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COMMISSION ON HUMAN RIGHTS

Seventeenth Session

SUMMARY RECORD OF THE SIX HUNDRED AND NINETY-THIRD MEETING

Held at Headquarters, New York
on Friday, 10 March 1961, at 3.15 p.m.

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Report of the thirteenth session of the Sub-Commission on Prevention of Discrimination and Protection of Minorities (E/CN.4/815 and Corr.1; E/CN.4/L.589/Rev.1, E/CN.4/L.593/Rev.1) (continued)

PRESENT:

<u>Chairman:</u>	Mr. JHA	(India)
later,	Mr. ERMACCORA	(Austria)
<u>Rapporteur:</u>	Mr. DELGADO	(Philippines)
<u>Members:</u>	Mr. PAZHWAK	Afghanistan
	Mr. ABREU)	Argentina
	Mr. QUIJANO)	
	Mr. ZENKER	Austria
	Mr. CHENG PAONAN	China
	Mr. MADSEN	Denmark
	Mr. JUVIGNY	France
	Mr. BHADKAMKAR	India
	Mr. KITTANI	Iraq
	Mr. BEAUFORT	Netherlands
	Mr. HAKIM	Pakistan
	Mr. ILLUECA	Panama
	Mr. BRILLANTES	Philippines
	Mr. WYZNER	Poland
	Mr. NEDBALLO	Ukrainian Soviet Socialist Republic
	Mr. MOROZOV)	Union of Soviet Socialist Republics
	Mr. SAPOZHNIKOV)	
	Sir Samuel HOARE)	United Kingdom of Great Britain and Northern Ireland
	Mr. BENTLEY)	
	Mrs. TREE	United States of America
	Mr. ARRAIZ	Venezuela

Observers from Member States:

Mr. ELIZUR	Israel
Mr. NAGASHIMA	Japan

PRESENT (continued):

Representatives of specialized agencies:

Mr. ZMIROU	International Labour Organisation
Mr. AKRAWI	United Nations Educational, Scientific and Cultural Organization
Dr. SACKS) Mrs. MEAGHER)	World Health Organization
Mr. HUMPHREY	Director, Division of Human Rights
Mr. DAS	Secretary of the Commission

Secretariat:

REPORT OF THE THIRTEENTH SESSION OF THE SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES (E/CN.4/815 and Corr.1; E/CN.4/L.589/Rev.1, E/CN.4/L.593/Rev.1) (continued)

Mr. PAZHWAQ (Afghanistan) asked the Chairman to fix a time limit for the submission of amendments to India's revised draft resolution (E/CN.4/L.593/Rev.1).

The CHAIRMAN suggested that all written amendments should be submitted before 4.30 p.m.

It was so decided.

Sir Samuel HOARE (United Kingdom) asked if the representative of India would have any objection to his suggestion that the word "for" in operative paragraph 1 of the draft resolution recommended to the General Assembly should be replaced by the word "and", which would, in his opinion, improve the text.

Mr. BHADKAMKAR (India) said that he had given careful consideration to all the suggestions made at the preceding meeting.

He thought that there was no need for the first preambular paragraph to mention the full title of the resolution adopted by the Sub-Commission, as suggested by the representative of France. It was true that the Commission could take note of decisions relating to specific matters, but it should adopt as general an approach as possible. He therefore thought it inadvisable to introduce a title into the draft resolution and regretted that he could not accept the French representative's suggestion. It seemed to him that the mention of chapter IX of the report of the Sub-Commission and of resolution 5 (XIII), which had been added to meet the French representative's request, made the first preambular paragraph sufficiently specific.

With regard to operative paragraph 3, which had occasioned so much controversy, he could not see that it could be regarded as imposing any obligation. It was simply a recommendation which Governments would be free to follow or to disregard. States would not be obliged to enact legislation; they would be invited to do so "where required". Furthermore, the adjective "severe" qualifying the word "penalties" had been replaced by the adjective "adequate". States would thus be completely free to follow whatever course they saw fit and to take their own traditions into account in acting on the Commission's recommendation.

(Mr. Bhadkamkar, India)

Finally, recalling that the French representative had asked which were the States referred to in operative paragraph 4, he explained that they were the States with which the non-governmental organizations and specialized agencies should seek to collaborate and that where such States were non-Members, the specialized agencies concerned should apply the provisions of their own constitutions.

Mr. CHENG PAONAN (China) asked why the word "racial" before the word "prejudices" and the words "national and religious" before the word "intolerance" had been omitted in the fifth preambular paragraph of the draft resolution recommended to the Assembly. Unless it was an inadvertent omission, those words should also be deleted from the third preambular paragraph.

The first three operative paragraphs mentioned "the Governments of all States"; he asked if that meant States Members of the United Nations.

Where operative paragraph 3 was concerned, he regarded it as a recommendation binding upon Governments. He had no objection to the Commission's recommending "the Governments of all States to discourage in every possible way the creation, propagation and dissemination, in whatever form, of such prejudices and intolerances" but he did not think that legislation should "provide for" penalties. He would therefore prefer that the words "providing for" should be replaced by the word "including" and hoped that the sponsor of the draft resolution would consider that suggestion.

Sir Samuel HOARE (United Kingdom) did not consider that the question of the wording of operative paragraph 3 was very relevant. Paragraph 3 was still, in his view, an unnecessary and somewhat dangerously detailed provision. If, as the Indian representative had said, the Commission should be guided by general principles, he would suggest that inasmuch as the text of operative paragraph 2 already included the essence of operative paragraph 3, the sponsor might withdraw the latter paragraph; if that was done, the draft resolution would in all probability be accepted unanimously. He also pointed out that the word "intolerances", which was in the plural in the English text of operative paragraph 2, should be in the singular.

He saw no reason why there should not be a clear indication in the first preambular paragraph of the subject of the Sub-Commission's discussions and would vote in favour of the addition suggested by the French representative.

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(Sir Samuel Hoare, United Kingdom)

The omission of the adjectives "racial" and "national and religious" in the fifth preambular paragraph, to which the representative of China had called attention, did not seem to him to be serious inasmuch as the meaning of the paragraph was sufficiently clear to obviate the necessity of repeating those adjectives.

Mr. JUVIGNY (France) explained that his purpose in pressing for the mention of the word "anti-Semitism" in the first preambular paragraph was to make it clear that the Sub-Commission had adopted its resolution 5 (XIII) in the wake of concrete manifestations of anti-Semitism. The question thus formed part of the background to the work of the Sub-Commission and the Commission and he thought it was essential to relate the draft resolution to a specific development.

With a view to satisfying all those who had objected to the wording of operative paragraph 3, he suggested the following text: "Recommends to the Governments of all States to discourage in every possible way, apart from such legislative measures, including those of a penal character, as have already been or may be adopted, the creation, propagation and dissemination of such prejudices and intolerance". That wording would have the advantage of making it clear both that the Commission took note of the fact that many countries had already enacted legislation to combat racial prejudices and national and religious intolerance, and that the States which had not adopted such measures were not obliged to do so.

He pointed out that the invitation issued to the specialized agencies should be interpreted in the light of the provisions of their own constitutions and procedures as regards relations with non-Members.

Mr. Ermacora (Austria), Vice-Chairman, took the Chair.

Mrs. TREE (United States of America) suggested that operative paragraph 3 should be deleted because she felt that operative paragraph 2 was sufficiently explicit in itself.

Mr. MOROZOV (Union of Soviet Socialist Republics) observed that, where the elimination of discriminatory practices and the vestiges of colonialism was concerned, certain Powers stooped to any argument, no matter how low, to render ineffective resolutions adopted by the United Nations. Indeed, it was the tragedy of the United Nations, a tragedy which certain Powers were doing their best to convert into a farce, that it was incapable of taking any steps to put an end to a disgraceful situation. In their efforts to weaken operative paragraph 3 of the

(Mr. Morozov, USSR)

Indian draft resolution, the representatives of the United States, the United Kingdom and France were posing as champions of the principle of freedom of expression. To invoke that principle to justify the dissemination of a work such as "Mein Kampf", which had inspired such wide-spread slaughter, was to distort its real meaning. A United States jurist had said that if a person cried "Fire!" in a crowded hall, thus causing a large number of deaths, he should be convicted as a criminal and not acquitted in the name of freedom of expression. Yet it was the latter position that seemed to have the support of the representatives of certain Powers, which objected to even the moderate wording of operative paragraph 3 of the Indian draft resolution. For his own part, he considered that provision an indispensable minimum and would vote in favour of it.

Mr. PAZHWAQ (Afghanistan) said that he would support the revised Indian draft resolution in its present form. While he had been the first to object to the original draft, as the representative of the United Kingdom had noted, the insertion of the words "where required", the substitution of the word "adequate" for the word "severe" and the explanations given by the representative of India had fully satisfied him. Nevertheless, in the hope that the draft could be adopted unanimously, he would suggest that operative paragraphs 2 and 3, which had similar but not identical objectives, should be combined, the most important words of operative paragraph 3, namely, "where required" and "providing for adequate penalties", being inserted in paragraph 2. If that suggestion was not accepted, he would vote in favour of the Indian draft resolution as it stood.

Mr. KITTANI (Iraq) considered that to substitute the word "and" for the word "for" in operative paragraph 1 of the Indian draft resolution would improve the style without changing the meaning. He suggested, however, that the word "for" should be replaced not only by the word "and" but by the words "and to".

He considered that the idea expressed in operative paragraph 3 was already to be found, stated more forcefully, in the last two clauses of operative paragraph 2, beginning with the words "to adopt legislation if necessary ...". Indeed, operative paragraph 2 opened with the words "Calls upon", which were much stronger than the word "Recommends", and the words "prohibit" and "combat" were both much stronger than "discourage". He therefore considered operative paragraph 3 to be superfluous, but would not oppose its retention if the majority of the members of the Commission so desired.

(Mr. Kittani, Iraq)

With regard to the French amendment, he shared the opinion of the representative of India, whose arguments he had found convincing. He pointed out that the Indian draft resolution did not refer to all the provisions of the Sub-Commission's resolution 5 (XIII), but only to operative paragraph 4 of that resolution, in which no mention was made of manifestations of anti-Semitism. However, paragraphs 177 to 189 of the Sub-Commission's report indicated that that resolution had itself been adopted after considerable discussion and had been the subject of a number of amendments. Moreover, as the representative of the United Kingdom had observed, the Commission on Human Rights could not adopt at its present session a draft resolution the scope of which would be practically identical with that of resolution 1510 (XV), which had been adopted by the General Assembly barely three months before. It was for the Commission to go a step further, and, as the Indian delegation had done, put the question on a more general basis. This would no longer be the case if a particular type of manifestation of racial hatred were expressly mentioned, especially since other manifestations of that kind had since taken place in various other parts of the world. It should also be noted that resolution 5 (XIII) of the Sub-Commission and the Indian draft resolution did not have the same title.

Mr. JUVIGNY (France) thought, as did the representative of Iraq, that the resolution to be adopted by the Commission on Human Rights should embrace all manifestations of racial hatred. He pointed out, however, that the Sub-Commission had referred to manifestations of anti-Semitism not only in the title of the resolution, but also in operative paragraph 3. The scope of the French amendment was extremely limited, since it applied not to the draft resolution that would be recommended to the General Assembly, but simply to the resolution of the Commission on Human Rights. Its purpose was to include the title of resolution 5 (XIII) of the Sub-Commission in the first paragraph of the preamble, which set out the previous history of the question, with the idea of paying the Sub-Commission a discreet tribute for the initiative it had taken in certain specific circumstances. The French amendment would not affect the substance of the draft resolution, that is, the steps that should be taken in future; it was exclusively concerned with the past.

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Mr. BHADKAMKAR (India) said he could see nothing in the draft resolution, of which his delegation was the sponsor, that could offend any State's sense of national sovereignty. Operative paragraph 3 was merely a recommendation. The words "if necessary" left each State the judge of whether it should or not introduce the appropriate legislation. The penalties in question could be of all kinds, and could include not only repressive measures but also, for example, re-educational measures.

He much admired the respect in which freedom of expression was held in the United Kingdom, and wished to stress the fact that, in that matter, Indian legislation had been modelled on the British. His delegation's intention was not, therefore, to invalidate the principle of freedom of expression, but merely to prevent the recurrence of manifestations of racial prejudice and religious intolerance. The words "in every possible way" left each State the choice of the means to be employed.

He agreed to substitute the word "and" for the word "for" in operative paragraph 1. For the reasons he had already given, he could not incorporate the French amendment in his draft. He considered that the Commission on Human Rights was in no way bound by the resolution adopted by the Sub-Commission.

The CHAIRMAN put to the vote the French amendment made orally at the 692nd meeting to add the words "concerning manifestations of anti-Semitism and other forms of racial prejudice and religious intolerance of a similar nature" to the first preambular paragraph.

The French amendment was adopted by 8 votes to 6, with 4 abstentions.

The preamble of the revised Indian draft resolution (E/CN.4/L.593/Rev.1), as amended, was adopted unanimously.

The CHAIRMAN put to the vote the United Kingdom proposal to delete operative paragraph 3 of the Indian draft resolution.

The United Kingdom proposal was not adopted, 8 votes being cast in favour and 8 against, with 2 abstentions.

The CHAIRMAN observed that the representative of the United Kingdom had requested a separate vote on the last sentence of operative paragraph 3, namely, "including the enactment, where required, of legislation providing for adequate penalties".

Mr. MOROZOV (Union of Soviet Socialist Republics), speaking on a point of order, said that such a vote was inadmissible and would be contrary to the rules of procedure. The Commission had, in fact, just decided not to delete operative paragraph 3 of the draft resolution; that meant that the paragraph must be retained in its entirety and could not form the subject of a further separate vote, which, moreover, had not been requested before the voting had begun.

Sir Samuel HOARE (United Kingdom) said he could not agree with that interpretation. His proposal had been that a vote should be taken on the question whether, irrespective of its terminology, operative paragraph 3 was necessary at all, in view of the existence of operative paragraph 2, and if the decision was in the affirmative, that a separate vote should be taken on the last sentence of the paragraph. He could see nothing contrary to the rules of procedure in that proposal.

Mr. PAZHWAQ (Afghanistan) held that a vote on the retention of a paragraph was tantamount to a vote on the text of the paragraph. Since the Commission had decided not to delete operative paragraph 3, that meant that its provisions had been adopted.

Mr. MOROZOV (Union of Soviet Socialist Republics) said that he was in agreement with the representative of Afghanistan. The Commission had voted on a concrete proposal and not in the abstract. To achieve his purpose, the representative of the United Kingdom should have asked first for a separate vote on the last phrase of operative paragraph 3, then on operative paragraph 3 as a whole.

Mr. BHADKAMKAR (India) also thought that, in principle, the Commission could not go back on its decision to retain operative paragraph 3, unless some acceptable way could be found of putting the United Kingdom representative's proposal to the vote.

Sir Samuel HOARE (United Kingdom) pointed out that the procedure adopted had not depended on himself; he had simply accepted the decision of the Chairman. If, instead of voting first on the question prejudicielle of whether to retain operative paragraph 3 in view of the existence of operative paragraph 2, the Commission had first voted on the last part of operative paragraph 3 and then on the paragraph as a whole, he would have had no objection.

Mr. JUVIGNY (France) pointed out that while there had not been a majority of votes in favour of deleting operative paragraph 3, there had not been a majority in favour of adopting it either. The Commission was obliged, however, under rule 5 of its rules of procedure, to take a decision on the point by a majority vote. Consequently, a separate vote had to be taken, if requested (rule 59 of the rules of procedure).

Mrs. TREE (United States of America) also thought that, under rule 59 of the rules of procedure, the Commission was perfectly in order in taking a separate vote on the last part of operative paragraph 3; its previous vote had been on the deletion of the paragraph as a whole.

Mr. MOROZOV (Union of Soviet Socialist Republics) objected to the interpretations of the rules of procedure given by the representatives of the United Kingdom, France and the United States. In asserting that operative paragraph 3 had not been adopted, the representative of France had disregarded the result of the Commission's vote. If the text of the paragraph as a whole had been put to the vote instead of the question of its deletion, it would not have been adopted either, on account of the tied vote, but that result would not have entitled the Commission to go back on its decision. The Commission must not become lost in a maze of legal fiction.

Nevertheless, if it would simplify the course of the debate, he would suggest that the Commission should take a preliminary procedural vote on the United Kingdom request that the last part of the paragraph should be voted upon separately.

Mr. KITTANI (Iraq) said that, according to the last paragraph of rule 60 of the rules of procedure, the United Kingdom proposal to delete operative paragraph 3 in fact constituted an amendment and not a request for a separate vote. That amendment had been rejected and as the Commission no longer had any amendment before it, the draft resolution should now be put to the vote in its original form in accordance with the first paragraph of that rule of procedure.

(Mr. Kittani, Iraq)

He fully supported the interpretation given by the representative of the Soviet Union, and pointed out that under rule 58 of the rules of procedure, the United Kingdom representative should have requested a separate vote on the last part of operative paragraph 3 before the voting had begun. The Commission's rules of procedure, unlike those of the General Assembly (rule 91) did not provide for a vote on a request for the division of a proposal, an omission which he thought regrettable.

Mr. CHENG PAONAN (China) thought that the interpretation given by the representative of Iraq merely complicated the position. In any event, it was customary for the Chairman to accede to any request for a separate vote even if it was made in the course of the voting.

The CHAIRMAN said that he agreed with the interpretation given by the representative of France and considered that a separate vote on the last part of operative paragraph 3 was perfectly in order. In his view, moreover, the representative of the United Kingdom had in fact requested a separate vote before the voting had begun.

Under rule 44 of the rules of procedure, members of the Commission might appeal against the ruling of the Chairman and that such an appeal must be put to the vote immediately.

Mr. PAZHWAK (Afghanistan) said that it was preferable for the Commission to explore all other possible procedures before requesting a ruling by the Chairman.

He therefore formally proposed, on a point of order, that the request for a separate vote on the last part of operative paragraph 3 should be put to the vote.

Mr. KITTANI (Iraq) supported the proposal of the representative of Afghanistan.

He regretted that the request for a separate vote on the last part of operative paragraph 3 had not been clearly announced before voting had begun.

He would point out, moreover, to the representative of China that even if it was customary to accede to requests for a separate vote at any time during the voting, it was undesirable that the Commission, after having decided not to delete the paragraph in question should then proceed to delete a part of it.

Sir Samuel HOARE (United Kingdom) said that he was also in agreement with the procedure proposed by the representative of Afghanistan.

He did not agree with the representative of Iraq because his request was for a vote on the deletion of operative paragraph 3 as a whole and in his view this was not an amendment under rule 60 of the rules of procedure. In any event, that was a point that had been decided by the Chairman.

The rules of procedure should be the Commission's servant and not its master; the Commission should not be precluded from voting on the question whether the last part of operative paragraph 3 should be retained.

The CHAIRMAN put to the vote the proposal that a separate vote should be taken on the last part of operative paragraph 3 of the draft resolution (E/CN.4/L.593/Rev.1).

The proposal was adopted by 9 votes to 7, with 2 abstentions.

Mr. KITTANI (Iraq) explained that he had voted against the proposal for the reasons he had already indicated, but he also wished to protest against the disregard of the rules of procedure by the United Kingdom representative, who had placed the Commission in its present difficult situation.

A vote was taken by roll-call on the last phrase of operative paragraph 3 ("including the enactment, where required, of legislation providing for adequate penalties").

Poland, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Poland, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Venezuela, Afghanistan, Austria, India, Panama.

Against: United Kingdom of Great Britain and Northern Ireland, United States of America, Argentina, China, Denmark, France, Netherlands, Pakistan, Philippines.

Abstaining: Iraq

The last phrase of operative paragraph 3 was rejected by 9 votes to 8, with 1 abstention.

The revised draft resolution of India (E/CN.4/L.593/Rev.1), as a whole, as amended, was adopted unanimously.

The meeting rose at 6.15 p.m.