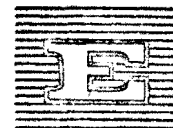


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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES

Seventh Session

SUMMARY RECORD OF THE HUNDRED AND FIFTY-FIRST MEETING

Held at Headquarters, New York,  
on Tuesday, 11 January 1955, at 10.50 a.m.

CONTENTS

Study of discrimination in the field of employment and occupation:  
Progress Report of the International Labour Office (E/CN.4/Sub.2/166;  
E/CN.4/Sub.2/L.81) (continued)

PRESENT:

<u>Chairman:</u>	Mr. SORENSEN	(Denmark)
<u>Rapporteur:</u>	Mr. INGLES	(Philippines)
<u>Members:</u>	Mr. AMMOUN	(Lebanon)
	Mr. AWAD	(Egypt)
	Mr. CASANUEVA	(Chile)
	Mr. CHATENET	(France)
	Mr. FOMIN	(Union of Soviet Socialist Republics)
	Mr. HALPERN	(United States of America)
	Mr. HISCOCKS	(United Kingdom of Great Britain and Northern Ireland)
	Mr. KRISHNASWAMI	(India)
	Mr. KULAGA	(Poland)
	Mr. ROY	(Haiti)
<u>Also present:</u>	Miss BERNARDINO	(Commission on the Status of Women)

Representatives of specialized agencies:

Mr. DUNAND	International Labour Organisation
Mr. METRAUX	United Nations Educational, Scientific and Cultural Organization

Representatives of non-governmental organizations:

<u>Category A:</u>	Miss SENDER	International Confederation of Free Trade Unions
	Miss KAHN	World Federation of Trade Unions
	Mrs. FOX	World Federation of United Nations Associations

Category B and Register:

Mrs. GIROUX	Catholic International Union for Social Service
Mr. JOFTES	Co-ordination Board of Jewish Organizations
Miss HITCHCOCK	International Alliance of Women
Mrs. WICKES	International Movement for a Brotherly Union of Races and Peoples

Category B and Register (continued):

Mr. HARDMOND	National Baptist Convention
Mr. SIENIEWICZ	<u>Nouvelles Equipes International</u>
Mr. PENCE	World's Alliance of Young Men's Christian Associations
Mr. JACOBY	World Jewish Congress
Miss PEZZULLO	Young Christian Workers
<u>Secretariat:</u>	
Mr. HUMPHREY	Director, Division of Human Rights
Mr. LAWSON	Secretary of the Sub-Commission

STUDY OF DISCRIMINATION IN THE FIELD OF EMPLOYMENT AND OCCUPATION: PROGRESS REPORT  
OF THE INTERNATIONAL LABOUR OFFICE (E/CN.4/Sub.2/166; E/CN.4/Sub.2/L.81) (continued)

Mr. INGLES observed that the Economic and Social Council had requested the ILO to submit to the seventh session of the Sub-Commission an interim report and not merely a progress report. The ILO had stated that it had considered factors not expressly mentioned in article 2 of the Universal Declaration of Human Rights, for example distinctions based on age, trade union affiliation, and marital status with regard to women. He believed that discrimination against women on the ground of marital status was certainly based on sex, if not on the "other status" mentioned in article 2. Discrimination on the ground of trade union affiliation was also based on "political or other opinion" ~~xx~~ mentioned in the same article. As regards discrimination based on age the question arose whether that was not covered by the provisions of article 25 of the Declaration giving protection to childhood and old age.

He underlined the observation of the ILO about the close connexion between employment and citizenship in certain countries. He cited the Convention relating to the Status of Refugees to illustrate how difficult it was to lay down a rule which absolutely forbade discrimination based on national origin in matters of employment. That Convention provided that in certain fields, the country ~~xxxxxxxx~~ concerned should accord to refugees the same treatment as that accorded to its nationals, and in other fields the same treatment as that accorded the most favoured aliens. Hence under that Convention, discrimination on grounds of national origin seemed to be sanctioned.

He then referred to article 29 of the Universal Declaration of Human Rights which stated that in the exercise of his rights and freedoms, everyone should be subject only to such limitations as were provided<sup>ded</sup> by law in accordance with certain specified purposes. Governments were, therefore, given wide discretion in specified cases to determine what were permissible limitations which should not be confused with discrimination.

Mr. AMMOUN said that the discriminatory measures applied to refugees in different countries could not be judged by the same standards. For example, in a country in which refugees accounted for 10 per cent of the total population the Government had to consider the possible repercussions of that situation on the standard of living of the population. Another case was that of a country whose refugee population outnumbered the original population by two to one. The case of each country was different and it was impossible to deal with the question by applying a common yardstick to all.

The CHAIRMAN, speaking as an expert, said that the anti-discrimination clause of article 2 of the Universal Declaration of Human Rights should be interpreted in a broad sense. Even if the Declaration did not specifically mention certain distinctions which the ILO had taken into account, they were nevertheless covered by implication. The ILO should not overlook any cases of discriminatory measures which were likely to confer an advantage on xx one group in comparison with another in the field of employment.

Mr. KRISHNASWAMI, speaking first on a question of principle, said the Sub-Commission should not give the impression that it placed less emphasis on human rights than on the limitations which Governments were authorized to introduce under the Declaration.

He recalled what had been accomplished by the ILO, whose work on discrimination in employment dated back to the pre-war days. The ILO in its study had taken into account circumstances other than those mentioned in article 2 of the Universal Declaration of Human Rights; for instance, it had studied equality of treatment between clerical employees and manual workers in the matter of social security. The ILO's study dealt with different sectors separately, with special emphasis on legislation. In his opinion the approach should be more universal. The ILO's object was to persuade Governments to enact legislative provisions dealing with discriminatory measures in employment, and by reason of its tripartite composition the ILO had access to information on certain aspects of social problems which

(Mr. Krishnaswami)

the Sub-Commission could not otherwise obtain. He recalled that the Economic and Social Council had invited the Secretary-General, other specialized agencies and non-governmental organizations to provide the ILO with whatever documentary material they could supply concerning discriminatory measures in the field of employment and occupation. In particular, he hoped that the non-governmental organizations would facilitate the task of the ILO by providing it with the necessary data.

He explained why he had expressed the hope in his draft resolution (E/CN.4/Sub.2/L.81) that the ILO would be in a position to present an interim report to the eighth session of the Sub-Commission. It was evident, in view of the short time at its disposal and the complexity of the subject, that the ILO's report could not but be an interim one.

With respect to the question of limitations of the rights recognized by the Universal Declaration of Human Rights, he considered that the Sub-Commission should decide whether certain limitations were justified. If fundamental human rights were hedged about by too many limitations, public opinion would rightly wonder why those rights were proclaimed in the Universal Declaration, whereas the support of the world conscience should be enlisted for the Sub-Commission's efforts to remove discriminatory measures in employment.

Miss BERNARDINO (Commission on the Status of Women) recalled that the Commission which she represented, ever since its establishment in 1946, when still only a Sub-Commission, had given much thought to discrimination in the field of employment and occupation and particularly to discrimination against female employees. Every year the Commission had gratefully welcomed the co-operation of the ILO in the form of studies contributing to the solution of those problems; it was particularly gratifying that under the auspices of the ILO Convention No. 100 had been concluded which to a certain extent recognized the principle of equal remuneration for men and women workers for work of equal value.

The Commission on the Status of Women had come to the conclusion that it was wrong to regard men as entitled to higher pay for their work because of their family responsibilities; in practice many women were forced by economic necessity to take up employment outside the home.

(Miss Bernardino, Commission on the  
Status of Women)

There were other forms of discrimination against women. The Commission on the Status of Women was convinced that its co-operation with the Sub-Commission would help to eliminate gradually the problem of discrimination by reason of sex in the field of employment.

Mr. HALPERN shared the views which Mr. Krishnaswami had expressed and which would be of great value to the ILO even if they were already held by that Organisation.

In the first place he agreed that the study should be universal and should not neglect any grounds for discrimination. In particular, close attention should be paid to distinctions made on grounds of political or other opinions or of differences in national or social origin. It might also be useful to compare the de facto situation in a country with the law, for the latter might at times obscure the real nature and seriousness of the facts.

It was not a tenable argument against that procedure to object that the form of discrimination to be studied was not specifically referred to in article 2 of the Declaration of Human Rights; on that point the Chairman had disposed of the doubt expressed by Mr. Ingles. Any such view was precluded by article 2 itself, which recognized that everyone was entitled to the rights set forth in the Declaration "without distinction of any kind"; the list which followed was purely illustrative. It was difficult to conceive of any form of discrimination which article 2 did not cover. It was therefore regrettable that in his letter (E/CN.4/Sub.2/166, page 3, first paragraph) to the Secretary--General the Assistant Director-General of the ILO should have implied that the article was other than comprehensive. He undoubtedly did not mean to suggest that any class ground of discrimination fell outside the scope of the Declaration of Human Rights but the passage might well have been worded differently. The Declaration of Human Rights had gained an important place in public regard and we ought to protect its prestige by giving it the widest interpretation.

Secondly, he agreed with Mr. Krishnaswami that it would be dangerous and unwarranted to place too much emphasis on limitations of rights. To do so

(Mr. Halpern)

would be to accept the premise that enactments introducing such limitations were immune from any international inquiry, whereas it was precisely the Sub-Commission's business to verify the reasonableness of a distinction even if that distinction was the outcome of governmental action. The solution of the problem, which had often arisen in international organs, depended on the interpretation of the word "arbitrary". He could not accept the interpretation that "arbitrary" meant whatever was inconsistent with the positive law of a particular country; rather, in his view, an arbitrary act was any act which an international organ, considering it in the light of all the known facts, did not regard as based on reason. In that sense, legislation might come under scrutiny and an effort should be made, through the education of public opinion and by appeal to the Government involved, to induce the Government to re-examine its legislation and to bring it into harmony with the Declaration of Human Rights.

In that connexion, he emphasized the difference between the orientation of the ILO and that of the Sub-Commission. The ILO's concern, with respect to discrimination in employment and occupation, was apparently to recommend the enactment of suitable legislation and a comparatively summary study might be sufficient to demonstrate that legislation would be useful. The Sub-Commission, on the other hand, was concerned with mobilizing public opinion and for that purpose it would need a comprehensive and thorough examination into the factual situation in every country. The difference in the orientation of the two bodies might well result in different kinds of studies. For that reason, the ILO's attention should be drawn to the resolution with respect to the study of discrimination in the field of education, to which a cross-reference was made in the resolution requesting a study to be made in the field of discrimination in employment and occupation. Under the principles there laid down, the study should be comprehensive both from the standpoint of the countries covered and the grounds of discrimination considered. If the report gave a picture of the true situation in each country, the Sub-Commission would be able to hold up to the world certain developments as a model to be followed elsewhere and also would be able to point out the respects in which improvement was needed. The Sub-Commission's work would be of particular value with regard to countries



(Mr. Halpern)

in which there was no freedom of criticism and in which there were no non-governmental organizations engaged in examination of the national conditions. Those countries should therefore be embraced within the scope of the study.

Lastly, he was in favour of an interim report. The word "interim" was more important than some might think, for even if the report was final in the eyes of the ILO it might very well not be regarded as such by the Sub-Commission, which had other factors to consider. He hoped the ILO would take all the views expressed by the Sub-Commission into account, and thanked it in advance for doing so.

Mr. DUNAND (International Labour Organisation) stressed the value of the comments made by the members of the Sub-Commission who in that way related the special studies of the ILO with the more general interests of the Sub-Commission. He wished to give an assurance as to the meaning of the passage from the ILO letter (E/CN.4/Sub.2/166) to which Mr. Halpern had referred. The ILO was not proposing to confine its attention to the causes of discrimination expressly mentioned in article 2 of the Declaration of Human Rights; furthermore the enumeration in that article was not limitative.

With regard to the nature of the report, he could well imagine that even if the report was completed in the eyes of the ILO it might not be regarded as final from all points of view because the topics it would deal with would probably never be exhausted neither from the ILO nor from the Sub-Commission, which covered a wider field even than the ILO.

Mr. HISCOCKS said he was in favour of Mr. Krishnaswami's draft resolution, but had one or two observations to make.

~~Under~~ resolution 545 C (XVIII) the Economic and Social Council had first invited the ILO to provide the Sub-Commission with an interim report and, secondly, had invited the Secretary-General and other agencies to place at the disposal of the ILO all the material available to them. But Mr. Krishnaswami had spoken of the material which the ILO would supply to the Sub-Commission.

(Mr. Hiscocks)

That wording was not very apt, as it would justify ex post facto the sort of criticism (misconceived in his view) which had often been levelled at the Sub-Commission in the Commission on Human Rights, namely that the Sub-Commission assumed the ILO would do its work for it. He advised against anything that might provoke such criticism; the distinction drawn in resolution 545 C should be preserved. Furthermore in presenting its report the ILO would do more than provide the Sub-Commission with material; it might make recommendations which, as Mr. Krishnaswami and Mr. Halpern had pointed out, would not interfere with such action as the Sub-Commission took on its own initiative.

Secondly, he saw no reason for retaining the word "interim" in the draft resolution. There had been talk of an interim report for the seventh session, but the session now in question was the eighth. Moreover, the absence of the word "interim" would not mean that the report was final, for the Sub-Commission would have observations to make on it; but delay should not be encouraged through the use of what was perhaps a redundant word. He would reserve his decision on that point, however, until the ILO representative had conveyed his Organisation's views thereon.

Mr. FOMIN said that, as the Sub-Commission was a United Nations organ, the ILO should take the Charter or the Declaration of Human Rights as its guide in defining discrimination and the grounds therefor and in establishing rules for the conduct of the contemplated inquiries. He rejected Mr. Halpern's view that the situation in a particular country should be examined from one or other specially selected point of view. Such a course would unduly restrict the scope of the study and would make it political; whereas by virtue of its experience the ILO would be able to state objectively whether discrimination existed, where it existed and what form it took, and even to make recommendations. Moreover, Mr. Halpern's interpretation of the word "arbitrary" any institution in another country which differed from its own institutions, whereas there was no question of arbitrary action unless and until a country's written law was violated.

It was the Sub-Commission's duty under the Charter to prepare recommendations without intervening in the domestic affairs of States. In that connexion the work of the Commission on the Status of Women could on the whole be taken as a model. The Commission examined information about discrimination against women in the political and other fields. Yet in many instances even the countries which had been mentioned in the Commission's documents as countries where discrimination was practiced had voted for the recommendations. That was the only way to achieve constructive results; but he would not labour the point as that procedural question would not arise until the ILO report was received.

Lastly, he was in favour of Mr. Krishnaswami's draft resolution. He merely wondered whether the ILO could perhaps present a fuller report, dealing with both procedure and substance, in 1955. He asked the ILO representative whether that could be done.

Mr. DUNAND (International Labour Organisation) said in reply to Mr. Hiscocks that it was difficult for the representative of the ILO to express a preference as between "interim report" and "report". The ILO in fact intended to submit to its Governing Body a report which although not final would be as complete as possible and would permit progress. If, however, circumstances prevented the transmission of the report to the Sub-Commission within the desired period - a case which no one wanted to arise - the ILO would be in a less difficult position if the text were allowed to stand as drafted. The Sub-Commission should in consequence feel free either to strike out or to maintain the word "interim".

The representative of the ILO did not think it necessary that special steps should be taken so that the report might be produced faster, as Mr. Fomin had suggested. The report was to be examined by the Governing Body's subsequent session in November 1955, in other words early enough to be transmitted within the prescribed time limit to the eighth session of the Sub-Commission.

Mr. CHATENET did not think he was being too pessimistic in stating that the eradication of discriminatory practices in the field of employment was a distant aim which one could only hope to reach gradually. All the members of the Sub-Commission seemed to agree that it would be desirable to receive a report from the ILO with the least possible delay but they were so well acquainted with the difficulties of the problem that they did not expect the ILO to express final views within the space of one year. In the field of discrimination, as in many others, no result was ever final. The past forty years had admittedly witnessed a decrease in discrimination but profound changes had taken place in the world and new forms of discrimination had arisen. The Sub-Commission had undertaken a permanent task and it would be dangerous ever to imagine that the world could be satisfied with the progress achieved. The presence of the ILO representative gave the assurance that the wishes of the Sub-Commission would be noted and it hardly mattered whether the word "interim", which in Mr. Krishnaswami's draft qualified the word "report" (of the ILO), was included or not in the draft resolution.

It was gratifying that the International Labour Office had not only examined constitutional provisions which were intended to remove discriminatory practices but was also investigating in detail how specific legislation directed against employment discrimination functioned in the countries having such legislation. However valuable a synoptic or comparative table of legislative provisions directed against discrimination might be, it was not what the Sub-Commission expected from the ILO. The ILO should be informed that the members of the Sub-Commission were just as interested, if not more interested, in the way in which the legislation was applied and in the situation which it created as in the legislative provisions themselves. A discriminatory measure or practice could be understood only by reference to the circumstances producing it and to the surroundings in which it had maintained or increased its hold. Before they could express a sound judgment on a discriminatory measure or practice, the members of the Sub-Commission had to acquaint themselves with the historical, geographical, economic and social circumstances which provided, so to speak, its context. It was dangerous to theorize in the abstract; it was as discriminatory to apply an abstract rule to all situations as to treat two identical situations differently.

Only if the information contained in the ILO report related to facts would members of the Sub-Commission be able to weigh the facts reported and to make recommendations. They could thus distinguish between cases which were attributable to natural causes and those which were attributable to improper motives and hence reprehensible. That was the only way in which the Sub-Commission could avoid academic debates and ineffectual recommendations.

As Mr. Casanueva had pointed out, the tripartite structure of the ILO had, for more than thirty years enabled it to deal with the three aspects of one and the same question in their human manifestations and, for that reason, it was reasonable to hope that the Sub-Commission would obtain the concrete information it desired and so would be able to do its own work successfully.

Mr. AWAD had no objection to keeping the word "interim" in the draft resolution but said that some words of gratitude should be inserted to convey the commendation expressed during the debate. The Sub-Commission should at least state that it understood the reasons which had caused the delay in the submission of the report.

Mr. CASANUEVA was not satisfied with the wording of paragraph 3 of the draft resolution according to which the Sub-Commission asked the ILO for an interim report "on its study" of discriminatory practices in the field of employment and occupation. That wording did not take into account the dividing line between the respective functions of the ILO and the Sub-Commission. The ILO's report would be an interim one from its own point of view in the sense that it might represent a stage in the adoption of a convention. It would be an interim one from the Sub-Commission's point of view to the extent that that body had to formulate final conclusions in "a" report on discriminatory measures in the field of employment and occupation. The words "on its study" seemed unfortunate in that they gave the impression that the Sub-Commission was more concerned with the methods adopted by the ILO than with the question of substance. That certainly was not the case.

Mr. KULAGA agreed with Mr. Hiscocks that the word "interim" was inappropriate. He was loth to support Mr. Awad's suggestion that the draft resolution should express praise or thanks, which, in point of fact, were undeserved, since the Sub-Commission was unaware of the contents of the ILO report.

Mr. FOMIN said that with all due respect for the ILO, he saw no need for thanking it for a report which had not yet been submitted. If the Sub-Commission was to say what it felt it might rather express regret that the study requested was not more advanced. Of course, members of the Sub-Commission understood the causes of the delay but it was too much to ask them to congratulate the ILO.

He was ready to vote for the draft resolution, provided that Mr. Awad did not press his proposal and provided that the Sub-Commission asked the ILO in paragraph 3 for a report on the question of substance and not on the question of method.

Mr. ROY pointed out that the resolutions of the Economic and Social Council and of the Commission on Human Rights strictly forbade the Sub-Commission to undertake studies which came within the competence of a specialized agency.

Under the terms of resolution 545 (XVIII) the Economic and Social Council had entrusted the study of discriminatory practices in the field of employment and occupation to the International Labour Organisation. Hence the ILO should not be thanked for a report which it had not yet submitted. Naturally, he was not expressing any criticism of the ILO.

Mr. KRISHNASWAMI was glad to gather from the debate that he had been right in drafting his resolution in moderate terms and in avoiding unduly strong language. Not wishing to cast the slightest reflection on the ILO's reputation, and satisfied by the explanations given for the delay in the preparation of the report, his intention had been to remain neutral and to award neither praise nor blame in his draft resolution.

The real object of the draft was to avoid a similar situation at the eighth session. He hoped that no doubt remained about the Sub-Commission's

wish, which was to obtain a full report on the substance of the question.  
To avoid any misunderstanding he was ready to omit the word "interim".

The meeting rose at 1.10 p.m.