

UNITED NATIONS  
ECONOMIC  
AND  
SOCIAL COUNCIL



Distr.  
GENERAL

E/CN.4/764  
E/CN.4/Sub.2/192  
14 February 1958  
ORIGINAL: ENGLISH

COMMISSION ON HUMAN RIGHTS  
SUB-COMMISSION ON PREVENTION OF  
DISCRIMINATION AND PROTECTION  
OF MINORITIES

REPORT OF THE TENTH SESSION OF THE SUB-COMMISSION ON PREVENTION  
OF DISCRIMINATION AND PROTECTION OF MINORITIES TO THE COMMISSION  
ON HUMAN RIGHTS

New York, 13 January to 7 February 1958

Rapporteur: Mr. José D. INGLES

# TABLE OF CONTENTS

<u>Chapter</u>	<u>Paragraphs</u>	<u>Page</u>
I. Organization of the session . . . . .	1 - 14	6
A. Opening and duration of the session . . . . .	1 - 2	6
B. Representation at the session . . . . .	3 - 8	6
C. Election of Officers . . . . .	9	8
D. Meetings, resolutions and documentation . . . . .	10 - 13	8
E. Commemoration of the Tenth Anniversary of the Universal Declaration of Human Rights . . . . .	14	9
II. Agenda . . . . .	15 - 18	11
III. Invitation to the Commission on the Status of Women . . . . .	19	13
IV. Communications relating to prevention of discrimination and protection of minorities . . . . .	20 - 22	14
V. Study of discrimination in the field of employment and occupation . . . . .	23 - 80	15
Introduction . . . . .	23 - 27	15
A. General debate . . . . .	28 - 31	16
B. Consideration of the proposed convention concerning discrimination in respect of employment and occupation . . . . .	32 - 62	18
1. Scope of the proposed convention . . . . .	33 - 36	18
2. Provisions in the proposed convention . . . . .	37 - 62	19
C. Consideration of the proposed recommendation concerning discrimination in employment and occupation . . . . .	63 - 74	26
D. Consideration of draft resolution . . . . .	75 - 80	30
E. <u>Resolution A</u> , on the study of discrimination in the field of employment and occupation . . . . .	80	31
VI. Study of discrimination in the matter of religious rights and practices: draft report by the Special Rapporteur . . . . .	81 - 129	34
Introduction . . . . .	81 - 84	34

TABLE OF CONTENTS (cont'd)

<u>Chapter</u>	<u>Paragraphs</u>	<u>Page</u>
A. General debate . . . . .	85 - 89	35
B. Main issues raised in examination of the draft report . . . . .	90 - 116	36
1. The meaning of "religion or belief" . . . . .	90 - 91	36
2. Classification of countries on the basis of the relationship between State and religion . . . . .	92 - 94	36
3. The collection of statistical data concerning religious groups . . . . .	95 - 96	37
4. The problem of the loyalty of minority groups . . . . .	97 - 98	37
5. The meaning of discrimination in the matter of religious rights and practices . . . . .	99 - 102	38
6. Measures for the elimination of intolerance by society with respect to religion or belief . . . . .	103	39
7. The question of conscientious objection . . . . .	104 - 106	39
8. Dissemination of religion or belief . . . . .	107 - 108	40
9. Management of religious affairs . . . . .	109 - 112	41
10. General trends and conclusions . . . . .	113	42
11. Suggested additions to the draft report . . . . .	114 - 116	42
C. Discussion of the method to be followed in completing the study . . . . .	117 - 122	43
D. Consideration of the draft resolutions . . . . .	123 - 129	45
E. <u>Resolution B</u> , on the study of discrimination in the matter of religious rights and practices . . . . .	129	46
VII. Study of discrimination in the matter of political rights . . . . .	130 - 160	48
Introduction . . . . .	130 - 131	48
A. General views of the Sub-Commission on the interim report . . . . .	132 - 135	48
B. Main issues raised in examination of the interim report . . . . .	136 - 154	49
1. Terms of reference of the Special Rapporteur . . . . .	136 - 138	49

TABLE OF CONTENTS (cont'd)

<u>Chapter</u>		<u>Paragraphs</u>	<u>Page</u>
	2. The meaning of the term "Discrimination" in the matter of religious rights and practices . . . . .	139 - 140	50
	3. Exercise of political rights in territories other than independent States . . . . .	141 - 142	51
	4. Information regarding separate representation of distinct groups of people . . . . .	143 - 147	52
	5. Structure and legal status of political parties . . . . .	148 - 150	53
	6. Aims of the study . . . . .	151 - 152	53
	7. Co-operation with the Commission on the Status of Women . . . . .	153 - 154	54
C.	Assistance to the Special Rapporteur by the secretariat . . . . .	155 - 159	54
D.	Consideration of draft resolution . . . . .	160	56
E.	<u>Resolution</u> . . . . . the study of discrimination in the . . . . . of political rights . . . . .	160	56
VIII.	Future studies in the field of discrimination . . .	161 - 188	58
	Introduction . . . . .	161	58
A.	Action taken by the United Nations and by UNESCO with regard to the study of discrimination in education . . . . .	162 - 167	58
B.	Methods of work of the Sub-Commission . . . . .	168 - 173	59
	<u>Resolution D</u> , on methods of work of the Sub-Commission . . . . .	173	61
C.	The next study to be undertaken by the Sub-Commission . . . . .	174 - 182	62
	<u>Resolution E</u> , on the study of discrimination in the matter of the right of everyone to leave any country including his own and to return to his country . . . . .	182	64
D.	Future work programme of the Sub-Commission . . . . .	183 - 188	65
	<u>Resolution F</u> , on the future work of the Sub-Commission . . . . .	188	66

TABLE OF CONTENTS (cont'd)

<u>Chapter</u>	<u>Paragraphs</u>	<u>Page</u>
IX. Consultation regarding the convening of a second conference of non-governmental organizations interested in the eradication of prejudices and discrimination . . . . .	189 - 200	68
Introduction . . . . .	189 - 192	68
A. Statements by representatives of non-governmental organizations . . . . .	192 - 193	69
B. View of the Secretary-General . . . . .	194 - 195	69
C. Discussion in the Sub-Commission . . . . .	196 - 199	70
D. Consideration of the draft resolution . . . . .	200	71
E. <u>Resolution G</u> , on the convening of a second conference . . . . .	200	71
X. Adoption of the report of the Sub-Commission to the Commission on Human Rights . . . . .	201 - 204	73
ANNEX: List of documents before the Sub-Commission at its tenth session		

## I. ORGANIZATION OF THE SESSION

### A. Opening and duration of the session

1. The Sub-Commission on Prevention of Discrimination and Protection of Minorities held its tenth session at the Headquarters of the United Nations, New York, from 13 January to 7 February 1958.

2. Mr. Mohamed Awad, Chairman of the Sub-Commission at its ninth session, opened the tenth session on 13 January 1958 (221st meeting).

### B. Representation at the session

3. The following members of the Sub-Commission, or alternates, attended:

Mr. Mohamed Awad	(Egypt)
Mr. Pierre Chatenet	(France)
Mr. A.A. Fomin	(Union of Soviet Socialist Republics)
Mr. Philip Halpern	(United States of America)
Mr. C. Richard Hiscocks	(United Kingdom of Great Britain and Northern Ireland)
Mr. José D. Ingles	(Philippines)
Mr. Wojciech Ketrzynski (Alternate)	(Poland)
Mr. Arcot Krishnaswami	(India)
Mr. Hérard Roy	(Haiti)
Mr. Herran Santa Cruz	(Chile)
Mr. Voitto Saario	(Finland)

4. Before the session opened, one member of the Sub-Commission, Mr. Joseph Winiewicz (Poland), informed the Secretary-General that he was unable to attend the session and that, in accordance with Rule 70 of the Rules of Procedure of Functional Commissions of the Economic and Social Council, and with the consent of his Government, he appointed as alternate for the whole of the session Mr. Wojciech Ketrzynski. Two members of the Sub-Commission, Mr. Pierre Chatenet (France) and Mr. Philip Halpern (USA) designated as alternates for various parts of the session Mr. Claude Chayet and Mr. Theodore Spaulding respectively. The Secretary-General was in full

/...

agreement with these nominations and the alternates, therefore, had during the session the same status as members of the Sub-Commission, including the right to vote.

5. The Sub-Commission regretted that Mr. Charles Ammoun (Lebanon) was unable to attend the session.

6. The following representatives of specialized agencies were present at various meetings of the session.

International Labour Organisation

Mr. R.A. Metall, Director of the ILO Liaison Office with the United Nations

Mr. Donald Snyder, Chief, Employment Section, International Labour Office, Geneva

Mr. O.S. Seiersen, ILO Liaison Office with the United Nations

United Nations Educational, Scientific and Cultural Organization

Mr. René Maheu, Representative

7. The following authorized representatives from non-governmental organizations in consultative relationship with the Economic and Social Council were present as observers:

Category A

International Confederation of Free Trade Unions (Miss Nina Hillquit);

International Federation of Christian Trade Unions (Mr. Gerard Thormann);

World Federation of Trade Unions (Miss Elinor Kahn); World Federation of United Nations Associations (Mr. H.G. Barrett-Brown, Mrs. Weerasinghe); World Veterans Federation (Mr. Jacques Katel, Mrs. C. Rogger).

Category B

Agudas Israel World Organization (Dr. Isaac Lewin); Catholic International Union for Social Service (Mrs. Carmen Giroux); Commission of the Churches on International Affairs (Mr. A.D. Micheli); Consultative Council of Jewish Organizations (Mrs. Helene B. Kadane, Mr. Sidney Liskofsky, Mr. Moses Moskowitz); Coordinating Board of Jewish Organizations (Mr. Saul E. Jofte), Friends World Committee (Mr. Flton Atwater, Miss Stella Alexander, Mr. Sydney D. Barley, Miss Brenda Bailey), International Alliance of Women (Miss Frieda S. Miller, Miss Anne Guthrie, Miss A. Lagemann); International Association for Liberal Christianity and Religious Freedom (Mr. Harry H. Purvis, Dr. Grace Spofford);

International Catholic Child Bureau (Miss Margaret M. Bedard, Mr. Jules Gagnon);  
International Conference of Catholic Charities (Dr. Louis C. Longarzo);  
International Federation of Business and Professional Women (Mrs. Esther W. Hymer);  
International Federation of Women Lawyers (Mrs. Rose K. Kirschman,  
Miss Raymonde I. Paul, Mrs. Caroline K. Simon); International League for the  
Rights of Man (Mr. George De Silver, Mrs. Dora D. Roitburd, Dr. Max Beer,  
Mrs. Rita Rosenthal); International Movement for a Fraternal Union Among Races and  
People (Miss Elizabeth Reid); International Union of Family Organizations  
(Mrs. P.L. Collins); Medical Women's International Association (Dr. Ada C. Reid),  
Pan-Pacific Southeast Asia Women's Association (Mrs. Etta C. Enriquez,  
Mrs. Henry G. Fowler); Pax Romana (Mr. Edward J. Kirchner); Women's International  
League for Peace and Freedom (Mrs. Adelaide N. Baker, Mrs. Caroline Malin,  
Miss Orlie Pell); World Federation of Catholic Young Women and Girls  
(Mrs. Peter Cass, Mrs. Frank J. Berberich); World Jewish Congress (Mr. Gerhard  
Jacoby, Mrs. Jessie Joseph); World Union of Catholic Women's Organizations  
(Miss Catherine Schaeffer); World Union for Progressive Judaism (Mrs. Victor  
Polstein); World Young Women's Christian Association (Mrs. Roland Beattie,  
Mrs. George Britt); Young Christian Workers (Miss Caroline Pezzulo).

8. Mr. John P. Humphrey, Director of the Division of Human Rights, and  
Mr. Egon Schwelb, Deputy Director, represented the Secretary-General.  
Mr. Edward Lawson acted as Secretary of the Sub-Commission.

C. Election of officers

9. The Sub-Commission at its 221st meeting unanimously re-elected:  
Mr. Mohamed Awad (Egypt), Chairman;  
Mr. Pierre Chatenet (France), Vice-Chairman;  
Mr. José D. Ingles (Philippines), Rapporteur.

D. Meetings, resolutions and documentation

10. The Sub-Commission held 33 plenary meetings. The views expressed by  
the members of the Sub-Commission during these meetings are summarized in  
documents E/CN.4/Sub.2/SR.221-253.
11. In accordance with Rule 75 of the Rules of Procedure of the Functional  
Commissions of the Economic and Social Council, the Sub-Commission granted



hearings at various meetings (E/CN.4/Sub.2/SR.222, 229, 231, 235, 246 and 247) to representatives of the following non-governmental organizations:

Category A

International Federation of Christian Trade Unions (Mr. Gerard Thormann);  
World Federation of Trade Unions (Miss Elinor Kahn), World Veterans Federation  
(Mr. Jacques Katel).

Category B

Agudas Israel World Organization (Dr. Isaac Lewin), Commission of the Churches on International Affairs (Mr. A.D. Micheli), Consultative Council of Jewish Organizations (Mr. Moses Moskowitz), Friends World Committee (Mr. Elton Atwater), International Catholic Child Bureau (Mr. Jules Gagnon); International Federation of Women Lawyers (Mrs. Rose Korn Hirschman); International Movement for a Fraternal Union Among Races and Peoples (Miss Elizabeth Reid); Pax Romana (Mr. Edward J. Kirchner); Women's International League for Peace and Freedom (Mrs. Adelaide N. Baker); World Jewish Congress (Mr. Gerhard Jacoby); World Union for Progressive Judaism (Mrs. Victor Polstein).

12. Resolutions adopted by the Sub-Commission appear under the subject matter to which they relate.

13. Documents before the Sub-Commission at its tenth session are listed in the Annex.

E. Commemoration of the Tenth Anniversary of the Universal Declaration of Human Rights

14. At the 253rd meeting the Chairman recalled that 1958 is the year in which the United Nations, and the world at large, will celebrate the tenth anniversary of the proclamation by the General Assembly of the Universal Declaration of Human Rights. In his view the Sub-Commission could not stand aside when this great international event was being commemorated. The Sub-Commission could claim that it had made its contribution to the preparation of the Declaration, and had a right to be proud of that contribution. The theme which is the leitmotiv of the Declaration is the prohibition of discrimination, the principle of equality and of equal protection of the law. The prohibition against discrimination, expressed and implied in the Declaration, in itself furnishes considerable content to the notion of human rights. The contribution of the Sub-Commission

/...

E/CN.4/764  
E/CN.4/Sub.2/192  
English  
Page 10

had not, however, stopped at assisting in the drafting of the Declaration. The Sub-Commission had been instrumental in giving real meaning to the rights proclaimed therein, and had been the first to initiate studies of particular rights covered by certain articles of the Declaration. There could be no doubt that its future work would be directed towards these same ends.

## II. AGENDA

### Item 2 of the agenda

15. At the 221st meeting the Sub-Commission considered the provisional agenda (E/CN.4/Sub.2/190), prepared by the Secretary-General in consultation with the Chairman.
16. Mr. Hiscocks suggested that item 12 of the provisional agenda should read, "Protection of minorities: Request to the Secretary-General for a report on recent developments, including treaties incorporating clauses for the protection of minorities", in line with a proposal which had been made by Mr. Halpern at the Sub-Commission's ninth session. However, it was pointed out that at the ninth session Mr. Halpern, after proposing such an item, had later accepted the suggestion of Mr. Santa Cruz to rephrase the item in general terms, revising it to read, "Protection of Minorities", and that in this form it had been placed on the agenda of the session. Mr. Hiscocks, in withdrawing his proposal, expressed the hope that the Sub-Commission would consider the particular aspect of the question of protection of minorities mentioned in Mr. Halpern's original formulation.
17. In reply to an inquiry by Mr. Roy concerning the absence of an item relating to the study of discrimination in education on the provisional agenda, the representative of the Secretary-General referred to resolution 651 G (XXIV) of the Economic and Social Council, in which the Council had expressed the view that in submitting its proposals relating to the study of discrimination in education to its superior bodies the Sub-Commission had completed its consideration of this study. The Chairman expressed the hope that the Sub-Commission should be informed of any action taken by the United Nations relating to the study of discrimination in education. It was agreed that when the Sub-Commission examined item 8 of the provisional agenda, "Further studies in the field of discrimination", it would hear and consider reports on any action taken by the United Nations or by the specialized agencies with regard to the study of discrimination in education.
18. The Sub-Commission unanimously adopted the provisional agenda as its agenda for the tenth session, as follows:

1. Election of Officers.
2. Adoption of the agenda.
3. Invitation to the Commission on the Status of Women.
4. Communications relating to prevention of discrimination and protection of minorities.
5. Study of discrimination in the field of employment and occupation.
6. Study of discrimination in the matter of religious rights and practices; Draft Report by the Special Rapporteur.
7. Study of discrimination in the matter of political rights: Interim Report by the Special Rapporteur.
8. Further studies in the field of discrimination.
9. 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.
10. Protection of minorities.
11. Consultation regarding the convening of a second conference of non-governmental organizations interested in the eradication of prejudice and discrimination.
12. Adoption of the report of the Sub-Commission to the Commission on Human Rights.

III. INVITATION TO THE COMMISSION ON THE STATUS OF WOMEN

Item 3 of the agenda

19. At the 221st meeting, the Sub-Commission decided unanimously to invite the Commission on the Status of Women to send a representative to participate in its deliberations when items relating to discrimination based on sex were to be discussed, in accordance with Part A (5) of resolution 48 (IV) of the Economic and Social Council. Subsequently, the Commission on the Status of Women was represented by Mrs. Marie-Hélène Lefaucheux (France), who participated in the work of the Sub-Commission (E/CN.4/Sub.2/SR.225, 229 and 241).

IV. COMMUNICATIONS RELATING TO PREVENTION OF DISCRIMINATION AND  
PROTECTION OF MINORITIES

Item 4 of the agenda

20. The Sub-Commission received at a private meeting the confidential list of communications concerning prevention of discrimination and protection of minorities received by the United Nations from 16 October to 31 October 1957 (document Sub.2/Communications List No. 7).

21. Some members of the Sub-Commission, notably Messrs. Ingles and Santa Cruz, regretted that although the Charter had been in force for twelve years, United Nations organs had not established a procedure for handling communications and for coping with some of the situations alleged therein. Other members, however, considered that the Sub-Commission should follow in this matter the procedure followed by the Commission on Human Rights.

22. The Sub-Commission decided, by 7 votes to none, with 3 abstentions, to take note of the distribution of the list of communications, and to make public the summary record of the meeting (E/CN.4/Sub.2/SR.245/Add.1).

V. STUDY OF DISCRIMINATION IN THE FIELD OF EMPLOYMENT  
AND OCCUPATION

Item 5 of the agenda

Introduction

23. At the 222nd to 228th meetings, the Sub-Commission considered item 5 of its agenda, "Study of Discrimination in the Field of Employment and Occupation".

24. The Sub-Commission had before it a memorandum submitted by the Secretary-General (E/CN.4/Sub.2/188) containing a communication received from the International Labour Office. In the letter it was stated, inter alia:

"Further to our previous correspondence on this question, I should inform you that in accordance with resolution IV, adopted by the United Nations Commission on Human Rights at its thirteenth session, I communicated to the International Labour Conference, during its consideration of the question of discrimination in the field of employment and occupation at its fortieth session, the relevant extracts of the report and summary records of the Sub-Commission on Prevention of Discrimination and Protection of Minorities and of the Commission on Human Rights. These extracts are reproduced in document CD/D.2, a copy of which I enclose for your information.

"The conclusions adopted by the Conference on this question will be reproduced in a report to be prepared by the ILO for the next session of the Conference. I will forward this report to you when it is published so that it can be brought to the notice of the Sub-Commission on Prevention of Discrimination and Protection of Minorities at its next session...."

25. At a later date the ILO transmitted the Report mentioned in the above letter - i.e., Report IV (1), prepared for the forty-second session of the International Labour Conference, entitled "Discrimination in the Field of Employment and Occupation" - which was also before the Sub-Commission.

26. The Report contained two chapters, the first summarizing the proceedings of the fortieth session of the Conference relating to discrimination in employment and occupation, the second presenting (a) the text of a proposed convention concerning discrimination in respect of employment and occupation and (b) the text of a proposed recommendation on the subject, which had been drawn up by the International Labour Office on the basis of the conclusions adopted by the Conference. Governments had been requested to communicate their comments upon, or amendments to, the texts not later than 27 November 1957.

/...

27. Members of the Sub-Commission expressed their views on the Report, and heard statements by the representatives of the International Labour Organisation, the Commission on the Status of Women, the International Federation of Christian Trade Unions and the World Federation of Trade Unions. After the general debate had concluded, members of the Sub-Commission examined in detail the terms of the proposed convention and the proposed recommendation. They also considered the procedure whereby their views could best be drawn to the attention of the appropriate organs of the International Labour Organisation in time to permit their consideration by the International Labour Conference at its 42nd session in 1958. On the basis of a draft resolution submitted by Mr. Santa Cruz, the Sub-Commission unanimously adopted, at its 228th meeting, a resolution setting forth its collective views, requesting that these views be transmitted to the International Labour Organisation together with the records and the report of its debates, and deciding to continue its consideration of the question of discrimination in the field of employment and occupation at its eleventh session.

A. General Debate

28. In introducing the Report, the representative of the International Labour Organisation explained the progress which had been achieved by the ILO in working out international instruments designed to eradicate discrimination in the field of employment and occupation. He stressed the important step which had been taken by the International Labour Conference in the decision taken at its June 1957 session, to prepare a convention, supplemented by a recommendation, on the subject of discrimination in the field of employment and occupation. He pointed out that every effort was being made to arrive at the widest possible measure of agreement, and emphasized that common agreement on basic principles between governments, employers and workers was of paramount importance as progress in the field of prevention of discrimination in employment and occupation depended so largely on the voluntary acceptance and application of non-discrimination policies. The ILO representative reviewed in some detail the salient points which had emerged from the discussion at the Conference. He concluded by stating that the texts presented in the Report at this stage were only drafts which were liable to certain modifications, since recent consultations of



governments had revealed some divergencies between them on certain points. It was to be hoped that arrangements similar to those made last year could be made to draw to the attention of the 42nd session of the International Labour Conference the comments which the Sub-Commission would feel it appropriate to make.

29. All members of the Sub-Commission joined in expressing appreciation to the International Labour Organisation for the study of discrimination in the field of employment and occupation which it had carried out, and for the steps which it had taken towards the adoption of practical measures designed to prevent and to eliminate such discrimination. They considered it to be an outstanding piece of work.

30. Mr. Hiscocks expressed the view that the Sub-Commission should be as restrained as possible in its observations. He considered it would be discourteous for the Sub-Commission to attempt to rival or duplicate the work which the International Labour Organisation had done so thoroughly, especially since its task had not yet been completed. Although the Sub-Commission should feel free to express its views and to discuss specific points of the International Labour Organisation's Report, it should not attempt, in his view, to examine the Report too systematically. While some members agreed with this point of view, others felt that there should be no question of rivalry with the International Labour Organisation, or duplication of its work. While recognizing the competence of the International Labour Organisation in the field of employment and occupation, they pointed out that the Sub-Commission could not shirk its own responsibility with respect to the prevention of discrimination. Moreover, the International Labour Office had requested the comments of the Sub-Commission on the Report, and had indicated that they would be drawn to the attention of the International Labour Conference. In expressing its views on the Report the Sub-Commission was simply making its contribution to a co-ordination of efforts, initiated by the United Nations, to eradicate discrimination in the field of employment and occupation.

31. With regard to the decision of the International Labour Conference to prepare a convention on the subject, supplemented by a recommendation, different views were expressed by various members of the Sub-Commission. Some, notably

Messrs. Fomin, Ketrzynski and Roy, were of the opinion that the International Labour Office should concentrate on the drafting of a strong convention that would prohibit discrimination in the field of employment and occupation and guarantee its eradication; they felt that a recommendation was not necessary in this case and that it might even weaken the convention. Mr. Spaulding, while not opposing the convention as drafted, was of the opinion that for the purpose in view a recommendation was the more appropriate instrument. Mr. Hiscocks felt that the Sub-Commission should approve the Conference's decision to prepare a convention supplemented by a recommendation. Others, among them Messrs. Ingles and Santa Cruz, felt that the two proposed instruments, when finally drafted, might complement and strengthen one another.

B. Consideration of the Proposed Convention concerning Discrimination in Respect of Employment and Occupation

32. The Sub-Commission first considered, in general terms, the scope of the proposed convention, then examined its provisions in detail.

1. Scope of the Proposed Convention

33. Various members of the Sub-Commission drew attention to what they considered to be important omissions from the text of the proposed convention.

34. Mr. Spaulding referred to the close link between the problem of forced labour and that of discrimination in employment and occupation; in his view the proposed convention should deal with both practices. Although there was no objection to this suggestion, it was pointed out that forced labour had already been the subject of a special ILO Convention.

35. Mr. Fomin drew attention to the fact that the proposed convention did not prohibit discrimination in general education, which is intimately related to employment and occupation. The explanation given in the International Labour Conference and mentioned on page 10 of the Report - that the subject of discrimination in education was already being dealt with by the Sub-Commission - was in his view not a valid one, since the work of the Sub-Commission had not yet led to the adoption of any effective measures in this field. Mr. Hiscocks, however, supported the Conference's decision to exclude any reference to general education from the draft.

36. Several members drew attention to the fact that the text of the proposed convention was centred mainly on the formulation of general policy and did not

contain a prohibition of discrimination in the field of employment and occupation; they felt that the draft instrument should be strengthened by the inclusion of such a provision.

## 2. Provisions of the Proposed Convention

37. There was general agreement in the Sub-Commission that since work on the prevention of discrimination was not a matter for isolated action but formed part of the general activities of the United Nations and of the specialized agencies under the Charter and the Universal Declaration of Human Rights, the obligations to be embodied in the proposed convention should in no circumstances be less strict than those which are contemplated for inclusion in other international instruments already adopted or in preparation. Reference was made in particular to articles 2 and 28 of the draft covenant on economic, social and cultural rights and to article 4 of the draft covenant on civil and political rights, all of which had been adopted by the Commission on Human Rights and were now before the General Assembly; and to articles 6 and 7 of the former covenant, which had been considered and adopted by the Third Committee of the General Assembly. Some members of the Sub-Commission stressed the fact that the principle of non-discrimination had been laid down in the Charter of the United Nations and spelled out in the Universal Declaration of Human Rights; in their view the International Labour Organisation, as one of the members of the United Nations family competent to initiate action to implement this principle, was in a position to take practical and effective measures designed to prevent and to eradicate discrimination in the field of employment and occupation, and could not content itself with anything less. In order to achieve this goal the ILO must make certain that its decisions were consistent with the deliberations and decisions of the competent United Nations organs relating to the prevention of discrimination. Some members expressed the view, however, that the Sub-Commission would be ill-advised to advocate consistency with decisions of a preliminary character such as those contained in the draft covenants on human rights.

38. Mr. Fomin suggested that provisions should be added to the proposed convention prohibiting propaganda in favour of discrimination, and prohibiting racial segregation in places of employment. Mr. Spaulding agreed with the latter suggestion. Mr. Fomin was also of the opinion that the convention should include

/...

a provision based on article 2 (b) of the proposed recommendation, which mentioned the fields in which, he felt, discrimination should be prohibited.

39. Preamble. The preamble of the proposed convention reads:

"The General Conference of the International Labour Organisation,

"Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Forty-Second Session on June 1958, and

"Having decided upon the adoption of certain proposals with regard to discrimination in the field of employment and occupation, which is the fourth item on the agenda of the session, and

"Having determined that these proposals shall take the form of an international Convention, and

"Considering that the Declaration of Philadelphia affirms that all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity,

"Adopts this day of June of the year one thousand nine hundred and fifty-eight the following Convention, which may be cited as the Discrimination (Employment and Occupation) Convention, 1958:"

40. Various members of the Sub-Commission suggested that the Preamble should refer to the Universal Declaration of Human Rights as well as to the Declaration of Philadelphia.

41. Article 1. The article reads:

"1. For the purpose of this Convention -

"(a) the term 'discrimination' includes -

"(i) Any adverse distinction made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin which deprives a person of equality of opportunity or treatment in employment or occupation; and

"(ii) such other adverse distinctions affecting a person's employment or occupation as may be determined by the Member concerned after consultation with representative employers' and workers' organizations,

"(b) distinctions in respect of access to a particular employment based on the inherent requirements thereof shall not be deemed to be 'discrimination'.

"2. For the purpose of this Convention the terms 'employment' and 'occupation' includes access to vocational training, access to employment

42. Some members found that the definition contained in the article was not comprehensive enough and not quite precise. On the other hand, it was pointed out that it was difficult, if not impossible, to draft a definition that would be satisfactory to all. The suggestion was made that the same language should be used in the article as appeared in article 2 of the Universal Declaration of Human Rights.
43. The term "adverse distinction" was considered by some members to be unclear, as there was no indication as to who should determine whether or not a distinction had an adverse effect. In effect the determination was left to the Government concerned, which in some cases might not admit the existence of discrimination.
44. The omission of "language" from the enumeration of the grounds of discrimination was criticized by several members, who were strongly of the opinion that the term should be included in the definition of discrimination since it appeared not only in the Universal Declaration of Human Rights but also in the United Nations Charter as one of the grounds on which discrimination was forbidden. Mr. Hiscocks, however, upheld the omission in view of the frequency with which knowledge of a particular language was necessary to the performance of certain types of work, and when the lack of such knowledge might even be dangerous to workers in certain kinds of employment, such as mining.
45. Use of the term "national extraction" - rather than "national origin" as in the Universal Declaration of Human Rights - was questioned by some members and defended by others. Mr. Hiscocks considered that the use of the term "national extraction" instead of "national origin" was fully justified: the prohibition of discrimination on the ground of national origin did not necessarily protect the second generation born in a given country of foreign parents.
46. Various members drew attention to the omission from the enumeration in article 1 of such grounds of discrimination as age, citizenship, and membership in trade unions; in their view these omissions seriously weakened the text of the proposed convention.
47. Some members expressed their gratification that the proposed convention dealt with discrimination both in respect of employment and occupation, and that an effort to delete the words "and occupation" - on the ground that "occupation" is only a specific aspect of "employment" - had been defeated.

/...

48. Article 2. The article reads:

"Each Member for which this Convention is in force undertakes to declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof."

49. Several members of the Sub-Commission said that in their view the article appeared to be a mere declaration involving no specific obligation to prohibit discrimination. Further, they were of the opinion that while the measures prescribed therein might prove effective in combating discrimination in the public sector of employment, it was very doubtful if they would have any effect in eradicating discrimination in the private sector. They pointed out that while Governments controlled public employment, the extent of their control over private employment varied greatly.

50. Article 3. The article reads:

"Each Member for which this convention is in force undertakes -

"(a) to seek the co-operation of employers' and workers' organizations and other appropriate bodies in promoting the acceptance and observance of this policy;

"(b) to promote such educational programmes as may be calculated to secure the acceptance and observance of the policy;

"(c) to repeal any statutory provisions and modify any administrative instructions or practices which are inconsistent with the policy;

"(d) to pursue the policy in respect of employment under the direct control of a national authority;

"(e) to ensure observance of the policy in the activities of vocational guidance, vocational training and placement services under the direction of a national authority; and

"(f) to indicate in its annual reports on the application of the Convention the action taken in pursuance of the policy and the results secured by such action."

51. Sub-paragraph (c) of this article was considered to be inadequate by several members, who felt that parties to the proposed convention should undertake to introduce legislation to prohibit discrimination in the field of employment and

occupation, as well as to repeal statutory provisions and to modify administrative instructions inconsistent with the policy set forth in article 2. It was also suggested that the text should provide for legislative measures to be taken against discrimination in the private field; such measures could supplement educational programmes and might in some cases prove more effective. Moreover, it was suggested that article 3 should be revised in such a way as to encourage employers' and workers' organizations to recognize their responsibilities and to undertake obligations comparable to those imposed upon Governments, and to require the contracting Members specifically to undertake to educate public opinion with a view to ensuring the acceptance of a policy of non-discrimination.

52. Some members expressed the view that the adoption of an international instrument which would require governments to declare and pursue a policy of non-discrimination constituted an important step forward in the effort to combat discrimination in employment and occupation. They emphasized the educational value of the proposed governmental action in a field where progress depends to a large extent on the voluntary acceptance by employers, workers, and their organizations of non-discriminatory practices. Mr. Fomin felt that the convention should, in addition, provide that Members should undertake to introduce laws which would prohibit and punish discrimination in the field of employment and occupation.

53. Article 4. The article reads:

"Nothing in this Convention shall affect any statutory provision or administrative regulation which relates to the national security of a Member."

54. The text of this article was widely criticized, and its deletion was suggested. To some members of the Sub-Commission it appeared to constitute an "escape clause" which could open the door to the flouting of other provisions on the pretext of national security. To others it was unacceptable because it could give rise to abuse of a type which was extremely difficult to discover and correct. While recognizing the necessity for including a provision which would safeguard the security of parties to the proposed convention against internal and external subversion, some members felt that the article could only serve its legitimate purpose if it were drafted more precisely in such a way as

/...

to specify clearly the kind of pertinent and reasonable relationship to national security which might justify discrimination in employment. In this connexion they drew attention to the provisions of article 4 of the draft covenant on civil and political rights, which reads in part:

"1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed the States Parties hereto may take measures derogating from their obligations under this Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin...."

55. Article 5. The article reads:

"Any Member may, after consultation with representative employers' and workers' organizations, determine that the following shall not be deemed to be discrimination:

(a) special measures of protection or assistance provided for in other Conventions or Recommendations adopted by the International Labour Conference;

(b) other special measures designed to meet the particular requirements of persons who, for reasons such as sex, age, disablement, family responsibilities or cultural status, are generally recognized to require special protection or assistance."

56. Mr. Krishnaswami pointed out that the nation underlying the article was a sound one. In his view not all preferential treatment could be categorized as discriminatory; it was often necessary to give preference temporarily to individuals, or groups of people, who had been seriously disadvantaged in the past, in order to assist them in reaching the level of development prevalent in the area where they lived. However, he questioned the use of the term "cultural status" in the article, and suggested that "social disability" might be more appropriate.

57. Article 6. The article reads:

"Equal remuneration for men and women workers for work of equal value is dealt with in the Equal Remuneration Convention, 1951, and is therefore not dealt with in this Convention."

58. Mr. Santa Cruz expressed the view that there was ample justification for the inclusion in the convention of a provision on equal remuneration for men and women workers for work of equal value.



59. The representative of the Commission on the Status of Women supported this view. She pointed out that her Commission did not consider the Equal Remuneration Convention, 1951, to be completely satisfactory, particularly with regard to its methods of enforcement. She also raised a question as to the origin of the text of the proposed article 6, as the International Labour Conference had not adopted such an article.

60. Possible Article relating to Non-Self-Governing and Trust Territories. The article reads:

"1. Each Member which ratifies this Convention undertakes to apply it to the non-metropolitan territories, so far as it has the right to accept obligations affecting matters of internal jurisdiction.

"2. Concerning the territories for which the Member which has ratified the Convention has not the right to accept obligations affecting matters of internal jurisdiction, the Member shall immediately bring the Convention to the notice of the government of the territory asking it to indicate if it accepts the obligations of the Convention.

"3. Thereafter, the Member shall communicate to the Director-General of the International Labour Office all declarations established in agreement with the government of the concerned territory.

"4. Such Member which may desire to take advantage of the provisions of article 35 of the Constitution of the International Labour Organisation shall append to its ratification a declaration stating -

(a) the territories to which it intends to apply the provisions of this Convention without modification;

(b) the territories to which it intends to apply the provisions of this Convention with modifications, together with details of the said modifications;

(c) the territories in respect of which it reserves its decision."

61. Several members of the Sub-Commission, notably Messrs. Awad, Fomin, Ingles, Ketrzynski, Krishnaswami, Roy and Santa Cruz, were strongly of the view that the provisions of the proposed convention should be made applicable, without exception or reservation, to Non-Self-Governing and Trust Territories. The procedure by which this should be accomplished was considered to be a matter to be dealt with by the International Labour Organisation.

/...

62. Messrs. Saario and Spaulding preferred that the wording of the draft article should correspond to article 35 of the ILO Constitution. Mr. Hiscocks considered, however, that the insertion of such an article would either confirm article 35 of the ILO Constitution and therefore be superfluous, or would alter that provision and be unconstitutional.

C. Consideration of the Proposed Recommendation concerning Discrimination in Employment and Occupation

63. The proposed recommendation contained a preamble, followed by a section containing definitions which was nearly identical in substance to the corresponding text of the proposed convention. The Sub-Commission's observations concerning the definitions apply to those contained in both instruments.

64. In addition, the proposed recommendation contained sections on formulation of policy, application of policy, and co-ordination of measures for the prevention of discrimination in all fields.

65. Formulation of policy. The section reads:

"2. Each Member should, by means of legislative measures, collective agreements between representative employers' and workers' organizations or in any other manner consistent with national conditions and practice, formulate a national policy for the prevention of discrimination in employment and occupation, having full regard to the following principles:

(a) the promotion of equality of opportunity and treatment in employment and occupation is a matter of public concern;

(b) all persons should, without discrimination, enjoy equality of opportunity and treatment in respect of -

(i) access to vocational guidance and placement services;

(ii) access to training and employment of their own choice on the basis of individual suitability for such training or employment;

(iii) advancement in accordance with their individual character, experience, ability and diligence;

(iv) security of tenure of employment;

(v) remuneration for work of equal value;

(vi) conditions of work including hours of work, rest periods, annual holidays with pay, occupational safety and occupational health measures, as well as social security measures and welfare facilities provided in connexion with employment;

- (c) government agencies should apply fair and non-discriminatory employment policies in all their activities;
- (d) employers should not countenance or practise discrimination in engaging or training any person for employment, in advancing or retaining such person in employment, or in fixing terms and conditions of employment;
- (e) in collective negotiations and industrial relations, the parties should respect the principle of equality of opportunity and treatment in employment and occupation, and should ensure that collective agreements contain no provisions of a discriminatory character in respect of access to, training for, advancement in or retention of employment or in respect of the terms and conditions of employment;
- (f) industrial organizations should not countenance or practise discrimination in respect of admission thereto, retention of membership therein or participation in their affairs."

66. Several members of the Sub-Commission, notably Messrs. Awad, Fomin, Ingles, Ketrzynski, Roy and Santa Cruz, were of the opinion that a positive prohibition of discrimination in employment and occupation should be included in the proposed recommendation. Otherwise, in their view, the recommendation could not be considered an effective instrument.

67. Mr. Awad drew attention to the fact that no mention had been made in the proposed recommendation of the principle of equality of treatment as between men and women; he suggested that perhaps this was less necessary in the case of a recommendation than in the case of a convention.

68. Application of policy. The section reads:

"3. Each Member should -

(a) ensure application of the principles of non-discrimination -

(i) in respect of employment under the direct control of a central authority;

(ii) in the activities of vocational guidance, vocational training and placement services under the direction of a central authority;

(b) promote their observance, where practicable and necessary, in respect of other employment and other vocational guidance, vocational training and placement services by such methods as -

/...

- (i) encouraging state, provincial or local government departments or agencies and industries and undertakings operated under public ownership or control to ensure the application of the principles;
- (ii) making eligibility for contracts involving the expenditure of public funds dependent on observance of the principles;
- (iii) making eligibility for grants to training establishments and for a licence to operate a private employment agency or a private vocational guidance office dependent on observance of the principles.

4. Each Member should repeal any statutory provisions and modify any administrative instructions or practices which are inconsistent with the policy.

5. Application of the policy should not adversely affect special measures designed to meet the particular needs of persons who, for such reasons as sex, age, disablement, family responsibilities or cultural status are generally recognized to require special protection or assistance.

6. With respect to immigrant workers of foreign nationality and the members of their families, regard should be had to the provisions of the Migration for Employment Convention (Revised), 1949, relating to equality of treatment and to the provisions in the Migration for Employment Recommendation (Revised), 1949, relating to the lifting of restrictions on access to employment.

7. There should be continuing co-operation between the competent authorities, representatives of employers and workers and appropriate bodies in taking all practicable measures to foster public understanding and observance of the principles of non-discrimination and in considering what further positive measures may be necessary in national conditions to put the principles into effect."

69. Some members of the Sub-Commission, including Messrs. Fomin, Ingles, Ketrzynski, Santa Cruz and Spaulding, strongly favoured the inclusion of a specific text providing for application of the terms of the recommendation to Non-Self-Governing and Trust Territories; such a text was particularly necessary in this case, they felt, because there was no specific provision in the Constitution of the ILO providing for the automatic application of the ILO recommendations to such territories. On the other hand, Mr. Hiscocks considered such a provision to be unnecessary, as general recommendations were normally assumed to be of the widest possible application unless otherwise specified.

/...

Mr. Santa Cruz pointed out that the use of the phrases "in respect of employment under the direct control of a central authority" and "encouraging state, provincial or local government departments or agencies" in the recommendation made it all the more necessary to state clearly that the policy described therein was to be applied to Non-Self-Governing and Trust Territories, as otherwise the phrases might be misinterpreted. Mr. Fomin expressed the view that the recommendation, being a legal instrument, should clearly indicate where it was intended to be applied, as this was too important a matter to be left to the discretion of each government. In this connexion he recalled that many recommendations prepared by the General Assembly concerning Non-Self-Governing and Trust Territories specify that it is particularly important to apply the policy of non-discrimination in such territories. Further, the Universal Declaration of Human Rights, in article 2, paragraph 2, clearly condemns any distinction made on the basis of the political, jurisdictional or international status of a country or territory.

70. Mr. Krishnaswami stated, in connexion with the sixth paragraph of the section, that a similar problem arises in the case of persons who are not immigrants, but whose nationality status has been affected as a result of the achievement of independence by certain formerly dependent territories. Whereas these persons had the same nationality as that of the majority of the population of the territory before independence, after independence they had been deprived of their citizenship by new nationality laws. Consequently such persons had been denied many of their human rights, including in particular their political rights. In no field was the result more serious than in regard to the right to work. In Mr. Krishnaswami's opinion persons who had for generations shared both the advantages and the obligations of citizenship in a territory surely deserved to be treated in a manner not less favourable than that accorded to recent immigrants.

71. Co-ordination of Measures for the Prevention of Discrimination in all fields.

This section reads:

"8. The authorities responsible for action against discrimination in employment and occupation should co-operate closely and continuously with the authorities responsible for action against discrimination in other fields in order that measures taken in all fields may be co-ordinated."

72. Members of the Sub-Commission made no comments on this section of the proposed recommendation.

73. Mr. Hiscocks regretted many of the criticisms that had been made of the Report of the International Labour Organisation, which recorded the proceedings of a great international body after most careful preliminary preparation.

74. Some members of the Sub-Commission expressed the view that the Sub-Commission should continue its collaboration with the International Labour Organisation on the study of discrimination in the field of employment and occupation.

D. Consideration of draft resolution

75. At the 225th meeting, Mr. Santa Cruz introduced a draft resolution concerning the study of discrimination in the field of employment and occupation (E/CN.4/Sub.2/L.125). The draft resolution found general support, although some suggestions for improvement were made. In particular, Mr. Roy expressed his disappointment that the draft was phrased in vague terms and only proposed that the individual opinions expressed by various members of the Sub-Commission should be forwarded to the International Labour Organisation; he felt that the collective views of the Sub-Commission - not only those of its individual members - should be drawn to the attention of the International Labour Conference, and that precise suggestions should be formulated. At the same time, he was not in favour of referring to the draft covenants on human rights, which were still under discussion. He therefore introduced an amendment to paragraph 4 of the draft resolution, reading as follows (E/CN.4/Sub.2/L.126):

"Replace operative paragraph 4 by the following:

"4. Considers further that the convention should correspond to and be in harmony with the general trends reflected in the deliberations and decisions of the competent organs of the United Nations relating to the legal protection of human rights, especially as regards the following four points:

- "(i) The degree and extent to which the parties will guarantee or safeguard non-discrimination: articles 2 and 3 of the convention should provide not only for the repeal of legislative provisions and the changing of administrative provisions or practices which permit discrimination, but also for the preparation of positive provisions explicitly prohibiting discrimination;

"(ii) The grounds of discrimination: article 1 of the convention should at least incorporate the terms of the first sentence of article 2 of the Universal Declaration of Human Rights;

"(iii) The scope of the convention's application: a formula should be sought that would guarantee the explicit application of the instrument to non-metropolitan territories, for example in the form of article 28 of the draft covenant on economic, social and cultural rights;

"(iv) Limitations: the text of article 4 of the convention should be more in keeping with that of article 4 of the draft covenant on civil and political rights."

76. In the light of the discussion Mr. Santa Cruz, having accepted a number of comments and suggestions made by various members of the Sub-Commission, revised his draft resolution (E/CN.4/Sub.2/L.125/Rev.1). Mr. Roy, however, maintained his amendment. He was supported by some members of the Sub-Commission, while others felt that neither of the two texts expressed their views exactly.

77. At the 228th meeting Mr. Saario introduced a new text for the paragraph in question (E/CN.4/Sub.2/L.127), which won the support of Mr. Hiscocks, who did not approve the enumeration of the four points in the original text. At the same meeting, Messrs. Roy and Santa Cruz announced they had been able to agree upon a joint text for the paragraph (E/CN.4/Sub.2/L.128). Mr. Roy consequently withdrew his amendment.

78. The amendment submitted by Mr. Saario (E/CN.4/Sub.2/L.127) was not adopted, receiving 2 votes in favour and 5 against, with 4 abstentions.

79. The revised text of paragraph 4 of the draft resolution, submitted jointly by Messrs. Roy and Santa Cruz (E/CN.4/Sub.2/L.128) was adopted, receiving 9 votes in favour, 1 against, and 1 abstention.

80. The draft resolution as a whole (E/CN.4/Sub.2/L.125/Rev.1 and L.128), incorporating the new text of paragraph 4 and certain other amendments suggested orally and accepted by Mr. Santa Cruz, was adopted unanimously, as follows (E/CN.4/Sub.2/L.129):

#### RESOLUTION A

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

The Sub-Commission on Prevention of Discrimination and Protection of Minorities;

/...

Having examined Report IV (1), on "Discrimination in the Field of Employment and Occupation," prepared by the International Labour Office for the forty-second session of the International Labour Conference;

Having regard to the fact that the action undertaken by the International Labour Organisation with regard to discrimination in the field of employment and occupation forms part of the action initiated by the competent organizations of the United Nations family to implement the principle of non-discrimination expressly laid down in the Charter of the United Nations and spelled out in the Universal Declaration of Human Rights in connexion with the rights therein defined, which include the right to work referred to in article 23 thereof;

1. Expresses its appreciation of the work done by the International Labour Organisation, and its satisfaction that the Organisation, as a result of the study it has carried out on this question upon the recommendation of the Economic and Social Council, has taken effective steps towards the adoption of measures designed to prevent and eliminate discrimination in the field of employment and occupation;

2. Notes that the International Labour Conference has decided to include the question of discrimination in employment and occupation on the agenda of its forty-second session, and in this connexion to consider in particular a draft convention and a draft recommendation on that subject;

3. Expresses the view that any international instrument to be adopted on this subject should be consistent with the provisions of the United Nations Charter and with the obligations assumed by the States under the Charter; and should be drafted in the most specific terms best adapted to implement the provisions of the Universal Declaration of Human Rights and to advance its objectives;

4. Considers further that in particular a convention to be adopted should be in harmony with the general trends reflected in the deliberations and resolutions of the competent organs of the United Nations relating to the legal protection of human rights, and in this connexion - especially as regards (i) the degree and extent to which the parties should prohibit discrimination and guarantee or safeguard non-discrimination; (ii) the grounds of discrimination which should be prohibited; (iii) the application of the Convention to Non-Self-Governing and Trust Territories; (iv) the exceptions to the application of the Convention



in extraordinary circumstances, in particular for reasons of national security - recalls the provisions of the draft covenants on human rights under consideration by the General Assembly, especially articles 2, 6, 7 and 28 of the draft covenant on economic, social and cultural rights and article 4 of the draft covenant on civil and political rights;

5. Requests the Commission on Human Rights:

- (i) To recommend that the Economic and Social Council express to the International Labour Organisation its appreciation of the work it has done in this field;
- (ii) To transmit to the International Labour Organisation the views expressed in the Sub-Commission on the matter, as they appear in its records and reports, sufficiently early to permit their consideration by the International Labour Conference at its session in 1958, drawing attention to the exchange of views which took place regarding the draft convention and recommendations during the Sub-Commission's detailed consideration of those documents; and, if the Commission on Human Rights deems it appropriate, to request the Economic and Social Council at its twenty-fifth session to give the necessary authorization;
- (iii) To recommend that the Economic and Social Council should authorize, and the Secretary-General should take appropriate measures to enable the results of the work of the International Labour Conference to be transmitted directly to the Sub-Commission;

6. Decides to retain on the agenda of its eleventh session the question of discrimination in the field of employment and occupation.

VI. STUDY OF DISCRIMINATION IN THE MATTER OF RELIGIOUS RIGHTS AND PRACTICES  
DRAFT REPORT BY THE SPECIAL RAPPORTEUR

Item 6 of the agenda

Introduction

81. At the 228th to 241st meetings, the Sub-Commission considered item 6 of its agenda, entitled "Study of discrimination in the matter of religious rights and practices: Draft report by the Special Rapporteur".

82. The Sub-Commission had before it the draft report (E/CN.4/Sub.2/L.123) submitted by the Special Rapporteur, Mr. Arcot Krishnaswami, in accordance with resolution F, adopted by the Sub-Commission at its ninth session (E/CN.4/740, para. 231).

83. The draft report was divided into two parts. In Part I the Special Rapporteur presented a general view of the subject-matter, reviewing the fundamental principles involved, describing the materials which he had collected and on which the draft was based, and indicating how he had interpreted his terms of reference. In Part II he presented a preliminary analysis of the problem of discrimination in the matter of religious rights and practices, based upon the available information. Attached to the draft report as an appendix was a summary, prepared by the Secretariat, of the activities of other organs of the United Nations relating to the subject of the study.

84. The Sub-Commission began its consideration of the draft report with a general debate, in which statements were made by members of the Sub-Commission, the representative of the Commission on the Status of Women, and by the representatives of the Agudas Israel World Organization, the Commission of the Churches on International Affairs, the Consultative Council of Jewish Organizations, the International Catholic Child Bureau, Pax Romana, the Women's International League for Peace and Freedom, and the World Union for Progressive Judaism. The Sub-Commission subsequently examined the draft report in detail. After discussing a number of substantive issues, the Sub-Commission gave particular attention to the method proposed by the Special Rapporteur for the production of the final study. It then considered two draft resolutions, examining first a text submitted

jointly by Messrs. Hiscocks, Ingles and Saario (E/CN.4/Sub.2/L.132), and thereafter one submitted by Mr. Santa Cruz (E/CN.4/Sub.2/L.131). On the basis of these draft resolutions it adopted unanimously, at the 241st meeting, a resolution on the study of discrimination in the matter of religious rights and practices.

A. General Debate

85. Each member of the Sub-Commission joined in expressing appreciation to Mr. Krishnaswami for his work in preparing the draft report. The Special Rapporteur was commended for his objectivity, clarity, tact and moderation, and for the astute and diplomatic way in which he had dealt with a most complicated and delicate subject.

86. Mr. Krishnaswami, for his part, expressed his thanks to the Governments and non-governmental organizations which had replied to his requests for information, as well as to the United Nations Secretariat, which had assisted him in his work.

87. In introducing the report, Mr. Krishnaswami pointed out that although it was only a draft, he had tried to make it, as far as possible, similar in scope to the final report which would be prepared later. Basically, the draft report followed closely the outline which had been annexed to the progress report which he had submitted to the ninth session of the Sub-Commission (E/CN.4/Sub.2/182), although experience in dealing with the available materials had led him to modify the outline in some details. The final report, he indicated, probably would consist of an elaboration of the chapters which appear in the draft with the addition of further materials dealing with such matters as discrimination in the matter of religious rights and practices in Non-Self-Governing and Trust Territories, positive action taken by Governments to combat discrimination in the matter of religious rights and practices, and a more thorough analysis of indirect discrimination which restricts or impedes freedom to maintain religion or belief.

88. There was general agreement in the Sub-Commission that the study of discrimination in the matter of religious rights and practices, when completed, would remain in the name of the Special Rapporteur, and that the Sub-Commission would not attempt to adopt it in its own name. For this reason the Sub-Commission did not vote upon the draft report, either paragraph by paragraph or as a whole.

89. The observations made by various members of the Sub-Commission, the representative of the Commission on the Status of Women, and representatives of

non-governmental organizations, are set forth in detail in the summary records of the discussion (E/CN.4/Sub.2/SR.228-241). The Special Rapporteur, at the close of the debate, undertook to take these comments and suggestions into consideration in preparing the study in its final form, although it was understood that he alone would be responsible for the contents of the study. The main issues raised in the course of the debate are summarized below -

B. Main Issues Raised in Examination of the Draft Report

1. The Meaning of "religion or belief"

90. Mr. Roy inquired as to the definition of religion which had been used by the Special Rapporteur in preparing his draft report. In this connexion, Mr. Spaulding noted that the Special Rapporteur quite correctly had not attempted to define the meaning of religion or belief. While he agreed that a precise definition was not feasible or necessary for the purpose of the study, Mr. Spaulding felt that nevertheless it should be recognized that religious belief primarily denoted belief in an all-powerful God; it was an expression of the individual conscience, recognized as such in the Universal Declaration of Human Rights, and was not to be confused with a political credo, a Government, or a culture.

91. Mr. Fomin pointed out that the study was not confined to freedom of religion alone, but included freedom to hold other beliefs as well, and that religion and belief had been placed on a level of equality in article 18 of the Universal Declaration of Human Rights. Mr. Ketrzynski supported this view. Mr. Krishnaswami made it clear that in the preparation of his final study he would deal with freedom of conscience as well as with freedom of religion.

2. Classification of Countries on the basis of the relationship between the State and religion

92. The classification of countries on the basis of the relationship between the State and religion, suggested by Mr. Krishnaswami in Chapter III of the draft report, was challenged by some members of the Sub-Commission. The three groups mentioned by the Special Rapporteur were: (1) those which have an established or State religion; (2) those in which a number of religions are recognized; and (3) those which are based upon the principle of separation of State from religion. Mr. Spaulding suggested that a fourth category of States should be included in

this classification: those in which there was an ideological opposition to all religions on the part of the Government or government-dominated organizations. This suggestion, he recalled, had originally been made by Mr. Halpern in the preliminary report submitted to an earlier session of the Sub-Commission (E/CN.4/Sub.2/162).

93. Mr. Fomin objected to the introduction of such a classification on the ground that it was tendentious and dangerous and could only lead the Sub-Commission into polemical discussions. He recalled that Mr. Halpern's report had been considered and appraised at an earlier session of the Sub-Commission, and that Mr. Krishnaswami had adopted what he considered to be a correct approach to the question of the relationship between the State and religion.

94. Mr. Krishnaswami explained that he had attempted to propose a purely juridical classification and that he had come to the opinion that the wording suggested by Mr. Halpern referred not so much to a legal classification as to a possible description of a de facto situation.

### 3. The Collection of Statistical Data concerning religious groups

95. Mr. Awad deplored the fact, mentioned by the Special Rapporteur in Chapter III of the draft report, that many States do not include information concerning religious affiliation in their official censuses; he felt that such information was necessary for certain types of scientific research. Messrs. Chayet, Fomin and Spaulding, however, pointed out that the omission of questions concerning religion from questionnaires issued in connexion with population censuses had been adopted in their countries in an effort to promote freedom of religion and belief, and to minimize friction and controversy. In this connexion Mr. Ingles said that questions regarding religious affiliation were not considered in other countries as in any way infringing religious freedom, so long as they were not compulsory and the answers were used for statistical purposes only.

96. Mr. Krishnaswami agreed with Messrs. Chayet, Fomin and Spaulding, and indicated that he would clarify the paragraph in question by pointing out that many States do not consider it appropriate to request information concerning religious affiliation in connexion with their official censuses.

### 4. The Problem of the loyalty of minority groups

97. The problem of the loyalty of minority groups towards the State, and their attitude towards the majority within the State, raised in Chapter III of the draft

report, gave rise to some discussion. While all members agreed that States could not ignore activities aimed at their destruction, Mr. Ketrzynski pointed out that this was particularly true not only in the case of States which had recently achieved independence but also in States which have inaugurated a new social and political structure, especially where one religion had enjoyed a privileged position under the former regime. Mr. Santa Cruz agreed that this might be true in cases where churches had identified themselves with a particular political or social regime, but at the same time it was necessary to recall that many of the great Churches were constantly defending human dignity, and for this reason it was inevitable that they had to clash with regimes which violated human rights.

98. Mr. Awad expressed the view that in some cases doubt as to the loyalty of the minority stemmed from provocative actions of the members of the minority group.

5. The Meaning of Discrimination in the matter of religious rights and practices

99. Although in general members of the Sub-Commission approved the analysis of the meaning of freedom of thought, conscience and religion in Chapter IV of the draft report, some members were of the view that the report should attempt to establish a closer link between limitations on freedom of thought, conscience and religion on the one hand, and discrimination in the matter of religious rights and practices on the other.

100. Mr. Ingles pointed out that any limitation which was applied unequally, no matter how reasonable or justifiable it might be, would result in discrimination, while even an unjustifiable limitation might not result in discrimination if applied to all without distinction. The test of whether or not a limitation was discriminatory was provided in article 2 of the Universal Declaration of Human Rights, which indicated the grounds of discrimination which were prohibited. However, in many cases a law which on its own face appeared to be of general application could in fact be discriminatory if applied "with an unequal hand or an evil eye". In his view, if it could be shown that a limitation had been imposed to satisfy one of the requirements in article 29(2) of the Universal Declaration of Human Rights, the issue of discrimination did not arise.

101. Mr. Spaulding, however, did not agree that the mere act of declaration that a law had been enacted to satisfy the requirements of morality, public order and

general welfare was enough to justify the conclusion that article 29(2) was applicable. In some cases such grounds had been invoked merely as a subterfuge. 102. Mr. Ketrzynski agreed that the spheres in which public authorities might legitimately intervene in religious matters, especially in carrying out their social and political policies, should be clearly defined. The existence or non-existence of discrimination frequently depended upon the point of view adopted, he said, and it was essential to ensure that definitions of discrimination should be entirely clear.

6. Measures for the Elimination of Intolerance by Society with Respect to Religion or Belief

103. Messrs. Awad, Hiscocks and Ketrzynski expressed their agreement with references by the Special Rapporteur in Chapter IV of the draft report to the need for additional measures to eradicate intolerance by society with respect to religion or belief, and suggested that such measures might form the subject of specific proposals in the final study. In their view public authorities should not be too readily absolved from taking suitable measures to overcome intolerance by society with respect to religion or belief which, when unchecked, often leads to discrimination. Messrs. Awad, Hiscocks and Saario expressed the view that such intolerance could best be combatted by measures designed to educate public opinion and to encourage the authorities to be firm in dealing with such pressures. Mr. Krishnaswami explained that it was not his intention to condone any lack of firmness on the part of governments in promoting tolerance.

7. The Question of Conscientious Objection

104. References in Chapter VI of the draft report to the problem of exemption from military service on the ground of conscientious objection gave rise to some discussion. Mr. Saario expressed the view that every State had a right to request its citizens to make certain sacrifices such as military service, and that it was extremely difficult to find a solution which would entail no discrimination either against the majority or against the minority. Mr. Awad pointed out that, when a country is engaged in a battle for survival, it could not tolerate exemption in favour of anyone.

105. Mr. Hiscocks considered the questions raised by the Special Rapporteur to be so complex that the special circumstances of each case have to be taken into account. In some cases, if conscientious objectors constituted a numerically small

group, exception might be made in their favour. However, in other cases, small countries might require the services of all their population in order to ensure the defence of their territory. He suggested that the Special Rapporteur might indicate in the final report that whenever a society could find it possible to tolerate conscientious objection, that was a desirable state of affairs and in accordance with the principles of the Universal Declaration of Human Rights.

106. In reply to these observations Mr. Krishnaswami explained that it was indeed necessary to take into account the situations and traditions of each country when dealing with the question. He could not, however, fully accept Mr. Hiscocks' suggestion that the attitude of countries permitting conscientious objection should be recognized as preferable since opinion on that point was extremely divided. He also drew attention to article 29 (1) of the Universal Declaration of Human Rights, which provides that

"Everyone has duties to the community in which alone the free and full development of his personality is possible."

#### 8. Dissemination of Religion or Belief

107. In connexion with the examination of Chapter VII of the draft report, concerning dissemination of religion or belief, the question was raised whether or not dissemination or propagation should be considered as a part of the right to manifest a religion or belief. Mr. Awad in particular pointed out that dissemination was not mentioned in articles 18 or 19 of the Universal Declaration of Human Rights. In olden days faiths had been propagated from a central point, spreading slowly into the surrounding lands; at present it was possible for new religions to spread rapidly all over the world and for people to go from one end of the earth to the other in order to propagate a faith. He raised the question whether it was fair to permit a powerful and highly intellectual group to try to influence primitive peoples whose beliefs are simple and whose powers of imagination are somewhat undeveloped. This seemed to him to involve an element of compulsion. He felt that the right to disseminate was not an absolute right but should apply only to groups of people more or less equal in their stage of development. Messrs. Hiscocks and Spaulding disagreed with this view, and Mr. Hiscocks said that missionary activity and colonization had not only been inevitable, but had often acted as a civilizing force.

/...



108. Mr. Fomin recalled that in the past missionaries had often acted in such a way as to perpetuate colonial rule. Unfortunately in many cases they had not attempted to spread scientific learning, nor had they promoted independence; indeed, in some territories they had served as a tool for colonial powers.

9. Management of Religious Affairs

109. Several suggestions were made by members of the Sub-Commission with reference to Chapter VIII of the draft report, on "Management of Religious Affairs".

110. Mr. Fomin expressed the view that it should take more fully into account the existence of different economic and social systems in various countries of the world. In his view the same yardstick could not be applied to all countries, irrespective of the difference in their economic or social systems. Mr. Santa Cruz suggested that mention should be made in the Chapter of the "civil death" imposed by some countries upon members of certain societies, particularly religious societies. He hoped that in the final report the Special Rapporteur would examine the question to what degree the deprivation of rights in such cases might be considered legitimate.

111. Mr. Ingles stated that in his view the Sub-Commission had competence to deal only with that aspect of the management of religious affairs which related to restrictions imposed by States on the rights of religious groups to organize. He considered it advisable to establish clearly that the Sub-Commission is not seeking to inquire into the broader aspect of management of religious affairs, which in his view was not within its competence. He also felt that Section C of the Chapter, entitled "The Financial Relationship Between the State and Religion", had only a casual relationship with the problems of management of religious affairs, and suggested that the materials in this section might better be included in a more general section which would relate to all special measures of protection taken by States to assist religious groups. Examples where States had imposed sanctions against officials or individuals who disturbed or prevented religious ceremonies or processions, or performed acts notoriously offensive to the participants, might also be included in such a special Chapter.

112. Mr. Awad pointed out that it was frequently useful for the State to have a working arrangement with religious groups, based on the needs and interests of those groups. In this way the State could assist in settling differences that might arise among the followers of the Church, in accordance with the terms of a mutually-accepted agreement.

10. General Trends and Conclusions

113. Generally, members of the Sub-Commission welcomed the optimistic note contained in Chapter IX of the draft report, on "General Trends and Conclusions". It was pointed out, however, that although the present trend is positive, it could not be expected to continue indefinitely; and that the problem was not merely one of promoting greater tolerance but of securing the recognition of the legal rights of various groups. Mr. Saario expressed the hope that the final report would indicate clearly what are the main types of discrimination in the matter of religious rights and practices, and what are the most appropriate measures to be taken to eradicate them. He felt that conflicts between the State and religious or philosophical groups should not be impossible to solve, particularly if sincere efforts are made to compromise differences which may arise.

11. Suggested Additions to the Draft Report

114. Two members of the Sub-Commission referred to matters which in their view might profitably be dealt with in the final report.

115. Mr. Ingles suggested that the study in its final form should deal not only with discrimination against a particular religious group, and its members, by public authorities, but also with discrimination against such groups or their members by other sections of the population. Mr. Krishnaswami, while agreeing that serious instances of that kind should be reported, since they affected the most sacred rights of the individual, replied that he could not make a detailed study of this question without duplicating the other studies made by the Sub-Commission and by various specialized agencies such as the International Labour Organisation.

116. Mr. Ketrzynski suggested that in the final study special attention might be given to the State's duty to protect non-believers from persecution by religious bodies. In his view Governments were frequently called upon to maintain an equal balance between several religious groups, or between believers and non-believers, and in this function the State must not discriminate against either party but must act impartially. This was all the more true because members of religious bodies were nearly always in the majority while members of lay or atheistic bodies frequently constituted a minority. He also suggested that a discussion of the relationship between religious movements and non-religious groups in social and public life might be included in the final report.

/...

C. Discussion of the Method to be followed in Completing the Study

117. Considerable attention was devoted by the Sub-Commission to a discussion of the method to be followed in completing the study. Essentially the method proposed by the Special Rapporteur was based upon that laid down in resolution B, adopted by the Sub-Commission at its sixth session, in connexion with the study on discrimination in education. Material was to be collected if possible from the Governments of eighty-four States Members of the United Nations and of the specialized agencies, from the Secretary-General, from non-governmental organizations, and from the writings of recognized scholars and scientists. No material could be expected from specialized agencies, as there were none having special competence in the matter of religious rights and practices. Summaries of material - "country studies" - dealing with each country were to be prepared and forwarded to the Governments concerned for comment and supplementary data. On the basis of these "country studies", revised in the light of the comments and supplementary data received from Governments, the final report was to be prepared by the Special Rapporteur.

118. In the introduction to his draft report, the Special Rapporteur indicated that he had already received information from the Governments of fifty-four countries, from twenty-five non-governmental organizations in consultative status with the Economic and Social Council, and from several non-governmental organizations not having such consultative status. Utilizing this information, and supplementing it when necessary from other sources at its disposal, he had prepared, with the assistance of the Secretariat, tentative "country studies" relating to thirty countries. Fifteen of these had already been submitted to the Governments concerned, and the remainder would be sent as soon as possible. Fifty-four "country studies" were yet to be prepared and verified.

119. The Special Rapporteur drew special attention to the rule laid down by the Economic and Social Council in the annex to resolution 664 (XXIV), to the effect:

"...that with regard to the programme of studies of discrimination which the Sub-Commission on Prevention of Discrimination and Protection of Minorities is engaged the country reports utilized in the preparation of these studies be not normally issued as documents..."

In this connexion the Special Rapporteur expressed the hope that the Council might be requested to reconsider its decision, or that in any event the Secretary-General

might find it possible to make an exception in the case of the study of discrimination in the matter of religious rights and practices, and to arrange for the "country studies" to be issued as documents.

120. On behalf of the Secretary-General it was pointed out that resolution 1203 (XII) of the General Assembly requested him to continue his efforts to reduce the length and amount of documentation produced during 1958, and that in the present matter this general resolution must be read in conjunction with the very explicit decision of the Economic and Social Council mentioned above. The Secretariat considered that these two texts left it very little latitude. The question also had a financial side. It had been estimated that the set of "country studies" under consideration would total about 1,000 pages, most of them being drafted in English and some in French. If these papers were to become documents, they would, under the rules of procedure of the Economic and Social Council, have to be issued in English, French and Spanish so that each of the original drafts would have to be translated into two other languages, making a total of 2,000 pages of translation. The translation and typing (leaving out of account both reproduction and distribution) of one page of this class of matter costs \$7.00, so that the total cost of converting the "country studies" into documents would be no less than \$14,000 plus the cost of reproduction and distribution. The Secretariat was, however, aware of the difficulties which the Sub-Commission would experience if the "country studies" were not available at all. It, therefore, suggested that the studies should be reproduced in the original language, which was usually English or French, and circulated to the members of the Sub-Commission, the members of the Commission on Human Rights and to all delegations, as well as to a limited number of non-governmental organizations. A complete series would also be made available in the press room for correspondents who wished to consult them.

121. Several members of the Sub-Commission, in particular Messrs. Hiscocks, Santa Cruz and Spaulding, joined the Special Rapporteur in objecting to the proposed solution; in their view the Special Rapporteur's study would be incomplete unless it was supported by the "country studies". They felt that the circulation of these "country studies" only as unofficial papers in the original language, and not as official documents, would be inadequate because the studies

would not be available to all who wished to consult them. Mr. Hiscocks suggested, as a possible solution, that the "country studies" might be made available upon request.

122. Subsequently a representative of the Secretary-General suggested that the "country studies" might be circulated as "conference room papers", and distributed as follows: (1) to members of the Sub-Commission; (2) to members of the Commission on Human Rights; (3) to delegations at Headquarters; (4) to non-governmental organizations; and (5) to the United Nations Press Room for consultation by journalists. In response to Mr. Hiscocks' suggestion, the Secretary-General's representative agreed that copies of the "conference room papers" might also be made available on request to bodies and persons interested in the preparation of the study of discrimination in the matter of religious rights and practices, it being understood that the requests would not be unduly numerous and would be transmitted through the Department of Economic and Social Affairs.

#### D. Consideration of the Draft Resolutions

123. The Sub-Commission considered draft resolutions on the study of discrimination in the matter of religious rights and practices submitted respectively by Mr. Santa Cruz (E/CN.4/Sub.2/L.131) and Messrs. Hiscocks, Ingles and Saario (E/CN.4/Sub.2/L.132). As the first of these draft resolutions related for the most part not only to the study of discrimination in the matter of religious rights and practices, but to the study of discrimination in the matter of political rights as well, Mr. Santa Cruz withdrew all but operative paragraph 2, reserving the right to reintroduce the draft resolution in connexion with item 8 of the agenda, "Further Studies in the Field of Discrimination".

124. Mr. Halpern suggested that a paragraph should be added to the resolution requesting the Special Rapporteur to add, at the end of each chapter, textual footnotes containing excerpts from the "country studies" relating to the subject-matter of the paragraphs to which the footnotes were keyed. Some members expressed their disagreement with this suggestion. In particular Mr. Fomin noted that the adoption of the proposed procedure would be detrimental to the contents as well as to the form of the report. Mr. Krishnaswami pointed out that the suggestion, if accepted, would give rise to difficulties. Mr. Halpern did not press the suggestion as a formal amendment, since it was for the Special Rapporteur to take into account the views expressed by all members of the Sub-Commission.

125. The sponsors of the joint draft resolution accepted a number of amendments suggested orally by various members of the Sub-Commission. In particular they struck out references to particular paragraphs of the draft report which had appeared in the third preambular paragraph; and withdrew the fourth preambular paragraph. They amended operative paragraph 3 in order to thank Governments which had responded to the Special Rapporteur's request for information, as well as to express the hope that those Governments which had not done so would do so at an early date. They amended the fifth operative paragraph by insertion of the words "if possible".

126. In order to meet the views concerning the publication of the "country studies", expressed by Mr. Santa Cruz in the second operative paragraph of his draft resolution, and those of other members of the Sub-Commission, the sponsors accepted a suggestion for the rewording of paragraph 7 and for the addition of Mr. Santa Cruz's second operative paragraph as paragraph 8 of their draft resolution.

127. In the course of the discussion it was pointed out that it would be preferable not to make a formal request to the Secretary-General, but simply to state that a reconsideration by the Secretary-General of his decision regarding the publication of the "country studies" would be appreciated by the Sub-Commission as a highly important and positive contribution to the success of its work. Messrs. Ecmín and Ketrzynski explained that on this understanding they could vote for the resolution as a whole although they would abstain in the vote on paragraph 7.

128. A separate vote was taken on paragraph 7 of the joint draft resolution. It was adopted by 7 votes to none, with 2 abstentions.

129. The joint draft resolution, as amended, was adopted as a whole unanimously as follows (E/CN.4/Sub.2/L.134):

#### RESOLUTION B

##### STUDY OF DISCRIMINATION IN THE MATTER OF RELIGIOUS RIGHTS AND PRACTICES

The Sub-Commission on Prevention of Discrimination and Protection of Minorities,

Recalling resolution F adopted by the Sub-Commission at its ninth session and resolution VI adopted by the Commission on Human Rights at its thirteenth session,

Having considered the draft report on discrimination in the matter of religious rights and practices presented by the Special Rapporteur, Mr. Arcot Krishnaswami (E/CN.4/Sub.2/L.123),

Having noted the difficulties referred to by Mr. Krishnaswami in the introduction to his report,

1. Expresses its warm appreciation to Mr. Krishnaswami for his work, which it believes has already made a substantial contribution to combatting discrimination in the matter of religious rights and practices throughout the world;

2. Joins with him in thanking the Secretary-General and non-governmental organizations for their assistance;

3. Thanks the Governments which have responded to the Special Rapporteur's request for information and expresses the hope that those Governments which have not yet replied will do so at an early date;

4. Approves the method of work decided on by the Special Rapporteur in relation to the supporting "country studies", and described by him in Section C of the introduction to his draft report;

5. Expresses the hope that Mr. Krishnaswami, taking into account the exchange of views on his draft report during the tenth session of the Sub-Commission, will, if possible, complete his final report in time for it to be considered by the Sub-Commission at its eleventh session;

6. Requests that the Secretary-General furnish Mr. Krishnaswami with the assistance necessary to enable him to accomplish this task;

7. States that a reconsideration by the Secretary-General of his decision regarding the publication of the said "country studies" would be appreciated by the Sub-Commission as a highly important and positive contribution to the success of its work and to the attainment of the objectives pursued by the various United Nations organs for the preparation of studies of discrimination;

8. Notes with appreciation the efforts that have already been made in this direction by the Secretary-General, taking advantage of the discretion allowed him by the terms of the annex to resolution 664 (XXIV) of the Economic and Social Council, in order to make available to all those interested the supporting "country studies", which are indispensable for a full appreciation of the report.

## VII. STUDY OF DISCRIMINATION IN THE MATTER OF POLITICAL RIGHTS

### Item 7 of the agenda

#### Introduction

130. At its 241st to 245th meetings, the Sub-Commission considered item 7 of its agenda, entitled "Study of discrimination in the matter of political rights". The Sub-Commission had before it an interim report (E/CN.4/Sub.2/L.124) submitted by its Special Rapporteur, Mr. Hernan Santa Cruz, in accordance with resolution G, adopted by the Sub-Commission at its ninth (1957) session. The interim report was divided into two parts. The first part dealt with the collection of material for the study, and indicated to what extent information had been forthcoming from Governments, the Secretary-General, the specialized agencies, and the non-governmental organizations. The second part, entitled "Concept of the Study", outlined the views of the Special Rapporteur on the materials to be included in the study and the general approach to be taken to the problem of discrimination in the matter of political rights. An outline, indicating the points which the Special Rapporteur intended to deal with in regard to each of the States Members of the United Nations or of the specialized agencies, was attached to the interim report in an annex. A summary of the activities of other organs of the United Nations relating to discrimination in the matter of political rights, prepared by the Secretariat, formed a second annex.

131. The Sub-Commission held a general debate on the interim report, and subsequently examined it chapter by chapter. On the basis of a draft resolution submitted jointly by Messrs. Chatenet and Ketrzynski, the Sub-Commission unanimously adopted, at its 245th meeting, a resolution on the study of discrimination in the matter of political rights.

#### A. General Views of the Sub-Commission on the Interim Report

132. Various members of the Sub-Commission expressed their approval of the interim report and their admiration for the method which the Special Rapporteur had adopted for carrying out the task entrusted to him. In general they were in agreement on the proposed framework for the study, as outlined in annex I

/...



of the interim report, and with the Special Rapporteur's analysis of the basic principles which were to govern his work.

133. Mr. Santa Cruz, for his part, expressed his thanks to the Secretariat, which had helped him not only in the collection of information and in the preparation of seven tentative "country studies", but had also provided him with an office and a temporary assistant in Santiago, Chile.

134. In introducing his interim report, Mr. Santa Cruz pointed out that it was mainly procedural in nature, and intended to indicate in broad terms how he planned to proceed. He expressed the hope that the Sub-Commission would give him clear directives which would guide him in his future work. He drew particular attention to Chapter VII of the interim report, in which he had indicated his resolution to undertake to prepare the study in a constructive spirit and in accordance with the views which had been expressed by the Secretary-General, in a speech delivered at the opening of the twelfth session of the Commission on Human Rights, to the effect that:

"... it is in the general interest to give these studies a positive direction and to avoid a sterile registration of charges against Member Governments. The purpose of such studies should be not to list cases where Governments may have violated human rights, but the much more constructive and useful one of studying techniques that have been found useful in certain countries in solving relevant problems and which could be used by other countries having the same, or similar problems ..."

135. The observations made by various members of the Sub-Commission, and by the representative of the Commission on the Status of Women, are set forth in detail in the summary records of the discussion (E/CN.4/Sub.2/SR.241-245). The Special Rapporteur, at the close of the debate, undertook to bear in mind the comments and suggestions which had been made in preparing a draft report which would be submitted to the Sub-Commission at the eleventh session. The main issues raised in the course of the debate are summarized below.

#### B. Main Issues Raised in Examination of the Interim Report

##### 1. Terms of Reference of the Special Rapporteur

136. Several members of the Sub-Commission drew attention to particular aspects of the terms of reference of the Special Rapporteur which in their view had not been sufficiently highlighted in Chapter I of the interim report.

Messrs. Chatenet and Halpern expressed the view that the Special Rapporteur

should take fully into account all the relevant passages of the basic resolution on studies of discrimination (resolution B, adopted by the Sub-Commission at its sixth session), and in particular the provisions of that resolution relating to the nature of the report. Mr. Chatenet expressed the hope that the Special Rapporteur, in preparing his draft report, would not lose sight of the fact that many of the most important principles in the political field depend upon the mores and customs of the people of the countries concerned, and that the specific circumstances existing in each country - including the historical background and economic and social structure of the country - had always to be taken into account. Mr. Awad, endorsing this view, emphasized that it was important that the Special Rapporteur should begin with no preconceived ideas as to the cause and circumstances of discrimination in the matter of political rights; he should first gather all the facts and sift all the documentation, and only then come to conclusions.

137. Mr. Fomin pointed out that the question of political rights was one of extreme complexity and could not be compared to any other issue. It should be kept in mind that there are different political systems in the world, and that it is not for the Sub-Commission to judge which system is better. This fact placed the Special Rapporteur in a particularly delicate position; any criticism which he might make relating to conditions in a particular State could be construed as a suggestion that the fundamental structure of the State should be altered. Mr. Fomin expressed the hope that the Sub-Commission should not, as a result of its study of the question of political rights, become a source of new friction or recriminations. For this reason he felt that the only proper course for the Special Rapporteur was to be guided by the statement of the Secretary-General which had been quoted by Mr. Santa Cruz in his opening remarks.

138. Mr. Halpern, while fully agreeing with the Secretary-General's statement, felt that since one of the main purposes of the study was to educate world public opinion, the Special Rapporteur could not avoid referring to, in the final report, certain factual instances of violations of political rights.

## 2. The Meaning of the Term "Discrimination in the Matter of Political Rights"

139. There was general agreement in the Sub-Commission to the proposal of Mr. Santa Cruz that the study of discrimination in the matter of political rights should deal not only with the rights set forth in Article 21 of the Universal

Declaration of Human Rights, but also with those rights proclaimed in Articles 15, 19, and 20 in so far as they affected the exercise of the rights set forth in Article 21. The members of the Sub-Commission felt that all the grounds of discrimination mentioned in the Universal Declaration of Human Rights, including race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, should be examined by the Special Rapporteur in drawing up the draft report. Mr. Halpern in particular directed attention to the fact that discrimination in the matter of political rights might be based on political or other opinion; thus if political rights were given only to the members of a particular political party or group, this would be discrimination against the rest of the population.

140. It was suggested that the Special Rapporteur had also to study the meaning of the term "discrimination", particularly as applied with respect to political rights. In this connexion, it was agreed, the implications of Articles 2, 7, 29 and 30 of the Declaration should be carefully analysed, as had been done in connexion with the study of discrimination in the matter of religious rights and practices.

### 3. Exercise of Political Rights in Territories other than Independent States

141. There was general agreement that the study was intended to deal with non-self-governing and trust territories as well as with independent States. Mr. Hiscocks pointed out that the Special Rapporteur was correct in planning to include information relating not only to independent States but also in the case of federal or non-unitary states, to the constituent, autonomous or dependent units, such as states, cantons, provinces, or territories. That approach might have certain dangers. Constituent parts of the federal States occasionally adopt an independent attitude towards the central authority, and in such cases the Sub-Commission must not give the impression that it was interfering in matters that were not its concern.

142. In reply the Special Rapporteur stated that, in view of his terms of reference and in keeping with the provisions of paragraph 2 of Article 2 of the Universal Declaration of Human Rights, there could be no doubt that the study was to deal with the exercise of political rights in the constituent, autonomous or dependent units of federal or non-unitary States.

4. Information Regarding Separate Representation of Distinct Groups of People

143. Several members of the Sub-Commission, in particular Messrs. Ingles and Krishnaswami, expressed the hope that in the final report some attention would be devoted to specific measures for the protection of minorities. Such measures had been extremely useful, in some countries, in helping backward groups to obtain their political rights.

144. This suggestion led to an exchange of opinions on the question whether or not special measures, taken to ensure that distinct groups of people are properly represented in the organs of the public authorities, could in any circumstances be considered as discriminatory.

145. Mr. Fomin pointed out that it was not always sufficient to adhere strictly to the principle of de jure non-discrimination, especially in the case of States having numerous national, racial and linguistic groups. Minorities, in addition, need special measures of protection which should include, among other things, special representation of those groups in domestic legislative bodies. Such special measures could not be considered discriminatory if they increased the representation of the groups in question and led to true equality and the protection of minorities.

146. Mr. Halpern felt that the criterion in all cases should be absolute non-discrimination or equality of treatment of the whole population. Any special reservation of places in government service, provided to assist national, racial or linguistic groups in attaining their political rights, should be looked upon as an exception, and such measures should not be condoned except as a temporary measure, to be eliminated as soon as absolute equality of treatment could be achieved. He felt very strongly that any system of maximum quotas limiting the number of places in governmental services held by the members of any particular religious, racial, or linguistic group to a fixed number or ratio was a violation of the Universal Declaration of Human Rights.

147. Mr. Krishnaswami pointed out that in many countries it had been found particularly important to have the viewpoint of minorities and backward groups reflected in legislative bodies, particularly when measures relating to the economic and social development of such groups were being considered. It was essential to give those groups a feeling of participation in Government as well

as a certain amount of practical experience, and in such cases the temporary special representation provided for these groups could only be viewed with sympathy. Such cases could easily be distinguished from instances where Governments had abused "quota systems" in such a way as to prevent groups of people from being adequately represented.

#### 5. Structure and Legal Status of Political Parties

148. In Chapter VI of the interim report the Special Rapporteur referred to several points in the outline which he had prepared (Annex I of the report) which he considered to be of particular importance. One of these points, which he intended to study with care, related to "the legal status of parties and other groups participating in political life".

149. Mr. Ingles approved the Special Rapporteur's decision to go into this question; he felt that inasmuch as political rights were not only individual rights but group rights, it would be necessary to examine how political parties operate in actual practice before concluding whether discrimination existed in the matter of political rights.

150. Messrs. Fomin and Ketrzynski, however, could see no useful purpose in including information on this subject in the study. In their view the main purpose of the study was the formulation of general recommendations and it was obvious that general recommendations could not be made regarding the structure of political parties. The inclusion of such information would lead to unnecessary political debates which could not possibly result in any constructive action.

#### 6. Aims of the Study

151. In the interim report the Special Rapporteur stated that in carrying out the work "his endeavour will be to state the facts as he finds them and to evaluate them in the light of his interpretation of the public freedom and of the concept of democratic society as set forth in the Universal Declaration of Human Rights". Mr. Ketrzynski felt that this statement was not fully in accordance with the view expressed by the Secretary-General, mentioned above, which Mr. Santa Cruz had accepted as a guide. He expressed the hope that the Special Rapporteur would evaluate the facts according to the standards accepted by the

United Nations. Otherwise there was a risk that he would approach the problem subjectively and attempt to establish some sort of moral classification of countries.

152. Mr. Santa Cruz, in reply, pointed out that his concept of political freedom was identical to that embodied in the Charter of the United Nations and in the Universal Declaration of Human Rights, and that he would endeavour to make his report as objective as possible. However, in no circumstances would he abandon intellectual honesty or hesitate to take up a clear position on any problem which might arise.

#### 7. Co-operation with the Commission on the Status of Women

153. The representative of the Commission on the Status of Women drew attention to the summary (contained in Annex II of the interim report) of the work which that Commission had undertaken during the past twelve years to secure equal opportunities for all citizens, regardless of sex, to participate in all branches of government through the exercise of political rights. That work had culminated in the preparation of the Convention on the Political Rights of Women. The Convention contains provisions on the right to vote and to be elected, and provides that women shall be entitled to hold public office and to exercise all public functions on equal terms with men and without discrimination.

Implementation by Governments of the last provision had already led to a great improvement in the situation; to date, forty Governments had signed the Convention and twenty-eight had either ratified or acceded to it.

154. The Chairman and various members of the Sub-Commission reaffirmed their desire for close co-operation with the Commission on the Status of Women in all aspects of its work, and its deep appreciation of the accomplishments of the Commission in combatting discrimination against women.

#### C. Assistance to the Special Rapporteur by the Secretariat

155. In reply to questions put by the Special Rapporteur and other members of the Sub-Commission, the Representative of the Secretary-General made a statement at the 245th meeting concerning the assistance which could be given to the Sub-Commission's Special Rapporteurs by the Secretariat. The statement referred to the study of discrimination in the matter of religious rights and practices as well as to the study of discrimination in the matter of political rights, as the problems of staff involved were inseparable.

156. Of the total of eighty-four "country studies" required in connexion with the study of discrimination in the matter of religious rights and practices, thirty had been drafted and approximately fifty remained to be prepared. Of the same total of eighty-four "country studies" required in connexion with the study of discrimination in the matter of political rights, only seven had been completed, and those were still in a tentative form. It was estimated that the preparation of the first draft of each "country study" required the work of one professional officer for an average period of five weeks. On the assumption that the professional officers would be exclusively engaged in that work, the total workload would require the services of one officer for a period of approximately 130 months, or of five officers for a period of twenty-six months.

157. There were at present five professional officers to assist the two Special Rapporteurs. With that staff, forty "country studies" relating to either study could be prepared in 1958. However, even if all forty related to the study of discrimination in the matter of religious rights and practices, the Special Rapporteur could not complete the study in 1958 as there would still remain fourteen "country studies" to be prepared and verified. In the circumstances, with the staff available at present, the Sub-Commission could not expect to have final studies on both subjects before it in 1959. It was therefore suggested that, in the course of 1958, twenty "country studies" should be prepared for the study on religious rights and twenty for the study on political rights. Thus Mr. Santa Cruz would be able to prepare for the Sub-Commission's eleventh session a draft report similar in scope to that submitted by Mr. Krishnaswami to the tenth session, and Mr. Krishnaswami would be in a position to submit his final study to the Sub-Commission at its twelfth session in 1960.

158. The Secretary-General would endeavour to supplement the existing staff of the Division of Human Rights in the course of 1958 by three additional officers, in accordance with the policy of flexibility of staff, subject to over-all programme priorities within the Secretariat. If this should prove feasible, the production of "country studies" for both Special Rapporteurs would be accelerated accordingly.

159. In reply to a question by Mr. Santa Cruz, the representative of the Secretary-General indicated, without being in a position to commit the Secretary-

General, that one of the three officers who, it was hoped, would be added to the staff of the Division of Human Rights might be attached to Mr. Santa Cruz in Santiago.

D. Consideration of Draft Resolution

160. At the 245th meeting, Messrs. Chatenet and Ketrzynski introduced a draft resolution on the study of discrimination in the matter of political rights (E/CN.4/Sub.2/L.135). Several suggestions were made orally for amendments to the draft resolution, and were accepted by the sponsors. The draft resolution, as amended, was adopted as a whole unanimously as follows (E/CN.4/Sub.2/L.136):

RESOLUTION C

STUDY OF DISCRIMINATION IN THE MATTER OF POLITICAL RIGHTS

The Sub-Commission on Prevention of Discrimination and Protection of Minorities,

Having considered the interim report on discrimination in the matter of political rights (E/CN.4/Sub.2/L.124) presented by Mr. Santa Cruz,

Having heard the supplementary explanations of the Special Rapporteur and held a general exchange of views on the subject and on the method of studying it,

Having taken note with great interest of the information supplied by the representative of the Commission on the Status of Women,

1. Congratulates Mr. Santa Cruz, and thanks him for having presented to it a precise and complete work programme in so wide and complicated a field and having defined, within the framework of the principles set forth in the Universal Declaration of Human Rights and with due concern for the effectiveness of this work, the spirit in which this study should be carried out,

2. Expresses its conviction that in conducting such a study - the exceptional importance of which for its own mission it emphasizes once again - constant care should be taken, in accordance with the instructions laid down in the resolutions of the Commission on Human Rights and with full awareness and understanding of existing situations, to make a constructive contribution towards the drawing up of objective and general recommendations in accordance with the

/...



United Nations Charter and towards the educating of world public opinion; and that a study so conducted can be extremely useful in bringing the situation as regards political rights in all countries more and more into line with the provisions of the Charter and of the Universal Declaration of Human Rights;

3. Decides to undertake a detailed examination of this question at its eleventh session, on the basis of a draft report to be prepared by the Special Rapporteur, which should as far as possible be similar in scope to the final report;

4. Expresses the hope that, to this end, the Secretariat will continue to extend to the Special Rapporteur all the co-operation required, both in Chile and at the Headquarters of the United Nations.

## VIII. FURTHER STUDIES IN THE FIELD OF DISCRIMINATION

### Item 8 of the agenda

#### Introduction

161. At the 246th, and the 248th to 251st meetings, the Sub-Commission considered item 8 of its agenda, "Further studies in the field of discrimination". Under this item the Sub-Commission examined several questions, including (a) the action taken by the United Nations and by the United Nations Educational, Scientific and Cultural Organization with regard to the study of discrimination in education, (b) the methods of work of the Sub-Commission, (c) the next study to be undertaken by the Sub-Commission, and (d) the future work programme of the Sub-Commission.

#### A. Action taken by the United Nations and by UNESCO with Regard to the Study of Discrimination in Education

162. As decided at the opening meeting (see paragraph 16 above), the Sub-Commission at its 246th meeting reviewed the action which had been taken by the United Nations and by UNESCO with regard to the study of discrimination in education. The Sub-Commission received printed copies of the Study of Discrimination in Education (Sales No. 1957.XIV.3), prepared by Mr. Charles D. Ammoun, its Special Rapporteur. The study had been printed in accordance with the request made to the Secretary-General by the Sub-Commission at its ninth session (E/CN.4/740, resolution C), and by the Commission on Human Rights at its thirteenth session (E/2970, resolution VIII B).

163. The representative of UNESCC, in reporting on the activities of that agency with regard to the study of discrimination in education, recalled that the Commission on Human Rights, in resolution VIII B, adopted at its thirteenth session, had requested UNESCO "to prepare, in collaboration with the Special Rapporteur, a brief popular summary of the study, to the end that the summary be published and used, particularly in universities, schools and other educational institutions, to combat discrimination in education". In addition, the Sub-Commission had suggested that UNESCO should be asked to consider the possibility of drafting and adopting an appropriate international instrument or instruments for the prevention of discrimination in education.

164. In June 1957, the Executive Board of UNESCO had authorized the Director-General to prepare a summary of the study in collaboration with the Special

Rapporteur, who would accept sole responsibility for it. This decision had been communicated to the Commission on Human Rights at its thirteenth session. The Special Rapporteur had subsequently agreed to draw up the summary with the assistance of the UNESCO Secretariat. The summary would be issued in May 1958.

165. With regard to the preparation of an international instrument for the prevention of discrimination in the field of education, the Executive Board of UNESCO, in March 1957, had reaffirmed its earlier position that the question of a convention on this subject required careful study. If, in the light of further consideration, it was decided to prepare such an instrument, UNESCO was ready to undertake the task. The Executive Board had decided, further, to consider the inclusion of an item dealing with the advisability of preparing such a convention on the agenda of the 1958 General Conference of UNESCO. The UNESCO Committee on Human Rights had been requested to study the text of the statement of fundamental principles incorporated in Resolution C, adopted by the Sub-Commission at its ninth session, and to provide an annotated text to be transmitted to the Commission on Human Rights. In addition, UNESCO was considering other practical measures which might be taken to reduce discrimination in education. The Executive Board would, at its April 1958 session, consider adding seminars on discrimination in education. The Executive Board would, at its April 1958 session, consider adding seminars on discrimination in education to UNESCO's work programme for 1959-1960.

166. Mr. Hiscocks stressed that the summary of Mr. Ammoun's study should be really brief and really popular and should be given the widest circulation possible. He pointed out that the expression "other educational institutions" included centres of adult education. Various members of the Sub-Commission expressed the opinion that the Secretariat of UNESCO should draw up this summary in collaboration with Mr. Ammoun.

167. During the discussion some members of the Sub-Commission expressed the view that the Sub-Commission should continue its collaboration with UNESCO on the study of discrimination in education.

#### B. Methods of Work of the Sub-Commission

168. At the 248th meeting a draft resolution on the methods of work of the Sub-Commission (E/CN.4/Sub.2/L.137) was submitted jointly by Messrs. Hiscocks and Santa Cruz. The first operative paragraph proposed that the Sub-Commission declare that its studies of discrimination are inseparable from the information on

which they are based, as summarized in the "country studies". The second operative paragraph proposed that the Sub-Commission note with appreciation the statement which had been made by the representative of the Secretary-General, that he would endeavour to augment the staff available for the preparation of "country studies", and so accelerate the work of the Special Rapporteurs. The final operative paragraph proposed that the Commission on Human Rights be requested to recommend to the Economic and Social Council that a certain amount of flexibility should be allowed to the Sub-Commission in deciding on the form which the studies and the ancillary material should take.

169. Mr. Santa Cruz explained that the joint draft resolution represented a compromise between the views of those members of the Sub-Commission who wished to request the Economic and Social Council to revise its decision concerning the issuance of the "country studies" as documents, and those who, while not opposing such a request to the Council, felt that its decision had unduly tied the Sub-Commission's hands. The view was expressed that the "country studies" might well vary from study to study, depending upon the subject matter. In some cases it might not be necessary to issue any "country studies" as documents, in other cases only certain "country studies" would need to be issued, while in still other cases the issuance of all the "country studies" as part of the final report might be considered absolutely essential. It was therefore desirable for the Sub-Commission to have a certain amount of flexibility in deciding upon the form in which these "country studies" should be issued.

170. Mr. Famin considered the draft resolution to be unduly broad, and to some extent in conflict with the resolution which the Sub-Commission had already adopted in connexion with the study of discrimination in the matter of religious rights and practices (resolution B above). He felt that the proposed request to the Commission on Human Rights was not clear, and that the Commission would have great difficulty in deciding what steps the Sub-Commission wished it to take. Mr. Saario was also of the view that "flexibility" was too broad a term, and might lead to misgivings in the Sub-Commission's superior bodies.

171. Other members of the Sub-Commission, however, supported the draft resolution. In their view, it constituted a diplomatic way of asking the Council to reconsider the decision which it had taken with regard to the issuance of the "country studies" as documents; they felt that the request was neither superfluous nor incompatible with the earlier resolution, but supplemented it.

172. Mr. Halpern proposed that the phrase in operative paragraph 3 of the draft resolution, "in deciding on the form which the studies and their ancillary material should take" should be amended to read "in deciding whether the 'country studies' should be issued as documents". The amendment was rejected by 3 votes in favour to 4 against, with 3 abstentions. Paragraph 3 in its original form was voted on separately, and was adopted by 8 votes in favour and 1 against, with 2 abstentions.

173. After the sponsors had accepted several amendments suggested orally by various members of the Sub-Commission, the draft resolution as a whole was adopted by 9 votes in favour and 1 against, with 1 abstention, as follows (E/CN.4/Sub.2/L.141):

#### RESOLUTION D

##### METHODS OF WORK OF THE SUB-COMMISSION

The Sub-Commission on Prevention of Discrimination and Protection of Minorities,

Considering:

(a) that the main work of the Sub-Commission since its sixth session has been the preparation of a series of studies on different aspects of discrimination,

(b) that the task of preparing each study has been entrusted by the Sub-Commission to one of its members, who has been selected for the purpose as Special Rapporteur and that each Special Rapporteur has devoted considerable time and effort to his task on a voluntary basis,

(c) that the nature of the studies themselves, the materials available in each case and the methods of work of the Special Rapporteur may vary considerably and that therefore there can be no identity of form between the reports,

Noting the policy of economy in documentation ordered by the General Assembly in its resolution 1203 (XII) and the decision of the Economic and Social Council in the annex to resolution 664 (XXIV), which provided that:

"... with regard to the programme of studies of discrimination on which the Sub-Commission on the Prevention of Discrimination and Protection of Minorities is engaged, the country reports utilized in the preparation of these studies be not normally issued as documents ..."

Having regard to resolutions B and C, adopted by the Sub-Commission at this session (E/CN.4/Sub.2/L.134 and 136);

1. Declares that the studies of discrimination being carried out by the Sub-Commission are, in its opinion, inseparable from the information on which they

are based, which is summarized in the "country studies"; and that, while ignorance of the substance of this information reduces the value of the studies and leaves them open to misinterpretation, inclusion of the information in the actual text of the studies would rob them of much of their cogency and quality by making them more difficult to disseminate and read;

2. Notes with appreciation the statement made by the representative of the Secretary-General, at the 245th meeting, that he would endeavour to make additional staff available for the preparation of "country studies" and so bring about the acceleration of the work of the Special Rapporteur, to which the Sub-Commission attaches importance;

3. Requests the Commission on Human Rights to recommend to the Economic and Social Council that, having regard to the facts set forth in this resolution a reasonable amount of flexibility should be allowed to the Sub-Commission in deciding on the form which the studies and their ancillary material should take, in order that the Special Rapporteurs may carry out their delicate tasks in the objective, non-controversial and constructive fashion which would be best designed to achieve the purposes with which the Sub-Commission has been charged.

#### C. The Next Study to be Undertaken by the Sub-Commission

174. At the 249th meeting Mr. Halpern introduced a draft resolution on the next study to be undertaken by the Sub-Commission (E/CN.4/Sub.2/L.138); it proposed that the Sub-Commission decide to undertake next a study of discrimination in the matter of emigration, namely "the right of everyone to leave any country, including his own, and to return to his country, as provided in article 13, paragraph 2, of the Universal Declaration of Human Rights". It further proposed that Mr. Ingles would be requested to prepare a preliminary study of the matter for submission to the Sub-Commission at its eleventh session.

175. Several members recalled that the Sub-Commission had originally decided to study discrimination in the matter of "immigration, emigration and travel". However, the Economic and Social Council, in resolution 586 (XX), had revised the subject of the study to read: "The right of everyone to leave any country including his own, and to return to his country, as provided in article 13, paragraph 2 of the Universal Declaration of Human Rights". They therefore questioned the proposal of Mr. Halpern that the Sub-Commission should study

"discrimination in the matter of emigration". Mr. Halpern, explaining that he had only intended to abbreviate the lengthy title of the study, agreed to revise the draft resolution in order to conform to the terms used by the Economic and Social Council.

176. Some members of the Sub-Commission felt that the study referred to by Mr. Halpern had already been given priority by the Economic and Social Council, while others felt the question of priority had yet to be considered.

177. Messrs. Fomin and Ketrzynski pointed out that many forms of discrimination might be considered more serious than the one referred to by Mr. Halpern. Indeed, there were probably fewer acute cases of discrimination in the field of the right proclaimed in article 13, paragraph 2, than in many other fields, in particular the legal, social, economic, cultural, scientific and health fields. Moreover, while the right mentioned in paragraph 2 of article 13 was normally of interest only to a small proportion of the citizens of various countries who wished to travel abroad, rights proclaimed in other articles of the Declaration affected everyone in every country. Mr. Fomin also suggested that if the Sub-Commission decided to study the right mentioned in article 13, it should deal with the whole article, including paragraph 1, which sets forth the right to freedom of movement and residence within the borders of each State. Mr. Santa Cruz pointed out that all the rights proclaimed in the Declaration were fundamental rights of equal status. He recalled the great importance which Latin American peoples attached to the right of asylum. Mr. Halpern referred to the recent experience of religious minorities in Nazi Germany as demonstrating the importance of the fundamental right to escape from a country in which human rights were being violated.

178. The Sub-Commission agreed that Mr. Ingles, in preparing his report, should take into account all the relevant articles of the Universal Declaration of Human Rights.

179. Mr. Fomin expressed the view that the Sub-Commission should seriously consider at its next session whether it should give priority in the first place to questions of such importance as discrimination in the social and economic fields, which affected the interests of the widest sections of the population, and in particular to discrimination in the fields of education, social insurance and security, medical assistance, wages, employment and occupation, and so forth.

180. Mr. Ketrzynski suggested that the Secretary-General might be requested to prepare an analysis of the subjects within the terms of reference of the Sub-Commission which remained to be studied. Such a list could serve as a basis for further discussion at the Sub-Commission's eleventh session.

181. Mr. Halpern, after hearing the views expressed by other members of the Sub-Commission, agreed to delete as a tautology the first operative paragraph of his draft resolution, by which the Sub-Commission would have decided to undertake a study of discrimination in the matter of emigration at its next study. He also agreed to reverse the order of the remaining two operative paragraphs. At his suggestion it was agreed that the request to the Secretary-General, suggested by Mr. Ketrzynski, would form the subject of a separate draft resolution, which Mr. Ketrzynski himself would submit to the Sub-Commission.

182. The draft resolution submitted by Mr. Halpern, as amended, was adopted unanimously by the Sub-Commission as follows (E/CN.4/Sub.2/L.145):

#### RESOLUTION E

STUDY OF DISCRIMINATION IN THE MATTER OF THE RIGHT OF EVERYONE  
TO LEAVE ANY COUNTRY, INCLUDING HIS OWN, AND TO RETURN TO HIS  
COUNTRY, AS PROVIDED IN ARTICLE 13, PARAGRAPH 2, OF THE  
UNIVERSAL DECLARATION OF HUMAN RIGHTS

#### The Sub-Commission on Prevention of Discrimination and Protection of Minorities.

Bearing in mind the "Future work programme of the Sub-Commission in the field of prevention of discrimination" adopted by the Sub-Commission at its sixth session (E/CN.4/Sub.2/L.67) as modified by resolution 545 D (XVIII) adopted by the Economic and Social Council on 29 July 1954 and by resolution 586 B (XX) adopted by the Economic and Social Council on 29 July 1955.

Taking note of the fact that the subject of discrimination in the matter of "the right of everyone to leave any country, including his own, and to return to his country, as provided in Article 13, paragraph 2, of the Universal Declaration of Human Rights" is the sole topic remaining upon the approved work programme of the Sub-Commission, upon which a full study has not yet been initiated.

Recalling that a preliminary study, dealing in part with that topic, was prepared by Mr. José D. Ingles (E/CN.4/Sub.2/167), and submitted at the seventh session of the Sub-Commission,



1. Decides to include the following item on the agenda of its eleventh session: "Study of discrimination in the matter of the right of everyone to leave any country, including his own, and to return to his country, as provided in Article 13, paragraph 2, of the Universal Declaration of Human Rights";

2. Requests Mr. Ingles to prepare, in consultation with the Secretary-General, for submission to the Sub-Commission at its eleventh session, a preliminary study of discrimination in the matter above-designated, supplementary to the preliminary study heretofore prepared by him, including a discussion and analysis of the history and meaning of the relevant articles of the Universal Declaration of Human Rights, the nature of the concepts involved, the scope and nature of the study, and the methods and procedure by which it may be carried out.

D. Future Work Programme of the Sub-Commission

183. At the 251st meeting Mr. Ketrzynski submitted to the Sub-Commission a draft resolution concerning future studies in the field of discrimination (E/CN.4/Sub.2/L.142). The draft resolution proposed that the Secretary-General be requested to undertake an analysis of the progress made in certain areas by the specialized agencies of the United Nations, and to present to the Sub-Commission at its next session a report on studies which might be undertaken in the areas of legal, social, economic and cultural discrimination.

184. At the same meeting Mr. Santa Cruz submitted a draft resolution (E/CN.4/Sub.2/L.143) on the work programme of the Sub-Commission. This draft resolution proposed that the Secretary-General be requested (a) to present to the Sub-Commission at its eleventh session a list of studies which are being made by various organs of the United Nations and of the specialized agencies relating to the rights set forth in the Universal Declaration of Human Rights, and (b) to submit to the Sub-Commission at the same session a list of those rights set forth in the Declaration which could usefully be studied from the point of view of prevention of discrimination.

185. The Sub-Commission considered the two draft resolutions simultaneously.

186. Mr. Santa Cruz withdrew the preambular clause of his draft resolution in favour of the preamble proposed by Mr. Ketrzynski. Mr. Santa Cruz then proposed that the first operative paragraph of his draft resolution be considered as an amendment to the first operative paragraph proposed by Mr. Ketrzynski.

/...

187. Various members of the Sub-Commission suggested amendments to the operative paragraph proposed by Mr. Santa Cruz. Mr. Santa Cruz accepted these amendments. Mr. Ketrzynski, then accepted the revised text of the first operative paragraph.

188. The draft resolution submitted by Mr. Ketrzynski, as amended, was adopted unanimously, as follows (E/CN.4/Sub.2/L.144):

RESOLUTION F  
FUTURE WORK OF THE SUB-COMMISSION

The Sub-Commission on Prevention of Discrimination and Protection of Minorities,

Noting that there are broad areas in which discriminatory practices, requiring comprehensive studies on the part of the Sub-Commission, are still in existence,

Noting that a number of important articles of the Universal Declaration of Human Rights have not yet been covered by studies on the prevention of discrimination,

Desiring to establish a work programme which would enable the Sub-Commission, in carrying out its objectives, to make the best use of the available resources of the United Nations in the years to come,

1. Requests the Secretary-General:

(a) to present to the Sub-Commission at its eleventh session a list of specific studies of particular rights set forth in the Universal Declaration of Human Rights which have been or are being made by various organs of the United Nations and of the specialized agencies,

(b) to submit to the Sub-Commission at the same session a list of those rights set forth in the Universal Declaration of Human Rights which could usefully be studied from the point of view of prevention of discrimination with a view to assisting the Sub-Commission to select those rights which, subject to the approval of the Commission on Human Rights and the Economic and Social Council, would form the subject of its future work programme;

2. Decides to consider at its eleventh session the question as to what action should be taken to follow up the studies already carried out under the work programme of the Sub-Commission;

3. Decides to place the item "Future work of the Sub-Commission, including further studies in the field of discrimination", on the agenda of its eleventh session.

IX. CONSULTATION REGARDING THE CONVENING OF A SECOND CONFERENCE OF  
NON-GOVERNMENTAL ORGANIZATIONS INTERESTED IN THE ERADICATION  
OF PREJUDICE AND DISCRIMINATION

Item 11 of the agenda

Introduction

189. At the 246th and 247th meetings the Sub-Commission considered item 11 of its agenda, entitled "Consultation regarding the convening of a second conference of non-governmental organizations interested in the eradication of prejudice and discrimination".

190. The Sub-Commission had before it a report (E/CN.4/Sub.2/191) by the Secretary-General on the results of his consultation with non-governmental organizations concerning the convening of a second conference. The report had been prepared in accordance with the request made by the Commission on Human Rights at its thirteenth session (resolution V), and by the Economic and Social Council in resolution 651 D (XXIV). By the latter resolution the Council, bearing in mind the desirability of convening such a conference as soon as possible, had requested the Secretary-General:

"(a) to consult non-governmental organizations in consultative status concerned, especially those in Africa, Asia and Latin America, the Sub-Commission on Prevention of Discrimination and Protection of Minorities, and the Commission on Human Rights regarding the convening of a second conference of non-governmental organizations interested in the eradication of prejudice and discrimination;

"(b) to report to the Council at its twenty-sixth session on these consultations and, in the light of them and having regard to the views expressed in the council, 1/ to make appropriate recommendations".

191. Pursuant to this resolution the Secretary-General had sent a circular letter to 115 non-governmental organizations in consultative status with the Economic and Social Council, requesting each to advise the Secretariat (a) whether it is concerned with the eradication of prejudice and discrimination, and (b) whether it is interested in participating in a second conference of non-governmental

---

1/ E/AC.7/SR.362 and 363.

organizations on this subject. The replies received from organizations concerned with the problem fell into three main groups, as follows:

- (a) Forty-seven organizations indicated that they were prepared to participate in a second conference;
- (b) Eleven organizations indicated that they would consider the possibility of participating if such a conference were to be convened, although in some cases they were not fully convinced of the desirability of convening a second conference at this stage; and
- (c) Ten organizations indicated that they would not participate in such a conference, either because they were not in favour of the conference being convened or because they were not in a position to send participants.

A. Statements by Representatives of Non-Governmental Organizations

192. Statements were made by the representatives of the International Federation of Christian Trade Unions, the World Federation of Trade Unions, the World Veteran's Federation, the Consultative Council of Jewish Organizations, the Friends World Committee, the International Federation of Women Lawyers, the International Movement for a Fraternal Union among Races and Peoples, and the World Jewish Congress. These statements are summarized in documents E/CN.4/Sub.2/SR.246 and 247.

193. The representative of the International Federation of Women Lawyers indicated that her organization was prepared to participate in a second conference, raising the total number of organizations in this group to forty-eight.

B. View of the Secretary-General

194. As the Secretary-General had expressed the view to the Commission on Human Rights, at its thirteenth session, that "he was not convinced of the value of the Sub-Commission's proposal for the holding of such a conference in 1958, believing it unlikely that such a conference could go beyond the achievements of a conference held in 1955", the question was raised as to the Secretary-General's attitude towards the question of convening a second conference at a later date.

195. In reply, the representative of the Secretary-General stated that, in accordance with resolution 651 D (XXIV) of the Economic and Social Council, any recommendation of the Secretary-General had to be preceded by consultations with the Sub-Commission, with the Commission on Human Rights, and with the non-governmental organizations concerned. Pending such consultations, the Secretary-

/...

General had an open mind on the subject. After the Sub-Commission and the Commission on Human Rights had expressed their views, the Secretary-General would give careful consideration to those views and to the views of the non-governmental organizations concerned. In the light of these consultations, he would make his own report and recommendation to the Council.

C. Discussion in the Sub-Commission

196. For the most part, members of the Sub-Commission saw no reason to alter the recommendation of a second conference of non-governmental organizations interested in the eradication of prejudice and discrimination which they had made to the Commission on Human Rights in 1957. They realized that it was now too late to convene such a conference in 1958, but felt that it should be convened as soon as possible, preferably in 1959.

197. Mr. Awad expressed the view that since the Economic and Social Council had already underlined the desirability of convening such a conference as soon as possible, there was no need for detailed discussion of the matter in the Sub-Commission. Messrs. Chatenet, Halpern, Ingles, Krishnaswami, Saario and Santa Cruz all stressed the importance of such a conference and were joined by Mr. Hiscocks in emphasizing the need for adequate preparations to be made in order to guarantee its success. Mr. Hiscocks also drew attention to the suggestion of the Friends World Committee for Consultation for the establishment of a small planning committee of non-governmental organizations. In particular it was suggested that the Secretary-General, in making physical arrangements for the conference and in preparing its provisional agenda, might find it useful to consult with representatives of the non-governmental organizations concerned, perhaps through the medium of a planning committee. It was pointed out that a sufficiently large number of organizations, including the largest and most important ones, had indicated that they would attend such a conference, and that the failure of a few groups to take part could not be regarded as of any material importance.

198. It was also pointed out, with regard to the references to Asia, Africa and Latin America made in the resolutions of the Commission on Human Rights and the Economic and Social Council, that the majority of the international organizations which had indicated a willingness to participate in the conference had affiliates

in those parts of the world, and that the affiliates would be represented through their international organizations at the conference.

199. With regard to the view expressed by the representatives of several non-governmental organizations - that certain problems might better be considered in regional conferences or seminars or by small groups of experts - it was suggested that the organization of such conferences, seminars or expert groups should be considered by the conference itself when convened.

D. Consideration of Draft Resolution

200. At the 249th meeting the Sub-Commission considered a draft resolution submitted by Mr. Ingles (E/CN.4/Sub.2/L.139). After Mr. Ingles had accepted several amendments suggested orally by other members of the Sub-Commission, the draft resolution, as amended, was adopted unanimously as follows:

RESOLUTION G

THE CONVENING OF A SECOND CONFERENCE OF NON-GOVERNMENTAL  
ORGANIZATIONS INTERESTED IN THE ERADICATION OF PREJUDICE  
AND DISCRIMINATION

The Sub-Commission on Prevention of Discrimination and Protection of Minorities,

Having considered the report of the Secretary-General on his consultation regarding the convening of a second conference of non-governmental organizations interested in the eradication of prejudice and discrimination (E/CN.4/Sub.2/191),

Having heard the statements of non-governmental organizations in consultative status with the Economic and Social Council on this question,

Noting that forty-eight organizations are prepared to participate in a second conference and that eleven more would consider the possibility of participating if such a conference were to be convened,

Bearing in mind resolution 651 D (XXIV) of the Economic and Social Council, which stressed the desirability of convening such a conference as soon as possible,

1. Reaffirms resolution E, adopted by the Sub-Commission at its ninth session, on the duration and agenda of any further conference of non-governmental organizations interested in the eradication of prejudice and discrimination that may be convened;

2. Recommends that the conference be held in 1959;

3. Reiterates the view that a second conference could usefully take up the further implementation by non-governmental organizations of the objectives laid down in paragraph 1 of resolution 546 (XVIII) of the Economic and Social Council adopted on 3 August 1954, and of the resolutions adopted by the First Conference (E/NGO/CONF.1/8);

4. Emphasizes the importance of adequate preparation and documentation for such a conference;

5. Suggests that the Secretary-General consult with the non-governmental organizations concerned, preferably through a planning committee, on the provisional agenda and arrangements to be made for convening the conference;

6. Expresses the opinion that in the preparation of the provisional agenda it would be advisable for the Secretary-General to take into account the suggestion made by some organizations that specific aspects of the problem of eradication of prejudice and discrimination might best be dealt with by regional conferences or seminars, or by small working groups of experts.

/...



X. ADOPTION OF THE REPORT OF THE SUB-COMMISSION  
TO THE COMMISSION ON HUMAN RIGHTS

Item 12 of the agenda

201. At the 251st meeting, the Sub-Commission agreed to postpone consideration of the following agenda items until its eleventh session:

Item 9: 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

Item 10: Protection of Minorities.

202. At the 252nd and 253rd meetings, the Sub-Commission considered the draft report of its ninth session (E/CN.4/Sub.2/L.133 and Adds. 1, 2 and 3).

203. At the request of Mr. Fomin, a separate vote was taken on the inclusion of paragraph 21 of the report. The paragraph was retained by 5 votes in favour and none against, with 4 abstentions.

204. The draft report, as revised, was adopted unanimously.

ANNEX

LIST OF DOCUMENTS BEFORE THE SUB-COMMISSION AT ITS TENTH SESSION

1. Documents issued in the general series:

- E/CN.4/Sub.2/187 - Study of Discrimination in Education  
(Note by the Secretary-General)
- E/CN.4/Sub.2/188 - Study of Discrimination in the Field of Employment  
and Occupation: Report of the International  
Labour Office (Memorandum of the Secretary-  
General)
- E/CN.4/Sub.2/189 - Further Studies in the Field of Discrimination  
(Note by the Secretary-General)
- E/CN.4/Sub.2/190 - Provisional Agenda for the Tenth Session of the  
Sub-Commission on Prevention of Discrimination  
and Protection of Minorities  
(Note by the Secretary-General)
- E/CN.4/Sub.2/191 - Consultation Regarding the Convening of a Second  
Conference of Non-Governmental Organizations  
Interested in the Eradication of Prejudice and  
Discrimination  
(Note by the Secretary-General)

2. Documents issued in the limited series:

- E/CN.4/Sub.2/L.123 - Study of Discrimination in the Matter of Religious  
Rights and Practices: (Draft Report prepared by  
the Special Rapporteur, Mr. Arcot Krishnaswami)
- E/CN.4/Sub.2/L.124 - Study of Discrimination in the Matter of Political  
Rights: Interim Report by the Special Rapporteur  
(Submitted by Mr. Hernan Santa Cruz)
- E/CN.4/Sub.2/L.125 - Mr. Santa Cruz: Draft resolution concerning the  
Study on Discrimination in the Field of  
Employment and Occupation
- E/CN.4/Sub.2/L.125/  
Rev.1 - Mr. Santa Cruz: Revised draft resolution  
concerning discrimination in the field of  
employment and occupation

/...

- E/CN.4/Sub.2/L.126 - Mr. Roy: Amendment to Mr. Santa Cruz's revised draft resolution (E/CN.4/Sub.2/L.125/Rev.1)
- E/CN.4/Sub.2/L.127 - Mr. Saario: Amendment to Mr. Santa Cruz's revised draft resolution  
E/CN.4/Sub.2/L.125/Rev.1)
- E/CN.4/Sub.2/L.128 - Mr. Roy and Mr. Santa Cruz: Proposed text of paragraph 4 of the revised draft resolution  
(E/CN.4/Sub.2/L.125/Rev.1)
- E/CN.4/Sub.2/L.129 - Discrimination in the Field of Employment and Occupation (Resolution adopted unanimously by the Sub-Commission at its 228th meeting)
- E/CN.4/Sub.2/L.130 - Pattern of Conferences (Note by the Secretary-General)
- E/CN.4/Sub.2/L.131 - Mr. Santa Cruz: Draft resolution on the Study of Discrimination in the matter of religious rights and practices
- E/CN.4/Sub.2/L.132 - Messrs. Hiscocks, Ingles and Saario: Draft resolution on the study of discrimination in the matter of religious rights and practices
- E/CN.4/Sub.2/L.133/  
Add.1-3 - Draft Report of the Tenth Session of the Sub-Commission on Prevention of Discrimination and Protection of Minorities to the Commission on Human Rights
- E/CN.4/Sub.2/L.134 - Study of Discrimination in the Matter of Religious Rights and Practices (Resolution adopted unanimously by the Sub-Commission at its 241st meeting)
- E/CN.4/Sub.2/L.135 - Messrs. Chatenet and Ketrzynski: Draft resolution on the Study of Discrimination in the Matter of Political Rights
- E/CN.4/Sub.2/L.136 - Study of Discrimination in the Matter of Political Rights (Resolution adopted unanimously by the Sub-Commission at its 245th meeting)
- E/CN.4/Sub.2/L.137 - Messrs. Hiscocks and Santa Cruz: Draft resolution on methods of work of the Sub-Commission
- E/CN.4/Sub.2/L.138 - Mr. Halpern: Draft resolution on the Study of Discrimination in the Matter of Emigration

- E/CN.4/Sub.2/L.139 - Mr. Ingles: Draft resolution on the convening of a second conference of non-governmental organizations interested in the eradication of prejudice and discrimination
- E/CN.4/Sub.2/L.140 - The Convening of a Second Conference of Non-Governmental Organizations Interested in the Eradication of Prejudice and Discrimination (Resolution adopted unanimously by the Sub-Commission at its 249th meeting)
- E/CN.4/Sub.2/L.141 - Methods of Work of the Sub-Commission (Resolution adopted at the 48th meeting by 9 votes in favour, 1 against and 1 abstention)
- E/CN.4/Sub.2/L.142 - Mr. Ketrzynski: draft resolution concerning future studies in the field of discrimination
- E/CN.4/Sub.2/L.143 - Mr. Santa Cruz: draft resolution on work programme of the Sub-Commission
- E/CN.4/Sub.2/L.144 - Future Work of the Sub-Commission (Resolution adopted unanimously by the Sub-Commission at its 251st meeting)
- E/CN.4/Sub.2/L.145 - Study of Discrimination in the matter of the right of everyone to leave any country, including his own, and to return to his country as provided in article 13, paragraph 2 of the Universal Declaration of Human Rights

3. Other documentation:

- ILO Report IV (1) - Prepared for the forty-second session of the International Labour Conference

-----