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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 FIFTY-SEVENTH MEETING

Held at Headquarters, New York,  
on Friday, 14 January 1955, at 10.50 a.m.

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PRESENT:

<u>Chairman:</u>	Mr. SORENSEN	(Denmark)
<u>Rapporteur:</u>	Mr. INGLES	(Philippines)
<u>Members:</u>	Mr. AMMOUN	(Lebanon)
	Mr. AWAD	(Egypt)
	Mr. CASANUEVA	(Chile)
	Mr. CHATENET	(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. KRISHNASWAMI	(India)
	Mr. KULAGA	(Poland)
	Mr. ROY	(Haiti)

Also present: Miss BERNARDINO Commission on the Status of Women

Representatives of specialized agencies:

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

Representatives of non-governmental organizations:

<u>Category A:</u> Miss SENDER	International Confederation of Free Trade Unions
Mr. THORMANN	International Federation of Christian Trade Unions
Miss KAHN	World Federation of Trade Unions
Mrs. FOX	World Federation of United Nations Associations

Representatives of non-governmental organizations: (continued)

Category B and Register:

Mr. MOSKOWITZ	Consultative Council of Jewish Organizations
Mr. JOFTES	Co-ordinating Board of Jewish Organizations
Miss HITCHCOCK	International Alliance of Women
Mr. LONGARZO	International Conference of Catholic Charities
Mr. SIENIEWICA	<u>Nouvelles Equipes Internationales</u>
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
Miss PEZZULO	Young Christian Workers
<u>Secretariat:</u> Mr. HUMPHREY	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 IN THE MATTER OF POLITICAL RIGHTS (E/CN.4/Sub.2/165) (continued)

Miss BERNARDINO (Commission on the Status of Women) pointed out that Mr. Santa Cruz had referred in his report to the Convention on the Political Rights of Women, which had been opened for signature and ratification by General Assembly resolution 640 (VII) and which was the only international instrument drawn up by the United Nations dealing exclusively with political rights. The Commission on the Status of Women had felt that, despite the existence of the Charter and the Universal Declaration of Human Rights, women were still discriminated against on the grounds of sex in some parts of the world. After examining the Secretary-General's reports on constitutions, electoral laws and other legislation relating to women's suffrage and access to public office, the Commission on the Status of Women had concluded that one of the most effective ways of combating the discrimination to which women were still subjected in some countries would be to draft a convention on the political rights of women. Though that convention had not yet secured for women the exercise of full political rights in every country of the world, particularly in the Trust and Non-Self-Governing Territories, it did mark an initial step towards the final elimination of discrimination as to sex.

The Sub-Commission and the Commission on the Status of Women had interests in common, and it was to be hoped that their co-operation would continue to bear fruit.

Mr. KRISHNASWAMI expressed the fear that some members of the Sub-Commission might not have grasped the scope and purpose of the study envisaged by Mr. Santa Cruz. The study should deal mainly with political rights as provided in article 21 of the Universal Declaration of Human Rights, but need not necessarily be confined to those rights. It was impossible for the Sub-Commission to disregard article 2 of the Universal Declaration, and under that article it could not omit the Trust and Non-Self-Governing Territories from its study.

(Mr. Krishnaswami)

Furthermore, the Sub-Commission should take into account article 15 on the right to a nationality which, as had been stated, was an essential precondition to the exercise of other rights including those referred to in article 21. The Sub-Commission should therefore make recommendations for the reduction or elimination of cases of statelessness. Moreover, Mr. Santa Cruz had not placed sufficient emphasis either on restrictions affecting the exercise of the right to vote or on so-called protective measures, the purpose of which was to prevent the exercise of political rights by some sections of the population.

The Sub-Commission should not hesitate to undertake the contemplated study, for the principles of the Universal Declaration of Human Rights were universally recognized. Mr. Santa Cruz had emphasized the importance of the question, and the USSR representative to the Commission on Human Rights had urged in 1947 the abolition of all unjustified restrictions which might be placed on the exercise of human rights. Although the principles of the Declaration were universally recognized they were not always applied in practice. The Sub-Commission, therefore, was not justified in disregarding the question of political rights. It should have no hesitation in placing a broad interpretation on the Universal Declaration of Human Rights and in recommending to States that they should comply with its articles to the letter. The Indian Constitution, for example, contained a chapter on the directive principles of state policy which resembled the principles set forth in the Universal Declaration. Governments should endeavour to bring the directive principles of their policy into line with the articles dealing with the fundamental rights of the human person. Pending the establishment of an international agency responsible for ensuring compliance with the Universal Declaration of Human Rights, it was to be hoped that the Sub-Commission would be able to make recommendations to certain States which, though they signed the Declaration, followed a policy conflicting with the principles set forth in article 2 of the Declaration.

(Mr. Krishnaswami)

It would be useful for the rapporteur to study the possibility of recommending to countries which observed human rights that they should work together to induce other countries to follow their example. In some parts of the British Commonwealth, for example, discrimination was still practised against some sections of the population. The Commonwealth might consider what steps should be taken to ensure that all its members observed the principles of the Declaration to the letter.

He was sure the Sub-Commission could undertake a study on discrimination in the matter of political rights, and make recommendations, without offending Governments.

Mr. FOMIN was surprised that limitation of the study to certain regions or countries to the exclusion of others, particularly of the Trust and Non-Self-Governing Territories, should have been contemplated. Under the terms of article 2 of the Universal Declaration of Human Rights, which Mr. Krishnaswami had most aptly quoted, the study should obviously cover all countries. The universal application of that article, which opposed all forms of discrimination in every kind of territory, had been confirmed by article 53 of the draft covenant on civil and political rights.

What the Sub-Commission could or should do was just as obvious: its functions had been defined by the decisions of the Commission on Human Rights, the Economic and Social Council, and the General Assembly. The latter had, in resolution 532 B (VI), recalled that the Sub-Commission's functions were to undertake studies on discrimination "of any kind" and to submit recommendations on the subject. So long as no other tasks were assigned to it (a possibility envisaged in sub-paragraph (b) of the second paragraph of the resolution) it could merely pursue the studies and make recommendations, without claiming to judge constitutions and Governments.

Neither could it claim to supervise or judge the application and interpretation of the laws in any State.

In connexion with the method of work, he thought that, if one agreed with Mr. Halpern that it was not always possible to rely on the information supplied by Governments, and that it should be completed by data from other sources, the Sub-Commission's work would be valueless because it could not then be carried on, as it should be, in an atmosphere of mutual respect and of collaboration between Governments.

He stressed that the Sub-Commission must bear in mind that it was an organ of the United Nations: as such, it was bound by Article 2 (7) of the Charter and must refrain from intervening in any matters within the domestic jurisdictions of States. Its duty was not to judge Governments, but to estimate the degree of discrimination in all parts of the world and submit recommendations to promote the suppression of discrimination. He again mentioned the example of the Commission on the Status of Women, whose representative he requested to inform the Sub-Commission of its method of work and of its procedure in preparing recommendations.

Miss BERNARDINO (Commission on the Status of Women) said that her Commission requested the Secretary-General for reports and studies on discriminatory practices against women. It also applied to the specialized agencies and non-governmental organizations for information. With regard to the status of women in the Trust Territories and Non-Self-Governing Territories, it requested the Secretary-General for reports, which were based on those submitted by the Administering Authorities. On the strength of the reports, the Commission adopted resolutions drafted by a committee set up for the purpose.

The Commission analysed and discussed all the reports and drew final conclusions, which it transmitted to Member States via the Economic and Social Council. The Member States then took appropriate measures. Thus, at its last session, the General Assembly had adopted resolution 843 (IX) with a view to abolishing customs, ancient laws and practices affecting the human dignity of women.

In reply to a question by Mr. ROY, Miss BERNARDINO (Commission on the Status of Women) made it clear that all reports and information received by the Commission reached it through the Secretary-General. Moreover, at the beginning of each session, the Commission appointed a Committee on Resolutions, which sat only for the duration of the session.

Mr. HALPERN thought that the Commission was unanimously agreed on the principle that the study should cover the Non-Self-Governing Territories as well as other countries, since article 21 of the Universal Declaration of Human Rights applied to all people everywhere. Practical considerations should not, however, be neglected on that account; the Sub-Commission's task was comprehensive enough for it to avoid undertaking matters that were already being dealt with by others. The Trusteeship Council was concerned with all questions connected with the Trust Territories, while the Economic and Social Council and the Commission on Human Rights were engaged in studying measures for the promotion of the right to self-determination of all peoples, and the Sub-Commission should avoid duplication as much as possible. He would be in favour of a resolution which would instruct the Rapporteur to undertake a global study while relying on his judgment to avoid overlapping with other organs.

He congratulated the Chairman on the striking statement he had made the previous day concerning minorities, in the technical sense of the word, for which equality of treatment was not enough, but which claimed special treatment. That led to a broader meaning of discrimination and the assimilation of the position of minorities to that of individuals or groups subjected to discrimination. Such an extension was justified if it was considered that the majority might always obtain adequate representation, simply because it was a majority, while the minority could not do so, even if officially it enjoyed the same rights as the majority. Thus if there was to be real equality between all groups, some of them might have to be granted special privileges. He agreed with the Chairman's conclusion and with such an interpretation of the concepts of minority and discrimination.

Unfortunately, nothing authoritative was laid down on the matter. Neither the Charter, which referred only to the minorities living in the Trust Territories, nor the Universal Declaration of Human Rights had made any provision with regard to the technical minorities, which might well be found in metropolitan areas. When the Universal Declaration of Human Rights had been adopted, the General Assembly had discontinued its consideration of that question, as the debate had shown how complex it was.

The right of any minority to special measures of protection depended upon its history and all surrounding circumstances, particularly upon the conditions under which it had originally been included in the State. There was great variety in the factors which gave rise to the claim for special protective measures. It would therefore be better to give up the attempt to find a general solution and to deal with each case on its own merits. Consequently the Rapporteur should not be asked to study minority questions which might come to his notice in the course of his study in discrimination in a particular field, since a report upon that subject would be fragmentary and the Sub-Commission would not have adequate data upon which to base an opinion as to the fairness of the treatment of the particular minority affected.

In any case it would be preferable to adjourn the discussion on that question and to have a separate debate which the Sub-Commission might hold after having concluded its consideration of the general problem of minorities. It would be useful when that stage was reached for the examination of that particular problem to be introduced by remarks as penetrating as those made by the Chairman.

With regard to the sources of information and the procedure to be followed for the proposed study he thought it unnecessary to refer once more to the views which he considered to be those of the majority in the Sub-Commission. The debate could be resumed when the Sub-Commission was called upon to vote on the resolution which would settle the question.

Mr. AWAD said that, although he was in favour of a global study, he did not consider that specific aspects of the question or the position in specific countries should be neglected as the result of such a general approach; it was simply a question of enabling the Rapporteur to make a comparative study which would facilitate his subsequent work; it was obvious that a sample did not have the same information value as an over-all survey. Moreover, the study should cover former colonies, as it would otherwise be of little value. It was incorrect to say that the matter came within the jurisdiction of the Trusteeship Council; it should be remembered that the Administering Powers were only required to transmit information of a technical character relating to economic, social and educational conditions in Non-Self-Governing Territories and that the political information in which the Sub-Commission was interested was thus specifically excluded. The Sub-Commission's study should therefore relate to Non-Self-Governing Territories, as it would otherwise be very incomplete.

Mr. HALPERN pointed out that it was the Economic and Social Council and the Commission on Human Rights and not the Trusteeship Council, that he had referred to as the competent bodies which were engaged in studying measures to promote self-determination in Non-Self-Governing Territories.

The CHAIRMAN said that the Sub-Commission should not lose sight of its functions as an organ of the United Nations and of its terms of reference. It must not encroach on the functions of other United Nations organs, especially on those of the Trusteeship Council and the General Assembly; the Assembly did in fact deal with Non-Self-Governing Territories, as was evident from the debates in the Fourth Committee. All those organs possessed much information on Non-Self-Governing Territories which the Sub-Commission might use, as it had done in its study on discrimination in education. It would therefore be undertaking an unnecessary task, if it decided to collect such information itself.

Summarizing the debate, he observed that the members of the Sub-Commission were agreed on the principle that the study should cover all countries and territories. The disagreement, which was not very deep, concerned the information to be used. In that connexion, he hoped that the Sub-Commission would make use of the available information on political and social progress in Non-Self-Governing Territories.

Mr. FOMIN shared Mr. Halpern's views on the need to avoid any overlapping. Nevertheless, the nature of the subject demanded that the available information should be supplemented if necessary. It would therefore be wrong to excluded in principle the possibility of carrying out a very detailed study and to that end, attempting to obtain additional information to which the same value would be attached as to the data already available.

Mr. INGLES pointed out that, in its resolutions 144 (II), 327 (IV), 637 (VII) and A/RESOLUTION/222 (IX session) the General Assembly had recommended that Member States responsible for the administration of Non-Self-Governing Territories should transmit voluntary information on the manner and extent to which the peoples of Territories under their administration were being developed for self-government. In the latter resolution, the Assembly had invited the Administering Members to co-operate with the United Nations in facilitating the voluntary submission of information on the political development of the peoples of the Non-Self-Governing Territories under their administration. Unfortunately, the States administering Non-Self-Governing Territories had not always fully implemented those resolutions. On the strength of a strict interpretation of Article 73 of the Charter, they had too often pleaded the requirements of security and constitutional considerations to confine the information regularly transmitted to the Secretary-General to statistical and other information of a technical nature relating to economic, social and educational conditions in the territories for which they were responsible, other than those territories to which Chapters XII and XIII of the Charter applied. In those circumstances, it was to be feared that the information transmitted by Governments on the Non-Self-Governing Territories which they administered would not be sufficient to enlighten world public opinion on the question of respect for political rights in those Territories. It should therefore be supplemented by the data collected by specialized agencies, non-governmental organizations and scientists and scholars of unquestionable standing and impartiality.

(Mr. Ingles)

Certain Governments claiming that territories they administered had acquired self-government, had gone so far as to discontinue the transmission of information under Article 73 of the Charter. They had even succeeded in persuading the General Assembly to recognize that a territory might become self-governing by entering into an association with a State or a group of States, provided that the association was entered into freely and on a basis of complete equality. In his opinion, however, it was only by achieving independence that the Territories referred to in Chapter XI of the Charter could attain full self-government, without which political rights were but imperfectly recognized. At any rate the terms of the second sentence of Article 2 of the Universal Declaration of Human Rights were broad enough to cover not only independent and Non-Self-Governing Territories but also so-called "self-governing" territories.

Miss SENDER (International Confederation of Free Trade Unions) (ICFTU) had been glad to note that many members of the Sub-Commission had stressed the importance of political rights and had recommended their study as a matter of priority. Such a study would make it possible to test the sincerity of Governments which, in signing the Charter, had undertaken to recognize fundamental human rights. Political rights were important, because their practical recognition created the conditions in the absence of which all other rights were illusory. Political rights in the strict sense, as set forth in article 21 of the Declaration, could not be dissociated from other rights, such as those set forth in articles 18, 19 and 20, without which political rights properly so called lost all meaning. International law comprised what was commonly called the "principles of law recognized by civilized nations", the Charter and the decisions of the United Nations. The existence of the United Nations could not be justified unless the Organization undertook to ensure respect for international law, by asking Governments, if necessary, to take measures to remedy any situation which was not in conformity with the rule of law. The fact that the United Nations did not have the necessary powers to enforce respect for the principles of justice on a nation which might violate a rule of international law should be no reason for despair.

Neither could the differences existing between the Eastern and Western countries serve as a justification for inaction. The relations between those two groups of countries were no more tense in 1955 than they had been in 1946 when the Charter had been adopted or in 1946 when the Universal Declaration of Human Rights had been drafted in its final form. Those differences of opinion were certainly no bar to free discussion of controversial questions on the international level. On the contrary, there was reason to believe that such discussion would in fact serve to strengthen respect for human rights in both groups of States.

The International Confederation of Free Trade Unions believed that those who considered that discrimination existed only where minorities were deprived of their fundamental rights took too narrow a view. Discrimination could exist not only between two groups within a given society, but between two societies, in one of which the majority of the population could not exercise rights recognized as inalienable and in the other those rights were fully recognized. Hence the problem of discrimination was not necessarily dependent on the existence of a minority. The International Confederation of Free Trade Unions recognized, however, that the second type of discrimination was more difficult to prevent than the first.

In conclusion, she affirmed her organization's readiness to give, to the best of its ability, any help that the Sub-Commission might ask of it.

Mr. CASANUEVA said that, in accepting the proposal made by some of its members that the study of discrimination in the matter of political rights should include discriminatory measures and practices impeding the exercise of the rights set forth in the draft covenant on civil and political rights, the Sub-Commission would not necessarily be widening the scope of its study. Article 23 of the draft covenant on civil and political rights which defined the rights generally accepted as political rights properly speaking, was more limited in scope than article 21 of the Universal Declaration of Human Rights. The rights, which were held by "everyone" in article 21 of the Universal Declaration, were limited to the "citizen" in article 23 of the draft covenant. Similarly, the scope of article 23, and hence of the citizen's right to take part in the conduct of public affairs, to vote and to be elected, and of access to public service in his country, was

(Mr. Casanueva)

limited by the phrase "without unreasonable restrictions". The authors of the draft covenant on civil and political rights had thus recognized, by implication, that reasonable restrictions might be placed on political and civil rights. Restrictions on access could not be regarded technically as restrictions.

Further, in recognizing the citizen's right to accede to public service, article 23 of the draft covenant stipulated that the right should be exercised "on general terms of equality", implying that the equality need not necessarily be absolute. The adjective "general" was not used in article 21 (2) of the Universal Declaration which corresponded to article 23 (c) of the draft covenant.

Turning to the question of the information which might be used, he noted that in his report Mr. Santa Cruz had suggested, as one of the possible sources of information open to the rapporteur to be appointed, the data collected by organs of the United Nations such as the Trusteeship Council and the Committee on Information from Non-Self-Governing Territories, the International Law Commission, the Commission on the Status of Women and others, which had already considered certain aspects of the problem, and that was most important in obtaining a standard for carrying out the study.

Mr. AMMOUN thought that whoever was requested to undertake a study of discrimination in the matter of political rights should have regard to the limitation to which Mr. Casanueva had drawn attention, and should not treat as discrimination measures and practices which merely placed reasonable restrictions on the civil and political rights recognized in article 21 of the Universal Declaration and article 23 of the draft covenant.

Mr. ROY drew the Sub-Commission's attention to the case where a country's Constitution might not be in conformity with the principles of the Universal Declaration of Human Rights. He wondered whether it would be possible to speak of discrimination in such a case. In his opinion, it would be a matter of violation of the Universal Declaration of Human Rights, rather than of discrimination, since all the inhabitants of the country in question would be subject to the same treatment. He would like the Sub-Commission to give consideration to the distinction to be drawn between violation of human rights and discrimination in the strict sense.

The CHAIRMAN, summing up, noted that there was general agreement on the scope of the study of discrimination in the matter of political rights, should the Sub-Commission choose that topic for study in 1955. The discrimination to be studied would concern first, the exercise of the rights recognized in article 21 of the Universal Declaration of Human Rights, and second, the exercise of the rights recognized in articles 19 and 20 and possibly other articles of the Universal Declaration or by some articles of the draft covenant. In general, in defining the scope of the study, the Sub-Commission might be well advised to adopt the principle suggested by Mr. Ingles, namely that the study should cover all rights affecting the exercise of political rights in the strict sense.

It might however be desirable to follow Mr. Halpern's suggestion to postpone the consideration of minority problems until the Sub-Commission had dealt with all the items on its agenda relating to minorities.

He also noted that the majority of the Sub-Commission seemed to feel that the person responsible for studying discriminatory measures and practices limiting or preventing the exercise of political rights should to some extent follow the method Mr. Ammoun had adopted in his report on discriminatory measures and practices in the field of education.

Lastly, the members of the Sub-Commission seemed agreed that the proposed study should cover all countries and territories without distinction.

The meeting rose at 1.5 p.m.