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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES

Sixth Session

SUMMARY RECORD OF THE HUNDRED AND THIRTY-FIRST MEETING

Held at Headquarters, New York,
on Wednesday, 20 January 1954, at 2.50 p.m.

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PRESENT:

<u>Chairman:</u>	Mr. SORENSEN	Denmark
<u>Rapporteur:</u>	Mr. INGLES	Philippines
<u>Members:</u>	Mr. AMMOUN	Lebanon
	Mr. AWAD	Egypt
	Mr. EMELYANOV	Union of Soviet Socialist Republics
	Mr. HALPERN	United States of America
	Mr. HISCOCKS	United Kingdom of Great Britain and Northern Ireland
	Mr. KULAGA	Poland
	Mr. ROY	Haiti
	Mr. SANTA CRUZ	Chile

Representative of a specialized agency:

Mr. ARNALDO	United Nations Educational, Scientific and Cultural Organization
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Representatives of non-governmental organizations:

Category A:

Miss SENDER	International Confederation of Free Trade Unions
Miss KAHN	World Federation of Trade Unions
Mrs. FOX	World Federation of United Nations Associations

Representatives of non-governmental organizations:

Category B and Register:

Mrs. RUML	International Alliance of Women
Mr. LONGARZO	International Conference of Catholic Charities
Mr. BEER	International League for the Rights of Man
Miss VICKES	International Movement for a Brotherly Union of Races and Peoples
Mr. JACOBY	World Jewish Congress
Mr. PENCE	World's Alliance of Young Men's Christian Associations
Mr. RONALDS	World Union for Progressive Judaism
Mrs. SCHAEFER	World Union of Catholic Women's Organizations

Secretariat:

Mr. SCHWELB	Deputy Director, Division of Human Rights
Mr. LAWSON	Secretary of the Sub-Commission

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 (E/CN.4/Sub.2/152) (continued)

Draft resolutions (E/CN.4/Sub.2/L.63, L.65, L.66) (continued)

Mr. EMELYANOV considered that the remarks made by Mr. Halpern at the Sub-Commission's morning meeting had been prompted by hostile feelings and were openly slanderous. Nothing that he himself had said could have warranted such a reaction. The statement could therefore have been motivated only by a wish to create in the Sub-Commission a tension which he himself had done his best to avoid. He asked Mr. Halpern to amend the statements he had made at the preceding meeting.

With regard to his draft resolution (E/CN.4/Sub.2/L.63), it should be borne in mind that the United Nations had recognized the existence of various forms of discrimination, had been concerned about them and had decided to combat them; advocacy of national, racial or religious hostility that constituted an incitement to hatred or violence was one of the forms that discrimination could take; the question had therefore been placed on the agenda of the Sub-Commission's sixth session. The fact that the inclusion had been decided on hastily, when the session of the Commission on Human Rights was drawing to a close, was not an adequate reason for concluding that the Sub-Commission should not deal with the question. His draft resolution was therefore substantive and perfectly in order.

The draft had various advantages. First, it was simple and left out the idea of drafting a convention. Being aware of the constitutional, legislative and other difficulties of such a measure, he had merely drawn attention to the need to combat propaganda for racial and national exclusiveness, hatred and contempt. Secondly, the draft was flexible, since it imposed no obligations on governments, but enabled them to act in accordance with their legislation and their general situation. The draft had been criticized on the grounds that it was not constructive; it was difficult, however, to draw up a proposal which would offer so many possibilities for progress in that field. The criticism could be levelled more justifiably against the draft resolution submitted by Mr. Roy, which

proposed that the examination of the item should be suspended for the time being and was consequently unacceptable. There could be no question of postponing the item for an unspecified period, since it related to a task which had been entrusted to the Sub-Commission. The Sub-Commission should not await conclusions reached by other bodies, but should come to grips with the facts. From that point of view, Mr. Santa Cruz's draft resolution was a valuable contribution to the Sub-Commission's work and should be studied. Far from being contrary to his own draft, it merely served to complement it, since, before deciding to undertake concrete studies and make recommendations, the propaganda concerned must be condemned. He would therefore maintain his draft resolution. Some members of the Sub-Commission had alleged that the form of the draft made it unacceptable, because in fact they did not wish to study that highly important problem which had been included in the Sub-Commission's agenda. He was prepared to alter the form of the text in accordance with the Sub-Commission's wishes so as to make it possible to consider the substance of the question.

Mr. HALPERN said that he would refrain from replying in detail to Mr. Emelyanov's remarks. The official record of the morning meeting would show that it had been Mr. Emelyanov's statement that had forced him to cast aside the restraint which he had hitherto imposed on himself. At that meeting, Mr. Emelyanov had, in particular, made several attacks against the "Western democracies" and those attacks could not remain unanswered.

In stating his willingness to consider another draft resolution relating to the problems raised in Mr. Emelyanov's proposal (E/CN.4/Sub.2/L.63), he had had in mind a text inviting governments to desist from the use of agitation as an instrument of national policy.

With regard to the substance of the question, the Sub-Commission should use the utmost caution in considering any suggestion that governments should take measures restricting freedom of expression and freedom of the press. According to Anglo-Saxon tradition, which was also followed by many other countries, freedom of speech and freedom of the press were fundamental rights which, to use the words of a great American jurist Oliver Wendell Holmes, governments could infringe upon only in cases of "clear and present danger". While matters had not yet reached that degree of seriousness, the struggle against the bigots and cranks who were conducting propaganda for national

racial or religious exclusiveness, hatred and contempt must be carried on solely by means of the free dissemination of ideas. As the Supreme Court of the United States had said, freedom of expression and freedom of speech held a preferred position among the rights and freedoms to which citizens were entitled, because those two freedoms in themselves constituted safeguards against attempts to deny other freedoms. While minorities were free to criticize, orally or in writing, the racial or ethnic groups which formed the majority, they would in fact be able to defend themselves against any authoritarian tendencies which might appear among those groups. It was obvious that the totalitarian countries held the diametrically opposite view. Even in certain democratic countries, however, it was considered to be more important to combat propaganda for national, racial or religious hostility by means of legislation than to maintain the integrity of the principle of freedom of expression. The Sub-Commission's debates had thus shown a fundamental difference of concept and the prolongation of the discussion could lead to no useful results. In any case, the Anglo-Saxon countries could not consider changing, at the request of international organs, a position which was deeply-rooted in their traditions. They believed that education, not government intervention, was the best way in which to combat any advocacy of racial or national hostility. In the United States useful work was being done in that field by organizations such as the National Conference of Christians and Jews. Moreover, official bodies had been established in thirteen States and thirty municipalities to combat discrimination, particularly in employment. Among them was the New York State Fair Employment Commission one of whose members, Mrs. Simon, had participated in the Sub-Commission's work at its previous session. The Commission's purpose was to combat discrimination in employment, education and in places of public accomodation.

The draft resolution submitted by Mr. Santa Cruz (E/CN.4/Sub.2/L.66) provided for a thorough and up-to-date study of legislative and judicial practices. However, much of the necessary documentation was contained in the two memoranda (E/2046 and E/2046/Add.1) prepared by the Secretary-General in 1951 on the legal problems raised by certain amendments to the draft convention on freedom of information. Reference was made in document E/2046/Add.1 to the case of State vs. Klapprott which had received considerable publicity. It concerned a law of the State of New Jersey suppressing advocacy of hatred, abuse and hostility, which the courts had deemed unconstitutional. It might be sufficient to bring that documentation up to date, a **task** which the Sub-Commission itself might undertake.

The Sub-Commission should, in any case, abide by the stand it had taken earlier and refrain from going beyond the draft it had prepared at its fourth session which had merely provided for action against propaganda that constituted "an incitement to violence".

Mr. AMMOUN considered it regrettable that the Sub-Commission should have embarked upon a fruitless discussion on the problem of the balance to be established between the prerogatives of the State and the rights and freedoms of citizens, a problem which had preoccupied man for centuries. While the Anglo-Saxon countries might be primarily concerned with restricting the State's authority to intervene, many other countries stressed the need to protect their citizens from abuse of the freedom of speech. Under the Lebanese penal code, advocacy of racial or religious hostility was considered a criminal offence.

Welcome though the decision of the Commission on Human Rights with respect to article 26 of the draft convention on civil and political rights was, it should nevertheless be borne in mind that, even under the most favourable conditions, a considerable period would elapse before that convention came into force and was implemented. It might be wise, under the circumstances, to consider drafting, if the need should arise, a convention prohibiting any advocacy of national, racial or religious hostility that constituted an incitement to violence. Such limited convention might be more easily ratified than covenants relating to human rights.

To make that point clear, the following words should be added at the end of the operative part of the draft resolution submitted by Mr. Santa Cruz (E/CN.4/Sub.2/L.66): "in order that the Sub-Commission might, at its seventh session, propose a universal draft convention". Moreover, in the third line of the same paragraph, the words "of the legislative and judicial practice of the various countries", which were taken from the Secretary-General's memorandum (E/CN.4/Sub.2/152), should be replaced by "legislation and its application in various countries". The general sense of that sentence suggested the use of the word "suppress" instead of "incite to" in the fourth line.

Mr. INGLES agreed in principle with the members of the Sub-Commission as to the need to recommend suitable measures for the cessation of any advocacy of national, racial or religious hostility that constituted an incitement to hatred and violence jointly or separately.

He considered that Mr. Emelyanov's draft resolution (E/CN.4/Sub.2/L.63) was not acceptable for several reasons. In the first place, the Sub-Commission could not draw the conclusion embodied in paragraph 1 without having first gathered all the relevant data, either through a study of the situation in the various countries or through some other means. Otherwise, it would run the risk of confusing mere allegations with facts. Secondly, the operative part would be more acceptable if it were drafted in the spirit of article 26 of the draft covenant on civil and political rights for, in its present form, it was not drafted along the lines approved by the Commission on Human Rights. Even if accepted, that change would be inadequate, for in the draft covenant, article 26 was placed in a context in which provision was made for other rights and freedoms, such as freedom of information, and for safeguards regarding the application of the provisions in the draft covenant. Consequently, article 26, when taken out of its context and embodied in Mr. Emelyanov's draft resolution, would not adequately reflect the spirit of that covenant. Other United Nations organs had dealt with that problem. The United Nations Conference on Freedom of Information, far from recommending that governments should institute legislative measures, asked them to "encourage the widest possible dissemination of free information through a diversity of sources as the best safeguard against the creation of racial and national hatred and prejudice." Moreover, the Committee set up to prepare a draft Convention on Freedom of Information did not include in its list of limitations to which freedom of information was subject the fact that a publication advocated racial, national or religious hostility. The rapporteur on freedom of information had proposed a general formula upon which action might be based. His report would be examined by the Economic and Social Council in 1954. The Sub-Commission should therefore await the Council's decisions before formally recommending legislative measures to prohibit the advocacy of national, racial or religious hostility. Hence, from that point of view Mr. Emelyanov's draft resolution was premature.

With regard to the draft submitted by Mr. Santa Cruz (E/CN.4/Sub.2/L.66), the thorough study he proposed would enable the Sub-Commission either to make practical recommendations or to draft a special convention. Mr. Ammoun had stressed the latter point in his amendment. That amendment might be further completed by introducing the concept in paragraph 17 of the Secretary-General's memorandum (E/CN.4/Sub.2/152) as follows: "With a view to permitting the Sub-Commission to make practical recommendations and/or to draft a convention."

Mr. AMMOUN accepted the amendment.

Mr. SANTA CRUZ said that he wished to explain two points. It had been said that the measure suggested in his draft (E/CN.4/Sub.2/L.66) would duplicate action undertaken in other United Nations bodies. That criticism could more rightly be applied to Mr. Emelyanov's draft since its acceptance would have led only to another statement of principle against any advocacy of racial supremacy and hostility and of racial and national contempt. His own draft resolution had an entirely different object, in that it provided for a study which would lead to the adoption of specific practical measures.

On the question put by Mr. Hiscocks as to his notion of freedom of expression and thought, he too concerned himself closely with the principle of freedom of expression. For the past thirty years the citizens of his country had enjoyed complete freedom of expression.

He shared the conception of freedom of expression embodied in the provisions, and particularly in articles 19 and 29, of the Universal Declaration of Human Rights. Article 29 specified the limitations to which individuals might be subject in the exercise of their freedoms. Likewise, article 7 recognized the right to equal protection against any discrimination and against any incitement to such discrimination. There were thus cases in which freedom of expression must undergo certain restrictions to avoid interference with the rights and freedoms of others. To prohibit advocacy of the idea of genocide could not constitute an attack against freedom of expression. Mr. Halpern had not put the problem in its proper perspective. The Sub-Commission's terms of reference had been to study the measures to be taken for the cessation of a certain form of propaganda. It must carry out that duty in accordance with the provisions of the Charter and the principles set forth in the Universal Declaration of Human Rights, the draft covenants on human rights and the Convention on the Prevention and Punishment of

the Crime of Genocide. In the Commission on Human Rights, the representatives of countries of which experts taking part in the meetings of the Sub-Commission were nationals had decided to retain that item in the Sub-Commission's programme of work.

The problem as a whole should be considered on a world-wide scale. In many countries, it was urgently necessary to combat the advocacy of racial or religious hostility, and the racial or religious minorities were not adequately protected. Some members wished to turn a blind eye to the seriousness of the problem on the grounds that the debate had been used as a platform for propaganda. That argument was indefensible, and to adopt it would mean falling into the error to which many United Nations organs were prone. If the Sub-Commission accepted such an argument, it would be failing in its duty. His own draft resolution was, he felt, the only one which would enable the Sub-Commission to take effective action in the matter.

In the operative part of his draft resolution, paragraph 3 gave the United Nations an opportunity to do useful work by undertaking a general study which would involve no additional expenditure and would not throw too great a burden of work on the Secretariat. He thought that the time was not ripe to consider drafting a convention on that particular question. Such a decision could be reached only when the study was completed. Neither was the adequacy of the Convention on Genocide relevant: the general problem of discrimination must not be confused with the question of the Convention on Genocide.

Mr. ROY noted, now that the three draft resolutions before the Sub-Commission had been discussed, that if Mr. Emelyanov's draft were set aside, the other two drafts, namely Mr. Santa Cruz' and his own, were fairly similar. His draft (E/CN.4/Sub.2/L.65) did not aim at avoiding any discussion of the question, but at "suspending" it "for the time being". Moreover, he had, in an earlier speech, referred to the possibility of adopting one of the Secretary-General's suggestions. In a spirit of conciliation, he was prepared to make drafting changes to take into account the views of Mr. Ingles, Mr. Santa Cruz and Mr. Ammoun. For that purpose, he proposed to add a new paragraph at the end of the operative part of his draft resolution (E/CN.4/Sub.2/L.65/Rev.1).

Mr. HALPERN recalled that, at its ninth session, the Commission on Human Rights had decided to replace the words "to violence" by the words "to hatred and violence jointly or separately" in the Sub-Commission's programme of work. That was the crux of the matter. In most countries of the world, any direct incitement to violence was unlawful. On the other hand, the idea that any advocacy that constituted an incitement to hatred must be repressed was susceptible of various subjective interpretations and opened the door to the use of arbitrary methods. The wording of article 26 of the draft covenant on civil and political rights was thoroughly satisfactory in that respect because it prohibited "any advocacy that constitutes an incitement to hatred and violence". He would continue to oppose any attempt to extend that prohibition to another form of propaganda. In that respect, Mr. Santa Cruz's draft resolution could not be fully satisfactory because, in the third paragraph of its preamble, it included the words "for inciting to hatred and violence against particular groups".

Mr. SANTA CRUZ was surprised that his draft resolution should raise so many objections on the part of certain members of the Sub-Commission: it was directly inspired by the wording of the agenda item and therefore dealt essentially with the question entrusted to the Sub-Commission by the Commission on Human Rights for examination. He was, nevertheless, prepared to dispel those fears and doubts. He agreed to the amendments proposed by Mr. Ammoun and was making other drafting changes in the third paragraph of the preamble, and he hoped that the new text of his draft resolution (E/CN.4/Sub.2/L.66/Rev.1) would meet with the approval of the Sub-Commission as a whole.

Mr. HISCOCKS agreed with Mr. Santa Cruz on the importance of preserving freedom of information, but differed with him and the other members of the Sub-Commission on how it should be accomplished. The safeguarding of one of the fundamental principles essential to the existence of a free society was at stake. It would be recalled that freedom of expression had been totally suppressed in Germany under Hitler on the pretext of prohibiting propaganda harmful to the Government.

In that matter therefore the Sub-Commission was on particularly dangerous ground and should remember that the best means of preserving freedom of expression was to encourage it as much as possible, by deliberately removing any restrictions that might imperil it, provided that neither public order nor the security of the State was thus jeopardized.

Under those conditions, even in its amended form, Mr. Santa Cruz's draft resolution seemed unacceptable, because the reference to article 26 of the draft covenant on civil and political rights was retained which included the word "hatred"; in the circumstances, it might lead to the dangers to which he had pointed.

He did not believe that the Sub-Commission was in any way bound by the Secretary-General's suggestions and he thought that the wisest course would be for the Sub-Commission to decide to suspend any discussion of the question. But he would have agreed to Mr. Roy's draft resolution if its sponsor had kept it in its initial form, and he would vote for the original text if that part of the amended draft were voted on separately.

Mr. AMMOUN remarked that the Commission on Human Rights itself had made a point of including incitement to hatred in the study referred to as well as incitement to violence.

Mr. ROY stressed the fact that his draft resolution had the advantage of not mentioning, either directly or indirectly, the Convention on the Prevention and Punishment of the Crime of Genocide. He did not mean that he took no further interest in that Convention, of which his country was one of the originators: he simply thought it was neither sensible nor necessary to place the question under consideration on the same footing. That was the weak point of Mr. Santa Cruz' resolution which, although very similar to his own, differed from it in that particular. He therefore hoped that members of the Sub-Commission would agree to his own draft resolution and, to meet Mr. Hiscock's wishes if possible, he would ask for the first part of the amended draft, corresponding to the original draft, to be voted on separately.

The CHAIRMAN stated that the discussion on the substance of the question was closed and invited the Sub-Commission to vote.

Mr. EMEL'YANOV asked for the voting to be deferred to the next meeting, since he felt that the members of the Sub-Commission required some time to examine the various proposals before them more thoroughly.

Mr. SANTA CRUZ supported the request.

Mr. ROY pointed out that the draft resolutions submitted had already been thoroughly discussed, and thought that, to gain time, the members might agree to decide upon them immediately.

The CHAIRMAN stated that, under article 51 of the rules of procedure, the voting must be deferred to the next meeting because a member of the Sub-Commission had so requested.

It was so decided.

The meeting rose at 5.05 p.m.