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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-FIFTH MEETING

Held at Headquarters, New York,
on Tuesday, 20 January 1959, at 10.40 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. 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>	Mr. JACOBY	World Jewish Congress
<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 THE RIGHT OF EVERYONE TO LEAVE ANY COUNTRY, INCLUDING HIS OWN, AND TO RETURN TO HIS COUNTRY (E/CN.4/Sub.2/L.153)
(continued)

Mr. CHAYET said that he had attempted, in the draft resolution (E/CN.4/Sub.2/L.153), to take full account of the various views expressed in the Sub-Commission with regard to the only subject remaining on the list approved by the Commission on Human Rights for study by the Sub-Commission. Since the right stated in paragraph 1 of article 13 of the Declaration had not been included in the approved list, he had not referred to it or to the view of some that it should be dealt with in conjunction with the right stated in paragraph 2 of the article. The operative paragraphs had been framed in the most general terms in order to leave the widest latitude to the person who would eventually be appointed Special Rapporteur and in order not to bind the new members of the Sub-Commission who would succeed the present members when their term of office expired.

Mr. MACHOWSKI pointed out that the draft resolution failed to reflect the concern expressed by several members of the Sub-Commission regarding the omission from the approved list of subjects for study of the right stated in article 13, paragraph 1. A short paragraph to cover that point might well be included.

Mr. FOMIN also considered that the draft resolution should reflect the view of some members of the Sub-Commission that its next subject of study should be not just the right stated in article 13, paragraph 2 of the Declaration, but that right taken together with the right stated in paragraph 1 of the same article. The wisest course would be to admit frankly to the Commission on Human Rights that the Sub-Commission wanted to continue its work on the right stated in paragraph 2, but also wanted to take up the right stated in paragraph 1, and to put the question whether it might consider them together. The Commission on Human Rights would either reject that suggestion or would support it and convey it to the Economic and Social Council. Moreover, the draft resolution could not be construed as binding the successors of the present members of the Sub-Commission to give priority to the study of the right stated in paragraph 2; they would be entitled to review the entire programme of work and to establish priorities as they saw fit.

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The CHAIRMAN, speaking as a member of the Sub-Commission, noted that although the two rights stated in article 13 were very closely related, the study on the right stated in paragraph 2 had been formally approved by the Commission on Human Rights and the Council. The objections raised to Mr. Chayet's text might be met either by the addition of a paragraph stating that the Sub-Commission did not preclude the possibility that the right stated in article 13, paragraph 1, might be included in the study of the closely related question referred to in paragraph 2, or Mr. Chayet's text might be left unaltered and the view that paragraphs 1 and 2 of article 13 should be studied together might be stated in a draft resolution to be formulated by the Sub-Commission with regard to its future work.

Mr. HISCOCKS considered that the Sub-Commission should recognize the formal difference in the status of the two paragraphs of article 13 so far as the work of the Sub-Commission was concerned. It should demonstrate that it realized its own position in the hierarchy of United Nations organs dealing with human rights and that it respected the decisions taken by higher bodies regarding its work programme. He agreed that the right stated in article 13, paragraph 1, might also be studied. If, at its twelfth session, the Sub-Commission should decide to consider that right it might possibly propose that the two paragraphs should be studied together. For the present, the question of article 13, paragraph 1, should be dealt with in the draft resolution to be adopted in connexion with item 9 of the agenda: "Future work of the Sub-Commission, including further studies in the field of discrimination".

Mr. HALPERN also thought that paragraph 1 of article 13 should be dealt with in the draft resolution on future studies. He recalled that at the tenth session (E/CN.4/Sub.2/SR.250) Mr. Fomin had requested him to include the study of paragraph 1 of article 13 in the draft resolution which was then pending and which dealt with the proposed study of paragraph 2 of article 13. Mr. Halpern had declined to do this, on the ground that the study of paragraph 2 had already been approved by the Economic and Social Council and that another subject, not on the approved work programme of the Sub-Commission, could not be added without further action by the Commission on Human Rights and the Council. The draft resolution, dealing only with paragraph 2 of article 13, had then been adopted unanimously.

Mr. FOMIN pointed out that, at the tenth session, Mr. Halpern had not precluded the possibility that the Sub-Commission should request the Council to reconsider its decision with respect to paragraph 1 of article 13. He asked Mr. Chayet whether he would be willing to include a paragraph in his draft resolution drawing the attention of the Commission on Human Rights to the discussion in the Sub-Commission regarding the relation between paragraphs 1 and 2 of article 13.

Mr. SANTA CRUZ said that the addition requested by Mr. Fomin could be made either by asking Mr. Chayet to accept it or by submitting it as an amendment to the draft resolution. If it was rejected, it could be re-introduced in the draft resolution on the future work of the Sub-Commission. Mr. Fomin was perfectly free to submit a draft resolution on that item of the agenda.

Mr. CHAYET explained that he had not referred to the discussion on paragraph 1 of article 13 in his draft resolution because that discussion had a bearing only on the future work of the Sub-Commission. Inclusion of a reference to it in the text before the Sub-Commission would have meant dealing with both items 8 and 9 of the agenda (E/CN.4/Sub.2/196). Nothing in the draft resolution precluded the Sub-Commission from referring to paragraph 1 in connexion with its future work; indeed, he endorsed such a reference in any draft resolution on item 9 of the agenda.

Mr. ROY suggested that the difference of opinion might be settled by adding a fourth operative paragraph to Mr. Chayet's draft in which the Sub-Commission would draw the attention of the Commission on Human Rights to the views it had expressed regarding the close relation between paragraphs 1 and 2 of article 13, and would ask whether paragraph 1 should not be brought within the scope of the study already approved.

Mr. FOMIN said that he would be glad to accept Mr. Roy's suggestion, which could be put to the vote as an amendment to the draft resolution.

The CHAIRMAN proposed a recess to allow time to draft the amendment.
The meeting was suspended at 11.30 a.m. and resumed at 11.40 a.m.

Mr. ROY, speaking on behalf of Mr. Fomin, Mr. Machowski and himself, proposed the addition of the following paragraph to Mr. Chayet's draft resolution (E/CN.4/Sub.2/L.153) as operative paragraph 4:

"Draws the attention of the Commission on Human Rights to the views expressed in the Sub-Commission regarding the relationship between paragraphs 1 and 2 of article 13."

Mr. SANTA CRUZ said that, although he was grateful to the sponsors of the amendment for their attempt to reach a compromise, he could not support their text. Views expressed in the Sub-Commission should be given in the report of the session, not in a draft resolution. If the amendment was adopted, it would give a false impression, namely that attention was being drawn to the view of the majority, which was not the case. Furthermore, it was contrary to United Nations practice. He was not opposed to a study of the right enunciated in paragraph 1, on the contrary. However, he felt it should form the subject of a special study. For the reasons he had given he would vote against the amendment.

Mr. FOMIN said that the amendment did not state that there was a need to link paragraphs 1 and 2 of article 13; it merely drew attention to the relationship between the two. Furthermore, it drew attention to the views expressed in the Sub-Commission, not only by the minority but also by the majority. It was clear from the report and the summary records of the last session that some members had been in favour of studying both paragraphs simultaneously and others not. There was therefore no attempt to foist the views of the minority on the Sub-Commission.

Mr. HALPERN said that the amendment disregarded the fact that the Economic and Social Council had officially approved the subject of the present study. It would be pointless to draw the attention of the Commission on Human Rights to the views expressed in the Sub-Commission by two or three members without proposing some action by the Council. If the minority was convinced of the necessity for such action it should have introduced a draft resolution requesting the Council to amend the subject of the study, but that had not been done.

The draft resolution submitted by Mr. Chayet (E/CN.4/Sub.2/L.153) was a clear and satisfactory text; it should not be spoilt by the introduction of an

(Mr. Halpern)

obscure amendment, particularly as the point could be covered in the Sub-Commission's report. Mr. Halpern agreed that the initiation of a separate study of paragraph 1 of article 13 would be useful, and he would support the inclusion of such a study in the future work programme when the Sub-Commission took its final decision on item 9. He pointed out that while the rights covered by paragraph 1 were coupled in a single article with the rights covered by paragraph 2, the rights were of a different kind and raised wholly different problems. However, there was no need to consider the substantive differences between the two classes of rights, since the Economic and Social Council had settled the matter and had specifically asked the Sub-Commission to study the rights laid down in paragraph 2 only. It would be most undesirable to link in the same draft resolution a reference to a possible future study with the provision for study in the approved work programme.

Mr. MACHOWSKI agreed that the views of different members of the Sub-Commission should not normally be referred to in a draft resolution. However, the whole character of the study was now at issue, so that the Sub-Commission could hardly ignore the question in its resolution. The least it could do was draw attention to the fact that different opinions had been expressed.

Mr. HISCOCKS associated himself with the remarks made by Mr. Santa Cruz regarding the amendment introduced by Mr. Roy. He was opposed to the addition of the proposed new operative paragraph for several reasons. First, to draw attention to views expressed in the Sub-Commission without requesting any action was a weak procedure which made the Sub-Commission appear indecisive. He would be willing to support a much more positive proposal under item 9. Secondly, the amendment would imply that the Sub-Commission had not known its own mind in 1952 when it had defined the scope of the two studies then proposed. In appearing to doubt the wisdom of its own classification, it would be damaging its own prestige. Finally, by showing itself unwilling to comply with the instructions it had received, it would by implication be challenging the authority of higher United Nations bodies.

Mr. CHAYET regretted that he was unable to accept the amendment. It went both too far and not far enough. On the one hand, it went too far in mentioning paragraphs 1 and 2 of article 13 when the instructions it had

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(Mr. Chayet)

received from the Council restricted the study to paragraph 2. On the other hand, it did not go far enough, in that it proposed no positive action for a study of the right in paragraph 1, which he would be happy to support under item 9.

The CHAIRMAN put the amendment sponsored by Mr. Fomin, Mr. Machowski and Mr. Roy to the vote.

The amendment was adopted by 5 votes to 4, with 1 abstention.

Mr. Chayet's draft resolution (E/CN.4/Sub.2/L.153), as amended, was adopted by 8 votes to none, with 2 abstentions.

The CHAIRMAN, speaking as a member of the Sub-Commission, said that he had voted for the draft resolution as a whole on the understanding that it did not preclude the possibility that the study should embrace the question of refugees.

Mr. HISCOCKS said that he had abstained on the draft resolution as a whole because he did not wish to associate himself with a procedure which he considered illogical and which might damage the Sub-Commission's prestige in the eyes of the higher United Nations bodies.

MEASURES TO BE TAKEN FOR THE CESSATION OF ANY ADVOCACY OF NATIONAL, RACIAL, OR RELIGIOUS HOSTILITY THAT CONSTITUTES AN INCITEMENT TO HATRED AND VIOLENCE, JOINTLY OR SEPARATELY

The CHAIRMAN, introducing the item, said that he was particularly interested in the subject and therefore wished to give his views upon it as a member of the Sub-Commission. Speaking in that capacity, he said that the subject had remained for a long time on the Sub-Commission's agenda, but had been simply postponed from session to session, largely because it was crowded out by other supposedly more urgent items. Some action by the Sub-Commission now appeared necessary, though it could hardly do a great deal in view of the absence of any preparatory work. The comments he wished to make were therefore intended as a possible guide for future action.

The Commission on Human Rights had noted the Sub-Commission's intention to study the question and, at its twelfth session, had commented favourably on

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(The Chairman)

the work carried out so far, and expressed the view that it might continue, having at all times due regard to the principle of freedom of information. Members of the Commission would therefore be wondering why the Sub-Commission, which had itself proposed the subject in the first instance, had done nothing to further its study. While it might appear that the subject was not entirely within the competence of a body concerned with the prevention of discrimination and the protection of minorities, it was nevertheless a function of the Sub-Commission to study in what way discrimination occurred, what form it took, and to advise on ways and means of combating it. Strictly speaking, no article in the Universal Declaration proclaimed the right of individuals, groups or peoples to be free and immune from any advocacy of racial, national or religious hostility, but such a right might be implied in some of the provisions of the Declaration. However, article 26 of the draft Covenant on Civil and Political Rights, which stated that any advocacy of national, racial or religious hostility that constituted an incitement to hatred and violence should be prohibited by the law of the State, was likely soon to be approved as part of a final United Nations instrument and could then properly be considered by the Sub-Commission. The future membership of the Sub-Commission should be in a better position to decide upon the kind of study to make under the agenda item when the draft Covenant was finally approved, as the articles of the latter might undergo some change. Nevertheless, the question of the cessation of all national, racial and religious hostility was certainly within the competence of the Sub-Commission. The advocacy or promotion of a campaign of national, racial or religious hostility lay at the basis of much of the discrimination which the United Nations was anxious to combat.

The members of the Sub-Commission would well recall the policy pursued by the Nazis and the gospel of racism which they preached, based on false and easily refutable theories. The Nazis went beyond mere theory, however, and waged a determined campaign of hatred and violence. The conduct of campaigns against religious, national or racial groups led to the propagation of false ideas and the inevitable spread of prejudice which resulted, directly or indirectly, in discrimination and discriminatory measures. In his view,

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(The Chairman)

discrimination, which was never justified, sprang from prejudice, the result of false notions which were allowed to go unchecked or were even deliberately stimulated by a hostile propaganda machine. Thus, the subject of the agenda item lay at the root of all discrimination and discriminatory practices.

The propaganda machine was a powerful and very effective weapon in the hands of an advanced and wealthy Power. Its three principal instruments of mass communication: the Press, the cinema and the radio, were capable of exerting a deep influence on groups and individuals throughout the world. All three tended to prefer items that were sensational and exaggerated, which made them useful for any propaganda aiming at defamation and violent attacks on countries, peoples or rulers. They constituted an important weapon in time of war and the principal weapon of the cold war in time of peace. Countries of moderate resources were quite powerless to ward off effectively any hostile propaganda launched against them by a wealthy and influential agency. Whether completely independent or not, the Press, the radio and the cinema usually acted in accordance with a prescribed policy in the formulation of which the State tended to play a part.

Of the three instruments, the Press had perhaps gained the greatest measure of freedom, but only after a long and arduous struggle and, no matter how disturbing the frequent abuse of such freedom might be, it should remain the cardinal policy of every State to refrain from any interference in the free expression of opinion, except temporarily in times of emergency. The Commission on Human Rights, therefore, in approving continuation of the Sub-Commission's work on the subject, had qualified its statement with the stipulation: having, at all times, due regard to the principle of information. A Special Rapporteur, in any study of the subject, would have to show that freedom of information was not the same as freedom of false information and, while the former must be protected, the latter should not be tolerated.

A State could not condone a campaign of calumny and falsehood, masquerading under the guise of freedom of information. The question of how a State, while defending genuine freedom of information, could exert efforts to combat or even to suppress a campaign of falsehood and calumny was one which could be answered

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(The Chairman)

only by a Special Rapporteur, after a long and careful study of the matter, for which he would require the assistance of the Secretariat. It was also sometimes necessary to investigate whether such false propaganda was being carried on by a State or by some independent agencies or private concerns.

He hoped that there would be some discussion of the subject by members of the Sub-Commission and that a resolution might be adopted drawing attention to the discussion and to the action to be taken by higher United Nations bodies on the draft Covenant of Human Rights and recommending that the subject should remain on the agenda of the Sub-Commission for future study.

Mr. FOMIN said that the time had now come for a long-postponed discussion of the subject, the importance of which he did not need to emphasize. Campaigns of intolerance of the kind referred to by the Chairman were being waged at the present time and discrimination was being advocated directly, in defiance of the principle of non-discrimination which it was the Sub-Commission's task to uphold. The persistence of such propaganda constituted an actual threat to peace. Several United Nations bodies had emphasized that not only discrimination itself but also propaganda or appeals inciting to discrimination and hatred were intolerable. Such propaganda was condemned, not only in article 26 of the draft covenant on civil and political rights, but also, indirectly, in article 26 (2) of the Universal Declaration. The need to prevent such propaganda was therefore evident. The problem had been dealt with to a limited degree, but only in relation to particular questions. The Sub-Commission itself had a duty to make a general study and to seek the actual root of discrimination. In his opinion, it was no accident that where discrimination existed, propaganda and the urging of discrimination were also to be found. Legislation against discrimination was not enough and the Sub-Commission should tackle the essence of the problem despite its heavy work programme. He would like to see the Sub-Commission adopt a comprehensive resolution on the subject, but other members might feel the need for detailed study and the procedure adopted in the case of other agenda items could again be followed. He agreed with the Chairman that the members of the Sub-Commission

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(Mr. Fomin)

should inform their successors of the need to make a study of the subject and to make recommendations to the higher bodies of the United Nations. The item should clearly be given some priority as it had been so long on the agenda and the method of initial study by a special rapporteur, suggested by the Chairman, appeared acceptable. He would be glad to support a draft resolution along the lines suggested by the Chairman.

Mr. JACOBY (World Jewish Congress) drew the attention of the Sub-Commission to the anti-Jewish pamphlets and other printed material which were being distributed over a great part of the world. While the centre from which they came and their author were known, it was not known who financed or assisted in the distribution of that literature on an international level. The World Jewish Congress did not advocate any limitation of the right to freedom of opinion and expression but respectfully requested the Sub-Commission to pay attention to the pressing problem created by such literature, the distribution of which was contrary to the purposes and principles of the United Nations. It hoped that a special study of the problem might be made and was prepared to submit material to the Sub-Commission.

Mr. HISCOCKS said that the Chairman had given a misleading impression regarding the attitude of the Commission on Human Rights to the item under consideration as a subject for study. Reference to paragraphs 153 and 154 of the report of the twelfth session of the Commission showed that no formal proposal had been made and although some members of the Commission had expressed the view that the work might be continued, others had suggested that the Sub-Commission should give it no further consideration. The item was now on the Sub-Commission's agenda because of Mr. Fomin's interest in it. He himself did not feel that it should have been placed on the agenda or that it should now remain on it. It was a general question which had already been dealt with by other United Nations bodies. Furthermore, although he concurred with the Chairman's view that it was one of the basic causes of discrimination, it was not the only one.

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(Mr. Hiscocks)

He had a far more fundamental objection to the discussion of the present item, which stemmed from concern for the protection of freedom of expression throughout the world. As had already been pointed out, there was great divergence of views regarding concepts of democracy and the right of the State to interfere with the freedom of the individual. He was utterly opposed to any action which might be used as a pretext by Governments for limiting the freedom of the individual. The attitudes of Governments were indeed very different. In the United Kingdom, for instance, people were free to advocate very strong views in public, including criticisms of the monarch. In the USSR, on the other hand, anyone who incited to religious or national enmity or discord in time of war was liable to shooting and the confiscation of his property, under a law of 1929. That law might now have been repealed but it had been in force when the original document on the present item (E/CN.4/Sub.2/172) had been drafted. Obviously the attitude of countries which felt that strong measures were required to protect the State must be different from that of countries in which the freedom of the individual was the paramount consideration. It was his unalterable conviction that the protection of individual freedom was one of the highest duties of Governments.

The meeting rose at 1 p.m.