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COMMISSION ON HUMAN RIGHTS
SUB-COMMISSION ON PREVENTION OF DISCRIMINATION
AND PROTECTION OF MINORITIES

Eleventh Session

SUMMARY RECORD OF THE TWO HUNDRED AND SEVENTY-SECOND MEETING

Held at Headquarters, New York,
on Friday, 16 January 1959, at 3.40 p.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)
	Mr. HALPERN)	
<u>Secretariat:</u>	Mr. HUMPHREY	Director, Division of Human Rights
	Mr. LAWSON	Secretary of the Sub-Commission

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

Mr. SANTA CRUZ, Special Rapporteur, asked for an explanation of the discrepancy between the time-table suggested in the final operative paragraph of the draft resolution (E/CN.4/Sub.2/L.152) and the Secretary-General's reminder in his note on the future work of the Sub-Commission (E/CN.4/Sub.2/195, para. 21 (b)) that the study of discrimination in the matter of political rights probably would not be completed "for several years".

Mr. HUMPHREY (Secretariat) explained that the Secretariat, with the co-operation of the Special Rapporteur, could certainly count on completing the study on religious rights during 1960 in time for its consideration by the Sub-Commission at its twelfth session. That was the deadline envisaged in the relevant resolution adopted by the Sub-Commission. In order to do so, however, the staff assigned to assist the Sub-Commission in its work would have to assist the Special Rapporteur for most of the current year: the twenty-six country studies which remained to be completed would not be ready for submission to Governments until September.

On the other hand, not a single country study had as yet been prepared in connexion with the study on political rights, although twenty such country studies existed in draft form. In the course of the current year, the Secretariat could assist the Special Rapporteur by completing approximately one-half of the total of eighty-four country studies, the remainder being completed during 1960, assuming always that the staff available for the Sub-Commission's work remained at its present strength and the Sub-Commission assigned it no new major tasks. However, since each of the country studies prepared in 1959 and 1960 would have to be sent to Governments for comment and supplementary data, it was unlikely that the final study would be ready in 1960 for submission to the Sub-Commission in 1961, as suggested in the draft resolution (E/CN.4/Sub.2/L.152). Unless there was an increase in staff - and he saw no possibility of such a change - the best that could be expected was completion of the study on political rights in 1961 in time for consideration by the Sub-Commission in 1962.

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Mr. HISCOCKS, noting that the Special Rapporteur had started work on the study of discrimination in the matter of political rights in 1954, stressed that it was unreasonable to expect him to burden himself with that exacting task for more than seven years.

He sought from the representative of the Secretary-General an assurance that the situation could be improved, if necessary by an addition to the staff of the Human Rights Division, based on a unanimous Sub-Commission decision that the final report on political rights should be ready for its thirteenth session.

Mr. HUMPHREY (Secretariat) stated that if the work of the Sub-Commission was to be expedited, the Human Rights Division would require additional staff. However, he did not think it likely that the General Assembly would decide to increase the relevant budgetary appropriation.

The CHAIRMAN, speaking as a member of the Sub-Commission, observed that the problem had been discussed at length at previous sessions and expressed the hope that the Secretariat might find it possible to divert staff from other "dormant activities" to the urgent work of the Sub-Commission.

Mr. SANTA CRUZ, Special Rapporteur, said that the situation had become more critical than ever before. The Secretary-General must bear in mind his responsibility for assisting the Sub-Commission in its important work. An increase in the staff of the Human Rights Division admittedly depended on an increase in the relevant budgetary appropriation. But it was the Secretary-General who would decide whether or not to recommend such an increase to the Fifth Committee, on the advice of the Division of Human Rights. Mr. Hiscocks' questions were designed to ascertain what the Sub-Commission could do to enable the Division to justify a request to the Secretary-General for an increase in its budgetary appropriation. However mild the expression of hope in the draft resolution might be, its intention was clear.

Mr. HISCOCKS expressed disappointment in the reply of the representative of the Secretary-General. In co-sponsoring the draft resolution, he had hoped that the Sub-Commission would be expressing its wishes with the best chance that they would be met. He felt now that it might be advisable for the co-sponsors

and the Special Rapporteur to discuss informally with the representative of the Secretary-General whether the draft might be improved in order to lead to more effective action. He moved the suspension of the meeting for that purpose.

The meeting was suspended at 3.40 p.m. and resumed at 3.55 p.m.

Mr. HISCOCKS announced that the co-sponsors of the draft resolution (E/CN.4/Sub.2/L.152) wished to defer any decision on it until they had had a formal reply from the representative of the Secretary-General, after consultation with the competent authorities, as to the possibility of providing the Special Rapporteur with the assistance he would need in order to submit a draft report at the twelfth session and a final report at the thirteenth session of the Sub-Commission.

Mr. CHAYET strongly supported the proposal.

It was so decided.

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

Mr. CHAYET expressed agreement with Mr. Ingles' proposed procedure for carrying out the study, which should cover both de jure and de facto discrimination in regard to the right in question. After it had considered the report (E/CN.4/Sub.2/L.146), the Sub-Commission might consider the subjects to be dealt with in the country studies, a list of which might be included in an annex to the report to be submitted in 1960.

The CHAIRMAN, speaking as a member of the Sub-Commission, briefly outlined the background to the present study, which had been undertaken by Mr. Ingles in his personal capacity, not as a Special Rapporteur.

There were three aspects of the right under discussion: first, the right of a national to leave his own country; secondly, the right of a foreigner to leave the country of his sojourn; and thirdly, the right of a national to return to his country. In connexion with the right of a national to leave his own country, some difficult points arose. For instance, it might be against the

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(The Chairman)

economic stability of a country for the Government to allow a large group of skilled workers to leave. Although the text of article 13, paragraph 2, of the Universal Declaration referred specifically to individuals, the Sub-Commission should consider to what extent the individual could be allowed to exercise that right when he formed part of such a group of workers. The Sub-Commission must also consider other reasons why Governments were sometimes unwilling to renounce the right to prohibit immigration or emigration. A Government might, for instance, legitimately be unwilling to allow undesirable individuals to leave the country. The drafters of the Declaration had been concerned with the proclamation of human rights, not with the interests of States, but the Sub-Commission must consider the individual in his context in society.

The right of a foreigner to leave the country of his sojourn, the second aspect of the right proclaimed in paragraph 2 of article 13 of the Declaration did not present any particular problems from the point of view of the Sub-Commission's study. The third aspect, however, involving the right of a national to return to his country, which had been suggested by the delegation of Lebanon to the third session of the General Assembly, had perhaps not received all the attention it deserved. Various questions arose in connexion with that right which required careful analysis. The provision proclaiming the right to return appeared to give to all who had left their country the right to return there, whether their original departure had been of their own volition or whether circumstances or even some form of compulsion had motivated their departure. The right also raised the very important question of the position of refugees. It appeared to proclaim that all refugees were entitled to return to their homelands. However, the problem of the many millions of refugees throughout the world had been and was being dealt with by other United Nations bodies and he wondered whether the Sub-Commission itself could usefully deal with that matter. He did not say that the Sub-Commission should not do so but considered that some reflection was needed in order to see whether a useful and objective approach could be made to the problem. In view of the difficulties experienced by the Sub-Commission in completing its current projects on schedule and the undesirability of assigning a further task to a new rapporteur when the

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(The Chairman)

Sub-Commission's membership might soon be changing, he was inclined to agree with Mr. Hiscocks that the study of the general subject should be retained as an agenda item but that further immediate action on it should not be taken in view of its particular nature.

Mr. HALPERN said that while he disagreed with some of the points which the Chairman had just made, he would confine his remarks for the moment to the procedural question which had been raised, and would reserve the right to discuss the substance of the matter at the next meeting. He did not approve of the suggestion that the Sub-Commission should modify its agenda and take no final action on item 8 until a decision had been taken on item 9. But he felt that the Sub-Commission had a responsibility to carry out the mandate given to it by the Economic and Social Council and the Commission on Human Rights. The Sub-Commission should consider the substance of Mr. Ingles' preliminary study, following which it could consider what was the most appropriate action to take in the circumstances.

Mr. SANTA CRUZ said that he too had some doubts concerning the Sub-Commission's future work, and those doubts had been strengthened by the comments of the Chairman. However, before discussing the matter further, it was necessary to learn the views of the Secretary-General on the whole question of the Sub-Commission's future work.

Mr. MACHOWSKI shared the doubts expressed by other members on whether any useful work could be done on the subject immediately, particularly in view of the difficulties mentioned by the other Special Rapporteurs. It would perhaps be advisable to ascertain from the Secretary-General what facilities could be provided for such work.

Mr. FOMIN agreed with Mr. Santa Cruz that it was preferable to defer further consideration of the procedural aspect until more was known of the position in the Secretariat. Mr. Ingles, in presenting his report, had touched on a number of points involving interpretation. The right mentioned in paragraph 8 (c) of the preliminary study was one which affected millions of persons, the refugees who had to live an artificial existence as aliens or were forced to become assimilated in a foreign country. He was particularly concerned

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(Mr. Fomin)

with the question of the right of voluntary repatriation, which had been dealt with from many aspects by various United Nations bodies. The many examples of flagrant violation of the right of voluntary repatriation made the question particularly vital. If article 13 (2) was studied at all, that question could not be overlooked. He was interested in hearing other views on the question.

Mr. HISCOCKS said that he had been convinced by the arguments advanced by Mr. Santa Cruz at the previous meeting regarding the procedure to be followed for the study. It would be most unfortunate if the Sub-Commission gave the impression that it was not facing the problems involved squarely. However, the procedural problems mentioned by Mr. Fomin and the Chairman were not urgent because no immediate action could be taken, as the Secretary-General would be unable to provide Secretariat assistance for work on that study. It was obvious that no progress could be made until the study of discrimination in the matter of religious rights and practices had been completed, thus freeing staff for other work. The decision could safely be postponed for another year. There was no need for the Sub-Commission to adopt a resolution on the point. It could merely agree on a formula to keep the item on its agenda and provide for action at the twelfth session. He supported Mr. Chayet's proposal that Mr. Ingles should, in the meantime, be asked to draw up the headings of a questionnaire to be circulated to Governments so that action could be taken in due course. Mr. Fomin's procedural proposal could be discussed under item 9 of the agenda.

Mr. SAARIO drew attention to paragraph 13 where Mr. Ingles had stated that the same method and procedure should be followed in the study under discussion as in the other studies considered at the present session. If, after considering the report, the Sub-Commission decided to keep the item on its agenda, it could also recommend some specific action, such as asking Mr. Ingles to make a list of headings for a questionnaire, all the more because it would take several years to carry out the procedure suggested.

Mr. SANTA CRUZ moved the adjournment of the meeting in order to give members time to reflect on the issues involved.

Following a proposal by Mr. HISCOCKS, the CHAIRMAN suggested that the members who had made proposals should meet informally to agree on a procedure to be proposed to the Sub-Commission.

The meeting rose at 5 p.m.