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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-SIXTH MEETING

Held at Headquarters, New York,
on Thursday, 13 January 1955, at 3 p.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. CHATENET	(France)
	Mr. CASANUEVA	(Chile)
	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)

Representatives of specialized agencies:

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

Representatives of non-governmental organizations:

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

Category B and Register:

Mrs. GIROUX	Catholic International Union for Social Service
Mr. NOLDE	Commission of the Churches of International Affairs
Mr. MOSKOWITZ	Consultative Council of Jewish Organizations
Mr. JOFTES	Co-ordinating Board of Jewish Organizations

Category B and Register: (continued)

Mrs. DODD	International Alliance of Women
Mr. LONGARZO	International Conference of Catholic Charities
Miss ROEB	International Federation of University Women
Mr. SIENIEWICZ	Nouvelles Equipes Internationales
Mr. JACOBY	World Jewish Congress
Mr. PENCE	World's Alliance of Young Men's Christian Associations
Mrs. POLSTEIN	World Union for Progressive Judaism
Mr. HUMPHREY	Director, Division of Human Rights
Mr. LAWSON	Secretary of the Sub-Commission

Secretariat:

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 ON DISCRIMINATION IN THE MATTER OF POLITICAL RIGHTS (E/CN.4/Sub.2/165) (continued)

Mr. HALPERN said that he would deal seriatim with the significant points raised at the morning meeting. Mr. Ingles' observations concerning the scope of the study had been unexceptionable. The study's primary point of reference should be article 21 of the Universal Declaration of Human Rights, and such other articles, in particular articles 19 and 20, as might be relevant to the exercise of the political rights defined in article 21. Some such specifications should be laid down for the study because the general expression "political rights" might embrace more than half the articles of the Universal Declaration, which would be too wide an area to cover.

He supported Mr. Hiscocks' view on the question of minorities. Apart from the extra burden on the special rapporteur, the problem of a minority that was not satisfied with treatment equal to that of the rest of the population called for a judgment on the merits of each particular case and it was not feasible to attempt to set up universal criteria to determine the validity of claims to special protection. Consequently it would serve no useful purpose to include in the study casual references to the claims of certain minorities. He would, therefore, be opposed to the inclusion of the problems of minorities in the terms of reference.

Of course, where a minority was denied the political rights accorded to other elements of the population, discrimination in the sense of the suggested study would exist and there would be no need for a separate grant of authority to the rapporteur to deal with such a case.

He assumed that in accordance with the recommendation of Mr. Santa Cruz the study would be universal, that it would deal with infringement of political rights on any of the class grounds enumerated in the Universal Declaration: race, language, religion, political opinion, birth, economic or social status and so forth. The mention of religion raised the question of possible overlapping with

the suggested study of discrimination in the matter of religious rights. The Sub-Commission had long since resigned itself to the fact that some overlapping in its studies would be unavoidable. However, that did not mean a duplication of effort: some of the results of one study could be utilized in another.

The preliminary report raised the question of the impact of the Sub-Commission's work on the development of international law. He agreed with Mr. Hiscocks that that was not properly within the scope of the Sub-Commission's work. Apart from the point made by Mr. Hiscocks, there appeared to be a confusion of domestic and international law. The Sub-Commission sought improvement, through recommendations, in the domestic law of each of the countries concerned. The Sub-Commission would serve a most useful purpose, if it drew attention to those places where laws advancing the cause of human rights had been enacted and successfully applied, and if it made recommendations accordingly. On the other hand, in the present state of world organization it would be inadvisable to try to make any contributions to a code of international law. But he did not go to the opposite extreme as Mr. Fomin had done.

Mr. Fomin's remarks in that connexion had raised a fundamental question that had troubled all United Nations bodies, the question of the interpretation of Article 2 (7) of the Charter. The argument that, once a matter was recognized as domestic, it could never be a subject of international concern was an extreme view that rendered meaningless the human rights provisions of the Charter. While it was true that the relationship between a Government and its citizens was essentially a domestic matter, the United Nations Charter had made the systematic violation by a Government of the human rights of people subject to jurisdiction a proper matter for international concern, though not for international law. It was proper matter for international discussion, for studies and for recommendations and suggestions. That was the sense for Articles 55 and 56.

Such recommendations - and in the field of political rights they would have to be concerned with possible improvements in domestic legislation - did not constitute intervention within the meaning of Article 2 (7) because they were not coercive in effect and did not even constitute "paper judgments" - judgments unsupported by sanctions. Modest as such recommendations might be, they were

(Mr. Halpern)

the only form of action possible at present and they might prove a very important contribution to the amelioration of the lot of mankind.

He welcomed Mr. Hiscocks' expression of support for a study of discrimination in the matter of religious rights but he could not agree that that study would not be controversial or that the study on political rights should be abandoned because it was controversial. He did not share the fears that it would be impossible to agree on terminology. The language of the Universal Declaration contained words that were still common currency. He noted that Article 21 did not include such words as "democracy", which had been rendered practically unavailable for international discourse because of the different meanings attributed to it by the East and West.

That brought him to one of his basic differences with Mr. Fomin. It would be absurd to expect a Government that had a statute providing for universal and equal suffrage by secret ballot to report that its ballots were not truly secret. That was why information from non-governmental organizations and competent scholars was indispensable for any study of the question.

Mr. HISCOCKS wished to explain that he had been careful to avoid expressing any preference as between one study and another. All he had said was that there were reasons of expediency that militated against an immediate study in the field of political rights.

Mr. AWAD said his main concern was with the scope of the suggested study, which should be narrowed down as much as possible, in accordance with the competence of the Sub-Commission. He was in favour of limiting the study to article 21 of the Universal Declaration because if that article were fully applied in a country every group would be able to enjoy participation in the Government and thereby secure or protect any other right to which it was really entitled.

He wished to pose a hypothetical question: where the whole population of a country was equally subject to a certain regime, he wondered whether that situation could be considered discriminatory, even if all the elements of article 21 were not present. He invited an expression of opinion on the attitude to be adopted towards such a state of affairs. If discrimination was to be the sole criterion of the study, the fear of controversy concerning Western and Eastern conceptions was groundless. On the other hand, there was the question whether the Sub-Commission should not be satisfied with anything less than compliance with article 21.

Another pertinent question concerned the system of government, the merits of centralized and federal governments. The question was whether countries that allowed a greater measure of local autonomy were not more just in the treatment of minorities and local populations, and whether that aspect of the matter should enter into the study.

A third question was the extent to which the suggested study should deal with the problem of colonial populations. Article 2 of the Universal Declaration forbade the exclusion of such populations from the enjoyment of human rights, including those set forth in article 21.

Finally, there was the question whether the global approach was necessary and whether something less ambitious, in the nature of sampling, would be feasible. With proper safeguards, a study based on the sampling principle might be effective while avoiding the danger of controversy that Mr. Hiscocks had mentioned.

He wondered whether a scientific and objective investigation along some of the lines he had mentioned might not escape the many pitfalls that would otherwise beset it. He would be glad to hear his colleagues's views on the question he had raised.

Mr. HISCOCKS, commenting on Mr. Awad's question whether discrimination existed where the entire population of a country received equal treatment under a dominant regime, pointed out that such equality was normally achieved only after opposition elements had been discriminated against severely. The most terrible situation of all was where discrimination was no longer apparent because it had been carried out in the past with ruthless efficiency. A case in point had been Nazi Germany.

Mr. HALPERN agreed with Mr. Hiscocks. While theoretically no discrimination could exist if all were treated alike, in point of fact where a regime ruled with an iron hand there was discrimination in favour of the ruling body, which usually was alone to enjoy political rights.

Mr. KULAGA associated himself with the appreciation which previous speakers had expressed to Mr. Santa Cruz for the useful report he had produced.

He felt that the Sub-Commission should not confine the proposed study on discrimination in the matter of political rights to those political rights provided in article 21 of the Universal Declaration of Human Rights. The study should also include the political rights provided in articles 15, 19 and 20. In connexion with article 20, Mr. Santa Cruz took the view that freedom of peaceful assembly and association might have a political as well as non-political aspect. The distinction was difficult to make.

The study might, furthermore, usefully include trade union rights for where a person did not have the right to join a trade union he could not be said to enjoy political rights.

He agreed with Mr. Fomin that the draft covenants on human rights should also be considered in the proposed study. The Universal Declaration was merely a statement of principles, application of which could be achieved only through the draft covenants.

He could not agree with Mr. Santa Cruz's suggestion that a study should be made of the general principles of law applied by civilized nations in the field of non-discrimination. The Sub-Commission was not competent to engage in that type of study.

He supported Mr. Santa Cruz's view that the study on discrimination in the matter of political rights should be carried out along the same lines as those adopted by the Sub-Commission for the study of discrimination in education.

With regard to the question of including the Non-Self-Governing Territories in the study, he felt that the point was covered in paragraph 16 of Mr. Santa Cruz's report where Mr. Santa Cruz listed material concerning Non-Self-Governing Territories as sources of documentation for the study. That was necessary if the study was to have a global character. He believed, however, that the list in paragraph 15 of non-governmental organizations from which information should be requested could be expanded in order to make it more representative.

Mr. SIENIEWICZ (Nouvelles Equipes Internationales) said that the general guidance laid down by Mr. Santa Cruz represented the feelings and convictions of those peoples of the world who enjoyed freedom and prosperity and who desired to spread those elements to the parts of the world which were wrongfully deprived of fundamental rights and opportunities inherent in a free society.

Mr. Santa Cruz had correctly interpreted Article 38 of the Statute of the International Court of Justice. In the opinion of all the peoples of all the continents, the principles codified in the Universal Declaration of Human Rights constituted the very basis of law which must govern all societies and be universally observed.

Non-observance of fundamental human rights was not an internal matter in any State. On the contrary, it constituted a violation of an international order and thus should be treated by the organs of the highest international authority, the United Nations.

The Nouvelles Equipes Internationales wished to co-operate closely in the proposed study with the Sub-Commission. Non-governmental organizations by their very nature represented large segments of the people of different nations who voiced their opinions without control from any government.

His organization also believed that a wide range of sources should be used in the study of discrimination in the matter of political rights. He referred especially to eye-witnesses who had themselves been victims of political discrimination.

Mr. JACOBY (World Jewish Congress) expressed appreciation for the report submitted by Mr. Santa Cruz. He agreed that non-discrimination in the matter of political rights was clearly an essential factor in the eradication of discrimination generally. The existence of political discrimination against any minority or group promoted discrimination in general and endangered all groups in the population.

The World Jewish Congress was interested in Mr. Santa Cruz's suggestion that the proposed study might be broadened to include consideration of the rights of minorities to special measures of protection in the political field.

(Mr. Jacoby, World Jewish Congress)

It was for the Sub-Commission to decide whether the inclusion of that aspect was technically advisable and would not broaden unduly the subject of the study.

However, his organization could not support Mr. Santa Cruz in his view that, in consequence of opinions expressed in the Commission on Human Rights, the study should be limited to discrimination in respect to political rights as provided in article 21 of the Universal Declaration. The Commission had not given any such directives to the Sub-Commission. The latter was completely free to decide on an extended study. As Mr. Casanueva had pointed out, the rights under articles 19 and 20 of the Universal Declaration were inseparable from those under article 21. Mr. Ingles had been equally correct in stressing that article 21 provided the basis for a discussion of discrimination in the matter of political rights.

In conclusion, the World Jewish Congress felt that the study would greatly contribute to the implementation of the rights contained in the two draft covenants on human rights, and was prepared to contribute to the work of the Sub-Commission in the study.

Mr. MOSKOWITZ (Consultative Council of Jewish Organizations) said that his organization attached the greatest importance to all three proposed studies on discrimination, respectively in political rights, religious rights and practices, and immigration, emigration and travel.

Discrimination was a most flagrant as well as a most serious form of denial of human rights. It placed a premium on a particular race, creed, colour, national origin and set up categories of superior and inferior human beings. The abolition of discrimination was therefore one of the most effective means of promoting human rights.

Concerned as it was with violations of the basic human right to equality, the Sub-Commission was able to consider the subject methodically and on a global scale. Its right to inquire whether human rights were shared equally by all elements of the population of the countries of the world was firmly anchored in the Charter.

(Mr. Moskowitz, Consultative
Council of Jewish Organizations)

The Consultative Council shared Mr. Santa Cruz's view that the work undertaken by the United Nations in discrimination was capable of producing a body of international jurisprudence in human rights, jurisprudence in the sense of establishing precedents. If, after studying the situation with respect to a particular right, the Sub-Commission came to the conclusion that there was a violation of the principle of non-discrimination, contrary to the Charter, it would participate in the establishment of a body of international jurisprudence on at least one phase of human rights.

The Consultative Council ventured to suggest that the proposed studies should be oriented so as to accomplish the following objectives:

1. to establish the concept of and the scope given to the right or rights in question in the various countries studied;
2. to establish the existence, nature and extent of any discriminatory practices with respect to the exercise of those rights;
3. to establish a common denominator which would be representative of the conception of and the scope given to the right or rights in question;
4. to establish the common features of discriminatory practices.

With regard to Mr. Santa Cruz's reference to the definition of political rights, the Consultative Council wondered whether the criterion should not be the importance of the right. If there was ~~any~~ hierarchy in human rights, or any particular significance in the sequence in which the rights were enumerated in the Universal Declaration, then article 3 relating to the right to life, liberty and security of person would be the logical right for a first study. Preference should be given to rights contained both in the Declaration and in the draft covenants.

His organization did not approve of the suggestion that the proposed study of discrimination in the matter of political rights might be broadened to include consideration of the rights of minorities to special measures of protection in the political field. The Sub-Commission was on rather slippery ground when it attempted to deal with minority rights which varied from country to country and which were not readily susceptible to generalization.

Mr. CASANUEVA suggested that there might be some misunderstanding regarding paragraph 18 of the report submitted by Mr. Santa Cruz.

Mr. Hiscocks was right in saying that it would be somewhat ambitious for the Sub-Commission to attempt a formulation of general principles of international law; nevertheless, the legal and moral aspects of a question were sometimes difficult to separate. What Mr. Santa Cruz probably had in mind was that it was necessary to emphasize those principles of the Universal Declaration of Human Rights which had gained universal recognition and had become incorporated in the domestic law of numerous States. As soon as the protection of specified human rights became a universally recognized necessity, the relevant provisions in the domestic systems could be regarded as formulations of international law, within the meaning of Article 38 (c) of the Statute of the International Court of Justice. Although the problem of discrimination was basically of a moral nature, a serious study of the various aspects inevitably led into the field of law. That fact was confirmed by the progress report of the Special Rapporteur on discrimination in the field of education. The Sub-Commission could not assess the value of the various legislative provisions and comparisons were certainly invidious. Nevertheless, a study of those provisions, undertaken with scientific objectivity, could substantially contribute to greater international understanding.

As to the question whether the study should be confined to the terms of article 21 of the Universal Declaration and whether it was necessary to widen the scope of the survey as Mr. Fomin had suggested, a logical balance should be struck. Article 21 should serve as a basis while other political rights could be examined in so far as they related to that article. He agreed that Mr. Santa Cruz had laid primary stress on article 21, but the questions raised by articles 15, 19 and 20 could also be considered without widening the scope of the study to any unwarranted extent. If the purport of article 21 was to be fully analysed, it was desirable to take the other articles into account in order to explain certain points.

As to paragraph 13 of the report, he agreed with the arguments adduced in the Sub-Commission. At present, consideration of minorities should be postponed and the study should follow the same lines as in the field of education.

(Mr. Casanueva)

Minorities and discrimination were very distinct subjects and, indeed, no definition of minorities was available. Sooner or later, however, the question of minorities would also have to be tackled, as discrimination was often directed against specified social groups such as minorities. Consequently, it might be too much to expect the rapporteur to confine himself solely to discrimination.

He agreed with Mr. Halpern that specialized agencies and non-governmental organizations were valuable sources of material. The same applied to such bodies as the International Law Commission, the Commission on the Status of Women, and the like. The sources mentioned by Mr. Santa Cruz in paragraphs 14 to 16 were not put forward as an exhaustive list and every organization interested in the problem could give useful help. The assistance of the ILO would be especially valuable when trade union rights came to be considered. Such rights were not strictly political rights but there was a close connexion between the two. Workers enjoyed political rights and in some States the trade union movement played a large part in government.

The CHAIRMAN, speaking in his personal capacity, agreed that, in principle, the questions of discrimination and of minorities should be kept separate. The purpose of the struggle against discrimination was to ensure equality; the protection of minorities, on the other hand, was more a question of securing favoured treatment for those groups. In practice, it was not always possible to maintain the distinction. Formal equality did not always signify substantive equality. If minorities were to obtain substantive equality they required special privileges, such as the right to teach in their own language.

The same considerations applied in the field of political rights. The agreement reached in October 1954 between Italy and Yugoslavia showed that those two States clearly recognized the difference between formal and real equality. In addition to stating that each party would ensure, on its territory, equal treatment for resident nationals of the other party, including equal opportunities of appointment to administrative office, the agreement

(The Chairman)

stressed that such equality was to be guaranteed by allowing the minority group fair representation in administrative decisions. By contrast, certain ostensibly innocent provisions in some national electoral systems were in fact discriminatory. Thus, a provision that the right to parliamentary representation was restricted to parties or groups constituting a given percentage of the population might be expressly designed to deny representation to some smaller groups. Those examples showed that it was impossible to deal with discrimination without giving some consideration to the problem of minorities. Perhaps the instructions eventually formulated for the special rapporteur's guidance might contain a passage similar to resolution G, specifying the approximate extent to which minorities should be considered in his study.

As to the question of the general principles of law, referred to in paragraph 18 of the preliminary report, it seemed that the matter was really a side issue. The real meaning of paragraph 18 could perhaps be discerned from the speech quoted by Mr. Santa Cruz on page 9 of the preliminary report. The general principles which might be established would supplement the Charter provisions directed against discrimination. It would be wrong, however, to assert that the Sub-Commission should formulate international law. Mr. Casanueva had already explained the full significance of paragraph 18, and the Sub-Commission need not dwell on the niceties of the legal construction to be placed on its work.

Mr. CHATENET said that the title of agenda item 8 left some preliminary questions unanswered. In the first place, it was necessary to know whether the Sub-Commission intended to establish an order of priority for the three proposed studies or whether they would all be undertaken simultaneously. Secondly, it had not been decided whether the three subjects should be dealt with by the same method. Each topic contained very different features and the question of political rights was much wider than those raised by the other two preliminary reports.

The CHAIRMAN said that at present, the intention was to defer the choice of subject for priority consideration until the end of the debate. By that time the Sub-Commission would be fully acquainted with the implications of the various topics. The question of method, moreover, also had some bearing on the choice. The Sub-Commission might wish to know what method would be applied before making its selection.

The meeting rose at 5.10 p.m.