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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 SEVENTIETH MEETING

Held at Headquarters, New York,
on Thursday, 15 January 1959, at 3.05 p.m.

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(E/CN.5/Sub.2/L.147) (continued)

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)
<u>Also present:</u>	Miss MAÑAS	Commission on the Status of Women
<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.147)
(continued)

D. Plan envisaged for the study (paragraphs 22-36) (continued)

Mr. SPAULDING, in response to an invitation from the Chairman, summarized his previous remarks, which had been interrupted at the close of the preceding meeting.

Mr. FOMIN did not think that the Special Rapporteur's terms of reference permitted him to deal in his report with particular situations in particular countries, to which his attention was drawn. If the Special Rapporteur accepted Mr. Spaulding's suggestion, it would be necessary to consider not only theoretical progress through legislative action, but also the practical situation in regard to discrimination and the rate at which the decisions of the United States Supreme Court to which Mr. Spaulding had referred were being put into effect. The Sub-Commission was now concerned with a progress report dealing with the procedural aspects of the study and there was no reason for considering questions of substance in the future report.

The CHAIRMAN noted the Special Rapporteur's intention to use, as a general framework for the projected analytical part of his study, the enumeration of various grounds of discrimination condemned by article 2 of the Declaration. While this appeared to be a wise approach, he believed the Sub-Commission would approve a degree of flexibility in regard to the plan to be followed.

Mr. SANTA CRUZ, Special Rapporteur, said that the decision to omit or include reference to any particular country or situation would depend on the material ultimately collected. The criterion would be whether such reference would clarify any particular point in the study and contribute to a more comprehensive report. He would be guided at all times by the directive contained in operative paragraph 2 of resolution C which the Sub-Commission had adopted at its tenth session (E/CN.4/Sub.2/764, paragraph 160). He assured Mr. Fomin that in specific allusions and general comments he would refer not only to theoretical or legislative progress made in combatting discrimination but also

(Mr. Santa Cruz, Special Rapporteur)

to the degree of factual or practical progress made in that field. The method outlined in annex I of his interim report (E/CN.4/Sub.2/L.124), while satisfactory for preparation of the "country studies", was not suitable for the analytical part of the study, for which he proposed to use the framework referred to in paragraph 31 of the progress report.

The question of discrimination in the matter of political rights on grounds of nationality, referred to by the Chairman, was an important one, and would be considered in the study. Further points made by the Chairman with regard to the rights of individuals in Non-Self-Governing Territories and the situation under dictatorships were covered by paragraphs 77 and 78 of the progress report and by his reference to article 21 of the Declaration. He would bear in mind the comments made by Mr. Fomin concerning the position of minorities.

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

Mr. INGLES agreed with the Special Rapporteur that the literal interpretation to be given to article 2 of the Declaration of Human Rights was that any measure resulting in inequality of treatment had to be regarded as discriminatory. As the Special Rapporteur had pointed out, the expression "such as" in the first sentence of the article indicated that the list of grounds of distinction which it contained was not exhaustive. However, a literal interpretation of the article might differ from the legal or constitutional interpretation given to it and he hoped to see that aspect discussed more fully. In other fields, such as that of employment and occupation, the Sub-Commission had not considered the prohibition of discrimination on the grounds of the distinctions mentioned in article 2 to be absolute. The Sub-Commission had approved the omission from the text of ILO Convention 111 of reference to language, property, birth or other status as grounds of distinction. In the field of political rights, the Declaration did not, in its article 21, appear to prohibit discrimination on grounds of national origin. That was an instance where the Declaration made it clear that one of the grounds of distinction listed in article 2 was not applicable. The Special Rapporteur had considered other possible grounds of discrimination not mentioned in

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(Mr. Ingles)

article 2, but he wondered how far it was desirable to go in that direction. He was interested in hearing further comments on the point but believed the Sub-Commission should not be diverted from its principal task which was to consider primarily the grounds of distinction listed in article 2.

Mr. FOMIN emphasized that the list of grounds of distinction in the first sentence of article 2 of the Declaration did not claim to be exhaustive. The list was supplemented by the further grounds mentioned in the second sentence. Furthermore, in their reports on discrimination in the fields of education and religion, the Sub-Commission's other Special Rapporteurs had considered grounds of distinction additional to those listed in article 2 of the Declaration. He agreed with the attitude taken by the Special Rapporteur and drew the latter's attention to an important form of distinction, the poll tax, as well as voting restrictions on grounds of education, property, residence etc., which gravely affected the principle of universal suffrage. He agreed, in principle, with the Special Rapporteur's interpretation of article 2 of the Declaration and, in particular, with paragraph 44 of his progress report. The Special Rapporteur for the study of discrimination in the matter of religious rights and practices appeared to have overlooked article 29 of the Declaration and had introduced an unqualified concept of the right to maintain one's religion and belief. He hoped that there might be unanimity in the interpretation of the articles of the Declaration by the Special Rapporteurs, as he saw no reason for any difference of interpretation.

Mr. INGLES said that the Sub-Commission had approved provisions in ILO Convention 111 which could not perhaps be justified by a literal interpretation of article 2 of the Declaration. While it could be held that a distinction of any kind was discrimination, a selective process had apparently been adopted and some distinctions appeared to have been considered as discrimination while others had not. It was indeed difficult to draw the line and he felt that article 2 should not be interpreted too literally but in a liberal and constructive manner.

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Mr. SANTA CRUZ, Special Rapporteur, said that none of the articles of the Universal Declaration of Human Rights could be interpreted as an absolute prohibition of all distinctions. Article 21, for instance, which laid down everyone's right to take part in the government of his country, automatically excluded persons who were not nationals of the country concerned, and the exclusion of aliens from participation in the government of a country could not be considered as discrimination. There, as in many other cases, it was the motive which decided whether such distinctions were discriminatory.

He felt there was a basic identity of approach between himself and the Special Rapporteur on discrimination in the matter of religious rights and practices, and failed to understand Mr. Fomin's objection.

Mr. FOMIN said that the two Special Rapporteurs had not approached the Universal Declaration in the same way. For Mr. Krishnaswami the rights laid down in the Declaration were absolute; for Mr. Santa Cruz they admitted limitations. Their interpretations of the Declaration were therefore divergent and the Sub-Commission could not approve both without laying itself open to a charge of inconsistency.

Mr. SAARIO pointed out that all groups of society obviously could not be treated in an identical manner. However, distinctions could be called discriminatory only when they were made with an intention to discriminate. Each case must be judged on its merits.

Mr. FOMIN said that paragraph 45 of the report contained an erroneous interpretation of article 29 of the Universal Declaration of Human Rights. That article did not provide any justification for coercive measures, such as compulsory voting. It would be advisable for the Special Rapporteur to modify that part of the report.

Mr. HISCOCKS welcomed the Special Rapporteur's analysis of article 29 of the Declaration, which was extremely valuable. The Special Rapporteur was also to be congratulated on the clarity with which he had pointed out the

(Mr. Hiscock)

distinction between the de jure and the de facto situation regarding discrimination on the part of Governments. There were cases where the legislation of a country was above all criticism but its application in practice left much to be desired. He hoped the point would be brought out very clearly in the final report.

The second sentence of paragraph 55 raised a point which had already been dealt with in the first draft report by Mr. Krishnaswami (E/CN.4/Sub.2/L.123, paragraph 88), which was that the mere fact that a Government alleged that it had imposed a limitation in the public interest was not a proof in itself that the limitation was legitimate. There was a fundamental difficulty in interpreting all texts regarding human rights, which stemmed from two conflicting concepts of freedom. In one case, the rights of the State were felt to be paramount, and the individual's full development was considered to be possible only within the State. In the other case, the rights of the individual based on natural and moral law were held to be of more importance. The Special Rapporteur should present both views clearly, as they had influenced the drafters both of the Charter and of the Universal Declaration of Human Rights. It was difficult to say which view had been espoused by the United Nations itself, but he himself felt that it stood for protection of the rights of the individual. That view would appear to be supported by articles 18 and 19 of the Universal Declaration in particular. However, article 8, sub-paragraph (c) (ii) of the draft Covenant on Civil and Political Rights, took no positive stand with regard to such a question as conscientious objection, for instance.

Miss MAÑAS (Commission on the Status of Women) recalled that the work of the Commission on the Status of Women on discrimination against women in the field of political rights had led to the adoption of the Convention on the Political Rights of Women, which had now been signed by forty-one countries and ratified by thirty-one. The enjoyment of political rights was closely linked with the right to take part in the government, the right of equal access to public service, and the right of equal economic opportunities for women, but progress was slow in those fields and the Commission still had much to do.

At its twelfth session, the Commission on the Status of Women had devoted considerable attention to one aspect of the question of political rights for ...

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(Miss Mañas, Commission on
the Status of Women)

women, the access to and the exercise of public functions by women. She read out resolution 1 (XII), which the Commission had adopted as a result of its discussion and expressed the hope that the Secretary-General would be able to comply with the request formulated in operative paragraph 3 of that resolution.

The education of women to enable them to participate adequately in public life was most important and some progress was being made in that direction under the programme of advisory services in the field of human rights. A seminar on the civic responsibilities and increased participation of Asian women in public life, organized at Bangkok in 1957, had been highly successful. It was hoped that a similar seminar to be organized at Bogotá during 1958 would achieve equally satisfactory results.

Mr. INGLES was happy to note that the Special Rapporteur had put the question of permissible limitations under article 29, paragraph 2, of the Universal Declaration clearly before the Sub-Commission, which must consider how far those limitations could go. It was obvious that the intention of article 29, paragraph 2, was to keep such restrictions to a minimum, and that point had been emphasized by the Special Rapporteur in paragraphs 47 and 60 of his report. However, no criterion had been suggested by which the extent of permissible limitations could be judged. Where Mr. Krishnaswami had suggested "the narrowest possible bounds", Mr. Santa Cruz had referred to "the strictly essential minimum". Article 30 of the Universal Declaration, however, even permitted limitations short of destruction of the rights and freedoms set forth in the Declaration. The Sub-Commission should consider the matter, with a view to giving some guidance to Governments. If the Special Rapporteur drafted basic rules similar to the ones proposed by Mr. Krishnaswami for the prevention of religious discrimination, he should deal with the question of the extent of permissible limitations more fully. The aim was to safeguard the rights of the individual while leaving Governments the greatest possible latitude to act as they saw fit for the good of the community as a whole.

Mr. SANTA CRUZ, Special Rapporteur, replying to Mr. Fomin, said that he had included the reference to compulsory voting in paragraph 45 because voting was considered in some countries as being one of the functions of public office.

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(Mr. Santa Cruz, Special Rapporteur)

Turning to the points raised by Mr. Hiscocks and Mr. Ingles with regard to article 29, paragraph 2, of the Universal Declaration, he said that he saw no reason to confront the rights of the individual and of the State as the question had already been settled. The Charter and the Declaration established that the rights of the individual rather than the State were the main concern of the United Nations, although it was also concerned with the exercise of those rights within the framework of the community. The Declaration itself showed that the rights of the State and of the individual did not necessarily conflict. The classic inalienable human rights were laid down in the first few articles of the Declaration; the subsequent articles established that they could be exercised only if certain economic and social rights, which involved the community, were also guaranteed. Finally, the individual's duty to the community was explicitly stated in article 29, paragraph 1. The Sub-Commission had no need to consider the question. The only real problem was the extent of the limitations which could legitimately be imposed under article 29, paragraph 2. As the criteria for judging action under that article were at least partially subjective, the Sub-Commission might usefully give the matter some thought.

Mr. HISCOCKS, referring to paragraphs 58 and 59, suggested that the Special Rapporteur might make an objective study of the various concepts of a democratic society. The different interpretations of the relationship between the individual and the State represented a challenge which should be taken up in the final study because it was clearly relevant to the manner in which Governments were likely to implement article 29 (2) of the Declaration. For example, those Governments which held a certain view of the meaning of democracy, might interpret "the general welfare" in such a way as to whittle down individual rights to a dangerous degree.

Mr. FOMIN considered that it would be dangerous to ask the Special Rapporteur to define the concept of a democratic society, however interesting that subject might be. He was not expected to present a philosophical treatise on the meaning of democracy, which would be totally irrelevant to the basic purpose of the Sub-Commission and of the other competent United Nations bodies dealing with human rights, but to formulate general and objective recommendations for the adoption of

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(Mr. Fomin, USSR)

measures to promote the elimination of discrimination in the field of human rights. If the Special Rapporteur were to take up Mr. Hiscocks' suggestion, the Sub-Commission was likely to be transformed into another political forum which would make no positive contribution to the cause of the United Nations.

Mr. HISCOCKS protested that Mr. Fomin had misunderstood his suggestion. The meaning of democracy, as understood by various Governments, was directly pertinent to their implementation of article 29 (2) and to the efforts they might be expected to make to eliminate discrimination.

Mr. FOMIN pointed out that however willing the Special Rapporteur might be to accept the challenge, it would be impossible for him to undertake the suggested study on an objective basis. Moreover, there was no purpose in such a study: while it might be educational, it could not contribute to the Sub-Commission's work on discrimination.

Mr. MACHOWSKI saw no need to open a debate on the concept of democracy in connexion with the analysis of the meaning of discrimination in the matter of political rights. In reality, no country had yet reached perfection in building a democratic society; every State was seeking the best solution according to its lights and with its own resources. Economic, historical and social factors could not be disregarded in assessing the results. However, there was no purpose in having the Special Rapporteur make a study of the kind suggested.

Mr. HISCOCKS, referring to the final paragraphs of the progress report, said that while he was satisfied with the Special Rapporteur's approach to the treatment of dependent territories including Non-Self-Governing Territories, Mr. Fomin had drawn special attention to the question of Non-Self-Governing Territories. He would like to point out that the second paragraph of article 2 of the Declaration distinguished four categories of territories: "independent, trust, non-self-governing or under any other limitation of sovereignty". It was essential that the same treatment should be given countries in all four categories. Whereas Non-Self-Governing Territories were described as such and Governments responsible for their administration were attempting to develop conditions favourable to self-government, in countries in the fourth category the limitation was often not recognized and the disease therefore was likely to persist.

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Mr. FOMIN, noting that paragraph 73 gave undischarged bankrupts as an example of a group justifiably disqualified from the exercise of political rights, emphasized that such disqualification was in effect discrimination. The denial of political rights on grounds of indebtedness was contrary to all accepted norms. Moreover, article 11 of the draft Covenant on Civil and Political Rights prohibited the imprisonment of persons merely on the ground of inability to fulfil a contractual obligation. Surely if persons could not be imprisoned for indebtedness, they could not be deprived of their political rights on those grounds. The example of undischarged bankrupts should therefore be included in an enumeration of unacceptable restrictions on political rights.

In connexion with paragraph 76, he would welcome a clearer approach to the relationship between educational level and political rights. Deprivation of basic political rights on grounds of illiteracy was definitely discrimination. It was a particularly important problem in territories which had not yet achieved independence and in countries just emerging into independence where the illiteracy rate was high. To deny political rights on those grounds would be to sanction discrimination against huge sectors of the population. Moreover, illiteracy in the modern world was doomed to a short life, for the process of education was continuous. That fact should be borne in mind, especially as the Sub-Commission's task was to formulate long-term principles. He therefore hoped that the Special Rapporteur would redraft the relevant paragraphs so that the Sub-Commission did not appear to be acquiescing in the establishment of educational restrictions on the exercise of political rights.

With regard to the point made by Mr. Hiscocks regarding equal treatment in the study for the four categories of countries mentioned in the second paragraph of article 2 of the Declaration, he was in full agreement, on the understanding that the Rapporteur would deal objectively with the groups of countries included in those categories. He did not have misgivings, however, regarding the statement in paragraph 78. There could be no justification for the failure of certain Trust or Non-Self-Governing Territories to achieve a large degree of political advancement, as prescribed by the Charter, after many years of trusteeship or colonial rule.

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Mr. KRISHNASWAMI was gratified by the Special Rapporteur's emphasis in paragraphs 70-75 on various types of distinctions which were not necessarily discriminatory, in connexion with the exercise of political rights. With regard to possible discrimination in recruitment to the civil service, it was necessary to consider the various systems of administrative jurisprudence and to ascertain the essential constituents of administrative law in the various countries before determining whether justice was being done to the individual. For example, while the system of open competition for civil service posts was a desirable one, it was not necessarily discriminatory not to apply it in all cases. Some of the newly-independent States were confronted with an acute problem in the recruitment of their civil service: age levels and other criteria which had been used in highly-developed countries could not be applied. The Special Rapporteur might usefully refer to the common experience of administrative tribunals in that connexion. Finally, with regard to extending the vote to illiterates, many factors should be taken into account. In some new States, it was impossible for some time to determine the educational criteria for the exercise of political rights because the educational process was inevitably slow.

The meeting rose at 5.30 p.m.