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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-FIRST MEETING

Held at Headquarters, New York,
on Friday, 16 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. HALPERN)	(United States of America)
	Mr. SPAULDING)	
	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. SALSAMENDI	United Nations Educational, Scientific and Cultural Organization

Representative of a non-governmental organization:

<u>Category B:</u>	Mrs. GRANT	International League for the Rights of Man
<u>Secretariat:</u>	Mr. HUMPHREY	Director, Human Rights Division
	Mr. LAWSON	Secretary of the Sub-Commission

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

II. Meaning of the term "discrimination" in the matter of political rights
(continued)

The CHAIRMAN, speaking as a member of the Sub-Commission, wondered what exactly was meant by the term "political rights" and whether it should not be held to include other rights besides that of taking part in a country's political life. The Special Rapporteur had given his study a wide scope on the basis of article 7 of the Universal Declaration of Human Rights, which laid down that all were equal before the law and were entitled to equal protection against any discrimination or against any incitement to such discrimination. He might perhaps broaden it still further and choose among the most important rights included in the Declaration those that might entail political consequences, of which article 13 in particular was a good example.

Mrs. GRANT (International League for the Rights of Man) expressed her organization's satisfaction at having been invited to assist in assembling material for the work of the Sub-Commission and its hope that it would be able to serve it effectively.

With regard to the progress report prepared by Mr. Santa Cruz, the League hoped that two aspects would be studied and brought into relief: firstly, the political discrimination which resulted from restraints and limitations expressed and implied in the written laws of the nations; secondly, the wide disparity between written constitutions and their actual application in certain countries.

With regard to the "country studies", the League suggested that countries which had recently inaugurated or reinstalled a democratic regime should be asked to submit information about discrimination practised by the preceding dictatorships, with a view to dissecting its causes and effects and proposing remedies and safeguards against the repetition of such practices in the future.

One of the most cruel discriminatory practices in the field of political rights was that of exile. The Sub-Commission might consider the issue of a special United Nations passport, like the Nansen passport of the League of Nations, as a protection for political exiles.

Mr. SAARIO, referring to the suggestion made by the Chairman at the beginning of the meeting, expressed the view that the draft report should cover all rights which might entail political consequences, since a person who was deprived of those rights would not be free to exercise his political rights.

Mr. INGLES wished to make a few remarks concerning the last part of the report by Mr. Santa Cruz, bearing in mind the fact that its conclusions were provisional. In paragraphs 69 et seq. the Rapporteur pointed out that certain distinctions in so far as the right to take part in the government of a country was concerned were not necessarily discriminatory. Such was the case, for instance, with distinctions on grounds of age. That was an admirable statement of principle, but in fact the age limits laid down by the law were not the same in the case of every right. The right to marry was usually guaranteed at a lower age than the right to vote. Even in countries where the minimum age for marriage was different for men and women the question of discrimination did not seem to arise, and he saw no reason why the establishment of a different voting age for men and women should be considered discriminatory. However, there seemed to be no scientific reason for discriminating against eighteen-year-olds by fixing the minimum voting age at twenty-one years, for example. Similarly, in view of increased longevity it might be discriminatory not to raise the age of retirement, which had been fixed at a time when the expectation of life was shorter.

In stating in paragraph 76 that the wording of article 21 of the Universal Declaration seemed to prohibit the exclusion from the electorate of illiterates and persons who had not reached a certain level of education, the Rapporteur appeared to have interpreted the word "universal" too literally, since it was accepted that the exclusion of, for example, children and lunatics did not violate the principle of universal suffrage. That was a very important question in a country where the level of education was still low despite the Government's efforts to improve it. He cited the example of a country which excluded illiterates from voting but at the same time instituted compulsory primary education. It was questionable whether a person who refused to benefit by the education made available by the authorities could complain that he was a victim of discrimination if the State denied him the right to vote because he

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was illiterate. For that matter, article 21 should not be construed in isolation but considered also in the light of article 29, paragraph 1.

Mr. MACHOWSKI referred to paragraphs 77 and 78 of the report.

Paragraph 77 stated that "the majority of members of the Sub-Commission have expressed the opinion, and that opinion is shared by the Special Rapporteur, that the study must include information on discrimination in the matter of political rights as it affects dependent territories, including Trust and Non-Self-Governing Territories". Paragraph 78 stated: "However, it must be remembered that so long as a Territory has not acquired full self-government, the right to take part in the government of the country is not exercised with the same completeness as in an independent country." But Article 73 of the Charter stipulated that "Members of the United Nations which have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government... accept as a sacred trust the obligation... to develop self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions...". He therefore thought that Part III of the report, the summary of action taken to prevent and to eliminate discrimination in the matter of political rights, should include a statement of the action taken by the Administering Authorities and Administering Powers to extend political rights in the Trust and Non-Self-Governing Territories.

Mr. SANTA CRUZ, Special Rapporteur, pointed out that the discussion which had taken place on the last paragraphs of the report had shown the provisional nature of the ideas set forth therein. He thanked the members of the Sub-Commission for helping him to clear up certain points.

He shared Mr. Krishnaswami's view that that part of the report required careful study because it could be interpreted in different ways. Mr. Krishnaswami had pointed to the differences in administrative practice in various countries, which were due to differences in the existing traditions and conditions, as well as in the development of political rights and freedoms.

He admitted that paragraph 73 in its existing form left a certain margin for interpretation and that it should be revised. The interpretation of paragraph 76

(Mr. Santa Cruz)

was considered to be too restrictive by some and too wide by others. The exceptions to which Mr. Ingles had referred fell within the limitations provided for in article 29, paragraph 2, of the Universal Declaration. With regard to the question of universal suffrage, however, his own point of view was very close to that of Mr. Fomin: countries evolved towards universal suffrage, and it was very difficult to trace a limit based on the degree of education required of a voter; there was a general trend towards extending the vote to all persons who were able to use their judgement in voting for a certain candidate. With regard to age distinctions, to which Mr. Ingles had referred, he pointed out that the problem had been raised in paragraphs 70 and 71 of his report, but that he had not attempted to solve it, as it was extremely complex. Chronological age and physical age did not always coincide and the fixing of a standard age might cause injustice and militate against the principle of age limit in accordance with actual capacity.

The remarks made by the representative of the International League for the Rights of Man were interesting, because they confirmed that one of the Special Rapporteur's obligations was to refer to the progress made in combating discriminatory practices, in order that the study should inform public opinion of the direction that developments were taking. To that end, he intended to submit further questions to other Governments.

In reply to Mr. Machowski, he said that he would take into account the provisions of Chapter XI of the Charter, including the obligation of all Administering Powers to ensure political advancement in the Non-Self-Governing Territories.

With regard to the rights taken into consideration in the study, he recalled that the question raised by the Chairman had been asked on several occasions. The interim report submitted to the preceding session (E/CN.4/Sub.2/L.124) had already indicated, in paragraph 15, that "the study should concern itself first with the exercise of the rights recognized in article 21, and secondly with the exercise of the rights proclaimed in articles 15, 19 and 20 and possibly with other articles; and that in broad terms the study should cover all rights affecting the exercise of political rights proper". In paragraph 31, he had

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(Mr. Santa Cruz, Special Rapporteur)

added that, in those circumstances, he had "included in his outline points relating to articles 19 - on the right to freedom of opinion and expression - and 20 - on the right to freedom of peaceful assembly and association - but only in a secondary place". Since the Sub-Commission had approved of that point of view, he would continue his work on that basis.

The CHAIRMAN, speaking as a member of the Sub-Commission, expressed his satisfaction at the fact that the Special Rapporteur recognized the importance of all the rights which might have political implications, for modern history had shown that many great democratic leaders who were now in power had spent part of their lives in prison for having tried to resist discrimination.

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)

Mr. INGLES, introducing his preliminary study (E/CN.4/Sub.2/L.146), pointed out that it supplemented the earlier preliminary study of discrimination in the matter of emigration, immigration and travel (E/CN.4/Sub.2/L.167). He drew attention to paragraph 5, which stated the scope of the study as determined by the Council. As stated in paragraph 12, a study of the right itself would be conducive to a clear understanding of the problem of prevention of discrimination in the exercise of that right. He had examined the nature of the concepts which should guide the study. He also pointed out that practical illustrations should shed light on the general trends and the progress achieved in eliminating discrimination in that particular field.

At the preceding session, several members of the Sub-Commission had proposed to extend the scope of the study to the whole of article 13 of the Universal Declaration of Human Rights. He considered their arguments quite logical since the whole article dealt with freedom of movement, paragraph 1 being concerned with travel within the borders of each State, while paragraph 2 was concerned with travel across State frontiers. Nevertheless, in view of the precise terms of reference which the Economic and Social Council had laid down and which the Sub-Commission had not questioned, he had no alternative but to limit himself to article 13, paragraph 2, of the Declaration.

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Mr. FOMIN did not think that the Sub-Commission should try to alter or extend the scope of the study. At its earlier sessions, the Sub-Commission had expressed surprise at the fact that an article of the Universal Declaration was being divided, and Mr. Ingles himself had indirectly expressed doubts in that connexion in his preliminary study. As he himself had stated at the preceding session, all rights were equally important and no distinction should be made between categories of rights. He was sure that discrimination was more wide-spread in the fields covered by article 13, paragraph 1, of the Universal Declaration than in those covered by paragraph 2; that was proved by the many cases of racial segregation which existed in various countries and with which the United Nations had concerned itself by devoting to the question a number of studies which would be most useful to the Sub-Commission if it were to undertake a study relating to article 13, paragraph 1.

It would be unjustifiable for the Sub-Commission to invoke precedents in order to shirk its responsibilities. Although it had not yet proposed to higher organs that a study should be undertaken on article 13, paragraph 1, of the Universal Declaration, the time seemed to have come for it to do so. Furthermore, the scope of article 13 was not so extensive as to frighten the Sub-Commission. Some of the other studies it had undertaken had been much wider in scope than the study he had in mind.

Although he did not wish to make a formal proposal, he considered that the Sub-Commission had two alternatives to choose from. It might request the Commission on Human Rights to ask the Economic and Social Council to adopt a resolution whereby Mr. Ingles' terms of reference would be extended. If the Council failed to accede to that request, an eventuality which he thought improbable, the Sub-Commission might provide for a study of article 13, paragraph 1, in its future work programme.

He did not think that such an initiative would really result in any loss of time for the Sub-Commission, for although some time would elapse before the Council took a decision, the Sub-Commission should first complete its study of discrimination in the matter of freedom of religion and religious practices and should proceed with its study of discrimination in the matter of political rights, so that the Secretariat would be unable to assign staff immediately to a study relating to article 13. He reserved the right to speak later on the substance of Mr. Ingles' report.

Mr. HISCOCKS said that he had been surprised at both Mr. Ingles' and Mr. Fomin's statements. He did not want to go into the details but he could not accept the interpretation which Mr. Ingles seemed to put on the Economic and Social Council resolution. According to that resolution, the study should deal only with discrimination in the particular field covered by article 13 (2) of the Universal Declaration.

As regards Mr. Fomin's statement, most of it had seemed to him to go beyond the limits of the question proposed for consideration by the Sub-Commission, and he did not understand Mr. Fomin's sudden enthusiasm for article 13 (1) of the Universal Declaration. He himself considered the right laid down in paragraph 2 of that article very important, especially in view of the situation existing in many countries since the Second World War. Of the two solutions suggested by Mr. Fomin, he could not agree to the first, which had very serious disadvantages; the second would be less unacceptable but, as Mr. Fomin had pointed out, the study envisaged could not, for administrative reasons, be included in the Sub-Commission's future programme of work before the next session.

The CHAIRMAN thought that Mr. Fomin's proposal was quite in order. Indeed, in the document which the Sub-Commission was considering (E/CN.4/Sub.2/L.146, paragraph 15), Mr. Ingles himself had referred to article 13 (1). Mr. Fomin was right in thinking that a complementary study on that paragraph might be necessary.

Mr. HALPERN congratulated Mr. Ingles on his preliminary study and especially on the legislative history of article 13 (2) contained therein, which showed what interpretations and suggestions had been rejected by the competent organs by large majorities, thus making it unnecessary for the Sub-Commission to discuss them again. He recalled in particular that the proposal by the USSR to add a provision that the right of emigration should be subject to the domestic law of the country concerned had been rejected by an overwhelming vote. The only limitations of the right were those provided in article 29 of the Declaration.

Mr. Fomin's request would not be out of order if it contemplated an application to the Economic and Social Council for a change of the approved work programme of the Sub-Commission, but thus far no motion for such an application had been made. In the absence of such an application and favourable action thereon by

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(Mr. Halpern)

the Economic and Social Council, the Sub-Commission was bound by the approved work programme and could not add paragraph 1 of article 13 to it. Mr. Halpern recognized that that paragraph was worthy of a separate study, and he announced that he would vote for it when it came up in a discussion of the future work programme. He did not think that a request should be made to the Economic and Social Council for a change of the approved work programme since the question had already been considered by the Council twice. A firm and clear decision had been made. The Secretary-General's note on the future work of the Sub-Commission (E/CN.4/Sub.2/195) recalled that, when in 1954 the Economic and Social Council had approved the Sub-Commission's programme of work, it had had before it the suggestion made by the Secretary-General in 1954 (E/2229, paragraph 75) with regard to the choice of article 13 (1) as a subject for study. Thus it was with a full knowledge of the facts that the Council had decided on a separate study of article 13 (2). Moreover, the Sub-Commission itself, in resolution E which it had adopted unanimously at its tenth session (E/CN.4/764-E/CN.4/Sub.2/192, paragraph 182), had declared unequivocally that it had in mind Economic and Social Council resolutions 545 D (XVIII) and 586 B (XX). There was therefore no point in reopening a discussion on the subject, but he saw no objection to selecting paragraph 1 as the subject of a future study by the Sub-Commission.

That attitude, fully justified on procedural grounds, was also justified on grounds of substance. The legislative history which Mr. Ingles had prepared showed that the subjects dealt with in paragraphs (1) and (2) of article 13 raised completely different issues and that the two paragraphs had been included in a single article solely for the purpose of simplifying the material presentation of the Declaration. Further, paragraph 1, although it raised very important questions, was far from having the same urgency as paragraph 2. The latter, in fact, raised an issue of life or death for victims of extremely serious violations of human rights who had had to flee their country and to seek refuge abroad. The Nazi persecutions were one instance and the problem had unfortunately lost none of its acuteness.

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Mr. FOMIN thought that Mr. Halpern had misinterpreted resolution E, which the Sub-Commission had adopted at its tenth session. That resolution had made Mr. Ingles responsible, inter alia, for discussing and analysing "the history and meaning of the relevant articles of the Universal Declaration" and also "the scope and nature of the study", which showed that no decision had been taken as to the breadth of the study. It was true that the Economic and Social Council had selected article 13 (2) for study but the members of the Sub-Commission were not obliged to obey slavishly. If they thought there were sound reasons for making an over-all study of the two paragraphs of article 13, they were entitled to draw the Council's attention to the point. Indeed, on other occasions, as the report on the previous session (E/CN.4/764-E/CN.4/Sub.2/192, paragraph 171) showed, certain members of the Sub-Commission who were now opposing his suggestion had not hesitated to request the Council to reconsider a decision. It should further be emphasized that, despite certain statements which implied the contrary, the Economic and Social Council had never had to consider a formal request that the two paragraphs of article 13 should be studied together. The Council had considered broader proposals such as a study of discrimination in the fields of immigration, emigration and movement. In the first place, the Sub-Commission consisted of experts who could put forward sound technical reasons, and in the second place the Commission on Human Rights and the Economic and Social Council no longer had the same composition as some years earlier, so that they might give a more favourable reception to a request by the Sub-Commission.

As regards the relative importance of paragraphs 1 and 2 of article 13, he was surprised that Mr. Halpern did not seem to be aware of the gravity of the problems of racial segregation which arose in connexion with paragraph 1. It was not his intention to criticize the study on paragraph 2, but there was a connexion between the two paragraphs and it was illogical to tackle one of them and neglect the other. A separate study of paragraph 2 would involve duplication and involve asking Governments two series of questions on two closely related matters. In short, time and money would be wasted, not to mention the Sub-Commission's prestige and other factors to which he had referred earlier.

Mr. SANTA CRUZ hoped that the Sub-Commission would proceed at once to a consideration of the substance of Mr. Ingles' preliminary study. The proposals made by the Secretary-General and Mr. Fomin could best be dealt with when item 9 of the agenda, dealing with future work, was considered. At the same time the Sub-Commission might consider combining the study of paragraph 2 of article 13 with that of paragraph 1 of the same article.

Answering a question put by Mr. FOMIN, he expressed the opinion that the Sub-Commission might consider Mr. Ingles' study without taking any final decision on it.

The CHAIRMAN observed that Mr. Ingles had not been appointed Special Rapporteur and that it was as a member of the Sub-Commission that he had been good enough to undertake a simple preliminary study.

Mr. HISCOCKS, replying to an earlier remark by the Chairman, drew attention to the fact that, while Mr. Ingles had referred to article 13 (1) in paragraph 15 of his study, he had done so in an apologetic way, and had subsequently mentioned it only in a procedural content in his analysis of the history of the relevant articles of the Universal Declaration of Human Rights. The Sub-Commission ought to work methodically so as to waste as little time as possible; that was why it had an agenda. Consequently, he did not wish to deal with the question of article 13 (1) until item 9 came up for discussion. That would give him every opportunity to study the paragraph thoroughly and to express an opinion after full consideration of the facts.

The meeting rose at 12.55 p.m.