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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 THIRTIETH MEETING

Held at Headquarters, New York,
on Wednesday, 20 January 1954, at 10.30 a.m.

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E/CN.4/Sub.2/L.65)

General debate (continued)

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)

Representatives of specialized agencies:

Mr. KLINEBERG)	United Nations Educational, Scientific
Mr. ARNALDO)	and Cultural Organization

Representatives of non-governmental organizations:

<u>Category A:</u>	Miss SENDER	International Confederation of Free Trade Unions
	Miss KAHN	World Federation of Trade Unions
	Mrs. FOX	World Federation of United Nations Associations
<u>Category B and Register:</u>	Mr. MOSCOWITZ	Consultative Council of Jewish Organizations
	Mrs. RUMI	International Alliance of Women
	Mr. LONGARZO	International Conference of Catholic Charities
	Miss ROBB	International Federation of University Women
	Miss SMITH)	International Federation of Women
	Mrs. SCHEFFLER)	Lawyers
	Mrs. SIMON)	

PRESENT: (continued)

Representatives of non-governmental organizations: (continued)

<u>Category B</u> <u>and Register:</u> <u>(continued)</u>	Mr. JACOBY	World Jewish Congress
	Mr. PENCE	World's Alliance of Young Men's Christian Associations
	Mr. RONALDS	World Union for Progressive Judaism
<u>Secretariat:</u>	Mr. LIN MOUSHENG	Acting 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; E/CN.4/Sub.2/L.63; E/CN.4/Sub.2/L.65)

General debate (continued)

Mr. EMELYANOV said that the history of the problem showed how important it was to combat the continued existence of propaganda directed against racial and national groups. The Charter had placed on record certain principles regarding non-discrimination, and the prerequisite of any sincere struggle was respect for human rights and a determination to eradicate all legislation perpetuating racial strife.

The Commission on Human Rights had repeatedly called for an end to persecution, and enjoined governments to take action. The General Assembly, at its last session, had likewise proclaimed that there could be no harmony in a multi-racial society until legislative action guaranteed equality for all. governments which perpetuated discrimination were openly violating the Universal Declaration of Human Rights, and the Assembly had called on them to discharge their duly assumed obligations.

The debates which had preceded the resolution adopted by the General Assembly at its last session on the racial situation in the Union of South Africa had revealed that much discrimination, incitement and hatred remained in the world. Though the Charter had been in existence many years, various categories of persons were still denied freedom because certain States entertained the notion that some natural law had vested in them the right to dominate others. The present standards among the newly emancipated peoples of Europe and the East proved that concept to be false. Nevertheless, the ruling circles in the Western hemisphere maintained their attitude. Their information services spoke of an alleged "yellow peril", and quoted the increasing birth rate in the East as evidence of the need for a preventive war. Some openly declared that the rich Western countries should be allowed to prosper at the expense of poorer peoples. Patriotic movements in oppressed countries were mercilessly exterminated.

As a citizen of a State which not only advocated equal rights for all but also made their enjoyment possible by legislative action, he invited the Sub-Commission to approve draft resolution E/CN.4/Sub.2/L.63 to draw attention to that continued disregard of the Charter and other international instruments.

Mr. HALPERN expressed his regret that a political element had crept into the Sub-Commission's discussions, which so far had been free of acrimony. Most of Mr. Emelyanov's remarks fell beyond the scope of the Sub-Commission, and the proposed draft resolution was itself defective since the Sub-Commission, which was composed of individually appointed experts, could not consider a proposal purporting to come from a government.

Mr. Emelyanov's allegations about campaigns of hatred had already been refuted in the General Assembly in the course of its plenary session of 30 November 1953.

It was true that there existed great disparity between the de jure and the de facto situation in the matter. The pious language of constitutions could not be reconciled with the direct testimony of witnesses. The present-day menace was inspired by governments, and he would support any resolution requesting the General Assembly to call on all governments to renounce the advocacy of hatred and violence against religious minorities as an instrument of national policy. Such government-induced attacks against minorities were a 20th Century phenomenon, motivated by two factors. In the first place the State concerned sought to make the minority a scapegoat, and so divert the attention of the mass of the population from its unhappy condition. Secondly, such a policy served to advance and impose a monolithic national culture, in that it prevented any group from sharing interests with the outside world.

The usefulness of the Sub-Commission's work lay in its initiation of world-wide studies. In the present case it might be advisable to approve a resolutions calling for a study of the advocacy of hatred and violence. If such a study were objectively prepared by neutral experts, who would seek evidence beyond constitutional provisions, the Sub-Commission could properly request the General Assembly to call on governments to take action.

At its fourth session, the Sub-Commission had discussed the propriety of municipal legislation dealing with individual agitation. Its subsequent proposal had been adopted by the Commission on Human Rights for inclusion in the draft covenant on civil and political rights as article 26. But that text did not in any way refer to any incitement to hatred between nations. The purpose of the proposed provision was to specify the powers of any government to suppress incitement within its own borders. If it had broached the international aspect, the Sub-Commission would have exceeded its competence.

Within the relevant sphere, article 26 specified governmental power by directly implying that a State could intervene when the advocacy of hatred and violence became an overt act. Intervention was, therefore, only justified when there was a clear and present danger that the words would incite to action.

The draft covenants on human rights would bind only the States that ratified them, and it might consequently serve a purpose if the Sub-Commission were to approve a resolution couched in the language of article 26, which struck the proper balance.

The true objective of the freedom of expression should be education and not propaganda. It was not, however, for any government to draw the distinction. In the words of the late Justice Oliver Wendell Holmes "Freedom of thought is the freedom of the thought we detest". Governments should take care not to damage the cause of freedom in attempting to protect it. Action to control thought would bring about a climate in which freedom could not survive. Governments contributed more to liberty by exercising restraint than power.

Mr. SANTA CRUZ regretted that there had been an unfortunate departure from the high level of objectivity that had hitherto characterized the work of the Sub-Commission and was compelled to acknowledge that Mr. Emelyanov was responsible for that change.

At the last meeting Mr. Roy had described the circumstances under which the Commission on Human Rights had assigned the item to the Sub-Commission. Whatever one's views of the propriety of the Commission's action, the Sub-Commission was now bound to consider the measures that might be taken to give effect to the Commission's wishes.

The first principle that should guide the Sub-Commission in the matter was that it should not duplicate what had already been done by other United Nations organs. The Secretary-General's memorandum (E/CN.4/Sub.2/152) summarized the history of the question and he was happy to note that after drawing attention to article 26 of the draft covenant on civil and political rights, it gave due emphasis to what had been done in connexion with the draft convention on freedom of information. The adoption of the Convention on the Prevention and Punishment of the Crime of Genocide, which might well become the most significant international instrument drafted by the United Nations, had already disposed of the most dangerous aspect of the item before the Sub-Commission. That Convention made "direct and public incitement to commit genocide" a punishable act.

Still, there were other aspects of the question that had been left open. Mr. Ingles had drawn attention to some of them at the last meeting and the Secretary-General's memorandum mentioned in paragraph 9 two draft amendments to article 2 of the draft convention on freedom of information which the committee concerned had failed to adopt, but which it had felt deserved thorough study in the interest of good international relations.

From the standpoint of avoiding duplication of past efforts, the resolution in document E/CN.4/Sub.2/L.63 did not represent a constructive approach. In the first place, in view of the Sub-Commission's character as a body of experts, he did not think that it should be examined unless it was re-submitted in the name of a member personally. It was not admissible if sponsored by a delegation. Apart from that consideration, the operative part of the proposed resolution was vague. The Sub-Commission was concerned only with incitement to hatred and violence as it related to the question of discrimination within States. Racial and national propaganda directed against another country did not fall within the scope of its work. That was a matter to be raised in the political organs of the United Nations, in all of which the USSR was represented.

For those reasons he could not support the so-called USSR draft resolution.

He did not favour the suggestion in the Secretary-General's memorandum of a possible special convention dealing with the substance of article 26 of the draft covenant on civil and political rights. Such a move might reduce the prospects for adoption of the draft covenant and weaken the effect of the Genocide Convention.

Paragraphs 16 and 17 of the Secretary-General's memorandum contained a good suggestion based upon an idea originally put forward by the French delegation in the Commission on Human Rights. A thorough and up-to-date study of the relevant law and judicial practice in various countries respecting the methods employed to incite hostility towards particular groups, and the remedies applied, might provide a basis for determining whether the Sub-Commission could formulate practical measures in the field under consideration. Such a study would help to clear up the long-debated question whether governments could legislate against incitement to hatred without infringing fundamental freedoms.

He would favour a study along those lines provided that it could be undertaken by the Secretariat as part of its regular work. He did not think that it would justify additional expense - in view of the financial implications of the studies already approved by the Sub-Commission.

Those were the considerations that had impelled him to submit the resolution in document E/CN.4/Sub.2/L.66.

Mr. KULAGA, after reviewing the history of the item, observed that no one could any longer deny that the advocacy of national, racial or religious hostility had the most serious consequences. The behaviour of the Nazis in their attempt to decimate the Polish people was an important lesson that should not be lost on the international community. Nor could it be said that such behaviour was a thing of the past. The racial situation in the Union of South Africa gave evidence of similar tendencies. In

commenting on the Bantu Education Act, the London Times had recently observed that the Act had been designed to perpetuate the inferior status of the native population. The treatment of colonial peoples also showed that national and social hostility persisted. It was important for the Sub-Commission to take a clear-cut stand on the question under consideration and it could do so by approving the USSR draft resolution. The Polish Government had already taken action along the lines indicated in the operative part by virtue of article 69 of its Constitution, which outlawed the advocacy of racial and national exclusiveness, and of a law prohibiting war propaganda. Those measures were strictly applied in his country and similar measures in other countries would contribute to international understanding.

Mr. AWAD hoped that Mr. Emelyanov would correct the form in which he had presented his draft resolution (E/CN.4/Sub.2/L.63), taking into account that the Sub-Commission was composed not of representatives of governments, but of individual experts.

The agenda item under discussion, far from being superfluous as Mr. Roy appeared to suggest (E/CN.4/Sub.2/L.65), indicated that the Sub-Commission should take some action within the framework of its general work programme. Its importance was such as to warrant a general declaration and appeal to all governments by the General Assembly along the lines of that proposed earlier by Mr. Halpern. Every government should be made to realize how vital it was to ensure fair and equal treatment of minority groups and not to encourage prejudice or incitement to violence. In one country, there was, for example, a separate law making it a criminal offence to create discord between religious groups.

The Sub-Commission should not be content with the insertion in the draft covenant on human rights of the text which formed its article 26. Pending acceptance of the covenant by all Member States, it could usefully work out a general declaration amplifying that text.

Mr. HISCOCKS also thought that Mr. Emelyanov's draft resolution should not have been filed in the name of the USSR.

The question before the Sub-Commission was not specifically within its province, did not require its urgent attention, and did not deserve priority over the item on measures for the protection of minorities (item 12), a question of immense importance for which it should reserve as much time as possible. As had been pointed out, many more important organs of the United Nations, from the General Assembly downwards, had discussed the matter of incitement to violence through hostility towards minority groups, and the Sub-Commission itself had taken effective action on the problem by bringing about the inclusion in the draft covenant on human rights of article 26. The suggestions for pursuing such action made by the Secretariat (E/CN.4/Sub.2/152) were out of place, and it was to be hoped that the Secretary-General would discourage such initiatives in future.

For all those reasons, he supported Mr. Roy's draft resolution (E/CN.4/Sub.2/L.65). Having achieved the inclusion in the draft covenant on human rights of article 26, the Sub-Commission should wait to ascertain what measure of success could be gained through implementation of that article. It was not precluded by Mr. Roy's text from returning to the problem at a later stage, but, for the time being, it was premature to suggest a special convention to deal with it. The most fundamental task remaining for the current session was the consideration of the whole complex problem of minorities and the measures that should be taken for their protection. The Sub-Commission should initiate discussion on it without further delay.

He could not support Mr. Emelyanov's proposal (E/CN.4/Sub.2/L.63) because, while he did not object to recommending legislation prohibiting incitement to violence where such legislation did not exist, he did not consider that hatred could be legislated out of existence without seriously endangering freedom of expression. Hatred defied definition; it could be

counteracted only by moral restraint, developed progressively over a period of many years concomitantly with greater respect for freedom of expression.

Mr. ROY shared Mr. Hiscocks' view that his own draft resolution (E/CN.4/Sub.2/L.65) was, in effect, a decision on priorities. With less than a week left before the close of the current session and the vital problem of the protection of minorities still to be dealt with, the Sub-Commission should not attempt to work out any further measures to put an end to incitement to violence; it had already achieved a great deal with the insertion of article 26 in the draft covenant on human rights. The most it might do, in the light of the actions of other United Nations organs on the question as set forth in the Secretariat memorandum (E/CN.4/Sub.2/152), was to add a paragraph to his draft resolution (E/CN.4/Sub.2/L.65) explicitly taking account of those actions, and perhaps another paragraph, recalling that the Convention on the Prevention and Punishment of the Crime of Genocide covered the question on the Sub-Commission's agenda. The purpose of his draft resolution was to stress that for the time being, the Sub-Commission felt enough had been done by the insertion of article 26 in the draft covenant, and that it had more important work to do to which priority should be given at the sixth session.

The meeting rose at 12.55 p.m.