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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES

Twelfth Session

SUMMARY RECORD OF THE THREE HUNDRED AND NINTH MEETING

Held at Headquarters, New York,
on Saturday, 30 January 1960, at 2.30 p.m.

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PRESENT:

<u>Chairman:</u>	Mr. INGLES	(Philippines)
<u>Rapporteur:</u>	Mr. SAARIO	(Finland)
<u>Members:</u>	Mr. BOUQUIN	(France)
	Mr. HALPERN	(United States of America)
	Mr. HISCOCKS	(United Kingdom of Great Britain and Northern Ireland)
	Mr. KRISHNASWAMI	(India)
	Mr. MACHOWSKI	(Poland)
	Mrs. MIRONOVA	(Union of Soviet Socialist Republics)
	Mr. RODRIGUEZ FABREGAT	(Uruguay)
	Mr. SHARAF	(United Arab Republic)
<u>Secretariat:</u>	Mr. HUMPHREY	Director, Division of Human Rights
	Mr. LAWSON	Secretary of the Sub-Commission

ADOPTION OF THE REPORT OF THE SUB-COMMISSION ON HUMAN RIGHTS
(E/CN.4/Sub.2/L.174 and Add.1-4, E/CN.4/Sub.2/L.213) (continued)

Mr. HALPERN presented an amendment to add to chapter V, on the study of discrimination in the matter of religious rights and practices (E/CN.4/Sub.2/L.174/Add.1), in paragraph 17 (Introduction) of section B, containing comments on particular sections of the report, the following passage:

"Mr. Halpern directed attention to the last sentence of paragraph 13 of the Introduction of the Special Rapporteur's report on the study of discrimination in the matter of religious rights and practices, which he feared might give the casual reader the impression that the Special Rapporteur believed that, at least de jure, there was religious freedom in the Soviet Union. He pointed out that under Article 124 of the USSR Constitution only the right to religious worship was recognized for adherents of religious beliefs, there being no assurance of the right to carry on religious propaganda, whereas the holders of non-religious beliefs were assured not only the right to adhere to their beliefs but to carry on anti-religious propaganda. He also pointed out that under Article 122 of the Penal Code of the RSFSR the teaching of religion to minors in any class or school was made a criminal offence. He therefore maintained that even from a de jure point of view there was discrimination in favour of the holders of non-religious beliefs against the holders of religious beliefs. He was also critical of the 'country study' on the USSR for its failure to set forth the de facto situation. Mrs. Mironova maintained in reply that there was full religious freedom in the Soviet Union."

He explained that the proposed amendment was an accurate summary of the statements which had been made at the meeting of the Sub-Commission when the Special Rapporteur's report was under discussion. The report should reflect that important part of the discussion. Otherwise, anyone reading the report would not be aware of the fact that exception had been taken to the statement in the Special Rapporteur's study.

Mr. SAARIO, Rapporteur, felt that that statement would be out of place in the Sub-Commission's report because it related to a particular country. Furthermore, the substance of the Statement appeared in summary record E/CN.4/Sub.2/SR.284.

Mrs. MIRONOVA considered that statements made at meetings by individual members of the Sub-Commission should not appear in its report. If Mr. Halpern pressed for the adoption of his amendment, she would request that the reply she had made to Mr. Halpern at the same meeting and which she read out should also be inserted in the report.

Mr. HALPERN pointed out that, under resolution B adopted by the Sub-Commission at its sixth session, the Special Rapporteur's report should deal with de facto situations. Mr. Krishnaswami had decided on his own initiative not to mention any country by name in the main text of his report but, of course, he had dealt with every country by name in the so-called country studies. Unfortunately, in the historical part of his report he had allowed a sentence to creep in which dealt with the USSR by name and which might give rise to an impression in the mind of the casual reader that the Special Rapporteur believed that, at least de jure, there was religious freedom in the Soviet Union. He was confident that the Special Rapporteur had not intended to create such an impression since the nature of the legislation there prevailing was well known to him but he believed that the Special Rapporteur had relied too greatly upon the astuteness of the reader of the report and upon his having a copy of the country study before him at the time he read the main report. That had all been fully discussed at the 284th meeting and it should be referred to in the report.

In reply to Mrs. Mironova, he stated that he would have no objection to the inclusion in the report of the full text of the statement which she had just read, which, according to her, represented her recollection of what she had said at the time of the discussion.

Mr. KRISHNASWAMI, Special Rapporteur, denied having shown any bias. The reference to the Union of Soviet Socialist Republics appeared in the historical part of his report, not in the study of the de jure or de facto situation

Mrs. MIRONOVA pointed out that the summary records contained only summaries of statements made; but if Mr. Halpern maintained his amendment she would insist that the following full text of her reply should be included in the report:

"She noted that Mr. Halpern had quoted article 124 of the Constitution of the USSR, which guaranteed freedom for religious cults to function. That included not only freedom to hold religious beliefs, as Mr. Halpern had said, but also freedom to disseminate religious beliefs by various means.

"As for the teaching of religion in the schools, in the Soviet Union the school was separated from the church. That was a progressive principle. If the school were not separated from the church, persons who held different religious or non-religious beliefs would be discriminated against.

"In the Soviet Union freedom of thought, conscience and religion was ensured by law and fully realized in practice. Persons professing a religion had every opportunity to manifest their religious beliefs. In the Soviet Union many churches and monasteries of a great variety of faiths were open, there were religious seminaries and academies for the training of priests, all believers were able freely to perform the religious rites in accordance with their beliefs.

"In the USSR any kind of discrimination on the ground of religion or belief was prohibited, just as all other forms of discrimination were prohibited. Therefore in the USSR all persons were fully guaranteed freedom of conscience, which included both freedom of religious beliefs and freedom of non-religious beliefs. There was also no discrimination against persons holding non-religious beliefs."

Mr. MACHOWSKI hoped that the Sub-Commission would pay due heed to the custom of avoiding mention of particular countries in its reports. If the Sub-Commission discarded that principle he might decide to submit amendments on conditions in a particular country. He would prefer Mr. Halpern and Mrs. Mironova to withdraw their amendments.

Mrs. MIRONOVA insisted that the full text of the statement which she had delivered, and which was summarized in summary record E/CN.4/Sub.2/SR.284 should appear in the report.

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Mr. HALPERN, in reply to Mr. Machowski, pointed out that the custom of avoiding mention of particular countries applied only to the discussion of abstract proposals or general principles. When a report of a study made pursuant to resolution B adopted by the Sub-Commission at its sixth session was under discussion, it was, of course, proper for all members of the Sub-Commission to discuss countries by name, since that was the subject matter of the study which the Sub-Commission had been authorized to undertake. He further noted that, at the time when the discussion had actually taken place (E/CN.4/Sub.2/SR.284), Mr. Ketrzynski, for whom Mr. Machowski was serving as alternate at the present meeting, had interposed no objection and no objection had been interposed by any other member. The report by the Sub-Commission to the Commission on Human Rights of its proceedings must include a summary of all the pertinent points of view expressed, if it was to be an adequate report. There was no reason to suppress in the report a discussion of the situation in a particular country which everyone had agreed was fully within the competence of the Sub-Commission at the time the discussion had taken place.

He directed attention to the discussion by the Sub-Commission of Mr. Ammoun's study on Discrimination in Education at its ninth session in 1957. Countries had been discussed by name and the points of view expressed in the discussion had been reflected in the Sub-Commission's report to the Commission on Human Rights.

In view of Mrs. Mironova's statement that the text which she had read out constituted her recollection of what she had said at the time of the original discussion, although it went far beyond the text which appeared in document E/CN.4/Sub.2/SR.284, he was prepared to agree to the inclusion of the full text of Mrs. Mironova's statement.

Mr. RODRIGUEZ FABREGAT again expressed doubt regarding the accuracy of the report, which in his view did not show sufficient impartiality in presenting the views expressed by the experts. While the principle argued by Mr. Halpern seemed to him to be sound, it would be arbitrary to reproduce in the report the views of only a few members of the Sub-Commission.

Mr. RODRIGUEZ FABREGAT would not agree to his amendment being added as an appendix to the report and pressed for its insertion in the report in order to indicate the latter's fragmentary and incomplete nature.

However, if the Sub-Commission approved in principle the insertion of his amendment in the report, he would agree that it should select the appropriate place for its insertion.

The CHAIRMAN said that, in his view, paragraph 3 would not be the proper place to insert Mr. Rodriguez Fabregat's amendment.

Mr. SAARIO, Rapporteur, said that the Sub-Commission itself should decide where it wished Mr. Rodriguez Fabregat's amendment to appear.

Mr. HISCOCKS suggested that the amendment should be added at the end of chapter XIII, "Adoption of the report".

The CHAIRMAN agreed and considered that the insertion of Mr. Rodriguez Fabregat's amendment should be voted upon after the vote on the report.

Replying to a question by Mr. Halpern, he said that Mr. Rodriguez Fabregat's amendment would constitute an explanation of vote and not a minority report.

Mr. RODRIGUEZ FABREGAT requested that a vote be taken on his amendment, which he agreed should be added at the end of chapter XIII - "Adoption of the report". He believed that he was entitled to record the fact that he was unable to vote for the report, and to indicate his reasons.

Mr. MACHOWSKI said that although he would vote in favour of the report he would not necessarily approve all the statements which it contained.

Mr. SHARAF appealed again to Mr. Rodriguez Fabregat to withdraw his amendment and thus enable the Sub-Commission to expedite its work.

Mr. RODRIGUEZ FABREGAT said that he had already responded to an earlier appeal from Mr. Sharaf by deciding to abstain from voting on the report instead of voting against it. It was impossible for him to go any further and he regretted that such a simple amendment should have caused the Sub-Commission to waste so much time.

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Mrs. MIRONOVA pointed out that Mr. Rodriguez Fabregat had himself stated that his amendment could be considered as an explanation of vote. She asked him whether he could not agree to be satisfied with that explanation.

Mr. HALPERN said that Mrs. Mironova's solution was a proper one, provided the explanation of vote was recorded in the report, as paragraph 53 in chapter XIII dealing with the adoption of the report.

The CHAIRMAN said that, according to Mr. Rodriguez Fabregat's latest statement, the words "to vote for" in the first paragraph of the text which he had submitted (E/CN.4/Sub.2/L.213) should be replaced by the words "to participate in the vote on".

Mr. RODRIGUEZ FABREGAT agreed to that change.

The CHAIRMAN put Mr. Rodriguez Fabregat's amendment, as amended, to the vote.

The amendment was adopted unanimously.

Mr. HALPERN proposed the addition at the end of the report of a new paragraph 54 reading as follows:

"Mr. Halpern stated that he had voted for the report because he agreed with all that was contained in it but that he believed that there was a serious omission in it resulting from the rejection by the majority of the Sub-Commission of his amendment proposing to add at the end of paragraph 7 of chapter V the following: (text of the amendment to be inserted here). In fairness to Mrs. Mironova he had also urged the inclusion of the text of a statement which she had read and which she said she wished to have included in the report if Mr. Halpern's amendment was carried, reading as follows: (Include English translation of Mrs. Mironova's amendment to be taken from the tape)."

Mr. MACHOWSKI and Mrs. MIRONOVA opposed that proposal, as it would amount to reopening, by a devious method, a decision previously taken by the Sub-Commission.

Mr. HALPERN stated that he was entitled to act as Mr. Rodriguez Fabregat had done and to give an explanation of his vote, to be included in the report as part of the chapter dealing with the subject of its adoption. In reply to Mr. Machowski and Mrs. Mironova, he explained that the prior decision had been on the question of amending paragraph 17 of the report itself. The question now before the Sub-Commission was whether he should be permitted, in his own name, to give an explanation of his vote.

Mr. HISCOCKS requested that the Sub-Commission should accept the Chairman's proposal and defer the vote on the matter until the end of the debate.

Mr. HALPERN said that the meeting might then no longer have a quorum.

Mr. RODRIGUEZ FABREGAT agreed with Mr. Halpern and accordingly proposed that the Sub-Commission should vote immediately. In order to avoid the unfortunate effect which a minority report would have, he inquired whether Mr. Halpern would not agree to the inclusion of his explanation of vote in paragraph 54, accompanied by the passage from the record to which Mr. Halpern had referred.

Mr. HALPERN agreed with that suggestion. It was exactly what he was asking for.

The CHAIRMAN, speaking as a member of the Sub-Commission, said that he saw no objection to adding to the report a paragraph containing an explanation of Mr. Halpern's vote on the report. However, the Sub-Commission had decided against the insertion in the report of the paragraph which Mr. Halpern had proposed as an amendment to paragraph 17 of document E/CN.4/Sub.2/L.174/Add.1. In order to overcome the difficulty, he suggested that the report should include the first part of the text proposed by Mr. Halpern, in which the latter merely explained that he made his statement because the Sub-Commission had rejected his amendment to paragraph 17, without reproducing the amendment in full.

Mr. HISCOCKS observed that instead of deferring the vote on the matter, as the Chairman and he had proposed, the Sub-Commission persisted in discussing it.

Mr. HALPERN insisted that his proposal should be voted upon only in the presence of the same members as had voted on Mr. Rodriguez Fabregat's proposal.

Mr. HISCOCKS said that such a demand was contrary to democratic principles. He requested that the vote be deferred until after the vote on the report.

Mr. RODRIGUEZ FABREGAT recalled that, as one member of the Sub-Commission would soon be obliged to leave the meeting, the Sub-Commission was aware that it would lack a quorum. He was therefore surprised that it should not accede to Mr. Halpern's request. The statement which the latter wished to have included in the report was perhaps controversial, but it would be contrary to the rules observed in the United Nations and to parliamentary procedure to deny him the right to insist on the insertion. Furthermore, the question of voting should not arise, as each member was entitled to have the report show the reason for his votes.

Mr. HALPERN agreed with Mr. Rodriguez Fabregat that a vote should not have been taken on the new paragraph 53 and correspondingly that none should be taken on the new paragraph 54. Any member was entitled to have an explanation of his vote on the report included in the chapter of the report dealing with the subject of its adoption.

Mr. HISCOCKS pointed out that the Sub-Commission, like any democratic body, was the master of its own procedure. The question was not merely one of recording Mr. Halpern's opinion, since the matter had deliberately been given a controversial turn. The Sub-Commission was entitled to decide for itself whether it wished to include such an opinion in its own report. He moved the closure of the debate and proposed that a vote should be taken on Mr. Halpern's proposal after the vote on the report.

Mr. HALPERN said that a vote could not be taken on an explanation of vote. The only question was whether the explanation would be recorded in the report, and he wished that question to be decided by a number of members equal to the number which had voted on Mr. Rodriguez Fabregat's proposal.

The CHAIRMAN put to the vote the motion for closure made by Mr. Hiscocks.
The motion was adopted by 4 votes to 1, with 3 abstentions.

The CHAIRMAN called for a vote on Mr. Halpern's proposal. Speaking as a member of the Sub-Commission, he requested a separate vote on the first part of the proposal, up to and including the words "paragraph 17 of Chapter V".

The first part of Mr. Halpern's text was adopted by 5 votes to none, with 2 abstentions.

The CHAIRMAN put the second part of Mr. Halpern's text to the vote. The second part was rejected by 3 votes to 2, with 3 abstentions.

The text proposed by Mr. Halpern, as a whole, as amended, was adopted by 5 votes to none, with 2 abstentions.

Mr. SAARIO, Rapporteur, said that, in view of his duties, he had preferred not to take part in the vote.

The CHAIRMAN noted that the statements made by Mr. Rodriguez Fabregat and Mr. Halpern as adopted for insertion in the report would not be balanced; neither had spelled out in detail the "omissions" which had respectively led them to adopt their positions.

Mr. HALPERN said that he would no longer be able to vote for a report which contained only a truncated version of his statement; he would have to abstain. Consequently, he was withdrawing the new paragraph 54 which had just been added to the report on his proposal, and would submit a minority report instead.

The CHAIRMAN said that the paragraph could not be withdrawn unless the Sub-Commission agreed to reconsider the decision it had just taken.

Mr. HALPERN pointed out that if paragraph 54 remained it would be in contradiction with the vote he would cast on the report. He formally proposed that the Sub-Commission should reconsider its decision.

Mr. HISCOCKS said that he agreed with Mr. Halpern and would vote for his proposal.

The CHAIRMAN said that he would ask the Sub-Commission to decide first whether it wished to reconsider the decision it had taken and then whether paragraph 54 should be retained or deleted.

By 5 votes to none, with 2 abstentions, the Sub-Commission decided to reconsider Mr. Halpern's proposal to insert a new paragraph 54 in the report.

The CHAIRMAN called for a vote on the deletion of paragraph 54.

Mr. HALPERN said that the decision the Sub-Commission had just taken had restored the situation existing when he had submitted his text, which he now withdrew. He therefore considered that there was no need to take a second vote on whether the text should be retained or deleted.

The CHAIRMAN replied that the procedure followed would be the one he had announced; he invited the Sub-Commission to decide whether to retain or delete paragraph 54.

The Sub-Commission decided, by 4 votes to none, with 3 abstentions, to delete paragraph 54.

Mr. RODRIGUEZ FABREGAT explained that he had voted in favour of allowing the Sub-Commission to re-examine its decision because Mr. Halpern had considered that his text no longer reflected his views; he had voted against the deletion in order to uphold the principle that each member had the right to express his opinion and to state the reasons for it.

Mr. HALPERN proposed an amendment to paragraph 21 of Chapter V, concerning the study of discrimination in the matter of religious rights (E/CN.4/Sub.2/L.174/Add.2), which was accepted by the RAPPORTEUR.

Mr. MACHOWSKI proposed an amendment to paragraph 68, in the same chapter, which was accepted by the RAPPORTEUR.

Mr. SAARIO, Rapporteur, said that, in the title of Chapter V, Section F, concerning manifestations of anti-Semitism (E/CN.4/Sub.2/L.174/Add.3), the word "and" between the words "hatred" and "religious" should be replaced by the phrase "as well as", and that the first preambular paragraphs of Parts A and B, paragraph 4 (1) of Part B of resolution 3 (XII), and all other relevant paragraphs, should be amended to bring them into line with the title.

Mr. HALPERIN said that the Sub-Commission had voted on the text of the resolution and on the amendments as submitted by the Chairman in the English language and the Rapporteur could not agree to change its wording on the initiative of one of the Sub-Commission's members.

Mrs. MIRONOVA explained that the purpose of the correction requested was not to change the wording of a resolution already adopted by the Sub-Commission but to bring the final text into harmony with her original proposal, which had been made in Russian (E/CN.4/Sub.2/SR.305) and which the Sub-Commission had voted to accept.

After an exchange of views between Mrs. MIRONOVA, Mr. HALPERIN the CHAIRMAN and Mr. SAARIO (Rapporteur), Mr. MACHOWSKI proposed that the Russian text of the report should be corrected so as to bring it into harmony with the amendment proposed by Mrs. Mironova (E/CN.4/Sub.2/SR.305) and that, in the case of the other languages, a footnote should be added to the report stating that the amendment had been submitted in Russian, that an error had been made in the English, Spanish and French translations, and that the text voted on had been the English text, which contained the word "and".

It was so decided.

Mr. HISCOCKS proposed an amendment to paragraph 20 of Section F (E/CN.4/Sub.2/L.174 Add.3), which was accepted by the RAPPORTEUR.

Mr. HISCOCKS and Mr. MACHOWSKI proposed amendments to paragraphs 43 and 44 of Chapter VII, concerning advocacy of national, racial or religious hostility (E/CN.4/Sub.2/L.174/Add.3), which were accepted by the RAPPORTEUR.

Mr. HISCOCKS proposed an amendment to paragraph 21 of Chapter IX, concerning discrimination in education (E/CN.4/Sub.2/L.174/Add.4), which was accepted by the RAPPORTEUR.

The CHAIRMAN, speaking as a member of the Sub-Commission, proposed the addition of a new paragraph 48 in chapter XII, concerning the future work of the Sub-Commission (E/CN.4/Sub.2/L.174/Add.4), which was accepted by the RAPPORTEUR.

The CHAIRMAN put the Sub-Commission's draft report to the Commission on Human Rights on its twelfth session, as a whole (E/CN.4/Sub.2/L.174 and Add.1-4), to the vote.

The report as a whole was adopted by 6 votes to none, with 1 abstention.

Mr. HALPERN said that he had abstained in the vote on the Sub-Commission's draft report, as he had announced, because of the important omission in paragraph 17 of document E/CN.4/Sub.2/L.174/Add.1. Apart from that omission, he entirely approved the report. He requested that the minority report which he proposed to submit should appear as an annex to the Sub-Commission's report, and should be placed before the statement of financial implications (E/CN.4/Sub.2/L.206/Add.1). He had found it necessary to submit a minority report because he had been denied the privilege of explaining his vote in the body of the report.

The CHAIRMAN said that the minority report would be distributed as a separate document.

In reply to a question from Mr. HALPERN, Mr. HUMPHREY (Secretariat) said that the minority report would be transmitted to the Commission on Human Rights at the same time as the Sub-Commission's report.

The CHAIRMAN said that Mr. Schaulsohn, Mr. Matsch and Mr. Mirghani had informed him, the first in writing and the two others orally, that they would have approved the draft report had they been able to take part in the present meeting. He asked the Rapporteur to include their views in the report.

CLOSURE OF THE SESSION

The CHAIRMAN declared the Sub-Commission's twelfth session closed.

The meeting rose at 7.20 p.m.