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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES

Sixteenth Session

SUMMARY RECORD OF THE FOUR HUNDRED AND TWENTY-NINTH MEETING

Held at Headquarters, New York,
on Wednesday, 29 January 1964, at 3.5 p.m.

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PRESENT:

<u>Chairman:</u>	Mr. SANTA CRUZ	(Chile)
<u>Rapporteur:</u>	Mr. CAPOTORTI	(Italy)
<u>Members:</u>	Mr. ABRAM) Mr. FERGUSON)	(United States of America)
	Mr. AWAD	(United Arab Republic)
	Mr. BOUQUIN	(France)
	Mr. CALVO-CORESSI	(United Kingdom of Great Britain and Northern Ireland)
	Mr. CUEVAS CANCIN	(Mexico)
	Mr. INGLES	(Philippines)
	Mr. IVANOV) Mr. STROVSKY)	(Union of Soviet Socialist Republics)
	Mr. KRISHNASWAMI	(India)
	Mr. MATSCH	(Austria)
	Mr. MUDAWI	(Sudan)
	Mr. SAARIO	(Finland)
	Mr. SOLTYSIAK	(Poland)

Also present: Mrs. LEFAUCHEUX Commission on the Status of Women

Observers from Member States:

Miss KRACHT	Chile
Mr. SAJJAD	India
Mr. ROSENNE	Israel
Mr. SCHAAPVELD	Netherlands
Mr. QUILMBAO	Philippines
Mr. MATSEIKO	Ukrainian Soviet Socialist Republic
Mrs. NASON	United States of America
Mr. MELOVSKI	Yugoslavia

Representatives of specialized agencies:

Mr. FARMAN-FARMAIAN	International Labour Organisation
Miss BARRETT	United Nations Educational, Scientific and Cultural Organization
Mrs. MEAGHER	World Health Organization
<u>Secretariat:</u> Mr. HUMPHREY	Director, Division of Human Rights
Mr. LAWSON	Secretary of the Sub-Commission

DRAFT INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION (E/CN.4/Sub.2/234; E/CN.4/Sub.2/L.321, L.354, L.357) (continued)

The CHAIRMAN, recalling that article 1 of Mr. Ingles's proposed measures of implementation (E/CN.4/Sub.2/L.321) had been adopted and would become article X of the draft convention, invited the Sub-Commission to decide whether the remaining articles (2-18 inclusive) should be disposed of in the manner suggested in operative paragraph 1 of the draft resolution submitted by Mr. Cuevas Cancino (E/CN.4/Sub.2/L.357).

Mr. CALVO CORESSI, recalling that he had moved the adoption of those remaining articles prior to Mr. Cuevas Cancino's oral presentation of his draft resolution at the previous meeting, requested that the Sub-Commission should vote first on his motion.

Mr. ABRAM supported that request, particularly since the majority in the Sub-Commission had clearly accepted the articles.

Mr. OSTROVSKY cautioned against precipitating a vote on the remaining articles of Mr. Ingles's text. They had not been given adequate consideration and they contained a number of legal and textual inconsistencies; they could in no case be said to be an expression of the general views of the Sub-Commission. The only point on which general agreement had been reached was the need to include measures of implementation in the draft convention in order to make it more effective. That point was adequately covered in Mr. Cuevas Cancino's draft resolution. As regards the actual text of articles 2-18, it would be more prudent to transmit it to the Commission on Human Rights to facilitate its decision regarding further measures of implementation. Although Mr. Ingles had already agreed to amend article 2 so that the proposed committee for the settlement of disputes between States Parties to the convention would be a committee of conciliation and good offices rather than a fact-finding body, Mr. Ostrovsky, for one, still had serious doubts regarding the effectiveness of such machinery. Since the pressure of time prevented the Sub-Commission from amending Mr. Ingles's text, the wisest course to follow was that suggested in Mr. Cuevas Cancino's draft resolution (E/CN.4/Sub.2/L.357).

Mr. CUEVAS CANCINO said that his draft resolution, in its written form, was purely procedural: it took no stand on the substance of articles 2-18 of

(Mr. Cuevas Cancino)

Mr. Ingles's text but merely transmitted them to the Commission on Human Rights for approval, amendment or rejection. Since several members of the Sub-Commission had expressed serious reservations concerning the machinery of implementation proposed in article 2, he had omitted from his text the phrase describing the articles as "an expression of the general views of the Sub-Commission".

The CHAIRMAN, speaking in his personal capacity, agreed that the draft resolution as it stood was purely procedural and that its adoption would not commit the Sub-Commission to any position on the substance of Mr. Ingles's text. He recognized that most of the members, including himself, were prepared to approve that text, but he questioned the desirability of transmitting a text to the Commission on Human Rights as approved by the Sub-Commission when several members had serious reservations concerning it. In the circumstances, he was prepared to vote for Mr. Cuevas Cancino's proposal.

Speaking as Chairman, he pointed out that since that proposal did not require a decision being taken on the substance of Mr. Ingles's text, it should be considered as a previous question under rule 61 of the rules of procedure and be put to the vote before Mr. Calvocoressi's proposal on the same question. Of course, if Mr. Cuevas Cancino's text had included the qualifying phrase "as an expression of the general views of the Sub-Commission", it would have had to be regarded as a substantive proposal.

Mr. BOUQUIN, Mr. ABRAM and Mr. CALVOCORESSI stressed that in the absence of that phrase, they could not support Mr. Cuevas Cancino's draft resolution. For their part, they were fully prepared to approve articles 2-18 of Mr. Ingles's text, as amended.

Mr. SAARIO regretted that support of the draft resolution would preclude a vote on the substance of Mr. Ingles's text, which he was prepared to endorse.

Mr. CAPOTORTI appealed to the Sub-Commission not to yield to procedural considerations, but to be guided by the spirit of the debate on Mr. Ingles's text. In that spirit, it should reinstate the phrase "as an expression of the general views of the Sub-Commission" in Mr. Cuevas Cancino's draft, thus assuring it unanimous approval. Furthermore, it should strengthen that draft by inserting as the second preambular paragraph a reference to the Protocol adopted by UNESCO

providing machinery for the implementation of its Convention against Discrimination in Education (E/CN.4/Sub.2/234, annex III).

Mr. FLOQUIN supported those amendments.

Mr. CUEVAS CANCEINO accepted the amendments.

Mr. SOLTYSIAK pointed out that Mr. Ingles's text would not be said to be an expression of the general views of the Sub-Commission because it had not been supported by all the members. Those views, as stated in operative paragraph 2 of Mr. Cuevas Cancino's text, would be reflected in the summary records.

Mr. MUJAWI said he would support the draft resolution as amended, although he would have preferred more detailed consideration of Mr. Ingles's text so that there could be no question that it reflected the Sub-Commission's views.

The CHAIRMAN invited members to vote on Mr. Cuevas Cancino's text (E/CN.4/Sub.2/L.357) as amended by the insertion of the following clause as the second preambular paragraph: "Taking into account the Protocol instituting a Conciliation and Good Offices Commission to be responsible for seeking the settlement of any disputes which may arise between States Parties to the Convention against Discrimination in Education" and by insertion of the phrase "as an expression of the general views of the Sub-Commission" before "on additional measures of implementation ..." in operative paragraph 1.

He called for a separate vote on that phrase.

The phrase was adopted by 10 votes to 2, with 1 abstention.

The draft resolution as a whole, as amended, was adopted by 11 votes to none, with 2 abstentions.

Mr. SAARIO announced that if he had been present, Mr. Krishnaswami would have voted in favour of the draft resolution.

The CHAIRMAN said that the first resolution adopted by the Sub-Commission on the draft international convention on the elimination of all forms of racial discrimination (E/CN.4/Sub.2/L.354) would be amended by the addition of the words "including some measures of implementation" at the end of the operative paragraph and would go forward to the Commission on Human Rights as resolution I A (XVI). The draft resolution just adopted would be labelled resolution I B (XVI).

Mr. OSTROVSKY said that he had abstained in the vote because he considered that the proposed measures of implementation, which were long and complex, had not been thoroughly examined. So important a matter should be considered by a major United Nations body such as the Third Committee. There was general agreement that measures of implementation were required, but there were differences of opinion on the nature of those measures. In his view, the measures provided in Mr. Ingles's draft went too far. The adoption of implementation measures which were not in accordance with international law and practice might merely result in the convention remaining a dead letter.

He did not approve of the provision in article 2 that the Committee of Conciliation and Good Offices should be responsible for seeking the amicable settlement of disputes between States Parties concerning the interpretation, application or fulfilment of the Convention. Article 11 also provided that matters which had not been adjusted to the satisfaction of both parties could be referred to the Committee by either State by notice given to the Secretary-General of the United Nations and to the other State. That was a retrograde step, since it meant that disputes would be referred to a body which did not possess great moral authority and that they would be lost to sight. Nor did he consider article 14 to provide truly effective machinery for the purpose of securing the rapid and effective implementation of the Convention.

Passing on to articles 14-18 of Mr. Ingles's proposed text, he said that he could not see that the settlement of disputes between States in the rather unsatisfactory manner envisaged could contribute in any way to the elimination of racial discrimination. That, which after all should be the primary purpose of the convention, seemed to have been rather neglected. Furthermore, as article 18 provided that States would be free to resort to "other procedures", the Conciliation and Good Offices Committee would clearly be useless. Holding these opinions, he had naturally been unable to vote for a resolution which described Mr. Ingles's text as helping to make the draft convention more effective.

STUDY OF DISCRIMINATION AGAINST PERSONS BORN OUT OF WEDLOCK (E/CN.4/Sub.2/236 and Add.1; E/CN.4/Sub.2/L.355)

Mr. SAARIO, Special Rapporteur, said that he had followed the usual procedure for the preparation of preliminary reports.

The principal problem in connexion with discrimination against persons born out of wedlock was still the old contradiction felt to exist between the granting of equal status to such persons and the stability of the family. If all distinctions were removed, there was a fear that sexual irregularities would be encouraged. Chapter II of his study outlined general trends and illustrated the nature and scope of the problem. The tendency to stigmatize those who were regarded as having broken the rules sustaining family life was to some extent understandable, but it was regrettable that the full weight of disapproval generally fell on the children, who were not responsible for the sins of their parents. The dignity of the human person should be upheld, and such stigmatization should vanish. There were encouraging signs that a serious effort in that direction was being made on a world-wide scale to remove distinctions between persons born in and out of wedlock. The question needed further study, with a view to the solution of practical problems. He hoped that his report would provide the necessary background information for such study.

Mr. CALVOCORESSI found Mr. Saario's preliminary report (E/CN.4/Sub.2/236 and Add.1) informative and very useful, containing as it did background material showing different traditions in their proper perspective. The crux of the matter was still that the granting of equal rights to persons born out of wedlock must always, at least in appearance, clash with the institution of the family. He congratulated Mr. Saario on the preliminary work which he had done, and was convinced that the final report, when it appeared, would be a sound basis for making recommendations.

The draft resolution suggested by the Chairman (E/CN.4/Sub.2/L.355) required no comment.

Mr. CAPOTORTI congratulated Mr. Saario on his fine work. He would like to see a fuller account in the final report of the debates on the rights of the child in the Third Committee.

The CHAIRMAN thought that Mr. Saario had done excellent work, and deserved the thanks of the Sub-Commission. Thanks were also due to the Governments and non-governmental organizations which had co-operated in the study by supplying information. He put to the vote his draft resolution (E/CN.4/Sub.2/L.355).

The draft resolution was adopted unanimously.

STUDY OF EQUALITY IN THE ADMINISTRATION OF JUSTICE (E/CN.4/Sub.2/237 and Corr.1; E/CN.4/Sub.2/L.356)

Mr. MUDAWI, presenting the preliminary report on the item (E/CN.4/Sub.2/237 and Corr.1) in the absence of the Special Rapporteur, explained the procedure which Mr. Abu Rannat had followed, drawing attention in particular to annex I of the document, which contained a draft outline for the collection of information. If any member of the Sub-Commission had any comments, or wished to add anything to that outline, he would be pleased to transmit their suggestions to the Special Rapporteur.

Mr. CAPOTORTI felt that the definition of a tribunal in section I of the draft outline was too narrow, and should be expanded to include all bodies engaged in the settlement of controversies, including not only civil and administrative, but also fiscal tribunals. He would question the French translation of the English term "legal profession", in section II of the draft outline, and thought that a French term should be found more clearly conveying that the intended reference was to persons engaged in the legal profession. In connexion with section IV, he said that he would like the pre-trial proceedings and the conduct of the trial to be covered in respect of the civil, administrative and fiscal courts also.

Mr. FERGUSON said that both Mr. Abram and he took the greatest interest in the subject under discussion. The United States Government had made an extensive study of the matter, and he would ask Mr. Mudawi to transmit the results of that study to the Special Rapporteur.

Mr. INGLES would like to see certain additions to the subject-matter covered by the draft outline for the collection of information (annex I) With reference to section IV, he was particularly interested in securing information about guarantees for persons accused of crimes. Those should

(Mr. Ingles)

include protection against false arrest. With reference to paragraph 19 (g) of that section, he wanted to have some information on how detained persons would be protected against third degree and ill-treatment. Paragraph 18 (b) like paragraph 19 (c) should include a request for information on the provision of free legal assistance. He could not find any reference in the draft outline to the right to release on bail. He strongly endorsed the study of the problem of trial by publicity referred to in Section VI, paragraph 29, of annex I. In general, he approved of the form of the draft outline, and would be in favour of its adoption.

Mr. IVANOV attached great importance to the principle that all persons were equal before the law, and thought it should be developed further in the report. He considered that questions should be included to elicit information regarding the possibility of discrimination at all stages in judicial proceedings.

The CHAIRMAN called for a vote on the draft resolution he had submitted (E/CN.4/Sub.2/L.356).

The draft resolution was adopted unanimously.

CONSIDERATION OF THE FUTURE WORK OF THE SUB-COMMISSION (E/CN.4/Sub.2/233)

In reply to a question from Mr. CUEVAS CANCINO, Mr. HUMPHREY (Director, Division of Human Rights) explained that the Economic and Social Council so far had taken no final decision concerning biennial meetings for the functional commissions, and had never discussed a change in the annual pattern of meetings for the Sub-Commission. He understood, however, that when the Council next took up the question of the meetings of the functional commissions, it would consider the calendar of the subordinate bodies.

The CHAIRMAN observed that the views of the Council and the General Assembly on those matters often differed, and that within the General Assembly itself the Fifth Committee sometimes refused to recommend the allocation of funds necessary to carry out programmes recommended by the Third Committee. According

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(The Chairman)

to paragraph 3 of the Secretary-General's note (E/CN.4/Sub.2/233), the Sub-Commission would have a very full agenda at its seventeenth session. It would obviously need four weeks to deal with that agenda properly.

Mr. MATSCH remarked that, as the General Assembly had already determined the resources which would be allocated to the Sub-Commission, the latter had no choice but to accept the Secretary-General's statement, in paragraph 16 of his note (E/CN.4/Sub.2/233), that it would be able to initiate a new study only at its eighteenth session. He hoped, however, that the Sub-Commission would discuss the item on the protection of minorities at its next session and would give that item a higher priority so that it would have sufficient time for the discussion.

Mr. CALVOCORESSI said that paragraph 3 of the Secretary-General's note left no doubt that there would be more than enough for the Sub-Commission to do at its next session. It was disturbing that, with the word "minorities" in its title and with documents before it indicating complaints about the treatment of minorities, the Sub-Commission did nothing on the subject. The difficulty was that the Sub-Commission did not know how to cope with the problem of minorities. It should consider fully and in the near future how to approach that problem.

Mr. IVANOV noted that the Sub-Commission did not have sufficient time to deal with its work and that, for financial reasons, there was no ground to expect that it would be granted more time. It must therefore find ways in which to accomplish more in the time available. According to paragraph 3 of the Secretary-General's note (E/CN.4/Sub.2/233), the study of discrimination against persons born out of wedlock and the study of equality in the administration of justice were expected to occupy the Sub-Commission's attention for several sessions to come. In his view, it should be possible to deal with those studies at the seventeenth session. Certainly, Mr. Saario's reports on the former topic (E/CN.4/Sub.2/223, E/CN.4/Sub.2/236) were so clear that the final disposition of the study was unlikely to engage much of the Sub-Commission's time. One way to shorten the time required for the preparation of studies would be, instead of

appointing Special Rapporteurs, to entrust the drawing up of the working draft to the Secretariat. Thus, the Sub-Commission might now instruct the Secretariat to prepare and submit to the seventeenth session drafts on two very urgent topics: measures to be taken for the cessation of any advocacy of national, racial or religious hostility that constituted an incitement to hatred and violence, jointly or separately (agenda item 9); and economic and social consequences of racial discriminatory practices, on which the Secretary-General had already prepared an excellent note.

The CHAIRMAN pointed out that the Sub-Commission had unanimously adopted resolutions calling for the studies of discrimination against persons born out of wedlock and of equality in the administration of justice. The first study would require two more years of work, and the second would not be completed until 1964. Moreover, the Special Rapporteurs relied upon the assistance of the Secretariat in preparing their reports. The Secretariat could not prepare drafts for other studies unless it were given additional funds and staff.

Mr. IVANOV felt, nevertheless, that the work on the two studies now in preparation could be accelerated. He also thought that the Secretariat could play a larger part in the preparation of future studies. He urged the Secretariat to consider what measures it could take to expedite the Sub-Commission's work. For example, on the question of the economic and social consequences of racial discriminatory practices, it should not be necessary for the Sub-Commission to appoint a Special Rapporteur when the Secretariat could simply submit a more extensive report on that topic.

Mr. MATSCH expressed the view that a three-week session was too short and that in future the Sub-Commission should meet for four weeks every year. He did not think it necessary to adopt a formal resolution on the subject, but would request members whose Governments were members of the Economic and Social Council to raise the matter there.

Mr. HUMPHREY (Director, Division of Human Rights), replying to Mr. Ivanov, said that if the Secretariat were to prepare studies on, say, equality in the administration of justice and the protection of minorities, other work would have to be postponed. The decision would therefore have to be taken by the Commission on Human Rights and ultimately by the Economic and Social Council. Moreover, if an increase in the staff of the Division of Human Rights became necessary there would be financial implications.

Mr. CALVOCORESSI pointed out that Mr. Ivanov's proposal involved also the fundamental question whether the Sub-Commission wished to depart from the procedure it had so far followed. The great advantage of the present system was that each Special Rapporteur was an independent expert carrying out his own research and giving his own opinions. He had no doubt that if the Secretariat had the necessary resources it could produce admirable reports, but they would be reports of a completely different kind. In any event there was obviously no time to discuss the matter at the present session.

The CHAIRMAN asked whether the Sub-Commission wished to adopt a resolution requesting the Economic and Social Council to extend its future sessions from three weeks to four.

Mr. CALVOCORESSI said that he would abstain if a vote were taken on any such resolution.

Mr. CAPOTORTI stated that he too would abstain on any such proposal. All the members of the Sub-Commission were independent experts who had duties elsewhere. Moreover, he did not think it necessary for the Sub-Commission's sessions to be prolonged. He considered that the agenda of the 1965 session could be completed in three weeks.

The CHAIRMAN said that if no member wished to make a formal proposal he would regard the item as closed.

REVIEW OF FURTHER DEVELOPMENTS IN THE FIELDS WHICH HAVE ALREADY BEEN THE SUBJECT OF STUDY OR INQUIRY INITIATED BY THE SUB-COMMISSION (E/CN.4/Sub.2/232, 239)

The CHAIRMAN suggested that since the Sub-Commission had not sufficient time to make a detailed examination of the subject, it should merely take note of the documentation before it.

It was so decided.

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PROTECTION OF MINORITIES (E/CN.4/Sub.2/L.351 and Add.1)

The CHAIRMAN drew attention to document E/CN.4/Sub.2/L.351/Add.1, which related to the financial implications of the draft resolution submitted by Mr. Matsch (E/CN.4/Sub.2/L.351).

Mr. MATSCH recalled that in 1962, in 1963, and again at the present session, consideration of the item had had to be postponed for lack of time. He considered, nevertheless, that the item should be retained on the agenda; indeed it formed part of the Sub-Commission's terms of reference. The draft resolution he had submitted should not give rise to any difficulties. The cost involved would be small, since the publication would be photo-offset by the Secretariat. The text of the international instruments mentioned in the first preambular paragraph would be annexed. He had no doubt that such a publication would greatly facilitate understanding by the public of the issues involved.

He had been assured by the Secretariat that the estimated cost of \$2,500 could be met within the existing financial appropriation. He pointed out that the estimate referred only to the cost of the publication and made no allowance for receipts from sales, which he hoped would be sufficient to cover the costs or even to show a small profit.

Mr. CAPOTORTI had no objection to the proposal that the question of the protection of minorities should remain on the agenda. There appeared to be some feeling that the Sub-Commission had not given sufficient attention to the item. The fact was that each year some more urgent matter had had to be discussed, so that the less urgent items naturally had had to wait.

With regard to Mr. Matsch's draft resolution, he pointed out that documents E/CN.4/Sub.2/221 and E/CN.4/Sub.2/214 were already available to the public, although not in printed form. Moreover, the draft resolution requested the Secretary-General to print the memorandum and the compilation "within the frame of appropriated means". As far as he was aware, however, no funds were available for that purpose.

Thirdly, he questioned the necessity of annexing the texts of the international instruments, as proposed by Mr. Matsch. He felt that the adoption of the draft resolution would create an undesirable precedent.

Mr. MATSCH replied that he had frequently been asked where material on the protection of minorities could be found. There was no United Nations publication available to the public which listed the documentation on the subject.

He reiterated that no expenditure would be involved, since it was to be hoped that the initial cost of \$2,500 would be counterbalanced by receipts from sales and that there might even be a surplus.

He did not feel there was much danger of creating a precedent. What he was proposing was merely the publication in printed form of documents which already existed.

Draft resolution E/CN.4/Sub.2/L.351 was adopted by 8 votes to none, with 1 abstention.

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 observed that the item had been included in the Sub-Commission's agenda because a decision to that effect had been taken at the previous session. No draft resolution had, however, been submitted.

Mr. IVANOV proposed that the item should appear on the agenda at the Sub-Commission's seventeenth session.

It was so decided.

PERIODIC REPORTS ON HUMAN RIGHTS COVERING THE PERIOD 1960-1962 (E/CN.4/860, 861 and Add.1 and 2, E/CN.4/Sub.2/238)

The CHAIRMAN observed that since there had been no time to study the documents, the Sub-Commission was not in a position to reach any decision. If there were no objections the request to the Secretary-General to continue to submit the material to the Sub-Commission would remain in force.

It was so decided.

The CHAIRMAN announced that the Sub-Commission had completed its substantive work.

STATEMENT BY THE REPRESENTATIVE OF THE COMMISSION ON THE STATUS OF WOMEN

Mrs. LEFAUCHEUX (Commission on the Status of Women) thanked the Sub-Commission for having invited her to attend its meetings. She had been

(Mrs. Lefauchaux, Commission on
the Status of Women)

impressed by the high level of the debates and had noted the similarity between the forms of discrimination that were studied by the Sub-Commission and those which came within the province of the Commission on the Status of Women. The Commission would not meet during the current year, but the Sub-Commission's report would be circulated to all its members.

The CHAIRMAN thanked Mrs. Lefauchaux for her remarks and expressed the Sub-Commission's appreciation of the importance of the work done by the Commission on the Status of Women.

The meeting rose at 6.45 p.m.