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COMMISSION ON HUMAN RIGHTS

Ninth Session

SUMMARY RECORD OF THE THREE HUNDRED AND SEVENTY-SEVENTH MEETING

held at the Palais des Nations, Geneva,  
on Thursday, 7 May 1953, at 3 p.m.

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Present:

Chairman: Mr. AZMI (Egypt)

Members:

Mr. WHITLAM	Australia
Mr. DIAZ-CASANUEVA	Chile
Mr. CHENG PAONAN	China
Mr. ABDEL-GHANI	Egypt
Mr. JUVIGNY	France
Mrs. CHATTOPADHYAY	India
Mr. INGLÉS	Philippines
Mr. DRUTO	Poland
Mrs. 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. FORTEZA	Uruguay
Mr. MELOVSKI	Yugoslavia

Representative of specialized agencies:

International Labour Organisation	Mr. VALTICOS
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Representatives of non-governmental organizations:

Category B and Register

Catholic International Union for Social Service	Miss de ROMER
Commission of the Churches on International Affairs	Mr. NOLDE
Consultative Council of Jewish Organizations	Mr. MOSKOWITZ
Co-ordinating Board of Jewish Organizations	Mr. WARBURG

International Council  
of Women

Mrs. EDER-SCHWYZER.

Miss GIROD

International Federation of Business  
and Professional Women

Mrs. SCHRADER-RIVOLLET

International Federation of Friends  
of Young Women )

Mrs. FIECHTER

International Federation of  
University Women )

International League for the  
Rights of Man

Mr. BALDWIN

Pax Romana

Miss ARCHINARD

Women's International League for  
Peace and Freedom

Mrs. BAER

World Jewish Congress

Mr. RIEGNER

World Union for Progressive  
Judaism

Mr. RONALDS

World Union of Catholic Women's  
Organizations

Miss de LUCY-FOSSARIEU

World Alliance of Young Men's  
Christian Associations

Mr. REYMOND

Secretariat:

Mr. Humphrey

Representative of the Secretary-General

Mr. Das )

Mrs. Bruce )

Secretaries to the Commission

DRAFT INTERNATIONAL CONVENANTS 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)

Mr. DRUTO (Poland) said there was no question that some provision on the lines of that proposed by the Sub-Commission on Prevention of Discrimination and Protection of Minorities (E/2256; page 54) was necessary for the effective protection of the different races or religious groups, that being one of the Commission's main tasks. But the proposed text, instead of going to the root of the evil, merely tackled its consequences, and the Sub-Commission's definition would only serve to hide the real nature of the problem.

His delegation therefore proposed that the Sub-Commission's proposal be amended to read:

"Any advocacy of national or racial exclusiveness, hatred and contempt or religious hostility, particularly of such a nature as to constitute an incitement to violence, shall be prohibited by the law of the State."(1)

The proposal thus amended would give specific meaning to the provision. The Sub-Commission's text referred only to actions constituting an incitement to violence, from which the conclusion could be drawn that propaganda advocating exclusiveness, hatred and contempt, would not call for legal action, provided it was not directly conducive to violence. Such a situation would be intolerable, for in practice it would be virtually impossible to draw the line accurately between propaganda and incitement to violence. He recalled the widespread use by the Nazi régime in Germany of nationalist propaganda by which the constant repetition of the theory of racial domination had led not only to the curtailment of human rights, but to the destruction of entire peoples. That lesson should be kept in mind, for a potential danger of the recurrence of such practices still existed.

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(1) The Polish amendment was subsequently circulated as document E/CN.4/L.269

Mr. DIAZ-CASANUEVA (Chile) said that the proposal before the Commission was of vital importance for the achievement of its aims, which were directly linked with the principles of tolerance and peace set forth in the Charter.

However, the proposal was so worded that it might be interpreted as not prohibiting propaganda which was not a direct incitement to violence. That was a serious defect, since there were some forms of propaganda which, while in appearance unaggressive, were so insidious as to constitute a very serious danger in the long run. It must be recognized that propaganda was today a social phenomenon the effects of which were so enormously enhanced by modern techniques that it had become a very dangerous weapon and one that could be trained on specific targets. Everyone still remembered the propaganda campaigns conducted in certain countries before the last world war with the object of mentally conditioning the masses for war - campaigns so well organized that they had actually induced collective hypnosis. Propaganda was a double-edged weapon, since it could be equally effective whether used in a good cause or for purposes detrimental to the general interest. Sociologists who had studied that modern phenomenon rightly claimed that skilfully directed propaganda could successfully nullify the effects or falsify the premises of education. Modern technical facilities for disseminating ideas, such as the press and wireless, were accessible to the young, they too were exposed to propaganda campaigns, which might be cleverly enough conducted to induce in the masses an attitude towards a nation, a race or a church that might end in an explosion of violence.

In its present form, the draft article proposed by the Sub-Commission made no provision for the prohibition of such propaganda under national law. His views on the subject were close to those of the Polish representative, whose amendment was of great value. But he thought the Sub-Commission's text would be appreciably improved and strengthened simply by inserting the words "hatred and" after the words "incitement to".

Mr. DRUTO (Poland) said that when the text of his proposal was distributed it would be seen that it covered the Chilean representative's point.

Mr. MELOVSKI (Yugoslavia), like the Chilean representative, felt that the matter dealt with in the draft article was one of major importance. In fact, the Charter of the United Nations expressly stated that the peoples of the United

Nations were determined "to practise tolerance and live together in peace with one another as good neighbours", while the Preamble to the Universal Declaration of Human Rights recognized that "it is essential to promote the development of friendly relations between nations". The States which had signed the Charter should work to translate those principles from the realm of ideas to the world of practical realities. The Yugoslav delegation therefore felt it essential for the draft covenant on civil and political rights to include an article of the kind proposed, although in its view the text proposed did not go far enough. Such an article ought to be directed not only against incitement to violence, but against all propaganda that constituted incitement to hatred and intolerance in every sphere. His delegation's attitude was based not only on the precepts of the United Nations Charter and the Universal Declaration of Human Rights, but also on the experience of the Yugoslav people, which for centuries had had to defend itself against the propaganda of aggressors. Yet another ordeal undergone by the Yugoslav people, namely the Second World War, had confirmed the need for protection against such propaganda, and for that reason the Yugoslav Parliament had introduced into its new penal code a special article prohibiting any incitement to racial or religious hatred.

Recalling General Assembly resolution 421 (V), Section B, paragraph 3(c), which stated "that in the drafting of the covenant account should be taken of the Purposes and Principles of the Charter of the United Nations and that these Purposes and Principles should be consistently applied and assiduously protected", he emphasized that in implementing that resolution the Commission was in duty bound to include in the draft covenant on civil and political rights an article condemning and prohibiting all propaganda that constituted incitement to hatred and violence.

Mr. WHITLAM (Australia) said that he spoke with diffidence because the draft article had been expanded to such an extent as to leave him rather at a loss. When he said that there was no likelihood whatever that a provision in that form would be embodied in Australian legislation, he hoped that that would not be taken as meaning that he approved of any of the activities which the proposal and the Polish amendment thereto were designed to prohibit. After a war entailing great loss of life and material destruction, caused by those very evils, Australia's

feelings were as deeply engaged as those of any country, and he was in full sympathy with any appropriate action which would help to eradicate the wicked things from which the countries of Eastern Europe in particular had suffered in the past. He was convinced, however, that legislation was not the best means of achieving the desired result. It was axiomatic in Australia that people could not be legislated into morality. To be effective, legislation of the kind proposed would inevitably involve censorship and repressive police action - a system utterly abhorrent to the Australian way of life. Indeed, the freedoms enjoyed by the Australian people derived directly from resistance to the imposition of directives, however well-intentioned, from above.

The Chilean and Yugoslav representatives had referred to the basic principle of tolerance endorsed by the Charter of the United Nations, and it went without saying that his delegation subscribed to that concept. The emphasis, however, was on the practice of tolerance, which, he was convinced, could be achieved primarily through other means than legislation, containing as that did the potential danger of censorship, the remedy might be worse than the evil it sought to remove. Accordingly, his delegation could not vote for the inclusion of the proposed article in its amended form.

Mr. DIAZ-CASANUEVA (Chile), referring to the revision of national history text-books undertaken by the United Nations Educational, Scientific and Cultural Organization and other bodies, a project which was generally accepted as necessary for dispelling hatred between nations and was making steady progress in the Latin-American republics, asked the Australian representative whether in his country legislative measures would be taken if it were found that school text-books were fomenting intolerance and national hostility.

Mr. WHITLAM (Australia) replied that although the methods of writing history were open to controversy, the kind of programme mentioned by the Chilean representative would undoubtedly have the support of the Australian people. In the hypothetical case mentioned, however, the remedy for such abuse would be an administrative matter in which the Ministries of Education, teachers and various voluntary organizations would all co-operate with full public support. Legislation, therefore, would be unnecessary; indeed, there would be opposition

to legislative measures as tending towards censorship, which, as he had already made clear, was anathema to the Australian people.

Mr. HOARE (United Kingdom) said the United Kingdom delegation's approach to the fundamental issue under discussion was similar to the Australian representative's. He entirely agreed with the Chilean representative's appreciation of the dangers of propaganda, which were today greater than ever, partly owing to the advance of applied science and partly owing to the unprecedented divisions in the modern world.

The proposal that States should be obliged to legislate against activities such as advocacy of exclusiveness or contempt must, however, be examined with great care before being voted into the covenant. The activities listed were clearly deserving of condemnation. But the question to be decided by the Commission was that of the proper steps that could be enjoined on States by international action. A major difficulty facing any society was the problem of the dissemination of ideas contrary to accepted beliefs or even inimical to social progress. In the past, there would have been common agreement that the free discussion of ideas was so important that the risks it involved should be taken. That, however, was a liberal attitude which, unfortunately, had been questioned in the contemporary world. It was a concept to which public opinion in his country gave strong approval, even to the extent of tolerating some degree of licence in order that discussion should be unfettered. Limits had to be set by law, but in his country those limits were extended as far as possible, and broadly speaking legal prohibitions related only to conduct insulting to persons or what was called conduct likely to cause a breach of the peace, that was to say, conduct which, whether or not it actually resulted in violence, a reasonable person would conclude to be likely to lead to violence.

If the criterion, instead of being specific - such as incitement to violence - were left in vague terms, the question would arise at what stage the expression of sincerely held opinion would enter the dangerous area of prohibited activities. Governments would thus be given the power to take a subjective decision on whether an opinion offended against an accepted canon. No more useful weapon could be handed to a government disposed to abolish free discussion, or, perhaps, tempted



to promote national hostility. Advocates of dangerous or objectionable doctrines should be defeated on their own ground, and nothing could be more dangerous than to place anybody of opinion under a taboo, and thus render its tenets immune from examination in open discussion. He would quote the example of the British Broadcasting Corporation's wireless discussions on controversial subjects, such as the racial question in South Africa, in which a hearing was always given to both sides. His reply to the Chilean representative would be that the power of democracy to combat propaganda lay in the last resort in the ability of its citizens to arrive at reasoned decisions in the face of conflicting appeals. In his opinion, the Polish and Chilean proposals, for the introduction of a subjective criterion which Governments could interpret at their will, would open the door to grave abuse. His delegation, therefore, could not accept them.

Mr. CHENG PAONAN (China) considered that it would be useful for members to keep in mind paragraph 3 of article 16 of the draft covenant on civil and political rights, which admitted only such restrictions as were necessary for the protection of national security, public order or public health or morals.

Mr. MOROSOV (Union of Soviet Socialist Republics) said that he had been unable to gather from the United Kingdom representative's remarks whether he intended to vote in favour of the Sub-Commission's text.

Mr. HOARE (United Kingdom) explained that he had not discussed in detail his delegation's attitude to the Sub-Commission's text because he had wanted first to comment on the proposed amendments thereto. The proposition on which the Sub-Commission's proposal was based was in itself unexceptionable; it corresponded with law and usage in the United Kingdom. Nevertheless, he had certain hesitations, due to the following considerations.

In most countries incitement to violence was an offence, whatever the circumstances in which it arose, since sanctions against such incitement were essential to the conduct of orderly society. The proposal, therefore, would add nothing to existing legislation. Moreover, if the problem were views from another angle, the text raised the same objections, though in a lesser degree, as he had already mentioned. A positive requirement on States to take repressive action, even if limited by the criterion of incitement to violence, might tempt some governments to take action contrary to the intentions of the authors of the

proposal; and the mandatory form of the article would give authority, since each government could interpret in its own way what degree of transgression constituted incitement to violence, for undesirable narrowing of the bounds of free speech and discussion. For those reasons he would feel obliged to abstain from voting on the Sub-Commission's proposal.

Mr. MOROSOV (Union of Soviet Socialist Republics) recalled that on several occasions in the past the Soviet Union delegation had submitted proposals of a similar nature. From what the United Kingdom representative had just said, as well as from the more guarded comments of the Australian representative, it was clear that history was repeating itself. Certain delegations were in the habit of expressing warm support for a principle, of declaring, for example, that propaganda was an evil and contrary to the principles of the Charter, and then of asserting that they were none the less unable to vote in favour of a concrete proposal aimed at eradicating the very evils they condemned.

The Australian representative had put the question on a somewhat different plane. He had said that legislation would not suffice to stamp out the evil. That was only too true. Legislation apart, all media must be used to eradicate national, racial or religious hostility: education, art, the wireless, the cinema - all must be harnessed in the struggle to attain the aim. Obviously the Sub-Commission's text rested on the assumption that appropriate measures must and would be taken to make racial hatred a thing of the past. He was unable, therefore, to accept the Australian representative's argument as a valid reason for rejecting the proposal. The next logical step would be to deny the usefulness of legislation as a means of ensuring law and order in society. Surely the Australian representative did not intend to take that nihilistic position. Although in some respects inadequate, the proposal, which was the outcome of the work of twelve experts representing twelve different countries, was fundamentally sound.

The United Kingdom representative's argument that a provision of that nature might lead to the imposition of restraints on free speech had often been heard in international forums. In point of fact, all national legislation, including that of the United Kingdom, forbade the propagation of certain ideas that were patently harmful to society. There were recognized limits to freedom of expression. As

had been said by a judge in the United States of America, if someone in a theatre shouted "Fire!" and caused a panic, he would be held responsible for his action even if the authorities were forced to think up a special law under which to charge him. Similarly, everyone to-day was aware of the appalling consequences of Fascist propaganda. Everyone knew how Hitler's "Mein Kampf" had poisoned peoples' minds, and what the cost of the dissemination of those insidious ideas had been in terms of suffering borne by the freedom-loving peoples. It was strange that the lessons of history should be so quickly forgotten. The United Kingdom representative's attitude on the freedom of speech was tenable neither juridically nor politically. The question for the Commission was whether it wished to take a step forward or not. No amount of talk about freedom of speech could conceal the real significance of the Sub-Commission's proposal or obscure the duty the Commission owed to the millions of people who pinned their hopes to the United Nations.

As far as he could tell without seeing them in writing, he believed that the Chilean and Polish amendments would improve the Sub-Commission's text.

Replying to an enquiry by Mr. DIAZ-CASANUEVA (Chile), Mr. DRUTO (Poland) said that the word "exclusivisme" (exclusiveness) in the French text of the Polish amendment might very well be replaced by the more appropriate term "ostracisme" (ostracism).

Mr. JUVIGNY (France) said he could not pass final judgment on the amendments to the text before the Commission, but thought the present an appropriate point at which to recall the attitude of the French delegation towards the problem raised by the Sub-Commission's proposal.

The Commission would recall that at a previous session, when article 17 of the draft covenant on civil and political rights had been under consideration, his delegation had supported the text now submitted by the Sub-Commission, but that the Commission had not seen fit to adopt it at that time. The French delegation had not changed its position, and was still in favour both of the principle proclaimed in the draft article and of the manner in which it was worded. The reasons for its attitude had been made clear on earlier occasions, and resembled those advanced by previous speakers. One of the reasons why his delegation supported the draft article was that in its opinion the Sub-Commission had given evidence of its ability

to draft such texts in a form which rendered them acceptable on humanitarian and technical grounds to the majority of the Commission's members.

Some representatives had, however, shown a desire to broaden the scope of the article, and had proposed certain additions to the text. While the French delegation was not opposed, a priori, to any such additions, it was only too well aware that "striving to better, oft we mar what's well", and that it was generally preferable to avoid unduly overloading a text with terms of vague connotation that were only liable to prove ambiguous.

The brilliant exposition of the Chilean representative had reminded him forcefully of those authors who, in their analysis of that vicious phenomenon of the modern world, propaganda, had very justly described it as mind-conditioning and spiritual rape of the masses. There could be no doubt that certain forms of propaganda were so insidious that they ended by setting up veritable conditioned reflexes in the individual, and could thus be regarded as coming within the scope of the problems under consideration by the Commission. Yet, deplorable as such methods undoubtedly were, the fact remained that it was extremely difficult to draft a satisfactory legal text prohibiting them. In every country there existed a legal tradition - that of the penal law - whose provisions, being of a punitive nature, had to be strictly interpreted by the courts. It was therefore possible that a text worded as the Polish delegation proposed would be considered too vague by criminal-court judges and would remain a dead letter.

At the same time, it was clear that countries could not be left defenceless against propaganda which constituted an incitement to violence. In French law, there were certain texts on the matter which dated from before the Second World War. Those texts were still applicable, and in cases of incitement to violence recourse to legal sanctions was not regarded by French legislative bodies as a violation of freedom of expression. In addition to legal sanctions there were other courses open, to which previous speakers had aptly referred in the course of the discussion. The Commission must not, however, blind itself to the fact that to transform the state of mind of a nation was a laborious task and, moreover, not solely a matter for the legislator, since what was required was a revolution not merely in legislation but also in national ways of thought.

In conclusion, the French delegation was in favour of the Sub-Commission's text, but was of course agreeable that thorough consideration should be given to the Polish and Chilean amendments thereto.

Mr. DRUTO (Poland) was unable to agree that his amendment was too vague, and would give rise to difficulties of judicial interpretation. In so far as it prohibited incitement to violence, the Sub-Commission's text was satisfactory, as the French representative claimed, without being in any way progressive. Its shortcoming was that it failed to deal with the causes of violence, namely the advocacy of racial exclusiveness, hatred and contempt.

In view of the importance of what was at stake, it was regrettable that several delegations declined to face the substantive issues, and took a non-co-operative attitude, although they knew perfectly well where the crux of the problem lay. He did not want to dot the "i"s and cross the "t"s, but would join the Soviet Union representative in reminding the Commission that its task was to move forward in the field of human rights.

He was grateful to the Chilean and Soviet Union representatives for their support of his amendment.

Mr. DIAZ-CASANUEVA (Chile) said that it would appear from the statements of the United Kingdom and Australian representatives that there were two different concepts about the role of legislation in respect of individual freedom. It was not a case of drawing a distinction between advocates of individualism on the one hand and those of State intervention on the other. It was a case, rather, of accepting the fact that contemporary conditions showed that the defence of democracy could not be left with the individual, even though it was on him, in the last analysis, that the essence of democracy depended. Intervention by the State was essential if the democratic way of life was to survive.

The United Kingdom representative had set a very interesting problem in asserting that hatred was subjective. He wondered what would be the opinion of lawyers on that point. As far as the individual was concerned, hatred was certainly subjective, but in the sense in which the term was used in the Polish amendment it referred to those developments which were ultimately inimical to friendly relations between nations. It was asked how could jurists define and

interpret hatred between countries, or between religions. It could as well be asked, how could they define such terms as "honour", "reputation" or "republic". Yet those terms certainly had their place in legislation.

His delegation would be unable to support the Sub-Commission's text unless it were amended, because it dealt only with incitement to violence and left the door open to all other forms of intolerance. It would consequently render no service to the cause of tolerance.

He agreed with the substance of the Polish amendment, but would like time to study its form; he would therefore reserve his detailed comments upon it.

The meeting rose at 5.50 p.m.