



UNITED NATIONS
ECONOMIC
AND
SOCIAL COUNCIL



Distr.
GENERAL

E/CN.4/Sub.2/SR.177
31 January 1956

ORIGINAL: ENGLISH

COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES

Eighth Session

SUMMARY RECORD OF THE HUNDRED AND SEVENTY-SEVENTH MEETING

Held at Headquarters, New York,
on Friday, 6 January 1956, at 10.55 a.m.

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<u>Rapporteur:</u>	Mr. INGLES	(Philippines)
<u>Members:</u>	Mr. AMMOUN	(Lebanon)
	Mr. AWAD	(Egypt)
	Mr. CHATENET	(France)
	Mr. CZARKOWSKI	(Poland)
	Mr. FOMIN	(Union of Soviet Socialist Republics)
	Mr. HALPERN	(United States of America)
	Mr. HISCCCKS	(United Kingdom of Great Britain and Northern Ireland)
	Mr. KRISHNASWAMI	(India)
	Mr. ROY	(Haiti)
	Mr. SANTA CRUZ	(Chile)

Representatives of specialized agencies:

Mr. SEIERSEN	International Labour Organisation
Mr. MAHEU	United Nations Educational, Scientific and Cultural Organization

Representatives of non-governmental organizations:

<u>Category A:</u>	Miss KAHN	World Federation of Trade Unions
	Mr. BROWN	World Federation of United Nations Associations
	Mr. ARNEMAN	World Veterans Federation

Category B and Register:

Mr. MICHELI	Commission of the Churches on International Affairs
Mr. JOFTES	Co-ordinating Board of Jewish Organizations
Miss KRIJNEN	International Movement for Fraternal Union among Races and Peoples
Mr. MANUILA	International Association of Penal Law
Mr. MacEOIN	International Catholic Press Union
Miss ROBB	International Federation of University Women

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Representatives of non-governmental organizations (continued):

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	Miss GYARMATI	International Union of Socialist Youth
	Mrs. WALSER	Women's International League for Peace and Freedom
	Mr. PENCE	World's Alliance of Young Men's Christian Associations
	Mr. JACOBY	World Jewish Congress
	Miss SCHAEFER	World Union of Catholic Women's Organizations
<u>Secretariat:</u>	Mr. SCHWELB	Deputy Director, Division of Human Rights
	Mr. LAWSON	Secretary of the Sub-Commission

STUDY OF DISCRIMINATION IN EDUCATION: DRAFT REPORT DRAWN UP BY THE SPECIAL
RAPPORTEUR (E/CN.4/Sub.2/L.92 and Add.1-27)(continued)

The CHAIRMAN invited the Sub-Commission to consider the draft report paragraph by paragraph.

Paragraphs 1 to 5 inclusive

In connexion with paragraph 2 and footnote 1, the CHAIRMAN asked the members to decide whether the report on discrimination in education should go forward to the Commission on Human Rights in the name of the Special Rapporteur, or in the name of the Sub-Commission as a whole.

Mr. INGLES proposed that the report should stand in Mr. Ammoun's name. Under the original Sub-Commission resolution, the Special Rapporteur had been given clear terms of reference including a certain measure of latitude to exercise his own judgement. He had fully complied with those terms of reference and he had exercised his discretion in setting forth conclusions and proposals based on the material he had collected and analysed.

The primary purpose of the report was to enable the Sub-Commission to formulate recommendations, and only the Sub-Commission's recommendations could properly stand in its name. The Sub-Commission could not assume authorship of the body of the report without approving every word in it, which he thought was not the function of the Sub-Commission.

On the other hand, the Sub-Commission was not precluded from suggesting improvements both in the form and content of the report, on the basis of which Mr. Ammoun might wish to revise certain passages according to his own judgement. He could not be expected to incorporate all the suggestions made without running the risk of greatly reducing the effectiveness of his work.

Finally, under the terms of the original resolution it was not mandatory upon the Sub-Commission to adopt the report formally. The resolution as amended by the Commission on Human Rights required the Sub-Commission to make recommendations for action (section III) following the "consideration" of the Special Rapporteur's report. Such "consideration" might culminate in an expression of approval of the report as a fulfilment of the Special Rapporteur's terms of reference and as a satisfactory basis for the Sub-Commission's recommendations. Though suggestions

might be made with a view to increasing the value of the report as an instrument for educating world opinion, such suggestions were not necessary for the primary purpose of the report, namely, to serve as a basis for the Sub-Commission's recommendations.

Mr. FOMIN agreed with Mr. Ingles that the Sub-Commission should let the report stand in Mr. Ammoun's name.

In adopting a procedure for considering the report, it was imperative for the Sub-Commission not to prejudge the form in which it would ultimately be transmitted to the Commission on Human Rights. He hoped that a paragraph-by-paragraph examination would not lead to a redrafting. The question of the final form could be decided when that examination had been completed.

The CHAIRMAN shared Mr. Fomin's view that the final form of the report could be decided when its consideration had been completed. The Sub-Commission should not contemplate the possibility of a substantial rewriting; it should leave the Special Rapporteur free to revise his work in the light of the views expressed by members. On points on which there was a wide measure of agreement, Mr. Ammoun would have no difficulty; where views diverged sharply, he might give an account of them and perhaps add his own comment.

Mr. AMMOUN, Special Rapporteur, emphasized that although he would be grateful if the Sub-Commission could see its way clear to adopting the report, he would abide by whatever decision it reached regarding the name under which it should be transmitted to the Commission on Human Rights.

Mr. SANTA CRUZ thought that the draft report as it stood could not go forward to the Commission on Human Rights in the name of the Sub-Commission, for the general debate had shown that several members had reservations regarding both the form and content. On the other hand, a decision to transmit the report in the name of the Special Rapporteur would imply a revision, and to some extent a reversal of the terms of the original resolution put forward by the Sub-Commission calling for a study on discrimination in education, and amended before adoption by the Commission on Human Rights (pp. 2, 3 and 4, E/CN.4/Sub.2/L.92).

(Mr. Santa Cruz)

The Sub-Commission had decided to make a study on discrimination in education, had discussed the methods for carrying out the study, and had enlisted the assistance of the Special Rapporteur to produce a draft report as a preliminary or preparatory stage in that study. In compliance with his terms of reference, Mr. Ammoun had now submitted his draft report; it must be understood from the original enabling resolution that the Sub-Commission was to adopt it. Since it was not prepared to adopt it in its present form, the logical course for it to follow was that suggested by the Special Rapporteur himself (paragraph 517, E/CN.4/Sub.2/L.92). Support for that course of action had already been voiced by Mr. Halpern explicitly and by Mr. Fomin implicitly, when he had suggested the addition of data on education in the People's Republic of China. It would mean that the Sub-Commission had a year before it in which to complete the draft report and agree on the final form in which it should be sent on to the Commission on Human Rights. A report would thus be produced representing not only a good basis for concrete recommendations, but an authoritative statement by experts in the field of discrimination likely to have much greater impact on world public opinion precisely because it would come out in the name of the Sub-Commission. Judging from his own experience as Chairman and Rapporteur of the three-member Commission on the Racial Situation in the Union of South Africa, he found it reasonable to expect the members of the Sub-Commission to exert every effort to reach agreement on the substance of a report which they would all sign for presentation to the Commission on Human Rights at its 1957 session.

Mr. HALPERN was inclined to favour a compromise solution. There could be no doubt that the original resolution of the Sub-Commission, as amended by the Commission on Human Rights, contemplated a study by the Sub-Commission and committed that body to embark on it with the help of a Special Rapporteur. It was likewise undeniable that adoption of the Special Rapporteur's draft report by the Sub-Commission, an expert body, would enhance its educative value and serve as an inducement to Governments to take measures to eradicate discrimination in education. It was further undeniable that the moral weight of the recommendations ultimately to be adopted by the Sub-Commission would depend to a large extent on the factual material on which they were based. Nevertheless, even at the risk

(Mr. Halpern)

of revising the original enabling resolution to some degree, a middle course appeared most desirable in the light of the circumstances. It would consist of leaving the report in the name of the Special Rapporteur, who would give due weight to the various suggestions for its improvement, and of passing on the report with a covering resolution to be formulated and adopted by the Sub-Commission. A final vote on the revised report could be deferred until the ninth session; even then that vote might prove to be divided and reservations might have to be recorded separately.

There should be no misunderstanding regarding the nature and functions of the Sub-Commission in the hierarchy of United Nations organs. It was a kind of ad hoc committee consisting of experts chosen for their special competence; it had been assigned the specific task by the Commission on Human Rights of dealing with discrimination and the protection of minorities. It could not disclaim responsibility for the study on discrimination in education which its parent body had instructed it to carry out. It would have to underwrite the substance of the final revised report to be submitted to it at the ninth session. Consequently, it should leave the matter of revision in abeyance for the time being, and proceed with the paragraph-by-paragraph examination.

Mr. HISCOCKS said that while he associated himself with the views of Mr. Ingles and Mr. Fomin, he also favoured Mr. Halpern's plea for a compromise. The point raised by Mr. Santa Cruz was a technicality, but it would be preferable not to interpret the exact wording of the original resolution in too inelastic a manner. The Sub-Commission would show little wisdom if it never allowed itself to change its mind. It had a moral responsibility towards the Special Rapporteur, more especially as he had stated that he was prepared to abide by any of its decisions, but an agreement that the report should go forward in Mr. Ammoun's name was tantamount to expressing approval of his work.

(Mr. Hiscocks)

Mr. Santa Cruz had said that the Sub-Commission, as an independent body of experts, ought to be able to agree, but the very independence of its membership might well make agreement more difficult. It would be best to keep discussion of the report on a fairly general plane, and not to become immersed in fruitless arguments over details.

The question whether the Sub-Commission should approve the report would be best left until the next session, when the final version would be available, but it was important to decide immediately, if necessary by majority vote, on the course proposed by Mr. Ingles.

Mr. FOMIN said that despite the ingenuity of the arguments adduced by the former speakers, he did not agree with their interpretation of the resolution. The Commission on Human Rights had entrusted the Sub-Commission with the preparation of a study on all forms of discrimination in education and with the appointment of a Special Rapporteur to assist it. The report to be produced by the Special Rapporteur was intended, as section II, (a) (v) of resolution B showed, "not only to serve as a basis for the Sub-Commission's recommendations, but also with a view to educating public opinion". On the motion by the United Kingdom representative the word "adoption" had been changed to "consideration" in section III; therefore there was clearly no question that the Sub-Commission should present the report in its own name. That was the only logical interpretation of the resolution. There was no precedent for the submission of reports by individual Rapporteurs in the name of United Nations organs as a whole.

The Sub-Commission should now make concrete recommendations on the substance of discrimination in education. Such recommendations could not be submitted without an adequate report on which to base them. If the report was to be reconsidered and revised before the final version appeared next year, it would be necessary to insist on the inclusion of additional information, such as data referring to the People's Republic of China. If there was to be no revision those data should be the subject of an addendum.

The time factor was important: sessions of the Sub-Committee were short and due account could not be taken of all the comments which members would wish to raise, whether now or next year. He could not subscribe to the report as it stood, since while he found it generally acceptable, there were many points of detail with which he disagreed, but full discussion of them would take up too much time, especially as other important matters would also be occupying the Sub-Commission at the ninth session. Since it would be impossible to reach full agreement on the report, he could in no circumstances sponsor its submission to the parent bodies as the opinion of the Sub-Commission.

The most reasonable compromise, in his view, was to consider the recommendations proposed by the Special Rapporteur, and to submit them, with such amendments as the Sub-Commission might deem necessary, to the Commission on Human Rights; the report would also be transmitted, but in Mr. Ammoun's name, together with a suitable resolution concerning it and a copy of the summary record of the present session.

The whole question of discrimination in education was of such importance that there was no reason why further information should not be gathered and other reports prepared. It would, of course, be better to prepare a new study which would also reflect the changes that had occurred. Meantime, the Sub-Commission's task was to formulate recommendations on the basis of a report, on the general content of which there appeared to be no serious difference of opinion in the Sub-Commission at the present stage.

Mr. HALPERN recalled that at the meeting of the Human Rights Commission held on 1 April 1954 the United Kingdom representative had defended his motion to replace "adoption" by "consideration" on the grounds that though the report would doubtless be excellent, it seemed unwise to give the impression that it would be adopted automatically. He pointed out that this would constitute a surrender by the Sub-Commission of its responsibilities. Thus the emphasis had been on the word "automatically" and not on "adoption". By the amendment of the resolution, the Commission on Human Rights had intended to convey the idea that the Rapporteur's report was to be fully considered by the Sub-Commission before it adopted it. There was no suggestion that the Sub-Commission was to surrender its responsibilities to the Special Rapporteur and to transmit his report without approving or disapproving it.

(Mr. Halpern)

Turning to the remarks of Mr. Santa Cruz, he pointed out that he had classed them as logically unanswerable; nevertheless, in line with Mr. Hiscocks' suggestion that it would be the part of wisdom for the Sub-Commission to change its mind, he felt it was proper to put forward the report as Mr. Ammoun's own work, so as not to lose the benefit of the Special Rapporteur's personal writing, and to accompany it with an appropriate resolution. He appealed to Mr. Santa Cruz to accept that reasonable modification of the instructions in the original resolution.

Mr. SANTA CRUZ said that he had not made any formal proposal to have the report submitted in the name of the Sub-Commission. The point he had wished to make was that if it were so submitted it would carry much greater moral weight than if it were presented by the Special Rapporteur alone. As regards his statement about the independence of the Sub-Commission as a body of experts, he agreed that that did not necessarily mean that the Sub-Commission was unanimous; it did, however, imply that any agreement reached would have greater moral strength.

The consensus seemed to be that, whether the report were completed this year or next, it should appear in Mr. Ammoun's name. It was not unknown for a member of a legal body - for example, the United States Supreme Court - to pronounce a judgement in which the other justices concurred. The members of the Sub-Commission could thus express their own views, while concurring generally in the findings of the Special Rapporteur.

Mr. FCMIN, replying to Mr. Halpern's arguments, said that he preferred to abide by the text of the original resolution and the report of the tenth session of the Human Rights Commission (E/2573) rather than by the summary records of the Commission. He quoted paragraph 391 of document E/2573, referring to section II, sub-paragraph (v) of resolution B, as evidence that there had been no criticism in the Commission of the desire to make the report a basis for the Sub-Commission's recommendations. Mr. Ammoun had interpreted his terms of reference in the light of that desire, and all his recommendations were based on the findings of his report, which it would be perfectly proper to transmit to the Commission in his own name.

Mr. HALPERN observed that the quotation from paragraph 351 of the report of the Commission on Human Rights did not support Mr. Fomin's argument. It only showed that there had been a minority view opposed to the objective of educating world opinion.

Mr. Sant Cruz's analogy to the United States Supreme Court was apt: Mr. Ammoun could be compared to a justice who wrote an opinion in which all or most of his colleagues might concur without altering the fact that it would still be the one justice's opinion.

The CHAIRMAN thought the Sub-Commission was agreed that the report should appear as the work of the Special Rapporteur under a resolution which would include an indication of the Sub-Commission's position towards the report. The appropriate wording for that indication could be found at a later stage. If the Sub-Commission did not assume responsibility for every word of the report, there would be no need for it to scrutinize Mr. Ammoun's revision.

He considered the examination of the question at issue concluded.

Paragraph 6

Mr. HISCOCKS invited the Special Rapporteur to comment on the question he had raised at the 175th meeting concerning the use of writings of recognized scholars and scientists.

Mr. AMMOUN, Special Rapporteur, reiterated the reply he had given at the 176th meeting. In the spirit in which he had conceived his task, he had sought to avoid the inclusion of polemical matter. Accordingly, he had reduced the citation of such writings to a minimum, although he had personally taken them into account.

Mr. HALPERN supported Mr. Hiscocks' inquiry. The question had been debated at length in the Sub-Commission and the Commission on Human Rights, and a formal decision had been taken to the effect that the writings of recognized scholars and scientists would be one of the main sources of material, having an equal status with the other four main sources. He did not think that the members of the Sub-Commission were competent to reduce that status.

(Mr. Halpern)

He asked the Special Rapporteur whether there was any objection to using material of a factual nature in a scholarly work which might also have in it polemical material. For example, he had suggested to Mr. Ammoun as a possible source "The Soviet Regime" by W. W. Kulski, a member of the faculty of Syracuse University. It was a scholarly work and contained many specific references to decrees and legislation. He wondered if such material would not be useful.

He was not suggesting that the report should be transformed into a polemical document; at the same time, official accounts should not have to be accepted at face value. He did not think any country in the world was as blameless as some Governments represented their countries to be. To place the reports of such Governments side by side with other reports which frankly described shortcomings would distort the full picture.

It had been intimated to him that material should not be used unless it was published in the country concerned. It seemed to him that the place of publication was not a controversial question per se and would certainly be an arbitrary reason for excluding material, not justified by any standard of objectivity.

Mr. HISCOCKS appreciated the Special Rapporteur's desire to avoid polemical material. At the present stage, he would not go beyond an appeal to Mr. Ammoun to make additional use of the writings of recognized authorities, especially in view of the observation in paragraph 249 of the draft report. In any event, it would be helpful if Mr. Ammoun's views on the use of scholarly material were included in the report.

Mr. FOMIN said that the question that had been raised was very important not only for the study of discrimination in education but for the future work of the Sub-Commission. The objective should be to collect material that would be helpful in making recommendations. Mr. Ammoun would be placed in an impossible position if he were called upon to scrutinize the literature in the field and to have to make a choice of the material that should be used.

It was not unusual to find propaganda material cleverly presented as the work of scholarship. He was not familiar with the book mentioned by Mr. Halpern but, judging from the fact that its subject was the Soviet "regime", a well-known

propaganda word, he had no doubt of its purpose. Thousands of such books had been published in the United States. There were recognized authorities, of course, Lauterpacht, for example, and others. He appealed to Mr. Halpern not to persist in his approach; otherwise the Sub-Commission would have to spend most of its time studying "regimes" and other similar "problems" and not the prevention of discrimination and the protection of minorities.

For his part, he agreed with Mr. Czarkowski's statement at the previous meeting that there was already some questionable material in the draft report. He was sure that it had been included inadvertently and not for any ulterior motive on the part of the Special Rapporteur. He hoped that in the future those shortcomings also would be taken into account and eliminated.

Mr. CHATENET observed that Mr. Ammoun had made full use of scholarly sources in what might be called the infrastructure of the draft report, the sections dealing with definitions and background.

However, the objective of the study was not to elaborate a doctrine, to prepare a university course on the subject, or to draw up a bibliography. The objective was to provide material that would help the Sub-Commission to carry out the mission it had been assigned by higher bodies of the United Nations in the light of the Charter and the Universal Declaration of Human Rights. That being the case, the writings of recognized scholars could not be put on an equal footing with official information. The very determination of a "recognized" scholar involved an element of personal judgement which the Special Rapporteur should not be called upon to define in specific terms. Other members of the Sub-Commission might be offended because he had rejected the particular scholars they "recognized".

Mr. SANTA CRUZ agreed that the terms of reference were very clear in giving importance to scholarly material. However, as Mr. Ammoun had said that he had personally taken them into account even if they had not been reproduced in his draft report - a fact which should be noted in the report - Mr. Ammoun had undoubtedly conformed to the terms of reference. If other members felt that specific material should be included, the situation could be remedied at a later stage.

The CHAIRMAN, speaking in his personal capacity, supported the suggestion that an explanation on the use of scholarly material should appear in the report.

Mr. AMMUN, Special Rapporteur, observed that he had been reproached both for his use of, and his failure to use, scholarly material. That was precisely what he had hoped to avoid by reducing such material to a minimum. In any event, the question was one on which he had had to rely on his personal judgement.

As had been suggested, he would insert a paragraph in the report to make good an inadvertent omission.

The meeting rose at 1.5 p.m.