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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND  
PROTECTION OF MINORITIES

Eleventh Session

SUMMARY RECORD OF THE TWO-HUNDRED AND FIFTY-SIXTH MEETING

Held at Headquarters, New York,  
on Tuesday, 6 January 1959, at 3.20 p.m.

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PRESENT:

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

Representatives of specialized agencies:

Mr. METALL	International Labour Organisation
Mr. GAGLIOTTI	United Nations Educational, Scientific and Cultural Organization

Representatives of non-governmental organizations:

<u>Category A:</u>	Miss SEIGEL	International Confederation of Free Trade Unions
	Miss KAHN	World Federation of Trade Unions
<u>Secretariat:</u>	Mr. HUMPHREY	Director, Division of Human Rights
	Mr. LAWSON	Secretary of the Sub-Commission

STUDY OF DISCRIMINATION IN THE FIELD OF EMPLOYMENT AND OCCUPATION (E/CN.4/Sub.2/192; CONVENTION 111 AND RECOMMENDATION 111 OF THE INTERNATIONAL LABOUR ORGANISATION; REFERENCE PAPER (EXTRACTS FROM PROVISIONAL RECORDS NOS. 21, 29 AND 30 OF THE FORTY-SECOND SESSION, INTERNATIONAL LABOUR CONFERENCE); E/CN.4/Sub.2/L.148, L.194)  
(continued)

Mr. HISCOCKS, referring to the remarks which Mr. Roy had made at the previous meeting, said that while he did not wish to reopen the previous year's debate, he maintained the position he had taken at the tenth session, namely, that the Sub-Commission should be as restrained as possible in its observations concerning the International Labour Organisation (E/CN.4/Sub.2/192, paragraph 30). He was surprised at the gratification expressed by Mr. Roy over the number of the Sub-Commission's suggestions that had been acted upon by the International Labour Conference. Though it was true that the final text of Convention 111 referred to the Universal Declaration of Human Rights in its preamble and used the term "social status" in article 5, there was scarcely a reference to the Sub-Commission's debates in the records of the International Labour Conference, while many of the Sub-Commission's suggestions had been entirely disregarded. With respect to article 6, excellent in both style and substance, rather than congratulate itself on the influence it had had, the Sub-Commission should recognize that, unlike the ILO, it had been unable to draft a satisfactory provision on measures against discrimination in Non-Self-Governing Territories. The occasion called for self-criticism instead of mutual congratulations.

While the words "national extraction" in article 1, sub-paragraph 1 (a), of Convention 111 might cover the case of stateless persons, Mr. Krishnaswami's amendment (E/CN.4/Sub.2/L.149) was a useful clarification and he would support its adoption.

On the question of keeping the study of discrimination in the field of employment and occupation on the Sub-Commission's agenda, he agreed with Mr. Chayet that it was not advisable to reopen the debate before the Convention had been ratified and had come into force.

Lastly, the Sub-Commission should extend its warmest congratulations to the ILO for its rapid and careful work. It should be a source of gratification to the Sub-Commission that in the international labour debates there were so many references to the fact that discrimination in the field of employment and occupation was an evil which ought to be combated. Moreover two great

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(Mr. Hiscocks)

international instruments now existed which incorporated the idea that discrimination in employment and occupation was wrong.

Furthermore, paragraph 5 of article 19 of the Constitution of the International Labour Organisation provided that even States members of the ILO which had not ratified the Convention should report to the Director-General of the International Labour Office the position of their law and practice in regard to the matters dealt with.

Mr. SPAULDING felt that the provisions of the Convention and Recommendation could not be fully and sincerely applied unless the United Nations and the ILO were able to act as educators and impress upon public opinion how harmful and reprehensible discriminatory practices were. The instruments adopted were nevertheless extremely valuable and were very usefully supplemented by the ILO Constitution which required States members to submit reports periodically. The Sub-Commission should now express its gratitude to the ILO and embark upon the consideration of the other important items on its agenda with which it alone was competent to deal.

Mr. ROY thought that Mr. Hiscocks had misconstrued his position. He had not intended to heap praise on the Sub-Commission's work, but had confined himself to an objective consideration of the extent to which the International Labour Conference had acted upon the Sub-Commission's suggestions.

Mr. FOMIN felt that it was the Sub-Commission's duty to continue to give some thought to the matter and to make every effort to ensure further progress. The ILO had taken a first step and although no one underestimated the importance of the action, it was still only a first step. The instruments which had been adopted had some weak points and the position would still be unsatisfactory even if the States which ratified the Convention made a sincere effort to implement it. At least one State in which there was discrimination in that sphere had indicated that it would not accede to the Convention and there was no certainty that its example would not be followed by certain other countries in which there was discrimination. The situation should be watched carefully, the more so as the United Nations could not shift the full burden of its work in that field to the ILO. The membership of the two organizations

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(Mr. Fomin)

was not identical and, moreover, the Charter placed certain specific obligations on the United Nations in the manner of eliminating discrimination. In his opinion, the ILO's consideration of the question of further measures in that sphere should not be restricted to an examination of the reports provided for in its Constitution, in the Convention and in Recommendation 111, and the Sub-Commission should not be afraid of offending the ILO by suggesting additional measures which would strengthen the instruments that had been adopted. In fact, it was its duty to do so.

Mr. METALL (International Labour Organisation) said that it was difficult, if not impossible, to specify who deserved the credit for any particular section of the instruments adopted.

Moreover, the fact that the texts were final, having been adopted in June 1958 by the International Labour Conference, did not mean in any way that they could not be improved upon or strengthened later. In that respect, the ideas of the ILO were fairly close to the views expressed by Mr. Fomin. The stages which followed the adoption of a convention or recommendation were perhaps even more important than the adoption itself. The process was a continuing one: on the one hand, the Convention would not come into force until twelve months after the date on which the ratifications of two members had been registered with the Director-General (article 8); on the other hand, under the Constitution of the ILO (article 19, paragraph 5 (b)), each member had a period of one year from the closing of the Conference to bring the Convention before the authorities competent to ratify it. This relative slowness was inevitable not only by reason of the constitutional requirements of the ILO and its member States but also because under ILO conventions States undertook heavier responsibilities than under most other international conventions. The States which ratified the Convention would assume the obligation to apply the provisions thereof and also a number of obligations arising out of the Constitution of the ILO, such as that of submitting to the Director-General of the International Labour Office reports in reply to a questionnaire drawn up by the Governing Body. Those reports were then considered by a committee of experts which made an annual study of the application of each convention by each of the States that had ratified it. The very detailed reports of the committee of experts were then submitted to a committee of the

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(Mr. Metall, ILO)

International Labour Conference. That committee, which was composed of representatives of Governments, employers, and workers considered the extent to which national legislation conformed with the provisions of the conventions and set forth its observations in a report which came before the Conference - also a tripartite body. Moreover, the Governing Body could from time to time present to the General Conference a report on the working of the Convention (article 12 of the Convention) and ask the States which had not ratified it to submit reports (ILO Constitution, article 19, paragraph 5 (e)).

With respect to the Recommendation, the procedure was slightly different. In each State one Recommendation had to be submitted to the national legislative authority within twelve months, but in that case, too, the States were required to furnish the Director-General with reports on the extent to which effect had been given to it.

Accordingly, control of application was extremely thorough and, of course came within the exclusive competence of the ILO. While he understood the Sub-Commission's interest in the matter, he pointed out that a formal agreement concluded between the United Nations and the ILO recognized the competence of the specialized agency in the matter (First ILO Report to the United Nations, Volume II, Appendix II, article I). The ILO was none the less desirous of keeping the Sub-Commission informed, as it had done in the past, and would continue to do in the future whenever the situation so required. But that would not occur before two or three years in view of the stages that had to be gone through.

Lastly, he wished to say that Mr. Roy's oral proposal and Mr. Santa Cruz's draft resolution (E/CN.4/Sub.2/L.148) were in keeping with the wishes of the ILO itself, which hoped for speedy and large-scale ratification; without wishing to comment specifically on a text which concerned a convention ratified outside the competence of the ILO he thought that Mr. Krishnaswami's amendment (E/CN.4/Sub.2/L.149) might be genuinely helpful. Unlike some of the Sub-Commission's other proposals, the amendment had the merit of referring to a convention already adopted by the United Nations and did not seek the inclusion in an ILO convention of provisions which were likely to make its ratification more difficult.

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Miss KAHN (World Federation of Trade Unions) expressed satisfaction that the International Labour Conference of 1958 had adopted the Convention concerning Discrimination in respect of Employment and Occupation. However, the adoption of the Convention was only a first step and the WFTU believed that the most important steps now to be taken were those which would ensure the largest possible number of ratifications. Its affiliates were already working towards that end.

The task of the Sub-Commission in the future was enormous, as economic discrimination was very prevalent in certain areas of the world, and the Sub-Commission had a broad and continuing mandate in matters relating to discriminatory measures in all the spheres mentioned in the United Nations Charter and the Universal Declaration of Human Rights. For those reasons the WFTU renewed its suggestion that the Sub-Commission should include in the agenda of its twelfth session a study of further steps to be taken.

Miss SEIGEL (International Confederation of Free Trade Unions) associated herself with the preceding speakers in expressing satisfaction at the adoption of the Convention concerning Discrimination in respect of Employment and Occupation. The ICFTU would do everything in its power, in the countries where it was represented, to assist in having the Convention ratified.

She urged the Sub-Commission to approve the draft resolution submitted by Mr. Santa Cruz (E/CN.4/Sub.2/L.148). She considered that the ILO, which included representatives of Governments, trade unions and employer organizations, was the institution best qualified to supervise the working of a convention. Moreover, experience showed that conventions were better implemented in countries where workers were organized in free trade unions.

The CHAIRMAN, speaking as a member of the Sub-Commission, expressed satisfaction that the Convention had at last been adopted. He felt, however, that it was too early to deal with matters of detail. The texts of the Convention and of the Recommendation supplementing it were final for the time being. They could, if necessary, be improved upon later on, but it had to be borne in mind that they had been adopted by the representatives of eighty countries.

He therefore hoped that Mr. Santa Cruz's draft resolution would be adopted.

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Mr. SANTA CRUZ reminded the Sub-Commission that at the previous meeting he had submitted a draft resolution (E/CN.4/Sub.2/L.148). He wished to make some additional observations and to propose certain changes which had been suggested to him by Mr. Roy, whom he thanked for having associated himself with the draft.

In paragraph 1 the words "some recommendations supplementary" should be replaced by "a Recommendation supplementary".

With regard to Mr. Roy's doubts concerning the propriety of the procedure envisaged in paragraph 2, he felt that while the Sub-Commission could not address itself to Governments direct it could quite properly request the Economic and Social Council, through the intermediary of the Commission on Human Rights, to recommend that they should ratify the Convention.

He wished to maintain the text of paragraph 3 despite Mr. Hiscocks' observations. While the Convention and the Recommendation were at present definitive instruments, they could nevertheless be amended in the future to take into account the Sub-Commission's observations. Thus, for example, a reference to the Universal Declaration of Human Rights had been inserted in the preamble to the Convention, and article 6 of the Convention had been amended in accordance with the views of the Sub-Commission to include the provision that the Convention should likewise apply to non-metropolitan territories.

He drew the Sub-Commission's attention to the nature of its responsibility. He did not agree with the ILO representative that there was a risk of encroaching upon the ILO's private domain, for the ILO was not the only one to bear responsibility for the attainment of the desired objectives. The Sub-Commission assisted the Commission on Human Rights and the Economic and Social Council in formulating their policy in matters within their sphere and the Council in turn was entitled to submit recommendations to the ILO in the light of its subsidiary organs' observations. The same point could be made in connexion with the comments of Mr. Spaulding and Mr. Hiscocks, in whose opinion the ILO's work should be regarded as sacrosanct; indeed, the very consideration due the ILO required that any documents it transmitted to the Sub-Commission should be studied with the greatest care.



(Mr. Santa Cruz)

Accordingly, he had added to his draft resolution the following new paragraph, which would be paragraph 4:

"Also requests the Secretary-General to keep the Sub-Commission informed regarding the implementation of the Convention and the Recommendation, requesting the relevant information if necessary from the International Labour Office, particularly the reports of the Governing Body of the International Labour Office referred to in article 12 of the said Convention".

Mr. KRISHNASWAMI supported Mr. Santa Cruz's draft resolution and requested the Sub-Commission to add to it the amendment he had submitted (E/CN.4/Sub.2/L.149). He assured the ILO representative that the Sub-Commission's desire was to do away with discrimination; it was for that reason that it was examining the Convention carefully.

The ILO representative had approved the amendment, which by drawing the attention of Governments to the provisions of the Convention relating to the status of Stateless Persons, in particular to article 2 of Chapter III thereof, would remedy a serious omission.

Mr. SANTA CRUZ pointed out that at the previous meeting he had indicated his approval of the idea expressed by Mr. Krishnaswami, to whom he expressed his thanks.

Mr. FOMIN drew the Sub-Commission's attention to two points arising in connexion with the draft resolution.

Firstly, with regard to the new paragraph 4 proposed by Mr. Santa Cruz, he wished to know who would be required to decide whether it was necessary to request information.

Secondly, although the United Nations and the ILO belonged to the same family they had different charters, and each had quite narrowly circumscribed and strictly defined responsibilities. In many cases the United Nations had dealt with problems that had also been dealt with by certain specialized agencies, because joint work was more productive than isolated efforts of a single body.

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(Mr. Fomin)

Accordingly, he would prefer that the resolution should request the ILO to consider other possible measures.

With regard to Mr. Krishnaswami's amendment, it was not very reasonable, indeed it was dangerous, even from the point of view of form, to mix two different questions. Before recommending Governments to become parties to a convention, one should at least look into the convention's content. But the Sub-Commission had not studied the Convention relating to the Status of Stateless Persons and it could not study that question as it did not come within the Sub-Commission's competence. He was therefore unable to support the amendment.

The CHAIRMAN, speaking as a member of the Sub-Commission, said he hoped that Mr. Krishnaswami would accept the new paragraph 4 proposed by Mr. Santa Cruz.

The Recommendation complemented the Convention, although they were two separate instruments. While the Recommendation was not as binding as the Convention from the legal point of view and while it was a less serious offence to act contrary to the Recommendation than to violate the Convention, it was still an offence, and the two instruments were parallel.

Mr. MACHOWSKI said that he was opposed to Mr. Krishnaswami's amendment; the problem of statelessness was so far removed from that of discrimination in respect of employment and occupation that it would be dangerous to set a precedent by dealing with both matters in the same resolution.

Mr. SANTA CRUZ saw no reason for specifying the circumstances in which the Secretary-General, in whom he had complete confidence, would be required to request the relevant information from the International Labour Office, or for amending the new paragraph 4 in the manner proposed by Mr. Fomin, since it was so drafted as to give the Sub-Commission ample latitude to examine any information transmitted to it, and since in any case, as Mr. Hiscocks had observed, any member of the Sub-Commission could request the inclusion of the question in the agenda.

With regard to Mr. Krishnaswami's amendment, he was not opposed to including in the resolution a mention of the Convention relating to the Status

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(Mr. Santa Cruz)

of Stateless Persons; he had participated in the work of the United Nations on the subject. Nevertheless, he recognized the cogency of the arguments advanced by Mr. Fomin and Mr. Machowski in that connexion.

Mr. SAARIO agreed that Mr. Krishnaswami's amendment raised some dangers, and that it might expose the Sub-Commission to the criticism that it had referred to texts which were not within its competence.

Mr. HISCOCKS said that despite the challenging statements made he did not wish to reopen the debate on a question examined at the previous session. He had pointed out earlier that the ILO's Committee on Discrimination had passed over the work of the Sub-Commission almost in silence. But in general the Sub-Commission could be very gratified of the results of its efforts.

Turning to the draft resolution, he said he would prefer a simpler text which could receive unanimous support. For the beginning of paragraph 1 he proposed a stronger wording, such as "Notes with great satisfaction". He would request a separate vote on paragraph 2, since in his opinion the ratification and implementation of the Convention should be left entirely to the goodwill and good faith of Governments. Finally, he hoped that Mr. Krishnaswami would agree to withdraw his amendment.

Mr. ROY, who had associated himself with Mr. Santa Cruz in sponsoring the draft resolution, accepted the majority of the changes requested. He saw no reason for opposing the new paragraph 4 proposed by Mr. Santa Cruz or for changing its wording, since paragraph 1, in specifying that the Convention was only a step towards the desired objective, implied that the question should remain on the Sub-Commission's agenda.

He would have some difficulty, however, in accepting Mr. Krishnaswami's amendment, which referred to a document not yet studied by the Sub-Commission.

Mr. INGLES thought that the Recommendation was no less important than the Convention. Consequently, he proposed that paragraph 1 of the draft resolution should be amended to read: "... a Convention and a Recommendation concerning Discrimination in respect of Employment and Occupation and states

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(Mr. Ingles)

that ...". He asked Mr. Krishnaswami to withdraw his amendment, which would be out of place in the draft resolution. If the Sub-Commission referred to the Convention relating to the Status of Stateless Persons it ought also to refer to other conventions, such as the Migration for Employment Convention referred to in article 8 of the Recommendation.

Mr. CHAYET said that in general he was in favour of Mr. Santa Cruz's draft resolution. He supported the amendments proposed by Mr. Ingles and Mr. Hiscocks with regard to paragraph 1. So far as paragraph 2 was concerned, he suggested replacing the word "invite", which was a very strong term, by the words "appeal to". While he thanked Mr. Santa Cruz for having taken his observations into account in drafting the new paragraph 4, he suggested that its second part should be deleted or, at least, that its wording should be softened.

Mr. METALL (International Labour Organisation) also supported the wording proposed by Mr. Ingles for paragraph 1. He suggested that the last part of the new paragraph 4 should be deleted if only for juridical reasons, since if it were maintained it might provoke a jurisdictional dispute between the Sub-Commission and the International Labour Conference, which might take exception to the passage in question.

Mr. HISCOCKS supported the ILO representative's suggestion.

The CHAIRMAN, speaking as a member of the Sub-Commission, said that he was convinced of the necessity for leaving the present forceful terms of paragraph 2 unchanged. Governments were only too prone to delay the ratification of conventions, as was evidenced by the situation which had arisen immediately after the Suez affair with regard to the application of the Convention for the protection of cultural property in the event of armed conflict.

Mr. SANTA CRUZ said that, bearing in mind the purpose of the Sub-Commission to undertake studies of discrimination with a view to contributing to its elimination, he was willing to accept most of the amendments suggested, and would try to complete the drafting of the resolution in consultation with the other members of the Sub-Commission.