

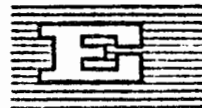
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Ninth Session

SUMMARY RECORD OF THE THREE HUNDRED AND SEVENTY-EIGHTH MEETING

Held at the Palais des Nations, Geneva,
on Friday, 8 May 1953, at 10.30 a.m.

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Mr. GEROY	Belgium
Mr. DIAZ-CASANUEVA	Chile
Mr. CHENG PAONAN	China
Mr. ABDEL-GHANI	Egypt
Mr. CASSIN	France
Mr. CHATTOPADHYAY	India
Mr. Abdur RAHMAN	Pakistan
Mr. INGLÉS	Philippines
Mr. DRUTO	Poland
Mr. RÖSSEL	Sweden
Mr. KRIVEN	Ukrainian Soviet Socialist Republic
Mr. MOROSOV	Union of Soviet Socialist Republics
Mr. HOARE	United Kingdom of Great Britain and Northern Ireland
Mr. HALPERN	United States of America
Mr. PORTEZA	Uruguay
Mr. MELOVSKI	Yugoslavia

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United Nations Educational, Scientific and Cultural Organization	Mr. BAMMATE

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Mr. ENNALS

Category B and RegisterCatholic International Union for Social
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Miss de ROMER

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Representative of the Secretary-
General

Mr. Das)

Mrs. Bruce)

Secretaries to the Commission

DRAFT INTERNATIONAL COVENANTS ON HUMAN RIGHTS AND MEASURES OF IMPLEMENTATION
(item 3 of the agenda) (continued):

Proposals for additional articles relating to the draft covenant on civil and political rights (E/CN.4/674) (continued):

Proposal by the Sub-Commission on Prevention of Discrimination and Protection of Minorities for a new article on condemnation of incitement to violence against any religious group, nation, race or minority (E/2256, E/CN.4/L.269, E/CN.4/L.270) (continued)

Speaking at the invitation of the CHAIRMAN, Mr. RIEGNER (World Jewish Congress) regretted that all efforts by the United Nations and other organs since 1947 had failed to produce a satisfactory solution of the problem of incitement to national and racial hatred. While the principle behind the proposals submitted was generally conceded, its application was thought to be so difficult and so likely to lead to abuse as to preclude the insertion of an article on the subject in a covenant or a legal text. The main argument of the exponents of that view was that the right to freedom of expression was so sacred that it should not be restricted, lest any such restriction might open the way to abuse.

He doubted whether a solution was really impossible. Article 16 of the draft covenant on civil and political rights so defined freedom of opinion and freedom of expression as to place certain restrictions upon them in order to avoid abuse, restrictions which were based on the requirements of public order, national security, public morals and respect for the rights of others. However, it had not been clearly stated during the discussion on article 16 that freedom of expression should also be restricted when it took the form of propaganda in support of racial or religious hatred or intolerance.

It was also true that article 4 of the draft covenant on civil and political rights was designed to prevent abuse of the rights referred to in the covenant, including the right to freedom of expression, so that it might be inferred that such a provision as that proposed by the Sub-Commission on Prevention of Discrimination and Protection of Minorities (E/2256, page 54) was unnecessary.

But his own view was that the hesitancy displayed by the Commission with regard to the article under discussion proved the inadequacy of article 4. Neither article 16, paragraph 3, nor article 4 sufficed to cover abuses of freedom of expression in respect of national, racial or religious hatred. The discussion had

also shown, he thought, that certain articles of the Convention on Genocide, and in particular articles 2 and 3, lacked clarity. It could therefore hardly be agreed that the question of propaganda in support of national, racial or religious hostility was covered by that convention. Accordingly, it was essential to include in the draft covenant on civil and political rights an article prohibiting incitement to racial and religious hatred, corresponding to article 14 of the draft covenant on economic, social and cultural rights.

Turning next to the alleged difficulty of applying such an article, he said that as a member of the minority which had suffered more than any other from the absence of provisions such as those under discussion and a third of whose members had suffered the supreme sacrifice during the Second World War, he would recall that for many years the words "Down with the Jews" had appeared in the Nazi publication, the "Stürmer", in letters over an inch high, and houses in Germany had been plastered with hundreds of thousands of posters calling for the death of the Jews or other minorities. It would be difficult to deny that such propaganda incited hatred or violence, and it would be doing the independent and enlightened judges of the democratic nations an injustice to suppose that they would have any difficulty in applying an article prohibiting it.

The United Nations should live up to its responsibilities in the matter. Those who had suffered most from racial or religious hatred would fail to understand how it was that the Commission on Human Rights could not find means to prohibit explicitly the actions which engendered it. It could do so either by inserting a new article in the covenant or by amending paragraph 3 of article 16, and he appealed to it to take either of those two courses.

Mr. KRIVEN (Ukrainian Soviet Socialist Republic) said that he fully agreed with the Soviet Union, Polish and Chilean representatives that an article condemning incitement to violence against any religious group, or against any national or racial group or minority, would advance the cause of peace and contribute towards the prevention of hatred and the reinforcement of economic and cultural relations between peoples. History provided many examples of racial persecution, perpetrated in the name of national or racial exclusiveness, and the memory of the suffering inflicted by the forces of Fascism during the Second World War, not least upon the Ukrainian people, was still fresh in men's minds. Nor had the danger of racial

hatred passed, although it was flatly contrary to the whole spirit and letter of the United Nations Charter. Its persistence was a threat to peace and to the independence and freedom of all nations. Since it was one of the main tasks of the United Nations and its organs to safeguard peace and to promote respect for human rights without distinction, it would serve the vital interests of many millions to insert in the draft covenants an article on the subject, as had been proposed by the Sub-Commission on Prevention of Discrimination and Protection of Minorities.

In the General Assembly and other United Nations bodies the Ukrainian delegation had always supported any proposal designed to forbid and eliminate discrimination of any kind, standing as it did by the principle that all peoples were equal and were entitled to the same treatment. Only thus could basic human rights and freedoms be fully assured in a modern society. The attitude taken by his delegation was entirely consistent with the provisions of the Ukrainian Constitution, which prohibited racial or any other kind of propaganda.

The Polish representative had clearly pointed out the shortcomings of the Sub-Commission's proposal. His amendment (E/CN.4/L.269) was a great improvement since it brought in the important question of national or racial exclusiveness, and removed the serious limitation of the original text, which appeared to prohibit only such manifestations of national, racial or religious hostility as constituted an incitement to violence. It had the support of the Ukrainian delegation.

The Australian and United Kingdom representatives, on the other hand, though evidently in sympathy with the spirit of the article and aware of the consequences of national or racial exclusiveness, were not, it seemed, proposing to follow the logical course of supporting the Polish amendment.

Sir Abdur RAHMAN (Pakistan) said that in Pakistan and India the law prohibited incitement to "disaffection" - a term which had been very widely interpreted. The word "hostility", used by the Sub-Commission, appeared to him preferable and sufficiently general to cover the notion of exclusiveness, hatred and contempt. He saw no need therefore for the Polish amendment, nor did he understand what useful purpose would be served by the insertion of the words "particularly of such a nature", which, if they had any effect at all, would limit the application

of the original text rather than extend it. He would accordingly support the Sub-Commission's proposal.

Mr. ABDEL-GHANI (Egypt) said that the article under consideration was based upon a humanitarian principle to which his delegation fully subscribed, particularly as an article similar in spirit, if not in language, had existed in the previous Egyptian Constitution and would be included in the new one. After mature reflection, however, he had come to the conclusion that his initial hesitation about accepting the text as it stood was well-founded. Clearly the Sub-Commission's proposal had been inspired by the bitter experience of grave persecution inflicted in the last two decades upon certain racial and religious groups. However, before accepting such a proposal, it was necessary to examine the effect it would have in certain countries. He was bound to point out that its adoption would mean for instance that an Egyptian author writing against the British occupation of Egypt would be punishable by law, as would a member of a racial or religious minority which was denied its rights as laid down in the covenants, if he fought for them. It was precisely by virtue of a similar provision that Mahatma Gandhi, the greatest champion of non-violence in politics, had been sentenced to a term of imprisonment.

The Chilean, Polish and Soviet Union representatives had referred to the dangers of propaganda, but it should be remembered that there was good as well as bad propaganda. Every national movement for liberation was necessarily accompanied by propaganda for the enlightenment of public opinion, and its purposes and effects were by no means always noxious.

As the principle underlying the proposed article was clearly acceptable to most members of the Commission, it might perhaps be wise to amplify the text so as to make clear that incitement to violence should be prohibited unless it was required for the protection or realisation of the rights enunciated in the draft covenants.

Sir Abdur RAHMAN (Pakistan) considered that the examples cited by the Egyptian representative were irrelevant to the issue. Mahatma Gandhi had been imprisoned not for incitement to violence, but for encouraging disaffection, which was punishable by law. The Egyptian representative appeared to have overlooked the fact that the State, being pledged to the maintenance of law and order, could not

countenance incitement to violence. Quite clearly some line must be drawn, and he believed it was successfully drawn in the original text, between the right to free speech, comment and criticism and the protection of public order.

Mr. MOROSOV (Union of Soviet Socialist Republics) said that the Egyptian representative's statement was based on a misunderstanding. The meaning of the original text proposed by the Sub-Commission was absolutely clear and he was unable to understand how it could have been interpreted as referring to national movements of liberation. For instance, the French people's action in taking up arms to drive out the occupation forces during the recent war, or the Ukrainian and Byelorussian peoples' resistance to the first onslaught of the German army, had represented a struggle for the liberty and independence of their motherlands. The war had been fought by the Allies not against the German people as such but in order to eliminate Fascism and destroy the Hitlerite war machine. A movement inspired by the highest of motives to resist or expel an invader had nothing whatever in common with the base actions bred by national or racial exclusiveness, hatred and contempt or religious hostility. Although he understood and respected the Egyptian representative's hesitations, he considered that there was no need to modify the text in the sense proposed.

He wished to make it clear that activity directed towards achieving or strengthening the independence of a country was perfectly consistent with the aims of the Charter.

Mrs. CHATTOPADHYAY (India) said her delegation was in agreement with the substance of the proposed article. It was a regrettable fact that conditions in some countries necessitated the prohibition by law of racial or religious hostility, and in India a law existed covering some of the ground covered by the present proposal. Religious and cultural conflicts were nearly always motivated by political considerations and formed a medium for propaganda in the hands of a small number of persons aspiring to sway the emotions of the masses.

The point raised by the Egyptian representative was an interesting one. In India in the past the word "disaffection" had often been very widely interpreted and used as a pretext for holding people indefinitely in detention. But the Egyptian representative's argument related to a situation different from that which

the draft article was intended to meet. The struggles going on all over the world were fundamentally political in nature and the racial element involved was incidental. The conflicts assumed a racial character because the leaders could thereby arouse emotions; but once the political cause had been removed the symptoms of racial strife would disappear.

Some of the rights to which the proposed article referred were already covered by other clauses of the covenant, and she would not therefore press for the adoption of the article were the majority of the Commission opposed to it. On the other hand, if the majority were in favour of including the article as drafted by the Sub-Commission, she was prepared to support it, and also to accept the Chilean amendment thereto (E/CN.4/L.270).

Mr. DRUTO (Poland) said he could not accept as justified the criticism that his delegation's amendment lacked precision and that its provisions would be difficult or impossible to express in terms of legislation. The tendencies and aspirations of every people were reflected in the national laws, and those laws were formulated in accordance with the sentiments and the understanding of the nation. He might cite as an example the Polish Constitution, in the drafting of which the ordinary people had actively participated: the people had had no difficulty in making plain their wishes and the rights they claimed, and the jurists had had no difficulty in finding the legal formulae to express those principles. Article 69 of the Constitution prohibited the advocacy of sentiments of hatred and contempt for racial or religious groups, and hatred and contempt were clearly defined so that the meaning of the article was understood by everyone. It appeared to him that some members of the Commission tended to make the charge of imprecision whenever they were unwilling that concrete steps should be taken to give effect to the legitimate aspirations of the people.

It had been suggested that because the repression of advocacy of hatred, exclusiveness and contempt involved issues of mental attitudes and morality, it could not well be achieved by legislation. But penal law was by no means merely an instrument of repression and punishment; it comprised many elements of an educative character. Just as certain iniquitous laws, such as the former "Nuremberg Laws" of Nazi Germany, and the discrimination laws at present operative in South Africa and elsewhere undoubtedly promoted sentiments of exclusiveness and hostility in one

section of the population against another, so it was possible for right sentiments to be fostered and wrong sentiments to be eradicated by the action of law. The very purpose of the covenant was that its principles should be incorporated in the national morality of the States accepting it and be made effective, if need be, by new legislation.

The representative of Pakistan had opposed the Polish amendment on the ground that it would detract from the effectiveness of the original text; but surely it was evident that acts of exclusiveness, hatred and contempt often constituted an incitement to violence. He had no objection to the Chilean amendment (E/CN.4/L.270), although to speak of "incitement to hatred and violence" seemed to confuse two different concepts. Incitement to violence was a positive act, whereas incitement to hatred meant the arousing of the sentiment from which violence sprang.

The vote on the Polish amendment would show which delegations were ready to tolerate the perpetuation of conditions which bred group hostility and permitted the subjection of one people to another.

In reply to a question from Sir Abdur RAHMAN (Pakistan), Mr. DRUTO said that the word "hostility" in his amendment conveyed a different concept to that conveyed by "exclusiveness, hatred and contempt".

Mrs. RÖSSEL (Sweden) said that while she had listened to the representative of the World Jewish Congress with great interest and sympathy, she was not convinced that the Sub-Commission's article would help to prevent a repetition of the fanatical persecution of which he had spoken. The effective prophylaxis lay in free discussion, information and education. There had recently been a case in Sweden of advocacy of national hostility amounting to incitement to violence; but in spite of pressure for repressive measures to be taken, the Government had preferred to preserve the right of freedom of speech and information on which a democratic society was based, notwithstanding the risks entailed. She regarded articles 4, 15 and 16 of the covenant as of great importance, both for the rights they embodied and for the limitations on the exercise of those rights in particular circumstances. Her delegation supported the principle of the proposed article, but would abstain in the vote. She would be obliged to vote against the amendments.

Mr. DIAZ-CASANUEVA (Chile) observed that the question under discussion did not directly concern Chile and the rest of Latin America, as questions of national,

racial or religious hostility did not arise there. The laws of the various Latin American countries forbade the abuse of propaganda, and criticism was permitted only so long as it did not degenerate into insults or incitement to hatred. Thus the Chilean delegation, in taking part in the discussion, desired merely to make a contribution to the study of a universal problem which had become exceptionally acute since the Second World War. In that way it hoped it would be promoting peace and democracy.

He had been particularly struck by the statement of the Egyptian representative in which the latter had expressed the fear that national liberation movements might be hampered by an article such as that before the Commission, and he would point out that during his country's struggles for independence incitement to violence had been perfectly justified. The Chilean delegation would be prepared to consider any amendment which might prevent the article from being open to such an interpretation.

The covenant, in his opinion, must entail a legal obligation upon governments to adopt certain legislative measures in the matter and translate them into practice. The Sub-Commission's proposal, which did no more than condemn the advocacy of national, racial or religious hostility constituting an incitement to violence, seemed to him not only inadequate, but even ineffectual and dangerous. That was why his delegation had submitted an amendment for the addition of the word "hatred", so as to strengthen the text and render it more effective. The Chilean delegation would have been willing to accept a text condemning all advocacy of national, racial or religious hostility, but it had consistently endeavoured to approach the Commission's work in a spirit of compromise and to take account of the different conceptions of its members. The least that the Commission could do, however, in its opinion, was to take action against propaganda inciting not only to actual violence, but also to hatred, which was at the root of violence. The terms "exclusiveness" and "contempt", used in the Polish amendment, struck him as too vague and subjective, while the Sub-Commission's text seemed too negative in tone, particularly in the light of the tragic events of the Second World War. The Commission must not await the effects of an evil before seeking to remedy it. It must take preventive action and attack the evil at its roots.

He went on to describe the powerful media currently available for propaganda and the role it played in forming opinion, particularly that of young people.

Propaganda was a weapon of mass psychological penetration that could arouse national, racial or religious enmity. It could do that the more easily, since the masses, as certain sociologists had shown, were specially receptive to negative doctrines of hatred. Racial hatred, once aroused, unleashed the worst instincts and succeeded in making racial extermination or the use of cremation ovens appear logical and natural. The authors of those crimes had been tools of the diabolical propaganda of the dictatorships.

He had himself had painful experience in the matter, for he had spent his youth in a country that had systematically organized a propaganda of hatred. He had seen the youth of that country poisoned by a hatred that made them ready to commit every form of violence. Day after day he had observed the way in which propaganda transformed the moral outlook of the man in the street and sometimes that of cultivated people. He had seen the way in which incitement to hatred gave birth to a collective psychosis that allowed the justification of violence and even of crime.

He thought it possible, by modern scientific methods, to specify the instances in which propaganda was particularly dangerous. That being so, the principle of laissez-faire was indefensible, and there must be provision for recourse to the law. Social techniques and legal methods had to be co-ordinated in the defence of liberty and democratic rights, and it had to be done while there was still time.

UNESCO could no doubt do much to combat hate-propaganda by its efforts on behalf of human solidarity and mutual respect; but the endeavours of sociologists were not enough; the action to be taken must be enforced simultaneously on the level of national and international legislation. He did not agree that it was impossible to define certain manifestations of hostility as an incitement to violence so as to bring them within the framework of law. Many examples could be cited of national legislation for the prevention of pernicious propaganda: for instance, the French law controlling the contents of children's books, the Canton of Fribourg law regulating stage and cinema performances and the Swedish law restricting the freedom of the Press in the matter of attacks on groups of people on grounds of race or religion. The draft convention on the international transmission of news and the right of correction (E/1065), which had been submitted by the Economic and Social Council to the General Assembly, also prescribed measures to combat the dissemination of false information.

Reference had been made to article 16 of the draft covenant on civil and political rights, where restrictions on the exercise of rights were recognized as necessary for reasons of public order, public health or morals. But members would surely agree that advocacy of hostility and incitement to violence were in the present age at least as great a menace to humanity as threats to public health or order. The Commission had just adopted a new article on protection against defamation of character; but the libelling of a whole group or nation was an even more serious matter than the defamation of an individual.

For all those reasons, he could not too strongly insist on the importance of including in the covenant the article with the amendment he had proposed.

Mr. ABDEL-GHANI (Egypt) proposed the insertion, in either of the texts before the Commission, after the word "violence" of the words "not aiming at the achievement or protection of the rights recognized in this covenant"¹⁾.

The meeting rose at 1.05 p.m.

1) The Egyptian amendment was subsequently circulated as document E/CN.4/L.271.