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Seventeenth Session

SUMMARY RECORD OF THE SIX HUNDRED AND EIGHTY-FOURTH MEETING

Held at Headquarters, New York,
on Friday, 3 March 1961, at 3.15 p.m.

CONTENTS

Discrimination in education (E/CN.4/816; E/CN.4/Sub.2/210;
E/CN.4/815, paragraphs 124 to 140 and annex I; E/CN.4/NGO/93;
E/CN.4/L.588) (continued)

Report of the thirteenth session of the Sub-Commission on Prevention
of Discrimination and Protection of Minorities (E/CN.4/815 and Corr.1)
(continued)

PRESENT:

<u>Chairman:</u>	Mr. JHA	(India)
later,	Mr. NEDBAILO	Ukrainian Soviet Socialist Republic
<u>Rapporteur:</u>	Mr. BRILLANTES	Philippines
<u>Members:</u>	Mr. PAZHWAQ	Afghanistan
	Mr. QUISANO)	Argentina
	Mr. ABREU)	
	Mr. ERMACORA	Austria
	Mr. TSAO	China
	Mr. MADSEN	Denmark
	Mr. CASSIN	France
	Mr. BHADKAMKAR	India
	Miss KAMAL	Iraq
	Mr. BEAUFORT	Netherlands
	Mr. HAKIM	Pakistan
	Mr. ILLUECA	Panama
	Mr. WYZNER	Poland
	Mr. SAPOZHNIKOV	Union of Soviet Socialist Republics
	Sir Samuel HOARE	United Kingdom of Great Britain and Northern Ireland
	Mrs. TREE	United States of America
	Mr. ARRAIZ	Venezuela
<u>Also present:</u>	Mrs. LEFAUCHEUX	Commission on the Status of Women
<u>Observers from Member States:</u>		
	Mr. RIOSECO	Chile
	Mr. ELIZUR	Israel
<u>Representatives of specialized agencies:</u>		
	Mr. ZMIROU	International Labour Organisation
	Mr. SABA	United Nations Educational, Scientific and Cultural Organization
<u>Secretariat:</u>	Mr. HUMPHREY	Director, Division of Human Rights
	Mr. DAS	Secretary of the Commission

DISCRIMINATION IN EDUCATION (E/CN.4/816; E/CN.4/Sub.2/210; E/CN.4/815, paragraphs 124-140 and annex I; E/CN.4/NGO/93; E/CN.4/L.588) (continued)

REPORT OF THE THIRTEENTH SESSION OF THE SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES (E/CN.4/815 and Corr.1) (continued)

Mr. ILLUECA (Panama) said it was extremely gratifying to note that the decision made at the fourteenth session in favour of the drafting of fundamental principles on the eradication of discrimination in education had now, after the successful completion of a well-planned time-table of consultations and discussions, culminated in the adoption by the UNESCO General Conference of a Convention and Recommendation. The joint draft resolution (E/CN.4/L.588), of which his delegation was a co-sponsor, echoed that gratification, stressed the importance of the two UNESCO instruments and recommended that they should receive as wide an application as possible. Being absolutely non-controversial, the text should be favourably received by the Commission.

The representative of the Commission on the Status of Women had maintained that the inclusion of the words "or equivalent" in article 2 (a) of the Convention might open the door to discrimination on the ground of sex. However, it should be remembered that the more flexible wording adopted by UNESCO would enable the Convention to be adopted by a greater number of States and that the provisions of the first five articles had been carefully framed to prohibit all discrimination in education, including that based on sex. They thus confirmed the Preamble and Article 1 of the United Nations Charter which stressed the equal rights of men and women and encouraged respect for human rights without distinction as to sex.

Naturally, the final wording of all the articles of the Convention was not satisfactory to every delegation. His own delegation, for example, was somewhat disappointed that article 8 had been modified in the manner described in the Director-General's note (E/CN.4/816, paragraph 6). Furthermore, the method of settling disputes described in paragraph 7 of that same document did not appear calculated to strengthen the prestige of the International Court of Justice which was, after all, the most appropriate body for settling disputes between States.

Finally, he hoped that the Convention and Recommendation would make the greatest possible impact both on the Economic and Social Council and on the Third Committee as well as on the general public.

Miss KAMAL (Iraq) said that on the whole the Convention was acceptable to her delegation although she agreed with the representative of the Commission on the Status of Women that the text of article 2 (a) as now drafted, being open to a number of interpretations, might provide a loop-hole for discrimination. She shared the opposition of the USSR representative to article 13 and felt that the Convention should be open to accession by as many States as possible. Article 15 gave particular satisfaction to her delegation because the adoption of the measures prescribed in the Convention by Non-Self-Governing Territories would play a major rôle in preparing them for independence. She supported the joint draft resolution (E/CN.4/L.588), particularly operative paragraph 2.

Mr. NEDBALLO (Ukrainian Soviet Socialist Republic) said that where formerly the Commission had been concerned with the adoption of principles for the eradication of discrimination in education, now it was concerned with the implementation of legal instruments embodying those principles. His delegation felt that the best way of securing such implementation was the procedure outlined in operative paragraph 2 of the joint draft resolution whereby States would be invited to apply the provisions of the Recommendation as fully and widely as possible and become parties to the Convention. He agreed with the representative of Iraq on the importance of article 15 and would vote in favour of the joint draft resolution.

Mr. HAKIM (Pakistan) stressed that the Convention adopted by UNESCO should be acceded to as soon as possible by States, a process which should be encouraged by the inclusion of article 2. The positive measures listed in articles 3 and 4 were of the greatest importance. In Pakistan, existing laws already made provision for them, and an educational commission which had recently been appointed had made similar recommendations which were now being implemented. In reply to the Indian representative, he would point out that article 3 (e) might give rise to disputes between States and hence involve the application of article 8. He fully shared the views of other representatives on articles 9 and 15 and would gladly support the joint draft resolution.

Mr. MADSEN (Denmark) said that the implementation of the two instruments prepared by UNESCO would do much to eradicate discrimination in education. To that end, they should be endorsed by the largest possible number of States, as recommended in the joint draft resolution, which his delegation supported.

Mr. TSAO (China) said that the joint draft resolution was acceptable to his delegation, particularly the two operative paragraphs. His Government was giving careful consideration to the Convention adopted by UNESCO, but its acceptance of the joint draft resolution should not be construed as in any way committing it to sign the Convention.

Mr. BHADKAMKAR (India) proposed the addition of a new operative paragraph 2 reading "Transmits the summary of views expressed in the Commission to UNESCO".

Mr. Medbeilo (Ukrainian Soviet Socialist Republic) took the Chair.

Mr. BRILLANTES (Philippines) said, with regard to the objections raised to the wording of article 2 (a), that it was important to distinguish between a discrimination and a difference. Some differences might be construed as discrimination, but not all. For example, if his son was prevented from taking a course in embroidery he would not consider that a form of discrimination.

According to rule 39 of the Commission's rules of procedure, it should, so far as practicable, frame its recommendations in the form of draft resolutions of the Council. He suggested that that procedure should be followed in the present case.

Mr. ARRAIZ (Venezuela) expressed his delegation's profound interest in the Convention adopted by UNESCO and his support for the joint draft resolution, including the Indian amendment.

Sir Samuel HOARE (United Kingdom) approved of the Philippine suggestion that the draft resolution should be couched in the form recommended in the Commission's rules of procedure.

It was obviously beyond the powers of the Commission or of the Economic and Social Council to modify the provisions of articles 12 and 13 of the Convention adopted by the General Conference of UNESCO. However, the related Recommendation

(Sir Samuel Hoare, United Kingdom)

was merely addressed to the member States of UNESCO and the Council could certainly urge an even wider observance of its provisions. He therefore proposed that, in operative paragraph 2 of the draft resolution, the words "States to apply the provisions of the Recommendation as fully and widely as possible and to become Parties to the Convention" should be replaced by the following "States Members of the United Nations and of the specialized agencies to apply the provisions of the Recommendation as fully and widely as possible, and those States which are in a position to become Parties to the Convention to do so."

Mr. ERMACORA (Austria) said that the co-sponsors of the draft resolution accepted the Indian amendment. The operative paragraphs of the draft resolution should therefore be renumbered accordingly.

His delegation attached great importance to the two valuable instruments which had been adopted by the General Conference of UNESCO. A point which it considered of interest and which might require thought was the relation between article 8 of the Convention and Article 36 of the Statute of the International Court of Justice. The question arose whether the jurisdiction of the Court was automatic under article 8 of the Convention. With regard to the United Kingdom amendment, he felt that the Commission's resolution did not enjoy the same status as the UNESCO Convention and should not therefore attempt to modify the provisions of the latter. The United Kingdom wording might be interpreted as going further than did the UNESCO instruments.

He drew the Philippine representative's attention to the fact that rule 39 of the rules of procedure was not mandatory as it contained the phrase "so far as practicable".

Mr. BRILLANTES (Philippines) said that his delegation was reluctant to support any action which might appear to go beyond or seek to modify the decision which the General Conference of UNESCO had taken in adopting articles 12 and 13 of the Convention. In the particular matter with which the Convention dealt, UNESCO was the competent international organ and nothing should be done which might divert attention from the importance of the action it had taken by decision of a large majority of its members. His delegation could not support either the draft resolution in its present form or the amended text proposed by the United Kingdom representative.

Mr. BHADKAMKAR (India) said that article 1, paragraph 1, of the Convention provided that, for the purposes of the Convention, the term "discrimination" included, inter alia, any preference which had the purpose or effect of nullifying or impairing equality of treatment in education. His country had incorporated in its Constitution provisions calling for preferential treatment to be given, inter alia, in the matter of education to certain groups which, for historical reasons, were particularly backward. Those groups, if not given such preferential treatment would inevitably forever lag behind the rest of the population. Protective measures and educational preference had been given to those groups for a ten-year period which had ended in 1960, but it had been found necessary to extend that action for a further ten-year period. Consequently, although his Government fully supported the objectives of the UNESCO Convention and could endorse its provisions generally, it would have to reserve its position with regard to its accession to the Convention.

Mr. SABA (United Nations Educational, Scientific and Cultural Organization) said that the preference referred to in article 1, paragraph 1, of the Convention was preference based on race, colour, sex, language, religion, political or other opinion, national or social origin, economic condition or birth; it was not intended to include the very laudable type of preferential treatment which the Indian representative had described. The Working Party set up during the eleventh session of the General Conference of UNESCO had stated in its report (E/CN.4/Sub.2/210, Annex III, paragraph 13) that there was no unjustified "preference" when the State took measures to meet the special requirements of persons in particular circumstances such as populations to whose illiteracy it was desired to put an end by suitable teaching methods.

Mr. WYZNER (Poland) considered article 13, paragraph 1, of the Convention to be unduly restrictive. The universal value of the Convention should be reflected by its universal applicability. However, as a co-sponsor of draft resolution E/CN.4/L.588, his delegation agreed with the view expressed by the Austrian representative. The Commission was not empowered to modify the UNESCO instruments in any way and the draft resolution which it adopted could not have any effect upon them. His delegation was therefore unable to accept the amendment proposed by the United Kingdom representative and hoped the latter would not press it.

Mr. CASSIN (France) said that his delegation fully appreciated the constitutional difficulty which the Indian representative had described. In his view, the Philippine representative's suggestion was relevant and the Commission should draft its resolution in a form permitting its direct adoption by the Economic and Social Council. He did not believe that the problem concerning the jurisdiction of the International Court of Justice, which had been raised by the Austrian representative, could be solved by the Commission.

A feature of what was now operative paragraph 3 of the draft resolution, which he particularly liked, was the fact that it referred first to the Recommendation, general observance of which might be achieved most readily, and only then to the Convention. That was a new approach. His delegation could accept the draft resolution and also approved of the United Kingdom amendment.

Mrs. TREE (United States of America) supported the draft resolution and also saw merit in the United Kingdom amendment. She hoped that a generally acceptable text might be agreed upon.

Mr. BHADKAMKAR (India) thanked the UNESCO representative for his comment on article 1 of the Convention. His Government's difficulty arose from the fact that, frequently, it was the actual text of international instruments and not the intentions or reasoning of those who had drafted them, which were ultimately deemed to be of most importance. His delegation was not as yet committing itself with regard to the Convention, but was merely reserving its position at the present time.

Mr. ILLUECA (Panama) agreed with representatives who had pointed out that no action by the Commission or the Council could change the provisions contained in the Convention adopted by UNESCO. The provisions regarding accession to the Convention were clearly set forth in articles 12 and 13. His delegation was prepared to accept any form of words which corresponded to the terms used in the Convention.

Mr. SAPOZHNIKOV (Union of Soviet Socialist Republics) said that his delegation supported the three-Power draft resolution as amended by the Indian proposal to insert a new operative paragraph 2.

(Mr. Sapozhnikov, USSR)

He agreed with the United Kingdom representative that the Commission could in no way alter the Convention adopted by UNESCO. For that very reason, he could not support the latter's proposal to insert a restrictive phrase after the word "States" in operative paragraph 3, since that would amount to introducing a new formula different from the one adopted in the Convention. Even that formula, although wider than the one proposed by the United Kingdom representative, was not sufficiently universal. Conventions of a humanitarian nature, such as the one under discussion, should be open to accession by all States. Furthermore, the United Kingdom representative's suggestion to invite States in a position to do so to become parties to the Convention would weaken operative paragraph 3. The Commission could not compel States to accede to the Convention because its decisions had the force of recommendations only, but it should not leave the door open for States not to accede to the Convention.

Miss KAMAL (Iraq) proposed the insertion of the words "in accordance with the provisions of the Convention" at the end of what was now operative paragraph 3.

Sir Samuel HOARE (United Kingdom) withdrew his earlier amendment. He suggested that the Iraqi representative's amendment might be improved by substituting the words "those instruments" for the words "the Convention".

Mr. WYZNER (Poland), speaking on behalf of the co-sponsors of the draft resolution, accepted the Iraqi representative's amendment as amended by the United Kingdom representative.

Mr. SAPOZHNIKOV (Union of Soviet Socialist Republics) said that the new amendment was acceptable, but that such acceptance should not be interpreted as meaning that his delegation agreed with the restrictive nature of article 13 (1).

Draft resolution E/CN.4/L.588, as amended, was adopted unanimously.

The meeting rose at 5.50 p.m.