, because of their race, religion, nationality or sex, being subjected to discriminatory practices with regard to medical care, unemployment benefits or the right to rest, to cite only a few examples. As for the questions the study of which was proposed in paragraph 21 of the Secretary-General's note, he would be grateful if the representative of the Secretary-General would advise it to what extent the Social Commission and the Commission on the Status of Women were also studying them so that duplication could be avoided.

Mr. HISCOCKS said that he was not opposed to the study of economic and social rights by the Sub-Commission if such study was not too general in character. If the Sub-Commission decided to examine one such right, it should select it with care and concern itself only with possible discrimination in the field covered by that right.

Mr. FOMIN said that, in his opinion, the study of discrimination in the field of economic and social rights should be conducted in the same manner as the Sub-Commission's other studies. He did not see how it would differ, for example, from that undertaken in the field of political rights: just as there were a number of political rights, there were a number of economic and social rights, but that did not prevent the Sub-Commission from examining them. Indeed, there

(Mr. Fomin)

would be an advantage in doing so in the particular instance in question, since it would be much easier to assemble ample documentary material. If the Sub-Commission found that the volume of information available to it was too great, it could select what it needed and concentrate its efforts on a particular right, but it should study all the economic and social rights without exception if it was to avoid discriminatory treatment of them.

Mr. HALPERN said he did not think that it would be appropriate to study the social and economic rights mentioned by Mr. Fomin from the standpoint of discrimination alone. It would be more appropriate to make them the subject of a study of basic rights by the Commission on Human Rights, which could examine at the same time any discrimination which might be encountered in the course of the study. It was to be noted, moreover, that, in the list of fields to be studied which it had given to the Sub-Commission, the Economic and Social Council had included those of education and of employment and occupation, which undeniably came under the heading of economic and social rights. The Sub-Commission could therefore not be accused of neglecting that category of rights, for two of the five studies which it had undertaken dealt with rights in that category.

The Secretary-General had not proposed any other economic and social rights in the list he had submitted to the Sub-Commission because he had felt that they did not lend themselves to useful study from the point of view of discrimination. The right to social security, laid down in article 22 of the Universal Declaration, and the right to protection against unemployment, laid down in article 23, presented problems which could not usefully be studied from the standpoint of discrimination. They involved questions of the economic institutions of the country and of its economic resources with which other bodies were more competent to deal. The international aspect of those problems centred upon the programmes of financial aid and technical assistance.

The Secretary-General had reminded the Sub-Commission, in paragraph 21 of his note (E/CN.4/Sub.2/195), that a study of "discrimination against persons born out of wedlock" might well be undertaken. Before taking up that highly important question, however, the Sub-Commission would have to consider whether it would not be duplicating the study of the rights of the mother and the child planned by the Commission on Human Rights. The Secretary-General had also

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(Mr. Halpern)

reminded the Sub-Commission that it had not yet made a study of "discrimination in residence and movement" and "discrimination in the right to choose a spouse and in the enjoyment of family rights"; thus, the Sub-Commission did not lack subjects for study.

He also noted the difference between rights which were dependent upon the goodwill of Governments and the violation of which could be remedied forthwith by governmental action, such as the right to leave a country, and the social and economic rights to which reference had been made. The right to social security, the right to protection against unemployment and the right to an adequate standard of living, posed what were essentially economic problems that were bound up with the resources possessed by the various States and could not be solved by Governments, however well-intentioned, which lacked the wherewithal for doing so.

He noted further that the new Sub-Commission which was to be named and was to start holding meetings at the next session would have to complete the studies on discrimination in the field of religion, of political rights and of the right of emigration; it would therefore have enough work for the present and would have at least a year to ponder its future work programme. The present members of the Sub-Commission should not bind their successors by establishing the order of priority for the studies which were to be undertaken.

Mr. FOMIN said that the right to choose a spouse, which Mr. Halpern had placed in the category of social rights, was included among civil and political rights in the Universal Declaration of Human Rights. Mr. Halpern contended that certain rights posed basically economic problems and were therefore outside the jurisdiction of the Sub-Commission. However, there were countries where some workers did not receive unemployment benefits because of their race, where women and coloured persons received shorter leave than other workers, where hospitals were barred to coloured persons, and so forth; such cases involved social rights and discrimination which clearly came within the Sub-Commission's terms of reference. Indeed, it was difficult to find a single right in the Universal Declaration with regard to which discrimination was not practised and which was therefore outside the Sub-Commission's jurisdiction. The Sub-Commission's task should be, not to list those rights, but to prepare a report and recommendations on discrimination in the field of economic and social rights.



He requested the representative of the Secretary-General to inform the Sub-Commission whether the Commission on the Status of Women or the Social Commission had made any studies of the question of children born out of wedlock and, if so, what direction such studies had taken; otherwise, the Commission might conduct a study of its own on the same subject which would represent duplication of effort. He also asked whether the question came within the competence of the Commission on Human Rights from the formal, legal point of view.

Mr. HUMPHREY (Secretariat), replying to the first question, pointed out that all the studies undertaken by the Commission on the Status of Women were included in the Annex to the Secretary-General's Note on the future work of the Sub-Commission (E/CN.4/Sub.2/195), which made no reference to the question of children born out of wedlock. If the Sub-Commission decided to consider a study of the question, the resolution informing the Commission on Human Rights of that decision would be transmitted to the Commission on the Status of Women.

The question of whether, from a formal and legal point of view, the subject came within the competence of the Commission on Human Rights would depend entirely on the decision taken by the Commission itself.

Mr. SANTA CRUZ said it was his opinion, especially after having heard Mr. Krishnaswami, that most of the economic and social rights should be studied in their most general aspects and not merely from the point of view of discrimination.

He could not accept the definition Mr. Halpern had just given of economic and social rights, under which those rights would be abstract and illusory, dependent on the play of economic factors and personal efforts. That would be contrary to the conception embodied in the Universal Declaration of Human Rights. He recalled that Mr. Halpern's arguments had already been used in an attempt to prevent the inclusion of economic and social rights in the Universal Declaration. Article 22 of the Declaration in fact established the responsibility both of States and of the international community as regards the protection of economic and social rights, in accordance with the organization and resources of each country.

Mr. INGLES considered that the Sub-Commission could not and should not take a final decision on a complete programme of future work at the present session. That attitude was based not so much on his conviction that the Sub-Commission, as reconstituted, should be free to decide its own work programme, as on his conception of the problem under consideration.

The Sub-Commission could, however, examine and decide its work programme for the next few years. In that connexion, he recalled that some members of the Commission on Human Rights had considered that the Sub-Commission wished to proceed too rapidly but that others had feared that the Sub-Commission might find itself without a work programme for 1960 onwards. That fear no longer seemed justified, in view of the fact that the situation had changed since the last session. He pointed out that in six years the Sub-Commission had completed only one study under its sole responsibility. In those circumstances, it should not undertake new studies until it had finished the studies in progress as well as the remaining study under its approved programme, which would no doubt occupy it until 1962. The Sub-Commission could also propose measures to improve or accelerate its work, such as the assignment of additional Secretariat staff, or perhaps a change of plan for its future studies.

He did not think that the Sub-Commission should adopt a special resolution with regard to its long-term programme. It would be enough for its members to express their views during the present debate, so that the reconstituted Sub-Commission might consider them at a future session.

In that connexion, he believed that the Sub-Commission would eventually have to decide which of the remaining economic, social and cultural rights could usefully be studied from the point of view of prevention of discrimination. He agreed entirely with Mr. Krishnaswami that some of those rights should be studied from the point of view of ensuring their full exercise rather than from the point of view of preventing discrimination. That was particularly true of the under-developed countries, where the lack of resources might lead to restrictions of rights not merely among some sectors of the population but among the population as a whole.

Mr. PAYRO (International Labour Organisation), replying to a question asked by Mr. Fomin, drew attention to the annex to Report VII (1) to the International Labour Conference (fortieth session), which reproduced excerpts from international labour conventions and recommendations containing important

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(Mr. Payro, ILO)

anti-discriminatory provisions. The most important of those were the Social Policy in Dependent Territories Recommendation, 1944, the Social Policy in Dependent Territories (Supplementary Provisions) Recommendation, 1945, the Social Policy (Non-Metropolitan Territories) Convention, 1947, the Protection of Migrant Workers (Under-Developed Countries) Recommendation, 1955, for the protection of migrant workers in under-developed countries and territories, the Vocational Training Recommendation, 1939, the Equal Remuneration Convention, 1951, the Migration for Employment Convention (Revised), 1949, the Freedom of Association and Protection of the Right to Organise Convention, 1948, the Shipowners' Liability (Sick and Injured Seamen) Convention, 1936, and the Vocational Rehabilitation (Disabled) Recommendation, 1955. Lastly the Indigenous and Tribal Populations Convention, 1957, in addition to its economic and social aspects, had political aspects which might interest Mr. Santa Cruz in the preparation of his study.

The diversity of the ILO instruments dealing with discrimination was evident from that list. Lastly, it should not be forgotten that the Convention and Recommendation adopted in 1958 in respect of discrimination in employment and occupation were more comprehensive than their title seemed to suggest and dealt with most aspects of the individual's participation in economic life. In that connexion, he drew attention to article 2 of the Recommendation, which, *inter alia*, dealt with the social security measures and social welfare facilities and benefits provided in connexion with employment. It was therefore evident on examination that various international instruments of ILO covered most of the economic and social rights, especially since they applied to various categories of people.

Mr. SAARIO supported the proposal made by Mr. Ingles.

Mr. FOMIN considered that the time had come to make specific proposals regarding the work programme. In his view, Mr. Ingles' proposal amounted to postponing consideration of the question to the Sub-Commission's next session and diverting it from its immediate duty. He recalled the terms of the resolution the Sub-Commission had adopted at its last session (resolution F, E/CN.4/764, paragraph 188). In view of the time-lapse required for approval of its programme by the higher organs, the Sub-Commission should indicate the subject of its future studies, without, as Mr. Santa Cruz had proposed, deciding on their order of priority.

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Mr. INGLES said that although the Sub-Commission could not in his opinion take a decision regarding its long-term programme at its current session because, among other reasons, it did not have before it the documentation requested from the specialized agencies in order to avoid any overlapping or duplication of effort, it could nevertheless adopt a resolution embodying a short-term programme which would deal not only with the studies being made but with the studies already approved, such as those referred to in paragraph 21 of the Secretary-General's Note (E/CN.4/Sub.2/195). The adoption of such a resolution would not prevent the new Sub-Commission from reopening the whole question of its future work at the proper time.

Mr. HISCOCKS approved of the proposal made by Mr. Ingles and Mr. Saario, especially as it would be difficult to propose new subjects of study in view of the Sub-Commission's very heavy programme of work.

The CHAIRMAN thought that the Sub-Commission had strayed a little from the agenda before it. Speaking as a member of the Sub-Commission, he agreed with Mr. Fomin that it would be contrary to the Sub-Commission's practice to make a distinction between its short-term and long-term programmes. He found it surprising that none of the members had proposed the inclusion of article 13, paragraph 1, of the Universal Declaration in Mr. Chayet's draft resolution, since the discussion of that draft resolution had been deliberately postponed until after the consideration of the present agenda item.

The meeting rose at 5.40 p.m.