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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES

Eleventh Session

SUMMARY RECORD OF THE SECOND PART* (OPEN) OF THE TWO HUNDRED
AND SEVENTY-SIXTH MEETING

Held at Headquarters, New York,
on Tuesday, 20 January 1959, at 4 p.m.

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* The summary record of the first part (closed) of the meeting appeared under
symbol number E/CN.4/Sub.2/SR.276 (Restricted).

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
<u>Secretariat:</u>	Mr. HUMPHREY	Director, Division of Human Rights
	Mr. LAWSON	Secretary of the Sub-Commission

MEASURES TO BE TAKEN FOR THE CESSATION OF ANY ADVOCACY OF NATIONAL, RACIAL OR RELIGIOUS HOSTILITY THAT CONSTITUTES AN INCITEMENT TO HATRED AND VIOLENCE, JOINTLY OR SEPARATELY (E/CN.4/Sub.2/L.156) (continued)

Mr. HISCOCKS, resuming the statement which he had begun at the previous meeting, said that measures for the cessation of any advocacy of national, racial or religious hostility that constituted an incitement to hatred and violence, jointly or separately, were liable seriously to impair freedom. Such measures raised the problem of freedom of information. During a two-year stay in National Socialist Germany, he had observed that, in order to prevent the publication of information which it considered embarrassing, the Government always invoked valid reasons and asserted that it was fighting a campaign of falsehood. He did not consider that the subject could appropriately be studied under the heading of prevention of discrimination, and therefore he believed that the item should not be retained on the Sub-Commission's agenda.

Mr. SANTA CRUZ was opposed to any propaganda which constituted an incitement to hatred and violence and therefore had no objection to voting in favour of Mr. Awad's draft resolution (E/CN.4/Sub.2/L.156). However, before taking a decision, the Sub-Commission should reflect upon Mr. Hiscocks' warning, and should consider the subject only if it felt able to play a positive role.

Mr. HALPERN regretted that the Sub-Commission should have to deal at the end of its session with a subject which was very wide in scope and which raised many problems. The main problem was that of the extent to which legislation should be resorted to in order to prevent propaganda which the members of the Sub-Commission unanimously agreed was harmful. Referring to the Annotations on the text of the draft International Covenants on Human Rights (A/2929, paragraphs 189-194 and footnote 93), he drew attention to the fact that, although the Sub-Commission had itself originated the text of article 26 of the draft Covenant on Civil and Political Rights, that text had been altered by the Commission on Human Rights. Article 26 as originally recommended by the Sub-Commission authorized intervention by the State, only when the propaganda incited to violence. That proposal represented a useful effort to strike a proper balance between the interest in freedom of expression on the one hand and the interest in being free from the advocacy of hostility on the other. It

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was the law in all civilized countries that incitement to violence was punishable as a crime. In the Commission on Human Rights the article had been amended so as to read incitement to "hatred and violence". If read literally the meaning of the article was not modified by simultaneous reference to both violence and hatred, but if incitement to hatred was considered as a separate offence then the question was considered in a very different light which led to the approval of censorship. He pointed out the danger of undermining freedom of expression if governmental authorities were to be allowed, or indeed mandated, as they were by the proposed amended article 26, to censor expression of many ideas or opinions which the governmental authorities declared to be an incitement to hatred. He quoted the example of a South African law which, under the pretext of preventing feelings of hostility between Europeans and non-Europeans, tended to deprive the coloured population of all freedom of expression (E/CN.4/Sub.2/172, paragraph 37), which was certainly not the aim of Mr. Awad and Mr. Fomin.

In order to throw some light on the problem, it was necessary to distinguish two different cases.

In the first case, the Government controlled the Press and the radio and used them for propaganda in favour of national, racial or religious hostility. Its reason for engaging in such propaganda might be either that it needed a scapegoat, that it wished to unite the population, that it wished to impose a monolithic culture and close its frontiers to cultural and religious exchanges, or that it wished to further its foreign policy by advocating hostility and hatred against a religious minority whose co-religionists constituted the population of another country against which its foreign policy was aimed. The advocacy of racial or religious hostility by the Government itself was the real menace in this area in the twentieth century. But article 26 to which Mr. Awad alluded in his draft resolution did not deal with that menace at all. If a draft resolution were proposed appealing to Governments to desist from the use of the advocacy of racial or religious hostility as an instrument of national policy he would gladly support such a resolution but that was not the case in the draft resolution before the Sub-Commission.

With regard to the other type of case, the advocacy of hostility by private individuals, the question arose as to the point at which the Government might

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properly be called upon to intervene. If a draft resolution or proposal was adopted calling upon all Governments to interfere with freedom of expression before there was a clear and present danger of violence or other illegal action, the Sub-Commission was in effect approving the establishment of censorship which destroyed basic freedom. The governmental censor then had the sole power to decide what expressions constituted an incitement to hatred and to suppress those that he found came within that vague and general term. It was for that reason that, in a recent publication, the American-Jewish Congress, which represented a Jewish minority whose co-religionists in certain countries had suffered cruelly from national, racial and religious hostility, had declared itself opposed to any such censorship, in the belief that it was better to run the risk of having a few pamphlets distributed by irresponsible elements than to endanger the very basis of the democratic system by limiting freedom of speech or freedom of the Press.

Those countries which did not permit complete freedom of expression in accordance with the Universal Declaration of Human Rights but carried on a system of censorship would have no difficulty in accepting the proposed article. Indeed, in countries where censorship was regularly practised, the advocacy of racial or religious hostility certainly should fall within the ban of the censor. But the Declaration accepted the democratic principle of freedom of expression, and, in countries which adopted that philosophy, the proposed article would be wholly unacceptable. A difference of basic philosophy was involved. The democratic countries would not surrender their philosophy and accept that of the countries which regarded it as the proper function of a government to protect the people against ideas which the Government believed to be objectionable. In view of the irreconcilable conflict of philosophy, nothing would be gained by debating the matter further or indeed by retaining it on the agenda.

Apart from the violation of the principle of freedom of expression, the proposed article would not be an effective one. It would only deal with the symptom or manifestation of prejudice rather than with the basic evil itself. The Sub-Commission in its programme of studies was attempting to reach the root of the evil and to eradicate prejudice and the discriminatory action to which

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it gave rise. The Sub-Commission ought to continue on this course rather than to recommend measures which would prove ineffective if not actually harmful.

Furthermore, article 26 was much too broad in requiring every country to adopt the proposed legislation. There was no need to establish a system of government censorship in every country in order to deal with irresponsible expressions of the crackpot or lunatic fringe of society. Experience has demonstrated that their rantings evaporate in the bright sun of common sense and decency. Mr. Halpern had sufficient confidence in the people of his country to rely upon their rejecting appeals to racial and religious prejudice and he did not feel that it was necessary to prevent such appeals by imposing a system of censorship.

Finally, Mr. Halpern objected to the implied approval of the wording of the proposed article 26 of the draft covenant which might be read into the words "with satisfaction" in Mr. Awad's draft resolution, and he inquired whether Mr. Awad would agree to the deletion of the words "with satisfaction" from the last paragraph of the preamble.

The CHAIRMAN, speaking as the sponsor of the draft resolution, said that he preferred not to change its text. The Sub-Commission could take a decision on any amendment which might be submitted. The words referred to by Mr. Halpern simply expressed the Sub-Commission's satisfaction at the fact that a higher body was dealing with the question and they were not related to the substance. His intention had not been to attack freedom of expression, but only to ensure that the item would remain on the agenda of the Sub-Commission, so that consideration of it could be resumed in the future.

Mr. INGLES agreed with Mr. Halpern that the text of article 26 had not been followed, both in the wording of the agenda item and in the draft resolution. He wondered what other measures Mr. Fomin had in mind beyond the legislative measures already recommended by article 26 and measures tending to educate public opinion.

The basic issue was the prevention of national, racial and religious hostility which were but manifestations of discrimination. Advocacy of such hostility was only a relatively minor aspect of that problem. It was that basic problem which

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the Sub-Commission had been constantly dealing with in its studies of discrimination in different fields. It therefore appeared desirable not to retain item 10 as a separate agenda item, but simply to draw the attention of the various Special Rapporteurs to the question of advocacy of national, racial or religious hostility, and to request them to recommend measures for their cessation in case they came across that particular problem in their respective studies.

Mr. FOMIN was surprised that some members were considering the removal of the item from the Sub-Commission's agenda. No one denied that there was advocacy of national, racial or religious hostility but an attempt was being made to prevent consideration of measures for its cessation, on the pretext that the item was not clearly worded. That was not a valid argument, as the wording had been the same for several years and no one had thought of changing it until now.

Mr. Hiscocks had maintained that the Commission on Human Rights had never considered that wording, but that was not so. At its ninth session, the Commission had not only approved the Sub-Commission's work programme but had amended the wording of the item under discussion by adding the words "and violence, jointly or separately". That wording had been approved by the Economic and Social Council.

Some members of the Sub-Commission had proposed that the item should not be considered on the grounds that they did not understand what was meant by the words "measures to be taken"; but it was precisely to try and clarify that point that the Sub-Commission was meeting. It had also been maintained that the measures to be taken should not be considered because the problem was a delicate one and the adoption of certain measures might prove dangerous. But any discussion in the Sub-Commission led to the adoption of some measures and to oppose such a step in the present case was tantamount to opposing the consideration of any kind of discrimination and thus denying the Sub-Commission's usefulness.

Over and above such purely formal arguments, there were arguments of substance. In order to support his argument, Mr. Hiscocks had mentioned a Soviet law; however, he had, in the first place, given an erroneous interpretation of that law, which was applicable only in times of war or emergency and, in the second place, the Sub-Commission was not now being asked to consider the legislation of the Soviet Union.

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(Mr. Fomin)

Mr. Ingles had said that steps must be taken to combat tradition and demonstrations which incited people to hatred and violence; but tradition was often invoked as a justification for discrimination. Tradition was founded on racial theories, and both tradition and propaganda in favour of racial theories should be combatted. The same was true of demonstrations of hatred and violence; it was, of course, important to combat them but the Sub-Commission should not forget that propaganda existed and presented a great danger.

Mr. Hiscocks and Mr. Halpern had also asserted that in combatting propaganda the Sub-Commission might interfere with freedom of information. They maintained that the United Nations could not concern itself with freedom of information. However, notwithstanding such arguments, the General Assembly had decided, at its thirteenth session, to give detailed consideration to the substance of the draft Convention on Freedom of Information; earlier, the Assembly had urged States to increase their efforts to stop war-mongering. He asked whether the banning of pornographic works was an infringement of freedom of information. Was it shameful to prohibit incitement to murder and hatred on racial grounds? The argument based on freedom of information was obviously invalid.

Article 26 of the draft Covenant on Civil and Political Rights prohibited any advocacy of national, racial or religious hostility that constituted an incitement to hatred and violence. If Mr. Halpern thought that article was enough, what was the purpose of the Sub-Commission? In the course of its work, the Sub-Commission had constantly referred to the articles of the Universal Declaration of Human Rights and of the draft Covenant in order to strengthen them by framing measures against discrimination; one of those measures was the elimination of propaganda in favour of national, racial or religious hostility. It was the Sub-Commission's duty to consider all measures for that purpose and make all possible recommendations to the higher bodies. The fact that there were different philosophies or divergencies of view regarding freedom of information could not prevent the consideration of such measures. Experience showed that a solution had always been found to any problem when the views of those who were in favour of co-operation had carried the day.

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In conclusion, he said that he would vote for the draft resolution (E/CN.4/Sub.2/L.156) submitted by Mr. Awad because it was essential for the Sub-Commission to continue its careful consideration of the item.

Mr. HISCOCKS said that he would vote against Mr. Awad's draft resolution for the reasons he had given at the previous meeting.

Mr. HALPERN pointed out that the wording of item 10, which was repeated in the draft resolution, was not exactly the same as that of article 26 of the draft Covenant to which he had referred and said that the Sub-Commission should not note "with satisfaction" the proposed article 26 of the draft Covenant for the reasons which he had given previously; he therefore asked for a separate vote on the words "with satisfaction" and "same", in the second paragraph of the preamble, and on the last part of the operative paragraph, from the words "so that it" to the end.

The Sub-Commission decided by 5 votes to 4, with 2 abstentions, to delete the words "with satisfaction".

The Sub-Commission decided by 5 votes to 4, with 2 abstentions, to delete the word "same".

The Sub-Commission decided by 5 votes to 3, with 3 abstentions, to retain the last part of the operative paragraph.

The draft resolution (E/CN.4/Sub.2/L.156) as a whole, as amended, was adopted by 6 votes to 3, with 2 abstentions.

STUDY OF DISCRIMINATION IN THE MATTER OF POLITICAL RIGHTS (E/CN.4/Sub.2/L.152 and Add.1) (continued)

Mr. HUMPHREY (Secretariat) read out the statement submitted by the Secretary-General (E/CN.4/Sub.2/L.152/Add.1) concerning the financial implications of the draft resolution regarding the study of discrimination in the matter of political rights (E/CN.4/Sub.2/L.152).

Mr. HISCOCKS and Mr. SANTA CRUZ wondered whether, taking the Secretary-General's view into account, it might not be advisable to replace the words "Expresses the hope", in operative paragraph 3, by the word "Requests".

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Mr. HUMPHREY (Secretariat) said that he did not think the suggested change would make any difference. The Secretariat had already interpreted the draft resolution as one having financial implications.

Mr. HISCOCKS proposed that the sponsors of the draft resolution should meet to consider whether the text should be amended and that the vote should be deferred to the next meeting.

It was so decided.

The meeting rose at 5.45 p.m.