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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 SIXTY-SEVENTH MEETING

Held at Headquarters, New York,
on Wednesday, 14 January 1959, at 10.45 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. 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)
	Mr. SPAULDING	(United States of America)
<u>Representatives of specialized agencies:</u>		
	Mr. PAYRO	International Labour Organisation
	Mr. SALSAMENDI	United Nations Educational, Scientific and Cultural Organization
<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 RELIGIOUS RIGHTS AND PRACTICES
(E/CN.4/Sub.2/L.123/Add.1, E/CN.4/Sub.2/L.150)(continued)

Mr. HUMPHREY (Secretariat) said that he would give the Sub-Commission the information for which it had asked regarding the system of periodic reports on human rights, which had been established in Economic and Social Council resolution 624 D (XXII). At the time of the fourteenth session of the Commission on Human Rights, held in the spring of 1958, the Secretariat had received reports from thirty-five Governments; from those reports it had produced summaries (E/CN.4/747 and Add.1-4) which had been submitted to the Commission. In addition, the reports submitted by the specialized agencies (E/CN.4/758 and Add.1 and 2) had been communicated to the Commission. The Commission had engaged in a preliminary discussion of those reports and had expressed the hope that the Governments which had not yet done so would transmit reports before the fifteenth session, at which time it would consider the matter further. The Commission had further requested the Secretary-General, in consultation with the specialized agencies, to submit to it at its fifteenth session suggestions for a more detailed plan to guide Governments in preparing future triennial reports, as also for the avoidance of duplication between the summary of the reports of Governments and the reports of the specialized agencies. Since the fourteenth session of the Commission, five additional reports had been received from Governments. The Secretary-General was in the course of preparing the more detailed plan which the Commission had requested and would submit it to the Commission at its fifteenth session.

Mr. SAARIO felt that, while the Sub-Commission was fully entitled to express hopes, certain passages in the draft resolution (E/CN.4/Sub.2/L.150) before the Sub-Commission might nevertheless be worded in less **peremptory terms**. He proposed that the end of operative paragraph 3 should be amended to read: "will pay attention to the supplementary report of the Special Rapporteur and especially to the draft basic rules included in chapter XI of that supplementary report". Again, he felt that the beginning of paragraph 4 might be amended to read: "Expresses the opinion that the triennial reporting procedure planned by the Commission on Human Rights, if carried into effect, will in future provide...".

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Mr. HISCOCKS pointed out that Mr. Saario's proposal for operative paragraph 3 would be contrary to the sponsors' intentions. For one thing, "pay attention to" was a stronger and more peremptory expression than "take into account"; for another, Mr. Saario seemed to wish to draw attention to the whole of the supplementary report and not merely to chapter XI.

Mr. MACHOWSKI agreed with Mr. Fomin and Mr. Saario that operative paragraphs 3 and 4 were open to serious objections. Where paragraph 3 was concerned, the "higher bodies" could refer to the Sub-Commission's report and to the summary records of its meetings if they wished to take into account the views expressed in the Sub-Commission. It was not for the Sub-Commission to initiate action which was contrary to United Nations practice and which was not warranted by any particular emergency. It would be better still if the higher bodies were to postpone consideration of article 18 of the draft Covenant on Civil and Political Rights rather than to base themselves on texts which as yet were only of a provisional nature. With regard to operative paragraph 4, not only had it very little connexion with the paragraphs which preceded it but the Sub-Commission, in spite of Mr. Humphrey's explanation, was not sufficiently instructed about the triennial reporting procedure to enable it to take a decision on the question.

Mr. SANTA CRUZ observed that Mr. Machowski's remark that consideration of article 18 of the draft Covenant could be postponed was at variance with the criticism Mr. Fomin had made of operative paragraph 3 of the draft resolution at the previous meeting. However that might be, he would be glad if Mr. Machowski could see his way to voting in favour of paragraph 3, in case the higher bodies might feel unable to defer consideration of article 18 until such time as the Sub-Commission had completed its work on discrimination in the matter of religious rights and practices.

Mr. INGLES agreed with Mr. Saario that the draft resolution should not be worded in too emphatic a manner. He pointed out, however, that operative paragraph 3 merely expressed a hope. Paragraph 4 referred to a procedure which, though perhaps only experimental at present, was already in use. The wording proposed by Mr. Saario was not therefore in keeping with the facts. It might be

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(Mr. Ingles)

possible to consider replacing the words "if carried into effect" by "if made permanent". As the Special Rapporteur had said, the suggestion made by the Sub-Commission could be taken into consideration by the Commission on Human Rights when the latter was deciding on the future of the triennial reporting procedure. Moreover, the basic rules proposed by Mr. Krishnaswami could help in establishing the "more detailed plan" which had been requested by the Commission on Human Rights.

Mr. MACHOWSKI thanked Mr. Santa Cruz for the efforts which he had made to reach a compromise, but said that unfortunately he could not accept a proposal which did not meet his main objection, namely, that the Sub-Commission should not make a formal recommendation direct to the General Assembly. Furthermore, the Commission on Human Rights, the Economic and Social Council and the Third Committee of the General Assembly were kept fully informed about the work of the Sub-Commission and there was no need for the Sub-Commission to make a point of drawing their attention to a document which was as yet incomplete and of a provisional nature.

Mr. FOMIN, too, felt that the fact that there was no final text was in itself sufficient reason for opposing the adoption of operative paragraph 3. At the present stage of the Sub-Commission's work it would not be fitting for the documents it had issued to be made use of in considering article 18 of the draft Covenant. Mr. Krishnaswami's report and draft basic rules had not been completed and none of the members of the Sub-Commission was in a position to say what their final contents would be the following year. He had no objection to detailed reference being made in the Sub-Commission's report to all the opinions expressed by its members.

Turning to operative paragraph 4, he felt that it was not right to try to relate the triennial reporting procedure solely to the study of discrimination in the matter of religious rights and practices, the more so as the rules formulated by the Special Rapporteur, as they now stood, were at variance with the Universal Declaration of Human Rights on several important points. The questionnaires sent to Governments in connexion with the preparation of triennial reports should be based on the Declaration of Human Rights and on the Covenants, once the latter had been adopted. There was no reason why greater stress should be placed on

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(Mr. Fomin)

discrimination in the matter of religious rights than on discrimination in other equally important spheres, such as education, employment and occupation, or in spheres which the Sub-Commission had as yet not even begun to consider.

Mr. SAARIO proposed that the meeting should be suspended to enable members of the Sub-Commission to prepare a text incorporating proposals which would eliminate differences of opinion.

Mr. SANTA CRUZ said that, while he favoured a compromise solution, he did not think that a suspension of the meeting would enable the Sub-Commission to make any headway, since the sponsors of the draft resolution could not go beyond the views which they had already expressed.

Mr. ROY agreed. In his opinion, a suspension of the meeting would not make the quest for an agreed solution any easier.

The CHAIRMAN put the proposal for a suspension of the meeting to the vote.

The proposal was rejected by 6 votes to 3, with 3 abstentions.

Mr. ROY pointed out that operative paragraph 3, as now worded, did not specify which higher bodies the sponsors had in mind. He felt that the sponsors of the draft resolution could meet the wishes of Mr. Fomin and Mr. Machowski if they amended the text to read: "3. Expresses the hope that in any work which it may do in 1959 on article 18 of the draft Covenant on Civil and Political Rights, the Commission on Human Rights will draw the attention of the General Assembly through the Economic and Social Council, to the ideas contained in the draft basic rules included by the Special Rapporteur...".

He would find it difficult to vote in favour of operative paragraph 4. He had yet to be convinced that the triennial reporting procedure at present used experimentally by the Commission on Human Rights really provided a suitable framework within which Governments could report progress. He would abstain from voting on that paragraph.

Mr. HISCOCKS asked Mr. Fomin, who had maintained that the Sub-Commission was not entitled to transmit a report that was still in provisional form to a higher body, if Mr. Roy's suggestion, would meet his views.

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(Mr. Hiscocks)

Mr. Fomin had also pointed out that in choosing the particular subject of religious rights and practices the Sub-Commission would be discriminating in favour of one right to the detriment of the other rights that were set forth in the Universal Declaration. The Special Rapporteur had replied to that objection in advance, in paragraph 347 of his draft report: the Sub-Commission did not wish to burden Governments with any unnecessary requests for information.

Mr. SANTA CRUZ feared that Mr. Roy's suggestion regarding operative paragraph 3 of the draft resolution would not change the attitude of Mr. Fomin, who held that the Sub-Commission should not aspire to give advice of too specific a nature to higher bodies of the United Nations. The Sub-Commission, however, had never attempted to go over the head of the Commission on Human Rights or of the Economic and Social Council, and it certainly had the right to express an opinion. If Mr. Fomin was able to accept Mr. Roy's formula, the sponsors of the draft resolution would have no objection to considering its adoption.

Referring to operative paragraph 4 of the draft resolution, he said that it was not the sponsors' intention that the triennial reports should be limited exclusively to information on discrimination in the matter of religious rights and practices. Paragraph 4 referred to that subject simply because the draft resolution related solely to Mr. Krishnaswami's study. He would, however, agree to amend paragraph 4 to read as follows: "... progress made in combating discrimination, particularly in religious rights...".

Mr. FOMIN explained that his objection to operative paragraph 3 concerned a question not of drafting but of principle. He would vote against operative paragraph 4 also. For one thing, the Sub-Commission seemed to have forgotten that the studies on discrimination in the field of education and in the field of employment and occupation had not been withdrawn from its agenda and that great efforts would be needed to promote the elimination of discrimination in that field. For another, until the adoption of the draft Covenants there was no basis for the establishment of questionnaires for the triennial reports other than the Universal Declaration of Human Rights. Yet it was being suggested that the Sub-Commission should propose to the Commission on Human Rights that it should draw up a questionnaire on one particular right, that of freedom of religion, which would go beyond, and in some respects even contradict, the Universal Declaration and would not be in keeping with the need for uniformity in triennial reports. There was indeed a contradiction between the Universal Declaration and the basic rules to which he had already referred.

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Mr. HISCOCKS said that he did not object to the amendments to paragraph 4 suggested by Mr. Santa Cruz. He pointed out, however, that paragraphs 3 and 4 of the draft resolution corresponded to certain proposals in Mr. Krishnaswami's report. He regretted that those paragraphs were occasioning such lively controversy. He asked that operative paragraph 1 should be put to the vote separately so that the Sub-Commission might express its appreciation to the Special Rapporteur in a unanimous vote.

Mr. SANTA CRUZ pointed out that Mr. Fomin feared that in operative paragraph 4, which reproduced the idea set forth in paragraph 350 of the draft report, the Sub-Commission was proposing to the Commission on Human Rights that the basic rules, which had not yet been given final form, should be one of the factors the Commission would use in drawing up the plan for the preparation of the triennial reports. Operative paragraph 4 was not, however, as categorical as Mr. Fomin seemed to think: it simply pointed out that the triennial reporting procedure might provide a suitable framework for the collection of information; it was obvious that until the basic rules had been finally adopted the Commission on Human Rights would use the Universal Declaration of Human Rights as the basis for its questionnaire.

Mr. ROY said that he was satisfied with the amendments that Mr. Santa Cruz and Mr. Hiscocks had made to paragraph 4. He stressed that there was no question of the Sub-Commission considering that any particular procedure should be used as a basis for work in all fields of discrimination.

He found paragraph 3 quite satisfactory but he thought it would be better for the Sub-Commission to address itself unequivocally to the Commission on Human Rights and the Economic and Social Council in expressing a hope. His only reason in suggesting an amendment to the text of paragraph 3 had been to try to reconcile the different points of view.

After an exchange of views between Mr. SAARIO, Mr. SANTA CRUZ, Mr. HISCOCKS, Mr. CHAYET and the CHAIRMAN, Mr. ROY said that he was not submitting a formal proposal regarding operative paragraph 3.

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Mr. INGLES associated himself with Mr. Hiscocks and Mr. Chayet, who had expressed their support of the amendments Mr. Santa Cruz had proposed at the previous meeting.

The CHAIRMAN put the joint draft resolution (E/CN.4/Sub.2/L.150) to the vote.

Mr. FOMIN asked for separate votes on operative paragraphs 3 and 4.

The preamble and operative paragraphs 1 and 2 of the draft resolution were adopted unanimously.

Operative paragraph 3, as amended by Mr. Santa Cruz at the preceding meeting, was adopted by 9 votes to 2.

Mr. FOMIN requested a separate vote on the last phrase of operative paragraph 4, which read "particularly in religious rights and practices".

The last phrase of the amended text of operative paragraph 4 was adopted by 9 votes to 1, with 1 abstention.

The draft resolution as a whole, as amended, was adopted by 9 votes to 1, with 1 abstention.

Mr. KRISHNASWAMI, Special Rapporteur, said that he had not taken part in the voting because the draft resolution referred to a report of which he was the author.

STUDY OF DISCRIMINATION IN THE MATTER OF POLITICAL RIGHTS (E/CN.4/Sub.2/L.147)

Mr. SANTA CRUZ, Special Rapporteur, presented his progress report. He was very sorry he could not submit to the Sub-Commission a report of as broad a scope as it had wished and that he had been unable to adhere strictly to the terms of resolution C adopted by the Sub-Commission at its tenth session.

When he had set about collecting the basic information necessary for the draft report he had run into various difficulties, particularly with regard to the information which Governments were invited to provide for the preparation of country studies. Since the distribution of the interim report which he had submitted to the Sub-Commission at its preceding session, only twenty-eight Governments had sent in information; that information had admittedly been very useful but it was a great pity that more than thirty Governments had not seen fit

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(Mr. Santa Cruz)

to do likewise. Realizing that without that information he would find it extremely difficult to fulfil his task, at the beginning of 1959 he had appealed to the Governments concerned to reply to the questionnaire which had been sent to them. In addition, he could not but mention the fact that the Secretariat had not drawn up the twenty country studies which it had undertaken to produce. As far as non-governmental organizations were concerned, he had received only some general information, communicated by no more than twelve organizations, which was not of much use for the preparation of summaries, although the contribution of non-governmental organizations to the study should have been of the greatest value in that discrimination in the matter of political rights was first and foremost the act of Governments. In the face of that situation he had scarcely been able to make use of information from other sources for, as he had pointed out in paragraph 17 of his progress report, he realized that he must be careful not to offend Governments, which were particularly sensitive on that subject.

Despite the obstacles he had encountered, he had made it his duty to prepare, in collaboration with the Secretariat and within the framework of the current report, an outline of the plan proposed for the study as a whole. He gave a detailed account of his ideas for the final study, as described in paragraphs 22 to 36 of his progress report.

Lastly, a whole section of the report was devoted to the meaning of the term "discrimination" as applied in the matter of political rights. He attached particular importance to that section and hoped that it would be the subject of a thorough discussion; he would be particularly grateful to any members of the Sub-Commission who would give him their views on the subject, so that he might be guided by them in drawing up his final study.

The meeting rose at 12.45 p.m.