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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION  
AND PROTECTION OF MINORITIES

Eleventh Session

SUMMARY RECORD OF THE TWO HUNDRED AND FIFTY-SEVENTH MEETING

Held at Headquarters, New York,  
on Wednesday, 7 January 1959, at 10.45 a.m.

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PRESENT:

<u>Chairman:</u>	Mr. AWAD	(United Arab Republic)
<u>Rapporteur:</u>	Mr. SAARIO	(Finland)
<u>Members:</u>	Mr. BEYHUM	(Lebanon)
	Mr. CHAYET	(France)
	Mr. FOMIN	(Union of Soviet Socialist Republics)
	Mr. HISCOCKS	(United Kingdom of Great Britain and Northern Ireland)
	Mr. INGLES	(Philippines)
	Mr. KRISHNASWAMI	(India)
	Mr. MACHOWSKI	(Poland)
	Mr. ROY	(Haiti)
	Mr. SANTA CRUZ	(Chile)
	Mr. SPAULDING	(United States of America)
<u>Also Present:</u>	Miss MAÑAS	Commission on the Status of Women

Representatives of specialized agencies:

	Mr. METALL	International Labour Organisation
	Mr. GAGLIOTTI )	United Nations Educational, Scientific and Cultural Organization
	Mr. SALSAMENDI )	
<u>Secretariat:</u>	Mr. HUMPHREY	Director, Division of Human Rights
	Mr. LAWSON	Secretary of the Sub-Commission

## STUDY OF DISCRIMINATION IN THE FIELD OF EMPLOYMENT AND OCCUPATION

(E/CN.4/Sub.2/192; ILO Convention 111 and Recommendation 111; Reference Paper (Extracts from Provisional Records Nos. 21, 29 and 30 of the Forty-second Session of the International Labour Conference); E/CN.4/Sub.2/L.148/Rev.1, L.149) (continued)

Mr. SANTA CRUZ, presenting the revised draft resolution on the study of discrimination in the field of employment and occupation (E/CN.4/Sub.2/L.148/Rev.1), which he was sponsoring jointly with Mr. Roy, said that he would not comment on its text since the only changes which it contained were those which had been suggested by members of the Sub-Commission the day before.

Mr. SPAULDING said that in view of the objections to the wording of Mr. Krishnaswami's amendment E/CN.4/Sub.2/L.149 he now wished to propose, as an alternate suggestion, the addition, before operative paragraph 4, of a new operative paragraph reading as follows:

"Notes that these instruments call inter alia for the elimination of discrimination on grounds of national extraction and believes that the right of stateless persons to obtain employment should be given recognition under this aspect."

Mr. FOMIN remarked that he was in agreement with most of the points of the draft resolution under consideration, though he had important observations to make on the substance of the Convention worked out by ILO. Its operative paragraph 4 appeared to imply that, pending the receipt of a report from the Secretary-General at some unspecified date, the Sub-Commission was now prepared to rest on the ILO's laurels in a matter in which it had itself assumed the initiative. The Convention would not come into force for some time and a report on the extent of its implementation would apparently not be forthcoming for several years. Since it was already known that some States would not accede to it, and since the subject affected a very important and timely problem connected with the level of living and even the lives of many people, the Sub-Commission should make definite provision for further consideration of the matter in the near future, without the necessity of proposing a new item. Both the ILO and the Sub-Commission had a responsibility to follow up the action already taken with further efforts to eliminate discrimination in the field of employment and occupation, but the

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(Mr. Fomin)

Sub-Commission had a special responsibility by reason of its competence, the more so as it had been the initiator of the question. Moreover, members of the Sub-Commission had found that the ILO Convention was deficient in certain respects and he therefore proposed the addition of a fifth operative paragraph reading as follows:

"Decides to consider at its twelfth session the question of the additional steps which the Sub-Commission could take in order to contribute to the early elimination of discrimination in the field of employment and occupation".

Although he appreciated the intent of Mr. Spaulding's amendment, it was inappropriate to single out for comment one particular deficiency of the Convention, especially without proper consideration of the question and study of the reasons for the ILO's failure to mention stateless persons in the Convention. The matter should merely be drawn to the ILO's attention, as it was proposed to do in the case of the observations of the other members of the Sub-Commission.

Mr. HISCOCKS thought that the revised draft resolution represented a dignified attitude for the Sub-Commission to take towards the adoption by the International Labour Conference of such an important Convention and Recommendation. He appreciated the validity of the comments made by Mr. Krishnaswami and Mr. Spaulding on the position of stateless persons, but he hoped that they would not press for an amendment which would put out of balance a simple resolution intended only to set a stamp of approval on a great achievement.

Mr. KRISHNASWAMI emphasized that the problem of stateless persons, which he had raised at the previous session, was a very important one. He was perturbed by the definition given by the Drafting Committee of the Forty-second Session of the International Labour Conference of the expression "national extraction", as it appeared to imply that only discrimination against persons having a nationality should be prohibited, and that left unprotected the rights of the many people who had become stateless following the enactment of new nationality laws by newly independent States. The problem of such stateless persons was a new development to which attention should be drawn. He withdrew

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his own amendment (E/CN.4/Sub.2/L.149) in the hope that Mr. Spaulding's amendment would be adopted by the Sub-Commission.

Mr. SPAULDING said that he would not press his amendment in view of some of the comments which had been made on it.

Mr. MACHOWSKI said he believed it was not the intent of the Convention or of the Recommendation to exclude stateless persons from the benefit of the provisions to eliminate discrimination. The joint draft resolution was framed in general terms and he saw no reason to make a specific comment such as had been proposed by Mr. Spaulding; that was a dangerous precedent, which might lead to the inclusion of references to many other matters. The question of discrimination in the field of employment and occupation should be kept on the Sub-Commission's agenda and he therefore supported Mr. Fomin's proposal.

Mr. SANTA CRUZ said that, in view of the fact that the amendment proposed by Mr. Krishnaswami (E/CN.4/Sub.2/L.149) had been withdrawn and Mr. Spaulding's oral amendment was not being pressed, they could not be included in the draft resolution (E/CN.4/Sub.2/L.148/Rev.1). However, the point made by the two members should be clearly reflected in the summary records.

He agreed with Mr. Fomin that the campaign against discrimination in the field of employment and occupation was only just beginning and that both the Sub-Commission and the ILO had continuing responsibilities in that field; but the Sub-Commission did not need to bind itself to reconsider the question at a specific date and within prescribed time-limits. The joint draft resolution was so worded as to enable the Sub-Commission to take up the question again whenever that appeared to be advisable. Mr. Fomin had been anxious to place the item on the agenda of the twelfth session because of the situation in a certain country which had stated its intention not to ratify ILO Convention 111. There were two points he wished to make in that connexion. First, the Sub-Commission, like other United Nations organs, was not called upon to combat discrimination in any given country. It could therefore help to fight discrimination only by the adoption of recommendations and similar action. Secondly, as the Sub-Commission already had a very heavy agenda, it would be well advised to await information on the implementation of the ILO Convention before taking the question up again.

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(Mr. Santa Cruz)

As the ILO representative had stated at the previous meeting, the adoption of Convention 111 was only a starting point and the machinery to supervise its application had yet to be set up. He therefore felt that the paragraph proposed by Mr. Fomin was unnecessary.

Mr. ROY fully concurred in those views. Although he had the greatest sympathy with Mr. Krishnaswami's ideas, he did not feel his amendment would be in its proper place in the joint draft resolution.

Referring to Mr. Fomin's amendment, he said that there was nothing in the draft resolution to prevent the Sub-Commission from discussing at any time other measures to eradicate discrimination in the field of employment. He himself had envisaged a text of paragraph 4 which would have spelled out that point, but he had accepted the text proposed by Mr. Santa Cruz because it was simpler. He also, therefore, found Mr. Fomin's amendment unnecessary.

Mr. FOMIN stated that, while he was convinced of the good faith of the sponsors of the joint draft resolution, he feared that if no deadline was set for the resumption of the discussion, the item might be dropped from the agenda, particularly when the membership of the Sub-Commission changed, as the new members might not be fully conversant with the issue. Although the item might be discussed again when the Secretary-General's report on the implementation of the Convention and the Recommendation was available, he himself felt that it should be taken up earlier and he therefore pressed his amendment. Lastly, he agreed with Mr. Santa Cruz that the Sub-Commission would take no direct action to combat discrimination in any one country; he was not suggesting any interference in the domestic affairs of a Member State.

Mr. SPAULDING said that in view of the fact that operative paragraph 3 of the draft resolution (E/CN.4/Sub.2/L.148/Rev.1) provided that the Secretary-General should transmit the observations made by members of the Sub-Commission to the ILO, he formally withdrew his amendment.

Mr. INGLES said that at the last session of the Sub-Commission, he shared Mr. Hiscock's view that the term "national extraction" was broader than the term "national origin" because it covered both nationals and non-nationals.

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(Mr. Ingles)

Regrettably, the interpretation of the term "national extraction" given by the ILO Drafting Committee (Reference Paper, Provisional Record No. 21, paragraph 11) limited its application to nationals thereby excluding stateless persons. The difficulty might be surmounted either by rewording the definition of discrimination in article 1 of the Convention and paragraph 1 of the recommendation by changing the phrase "national extraction" to read "national origin or extraction", or by requesting the ILO to withdraw its restrictive interpretation. He had been unable to support the amendments proposed by Mr. Krishnaswami and Mr. Spaulding for technical reasons only; the points they raised were important.

Mr. CHAYET remarked that, as he would have had some misgivings in voting for Mr. Krishnaswami's amendment in view of the fact that it introduced considerations not connected with the subject under discussion, he welcomed Mr. Krishnaswami's decision to withdraw it. However, he fully sympathized with Mr. Krishnaswami's views.

He could not support Mr. Fomin's amendment, because it would be inadvisable to commit the Sub-Commission to resuming its discussion of discrimination in the field of employment at a specific time.

Mr. ROY said he too would be unable to vote for Mr. Fomin's amendment, as the Sub-Commission could not decide immediately that further steps should be taken at the twelfth session. So to decide before the ILO Convention had been ratified would indicate criticism of the ILO, which was unwarranted.

Mr. FOMIN felt that the actual session at which the discussion was to be resumed was immaterial. If the ILO Convention was not ratified by a sufficient number of States in which there was discrimination, the Sub-Commission might lose much time before resuming its consideration of the question. That was why he had proposed a specific time for the resumption of the discussion.

Mr. SAARIO thought that the Sub-Commission should consider what steps it should take to keep the question under review. That would be possible, under paragraph 4 of the draft resolution, when the Secretary-General's report came up for consideration. However, Mr. Fomin's amendment did not conflict with that provision and he saw no objection to it.

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Mr. METALL (International Labour Organisation) pointed out that the ILO had agreed to keep the United Nations informed regarding the implementation of the Convention and the Recommendation. It was therefore unnecessary to fix a definite date for the resumption of the discussion, particularly if the point was made clear in the Sub-Commission's report.

Mr. FOMIN said that, although he was grateful to the ILO representative for his statement, he still felt obliged to press his amendment, as the ILO had given no undertaking to submit a report by a specific date.

The CHAIRMAN put Mr. Fomin's amendment to the vote.

Mr. Fomin's amendment was rejected by 7 votes to 4, with 1 abstention.

The draft resolution (E/CN.4/Sub.2/L.148/Rev.1) was adopted unanimously.

Mr. FOMIN explained that he had voted for the draft resolution, despite its serious shortcomings, because he agreed with it in principle.

Mr. HISCOCKS said that he would have preferred operative paragraph 2 to be deleted, because, in view of the adoption of the Convention and the Recommendation by the ILO, it was unnecessary and inappropriate for the Commission on Human Rights to take the action called for in that paragraph. However, as he was strongly in favour of the rest of the draft resolution, he had voted for it.

The CHAIRMAN thanked the ILO representative for his valuable contribution to the discussion.

Mr. METALL (International Labour Organisation) congratulated the sponsors of the draft resolution on their text and said that he would transmit the observations made, which were constructive criticisms, to the ILO.

Miss MAÑAS (Commission on the Status of Women) welcomed the fact that the resolution stressed in operative paragraph 2 the need for the Convention to be applied as fully and as widely as possible. Resolutions adopted by other United Nations bodies contained a similar provision with regard to other international instruments.



STUDY OF DISCRIMINATION IN THE MATTER OF RELIGIOUS RIGHTS AND PRACTICES  
(E/CN.4/Sub.2/L.123/Add.1)

Mr. KRISHNASWAMI, Special Rapporteur, introducing the supplement (E/CN.4/Sub.2/L.123/Add.1) to his draft report, said that he had been unable to comply with the Sub-Commission's request for a comprehensive final report owing to circumstances beyond his control. He had been hampered primarily by the necessity of completing the country studies under preparation and of verifying those already completed, with a limited staff. Nevertheless, fifty-six country studies had been produced and submitted to the various Governments for verification and supplementary information. Of those, twenty-one had been completely verified and were available to members and other interested parties. Governments were being pressed to verify, and submit additional information on, the remaining studies. He had deliberately refrained from expanding or embellishing his original draft report in the light of the suggestions made by the Sub-Commission at the previous session both because to do so would have been of little value without all the verified country studies, and because the General Assembly had directed all United Nations organs to limit the mass of documentation produced. He had, however, taken into account the suggestion that inadequate attention had been given in the draft report to rationalism, free-thinking and agnosticism as against adherence to a religion; they had been covered in his consideration of freedom of belief.

The draft report he had submitted to the tenth session (E/CN.4/Sub.2/L.123) had been incomplete even as a preliminary paper; it had been a study rather than a report proposing action. Since discriminatory practices in the matter of religious rights often had social, historical and political causes and varied from country to country, he had preferred to cut through the mass of information in order to understand the question in its proper perspective before making any recommendations for action. Moreover, since all such recommendations had to be general, in that they could not be directed to any specific country, he had had to ascertain the common elements in various situations before presuming to recommend corrective measures.

His major task, in the supplement before the Sub-Commission, had been to present specific recommendations. Although discrimination against freedom of

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(Mr. Krishnaswami, Special Rapporteur)

thought, conscience, religion and belief still prevailed in only a few areas of the world, it represented a very serious and complex problem. He had tried to put the issues at stake into sharp focus and to define the scope of the problem. He had avoided references to particular countries: such information, where verified, had been circulated to the Sub-Commission; where merely compiled and not yet verified, it was available for examination upon request.

It would be seen from the supplement that the underlying issues had been classified as general or specific. However, the distinction could not always be maintained, especially since the denial of the right to maintain religion or belief was so basic a problem as to impinge on most of the specific aspects he had dealt with. He had given special consideration to the right in the case of children, who were unable to decide the matter for themselves. Normally, parents or guardians enjoyed a priority right to decide what religious education should be given to their children. However, children uprooted by war, revolution or the partition of a country torn from their homes presented a particularly difficult problem. While the presumed wishes of the parents and the family tradition were factors to be weighed, the spiritual as well as the material welfare of the children should be the paramount consideration. The misfortunes which had produced child refugees should not be used for proselytizing. On the other hand, there appeared to be no generally applicable solution to the problem. Workable solutions had to be developed in each specific case, bearing in mind the best interests of the child itself. In the circumstances, he had deliberately omitted from his list of basic rules any rule covering the situation of refugee children.

The basic rules (E/CN.4/Sub.2/L.123/Add.1, page 41 et seq.) had been derived from the principles contained in the draft International Covenants on Human Rights and in the Universal Declaration of Human Rights. They were based on the premise that freedom of thought, conscience, religion and belief should be as wide as possible and that the public authorities should direct their policies towards eliminating discriminatory practices, even if progress was very gradual. The rules were open to amendment by members of the Sub-Commission, and, subsequently, by the Commission on Human Rights. It was especially important that the Commission

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(Mr. Krishnaswami,  
Special Rapporteur)

should discuss them at an early stage because the Third Committee of the General Assembly, in its consideration of the draft Covenants, had almost reached the right relating to religious practices. It was also for that reason that there was a special urgency in completing the country studies; that information would greatly assist the Third Committee in its work. The basic rules were intended to permit the Third Committee, in its examination of the draft Covenants and particularly of article 18 of the draft Covenant on Civil and Political Rights, to formulate provisions designed to eliminate all discriminatory practices in matters of religion and belief as rapidly as possible. He hoped that the basic rules would be assimilated in the draft Covenants, as otherwise a separate convention safeguarding religious rights might be necessary.

Since there was no specialized agency competent to deal with the matter of religious rights, the United Nations had a special responsibility to keep the question under constant review. The elimination of discriminatory practices would be a slow process, but it would never cease to be urgent. Fundamentally, the task of the Sub-Commission was to discuss the basic rules, some of the underlying issues and, in particular, its future work on the item. It should concentrate its attention on the provisions of the draft Covenants relating to religious rights, determine to what extent they took account of the basic rules, and, where there were gaps, recommend to the Commission on Human Rights how they should be filled. Although those measures, in themselves, might not bring about the eradication of discriminatory practices in the matter of religious rights, by directing attention to the problem they might stimulate progress. Frequently, the attention focussed on a particular social phenomenon went far towards awakening public opinion and eventually bringing about beneficial legislative changes. Moreover, progress in one field of social activity was bound, in the long run, to affect progress in other areas, particularly as regards political and economic rights.

The meeting rose at 12.45 p.m.