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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-THIRD MEETING

Held at Headquarters, New York,
on Monday, 19 January 1959, at 10.50 a.m.

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PRESENT:

<u>Chairman:</u>	Mr. AWAD	(United Arab Republic)
<u>Rapporteur:</u>	Mr. SAARIO	(Finland)
<u>Members:</u>	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. INGLES	(Philippines)
	Mr. KRISHNASWAMI	(India)
	Mr. MACHOWSKI	(Poland)
	Mr. ROY	(Haiti)
	Mr. SANTA CRUZ	(Chile)

Representatives of specialized agencies:

Mr. PAYRO	International Labour Organisation
Mr. GAGLIOTTI	United Nations Educational, Scientific and Cultural Organization

Representatives of non-governmental organizations:

<u>Category B:</u>	Mrs. BAKER	Women's International League for Peace and Freedom
<u>Secretariat:</u>	Mr. HUMPHREY	Director, Division of Human Rights
	Mr. LAWSON	Secretary of the Sub-Commission

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STUDY OF DISCRIMINATION IN THE MATTER OF THE RIGHT OF EVERYONE TO LEAVE ANY COUNTRY, INCLUDING HIS OWN, AND TO RETURN TO HIS COUNTRY (E/CN.4/Sub.2/L.146; E/CN.4/Sub.2/L.153)(continued)

Mr. HALPERN said that in considering the right proclaimed in article 13, paragraph 2, of the Universal Declaration of Human Rights, the Sub-Commission must be careful not to lose itself in side issues. The core of the matter was that that right was one of the rights of the individual, who was endowed with human dignity and could not be treated as a mere economic asset. As was pointed out in paragraphs 42 to 56 of the preliminary study (E/CN.4/Sub.2/L.146), it had been proposed that the right should be made subject to the laws of the country concerned but that proposal had been rejected by the Third Committee. The exercise of the right could be temporarily suspended in times of national emergency or in the national interest, but such limitations as could be imposed were clearly defined in article 29, paragraph 2, of the Declaration. The limitations should be strictly construed so as not to destroy the substance of the right.

The individual's right to leave a country was a fundamental human freedom; its denial, which forced the individual to remain within a specified area, was tantamount to detaining him against his will without bringing a charge against him. If the human rights of an individual were being violated and if at the same time he was denied the right to leave the country, he would be crushed between upper and nether millstone. In the case of refusal by a Government to allow the emigration of a group of economically valuable skilled workers, for instance, the future Special Rapporteur would have to appraise the reasons advanced by Governments for such action. If the Government's reasons were not considered justifiable by the United Nations bodies, its action should be held to be a violation of human rights. In any event, the emphasis in approaching the problem should be upon the substance of the right not upon its limitations. It was incumbent upon Governments to maintain a climate in which freedom could flourish, and to maintain such economic, political and social conditions as would result in its nationals voluntarily deciding to remain.

Reference had been made at the preceding meeting to cases where passports had been refused to persons wishing to travel abroad. He was confident that any investigation of such cases would show that the United States Government more

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(Mr. Halpern)

than fulfilled its obligations under the Declaration. A recent Supreme Court decision established that the right to leave the country was a basic liberty of which a citizen could not be deprived without due process of law. The right was guaranteed by the United States Constitution and could be denied only if there was reasonable ground to believe that the individual wishing to leave engaged in criminal conduct or intended to commit acts detrimental to the interests of his country or was a party to a conspiracy to commit such acts. No passports were required for United States citizens who wished to travel in the Western hemisphere. There were restrictions under which travel was prohibited to certain areas where hostilities were in progress or were threatened, or where for other reasons it would be improper for United States citizens to go. In such cases the Government's concern was for the safety of the individual; there was, in any event, no question of confining him within the borders of the United States. The limitations upon the right were fully in accord with the limitations prescribed by article 29 of the Declaration.

It had been argued on the one hand that the study of article 13, paragraph 2, was too narrow and that other provisions ought to be added to it, and on the other hand that the study was so broad that the Sub-Commission might not be able to deal with it. Mr. Halpern chose a middle position: there was an adequate field for the Sub-Commission to study under article 13, paragraph 2; there was no need to extend it, and care should be taken not to allow additional issues to obscure the core of the study. Some of the additional problems which had been suggested such as those of refugees, displaced by war, by change of boundary lines, or by change of sovereignty, were clearly outside the competence of the Sub-Commission. He agreed with the views which had been expressed in that regard. Where the resident of a territory under a mandate left the country voluntarily and thereafter sought to return after a new sovereign Government had been established, the question was obviously a political one and there were also questions of military security to be considered. Those were all matters to be dealt with by other United Nations bodies. Article 13, paragraph 2, of the Declaration dealt with the right of the individual in times of peace, as the legislative history in Judge Ingles' preliminary study showed; the problem of war-time refugees was not within the contemplation of the Declaration. However, he had no objection to the consideration

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(Mr. Halpern)

of such problems by the Special Rapporteur if he found any aspect of them to be within the competence of the Sub-Commission under the Declaration, and if no other United Nations bodies were dealing with them.

Also, in connexion with the right of the individual to return to his country, it should be borne in mind that that was the right of the individual and not of the country, and that no coercion could properly be used to compel his return. The right to return proclaimed by the Declaration also included the right not to return.

The Sub-Commission had received a clear mandate from the Economic and Social Council to study the right laid down in article 13, paragraph 2, of the Declaration. There was therefore no doubt about the task which lay before it. With regard to procedure, he concurred with Mr. Ingles' view that the same method should be followed as for the two previous studies. Unfortunately, lack of staff made it imperative to postpone the present study for a year. He recognized that the prior commitments of the Secretary-General's staff made it impossible to undertake a full study of the subject until one of the pending studies was completed. He would, therefore, reluctantly support the draft resolution to be submitted by Mr. Chayet as a compromise. That resolution made it clear that the Sub-Commission was committed to the carrying on of the study by asking Judge Ingles to continue the preparatory work.

Mr. BEYHUM said that, as had already been pointed out, article 13, paragraph 2, of the Universal Declaration covered three distinct rights. First, there was the right of a national to leave his own country, which might legitimately be restricted in the interests of the country's economy. A Government might, for instance, restrict the travel of its nationals abroad if it needed the foreign currency they would require for other purposes, or a country lacking in manpower might find itself obliged to restrict the emigration of large groups of its population.

Secondly, there was the right of a foreigner to leave the country of his sojourn, which raised very few problems; the right could be denied only for security reasons and did not involve any infringement of fundamental human rights.

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(Mr. Beyhum)

The third right was that of a national to return to his country, which was the most important of the three. It had two aspects, for the individual could have left his country voluntarily or against his will. At the present time, large groups of unfortunates who had been forced to leave their homes were denied the right to return to them and were obliged to remain against their will on foreign soil. Their plight had been studied by various United Nations bodies, which had recommended their return and had recognized that they had been deprived of their fundamental human rights by unjust measures involving great hardship for them.

The CHAIRMAN, speaking as a member of the Sub-Commission, said that when he had referred, at the previous meeting, to the possible right of a Government to prevent the emigration of large groups of skilled workers, he had intended merely to draw the Sub-Commission's attention to a point it should consider; he had not been expressing an opinion regarding the justifiability of such action. A similar point arose with regard to the right of refugees to return to their own country.

Although some speakers had maintained that the Sub-Commission was not concerned with the political aspects of human rights, those aspects could not be entirely avoided. In fact, the Sub-Commission was bound to face the political implications of infringements of human rights. That was particularly true in the case of the right proclaimed in article 13, paragraph 2, of the Declaration. If the Sub-Commission did not wish to face the political implications of its task, it must seek authority to disregard them. To his mind, the Sub-Commission should regard itself as a purely technical body, carrying out an objective study.

Mrs. BAKER (Women's International League for Peace and Freedom) said that her organization had a particular interest in the item under discussion, as its very existence depended on the right of women to leave and to return to their own countries. Since 1915, when the organization had been founded, it had held triennial congresses in different countries and it was concerned at the fact that barriers were being imposed to an increasing extent upon the free movement of its members; it had become impossible to keep in touch with some former members or to hold meetings in countries where members had formerly met freely.

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(Mrs. Baker, Women's International
League for Peace and Freedom)

She wondered whether, if the method followed for previous studies had involved too many difficulties, the Sub-Commission might not consider adopting a less detailed and cumbersome procedure for the study under discussion. She would not venture to propose a procedure, but she strongly urged consideration of any method which would preclude the postponement and virtual abandonment of the study. That would be most unfortunate in present circumstances, when the need for action was urgent and any steps taken would have an immediate repercussion on efforts for international understanding and co-operation. Mr. Ingles' study (E/CN.4/Sub.2/L.146) represented such a step and he could count on the help of non-governmental organizations in his work. She hoped that the Sub-Commission would persist in its efforts, whatever the difficulties it had to face.

With reference to the members' expressions of disappointment with the NGO's for their failure to render the Sub-Commission the help that it had expected, she felt bound to remind the Sub-Commission that NGO's were often unable to do as much as they would wish because of lack of funds and personnel.

Mr. SANTA CRUZ said that he had participated actively in the work of the Commission on Human Rights and the Third Committee on article 13, paragraph 2, of the Declaration and was fully aware of the scope of problems which that provision had been intended to cover. It was significant that in August 1948, the Economic and Social Council, in its resolution 154 D (VII), had deplored legislative and administrative provisions which denied to women the right to leave their country of origin, and had requested the Commission on Human Rights to take that situation into account in drafting article 13, paragraph 2 of the Declaration. There could be no doubt that the right proclaimed therein was a fundamental human right which had to be protected, though personally, however, he would have preferred that the Sub-Commission should make the right stated in article 13, paragraph 1, the subject of its next study of discrimination. At the present stage, the Sub-Commission should not debate the substance of the problems inherent in article 13, paragraph 2; there would be time enough for such a debate when the Special Rapporteur had submitted a draft report. In view of the limitations placed upon it, all the Sub-Commission could do was to retain the item on its agenda and allow the preliminary work on it to proceed as well as it could in the circumstances.

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Mr. CHAYET said that he had submitted a draft resolution to that effect (E/CN.4/Sub.2/L.153). He suggested that it should be given careful study and that no decision should be taken on it or on the method to be selected for elaborating the study on the right stated in article 13, paragraph 2, of the Declaration until the Sub-Commission had completed consideration of the item on its agenda entitled: "Future work of the Sub-Commission, including further studies in the field of discrimination".

Mr. HALPERN assured the representative of the Women's International League for Peace and Freedom that the Sub-Commission had no intention of abandoning the study on that right.

Mr. FOMIN warned against any premature undertaking in that respect: nothing should be said or done to prejudge the decision which the Sub-Commission might take on Mr. Chayet's draft resolution.

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

Mr. GAGLIOTTI (United Nations Educational, Scientific and Cultural Organization) drew attention to UNESCO's decisions regarding the Sub-Commission's study of discrimination in education, and, in particular, to the final operative paragraph of its relevant draft resolution (E/CN.4/Sub.2/197).

He outlined the details of a provisional work plan under which the final drafts of recommendations and of a convention on discrimination in the field of education would be submitted to Member States for final comment in 1960 before they were taken up by the UNESCO General Conference at its eleventh session.

Lastly, he informed the Sub-Commission of the preparation or publication of a series of new works on racial discrimination, the race question and modern thought under UNESCO auspices.

Mr. HISCOCKS expressed his keen disappointment that UNESCO had thus far failed to produce the popular summary of Mr. Ammoun's report on discrimination in education requested by resolution of the Sub-Commission at its ninth session, and that the representative of UNESCO had not even mentioned the matter in his statement. He thought such a summary would have been highly effective in impressing public opinion with the urgency of eliminating discrimination in that field. He asked when the summary would be produced and why it was not yet available.

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Mr. GAGLIOTTI (United Nations Educational, Scientific and Cultural Organization) replied that UNESCO regretted the difficulties which had delayed the publication of the summary. It had been the opinion of the Sub-Commission's Special Rapporteur that the full version of the report would be preferable to a summary for the Sub-Commission's purpose. It had been decided to print the report in full, but prohibitive costs had prevented as wide a distribution as a summary might have had. However, as a substitute for the summary, the preparation of a popular pamphlet or booklet explaining discrimination in education in a very simple form was being considered by the UNESCO Secretariat.

Mr. HISCOCKS said that although he realized the difficulties involved, he would have expected UNESCO to have published a summary in the two years since the Sub-Commission had first made its request. He hoped that there had been no misunderstanding, for the records of the debate in the Sub-Commission showed clearly that the word "summary" was to be interpreted liberally, the intention being to arrest the attention of the average reader and to produce a readable and concise text suitable for use in universities and other educational institutions. He would welcome an undertaking from the representative of UNESCO that the popular summary of Mr. Ammoun's report would be printed before the next session of the Sub-Commission.

Mr. SANTA-CRUZ wanted to know how UNESCO intended to associate the Sub-Commission in its work on the draft recommendations and draft convention on discrimination in education, and whether it planned to transmit them to the Sub-Commission for an expression of views, as the ILO had done in the case of instruments on discrimination in employment and occupation. The Sub-Commission's interest in the documents to be elaborated by UNESCO was particularly keen because it had initiated the study of discrimination in education and its Special Rapporteur had carried it out.

Mr. FOMIN, elaborating Mr. Santa Cruz' question, asked whether the Sub-Commission might expect to receive full information on the progress of the draft recommendations and the draft convention at all stages and whether its expression of views on a preliminary draft would be communicated to the responsible UNESCO bodies and, in particular, to the General Conference, before final action was taken.

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Mr. KRISHNASWAMI, carrying the question a step further, asked whether UNESCO would undertake to submit the draft recommendations and draft convention to the Sub-Commission for discussion at its next session, so that the Sub-Commission's views could be placed before the UNESCO General Conference in 1960. If the documents reached the Sub-Commission only after their adoption by the Conference, the Sub-Commission could not alter them; it could merely suggest improvements for the future.

Mr. CAGLIOTTI (United Nations Educational, Scientific and Cultural Organization) said that it had been decided that a final draft of the recommendation and convention on discrimination in education should be ready for presentation to the next session of the General Conference of UNESCO to be held late in 1960. UNESCO would undertake to provide for the Sub-Commission's next session such documents or other materials connected with the draft recommendation and convention as would then be available. UNESCO would welcome and take fully into account any comments which the Sub-Commission might wish to make on them. It shared the disappointment expressed by Mr. Hiscocks at its inability to produce the "popular summary" to which he had referred. The failure to do so could not be attributed to any lack of effort and the decision finally taken had been based on the considered opinion of Mr. Ammoun, the Sub-Commission's Special Rapporteur, and the Executive Board of UNESCO. UNESCO would be pleased to report on further developments in the matter to the next session of the Sub-Commission.

Mr. PAYRO (International Labour Organisation) regretted that the ILO had been unable to respond earlier to the request made by the Secretary-General of the United Nations for a list of any specific studies of particular rights which it had made or was now making. Specific study had been made, and in most cases was still being made, by the ILO of the rights set forth in articles 22, 23, 24, 25 and 26 of the Universal Declaration of Human Rights, and of the labour aspects of articles 2, 4 and 20, both in connexion with the formulation and application of international labour conventions and recommendations and for purposes other than the setting of international labour standards. In addition to the preparatory reports submitted to it before the adoption of any convention or recommendation,

the International Labour Conference received each year a series of reports relating to the effect given to instruments already adopted. It was impracticable to prepare an exhaustive list of studies of particular rights being dealt with by the ILO in view of the scope and character of all the questions that were considered. However, in addition to the activity reported in paragraphs 16 and 17 of the Secretary-General's note (E/CN.4/Sub.2/195), the Sub-Commission would be interested to learn of the ILO's survey of the progress made in the territories of the different States members of the International Labour Organisation in the field of human rights during the period 1954-1956 (E/CN.4/758/Add.1) which was confined to the application of the human rights falling directly within the competence of the ILO. The Sub-Commission might also wish to note the renewed study of the right to rest and leisure (article 24) made by the ILO, which had resulted in the adoption in 1957 of the Weekly Rest (Commerce and Offices) Convention (No. 106). He emphasized that the information contained in document E/CN.4/758/Add.1 related to only one aspect of the ILO's study of human rights - preparation of international labour standards - and was limited to a period of three years. The ILO's activity in the field of human rights had actually extended over a period of forty years. The document did not take any account of the continuing specific study being made by the ILO, for purposes other than the setting up of international labour standards, of the rights set forth in articles 22, 23, 24, 25 and 26 of the Declaration.

Replying to a question from Mr. FOMIN, Mr. PAYRO (International Labour Organisation) said that not all the conventions mentioned in the document to which he had referred were concerned with discrimination. However, certain provisions of such conventions as the convention on social policy in non-metropolitan territories and the conventions on trade union rights were concerned with discrimination. Every year, moreover, the ILO conference dealt with conventions which had discrimination aspects and those were always open for discussion.

Mr. FOMIN, commenting on the Secretary-General's note (E/CN.4/Sub.2/195), said that the majority of the members of the Sub-Commission had agreed, the year before, on an order of priority of further items to be considered by the

(Mr. Fomin)

Sub-Commission. It had been decided to consider systematically discrimination in the fields of education, employment and occupation, political rights and religious rights, and then to proceed to a study of the rights proclaimed in article 13, paragraph 2, of the Declaration. He had had some doubts concerning this approach but he would not propose any change in the procedure now. Likewise, the majority of members appeared to favour the system of appointing special rapporteurs to undertake individual studies. For reasons of principle connected with administrative and budgetary considerations, he did not favour such appointments but accepted the decision taken.

The Sub-Commission and certain specialized agencies had so far considered a number of fields in which the study of discrimination was urgently necessary. There were a number of other fields, however, in which the existence of discrimination and the denial of rights affected millions of individuals. First, in the field of social rights set forth in articles 22, 24, 25 and 27, there were many problems which deserved study. Those questions could be considered individually, but he favoured carrying out initially a broad study of discrimination in all those fields, after which detailed individual studies could be made if necessary. The specialized agencies might co-operate in some of the studies, the ILO in a study relating to article 24, and WHO in a study of discrimination in the matter of medical services, which could be undertaken in conjunction with the World Health Year in 1961. A second field where a study of discrimination was needed was that of economic rights. Problems of discrimination arose in connexion with articles 22 and 25 of the Declaration, as well as with article 23. Here again, he favoured a broad study, rather than detailed work on the separate issues.

A third field for further study was that of discrimination arising from the situation which existed in Non-Self-Governing Territories or Trust Territories. Some aspects of that problem had been considered under other headings but a specialized study by the Sub-Commission was needed, in the light of paragraph 2 of article 2 of the Universal Declaration of Human Rights. A fourth question, to which he had referred previously, was that of the right to freedom of movement and residence within the borders of each State, set forth in article 13, paragraph 1. The Sub-Commission should make suggestions for its future work programme which could usefully be considered by its new members.

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Mr. SANTA CRUZ said that resolution F adopted by the Sub-Commission at its previous session and the request made to the Secretary-General in its operative paragraph 1 were a clear indication that the Sub-Commission intended to approve a programme of future work. While he agreed with Mr. Fomin that it would be desirable to study some of the social and economic rights which he had mentioned and also the right set forth in article 13, paragraph 1, the Sub-Commission would nevertheless have to face up to the realities of the situation. The difficulties of embarking on further studies had become apparent in connexion with the study relating to article 13, paragraph 2. The Sub-Commission should approve a list of three or four items to be considered in the next few years but should leave the matter of priorities for decision by the incoming members.

The meeting rose at 1 p.m.