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

Eighth Session

SUMMARY RECORD OF THE HUNDRED AND SEVENTY-NINTH MEETING

Held at Headquarters, New York,
on Monday, 9 January 1956, at 10.50 a.m.

CONTENTS

Study of discrimination in education: draft report drawn up by the
Special Rapporteur (E/CN.4/Sub.2/L.92 and Add.1 to 27) (continued)

PRESENT:

<u>Chairman:</u>	Mr. SORENSEN	(Denmark)
<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. HISCOCKS	(United Kingdom of Great Britain and Northern Ireland)
	Mr. KRISHNASWAMI	(India)
	Mr. ROY	(Haiti)
	Mr. SANTA CRUZ	(Chile)

Also present: Miss BERNARDINO Commission on the Status of Women

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>	Mr. THORMANN	International Federation of Christian Trade Unions
	Miss KAHN	World Federation of Trade Unions
	Mrs. FOX	World Federation of United Nations Associations
	Mr. ARNEMAN	World Veterans Federation

PRESENT (continued):

Representatives of non-governmental organizations (continued):

Category B and register:

Mrs. MEDLOCK	International Federation of
Miss SMITH	Women Lawyers
Mr. BEER	International League for the
Mrs. RUITBURK	Rights of Man
Mr. SIENIEWICZ	<u>Nouvelles equipes internationales</u>
Mrs. MENDEZ	Pacific South-East Asia Women's
	Association
Mrs. WALSER	Women's International League for
	Peace and Freedom
Mr. JACOBY	World Jewish Congress
Mr. FENCE	World's Alliance of Young Men's
	Christian Associations
Mrs. GARTLAN	World Union of Catholic Women's
	Organizations

Secretariat:

Mr. SCHWEIB	Deputy Director of the Division
	of Human Rights
Mr. GORDON	Acting 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 to 27) (continued)

Paragraphs 28 to 40

Mr. KRISHNASWAMI stressed the importance of the paragraphs under discussion, which were much more than mere comments on terminology and defined concepts whose full implications it was essential to grasp. The debate which was opening was not of merely academic interest and should enable the members of the Sub-Commission to reach agreement on recommendations which might be addressed to States. Those recommendations fell into two categories; some were intended to enlighten and educate world public opinion and others to eliminate specific and well-defined abuses and to set forth the measures to be taken by States to that end.

With all due respect to the Universal Declaration of Human Rights, he thought that the wording of its article 26, paragraph 1, was regrettable. The words "on the basis of merit" at the end of that paragraph were ambiguous and had sometimes been cited as an excuse and even a justification of really discriminatory practices. It was therefore with some reservations that article 26 of the Universal Declaration should be regarded as a fundamental text for the study of discrimination in education.

He thought that the distinction made in paragraph 34 between the discriminatory and the protective aspect of the same measure might be a little too subtle. Public authorities or groups might maintain or introduce really discriminatory measures under the guise of protection. He would be inclined to support reservations which, while in no way limiting the rights of interested groups, would take into account the economic, social and cultural conditions of the country concerned and would be valid for a short transition period.

The concept of geographical or international discrimination between countries referred to in paragraphs 39 and 40 unduly enlarged the scope of the notion of discrimination and would thus dilute the substance and diminish the scope of any recommendations that might be made to enlighten world public opinion or to invite States to eliminate specific abuses. What the Special Rapporteur referred to as discrimination at the international level was really a situation calling for other remedies, such as international assistance to countries and territories where little progress had been made in education. What the notion of discrimination

would gain in breadth if the Sub-Commission were to adopt the suggestions made in those paragraphs it would lose in depth; the introduction of an emotional element into a notion which required strict definition would reduce the practical scope of any recommendations that might be addressed to States.

Mr. FOMIN observed that the Special Rapporteur had cited the Charter and the Universal Declaration of Human Rights among the sources and fundamental texts on which he had based his report, but had made no reference to the international covenants on human rights. The debates in the General Assembly, particularly on articles 1 and 2 of the two draft covenants, showed the interest which the majority of Member States took in the covenants, which, even in their provisional form, complemented the Universal Declaration of Human Rights and constituted a weapon against discrimination.

The Special Rapporteur deserved praise for stressing the need to protect certain groups by taking special measures to make education more readily available to groups which had been denied access to it in the past. Mr. Ammoun might have emphasized that point even more strongly. Measures taken to repair the injustices of the past could not be called discriminatory. To illustrate that thesis, he cited as an example a country where, as the report indicated, a group representing about 3 per cent of the population had enjoyed wide access to education in the past and where the rest of the population had been more or less deprived of education. In order to eliminate the heritage of the past, the State might decide, as a provisional measure designed to eliminate an injustice, to make education more easily accessible to the group which had been under-privileged, to the detriment of the formerly privileged group. Special protection thus granted to part of the population for a provisional period would certainly not be discriminatory.

Mr. AMMOUN, replying to Mr. Krishnaswami, regretted that he had been unable to revise the wording of article 26 of the Universal Declaration of Human Rights, which was admittedly weak.

(Mr. Ammoun)

With regard to another objection of Mr. Krishnaswami's, he was afraid that the struggle against discrimination might lose some of its efficacy if the idea of breaking through frontiers and of taking bold international action were abandoned and it were to be confined to recommendations to Governments for their internal use. He thought that the juridical interpretation of certain texts must be somewhat forced in order gradually to close the enormous gap which existed between levels of education in the various countries and to achieve the equality at the highest possible standard which was the goal of all international assistance.

Mr. ROY regretted that he disagreed both with the Special Rapporteur and with Mr. Krishnaswami about geographical or international discrimination. The former saw discrimination at the international level in the differing degrees of cultural development of the various countries, while the latter did not consider that such inequality should be regarded as discriminatory. He himself thought that the distinction made between civil and political rights, on the one hand, and economic, social and cultural rights, on the other hand, might well be introduced into the realm of discrimination. From the point of view of their implementation, the two covenants on human rights differed in that the covenant on civil and political rights would be applicable immediately, whereas the covenant on economic, social and cultural rights could be applied only progressively. A country which had not yet decided to implement an economic, social or cultural right could not be accused of discrimination; on the contrary, as soon as it put one of those rights into effect, it would be bound to do so on a non-discriminatory basis. At the most, it might be said that there was inequality between the various countries before a right was implemented; the possibility of discrimination arose only after the right had been implemented. Moreover, in the latter case discrimination was still an internal phenomenon, peculiar to the country under discussion.

Mr. AMMOUN fully shared Mr. Roy's views and pointed out that he had himself used the word "inequality" in referring to that situation in paragraph 39 of his report.

Mr. HISCOCKS supported the observations that had been made and believed that it would be logical to replace the word "discrimination" in paragraph 40 by the word "inequality" or by an analogous expression.

Mr. FOMIN considered that it was not for the members of the Sub-Commission to amend the report and that the drafting of paragraph 39 was satisfactory. He did not agree with Mr. Hiscocks, who seemed to think that it was public opinion that determined whether or not discrimination existed on the international level. The Sub-Commission's task was to bring to light real cases of discrimination, in order to eliminate them. It should continue its consideration of the report since, in his understanding, that document would be transmitted to the Commission on Human Rights as it stood.

Mr. HALPERN said that he was not in favour of the procedure proposed by Mr. Fomin. The members of the Sub-Commission ought to make suggestions on the basis of which Mr. Ammoun could revise his report before it was transmitted to the Commission. He did not think that Mr. Hiscocks's proposal was acceptable. The word "inequality" had been used in the report as referring to discrimination and he felt that the word "inadequacy" would be a better word to express the idea that, in some countries, educational facilities might be inadequate as compared with the facilities of other countries. To extend the concept of discrimination to cover such comparisons between countries would be to dilute the concept to a point where it would lose its effectiveness. He therefore questioned the retention of paragraphs 39 and 40. However, there was one aspect of inadequacy which related to discrimination. Wherever educational opportunities were limited, there was a danger that they would be distributed unequally and that there would be discrimination in favour of the ruling group or against certain groups against whom prejudice existed.

It would also be undesirable for the Sub-Commission to base its work on the draft covenants on human rights, as Mr. Fomin suggested; if it did so, the value of its work might seem to depend on the adoption of the covenants and its significance would be reduced accordingly. Mr. Ammoun had been right to take the Universal Declaration of Human Rights as the basis of the study, although the proposed covenants might be taken into account as further expressions or formulations of the ideals embodied in the Declaration.

Mr. AWAD felt that paragraph 37, which consisted of two short sentences, was somewhat awkward. In paragraph 40, the expression "discrimination at the international level" was not clear. If conditions in one country were compared

(Mr. Awad)

with those in another, it was not easy to say who was practising discrimination and in any case, it was doubtful whether the Sub-Commission should concern itself with the inequalities between the various societies. Mr. Ammoun had been right to consider the question in his report but ought perhaps to have referred to inequality of opportunities at the international level, which was analogous to discrimination at the national level. A text drafted on those lines would be more acceptable to the Commission on Human Rights.

Mr. SANTA CRUZ also felt that the expression "discrimination at the international level" might lead to confusion. At the same time, Mr. Ammoun had been right in drawing attention in his report to the fact that educational opportunities were not equal in all countries. It was important to remember that fundamental rights were inherent in the human person and had been proclaimed by all countries. The Universal Declaration of Human Rights referred to human beings, and to citizens of the various countries. Mr. Ammoun's observations on the subject might perhaps have been limited to article 28 of the Universal Declaration.

With regard to the disagreement between Mr. Fomin and Mr. Halpern, he felt that a compromise was possible. It was true that the Universal Declaration of Human Rights adopted by the United Nations was official in character, but where certain ideas were clarified by the draft covenants which had been adopted by the majority of Members of the General Assembly, the Sub-Commission had everything to gain by being guided by them.

Mr. KRISHNASWAMI, explaining his position on paragraphs 39 and 40, said that he was anxious that the word "discrimination" should not be used improperly. It might well be desirable to deal with inequality in one section of the report, but there must be no confusion. He agreed with Mr. Santa Cruz that the Sub-Commission should bear in mind the fact that the draft covenants on human rights had been approved by a large majority of the Members of the General Assembly.

The CHAIRMAN, speaking in his personal capacity, also felt that the wording of paragraphs 39 and 40 might be improved. It was one of the functions of the Sub-Commission to define discrimination and it was most important, not only from the point of view of the study under discussion but also from the point

(The Chairman)

of view of the Sub-Commission's future work, that the definition should be clear. Discrimination presupposed the existence of two or more groups, living in a given community, one of which was able to exert an influence on the other or others. However, in the case, for example, of two countries which maintained friendly relations of a non-colonial type, such as Sweden and Ethiopia, and which had very different levels of living, it could not be said that Sweden practised discrimination with regard to Ethiopia, for the relations between the two countries were not sufficiently close. The word "discrimination" must therefore be used with care. While it was a good thing for the United Nations to concern itself with inequality in the world, inequality was, as Mr. Awad had pointed out, merely analogous to discrimination. The Sub-Commission's terms of reference were already broad and should not be extended to the innumerable inequalities that existed in the economic, social or political fields. However, as Mr. Halpern had indicated, the Sub-Commission should not ignore the problem: it might note that certain inequalities encouraged discrimination, and draw them to the attention of other United Nations bodies.

Mr. ROY agreed that the question was important. However, in reply to Mr. Santa Cruz, he pointed out that there was a fundamental difference between the Universal Declaration of Human Rights and the draft covenants. The Declaration proclaimed that all the rights were inherent in the human person; the draft covenants, on the other hand, recognized that there were inequalities in the implementation of those rights and that those inequalities could only be eliminated gradually. It was therefore important to distinguish between political rights, which should be implemented immediately, and economic, social and cultural rights, to which effect could be given only gradually. It was plainly impossible for all countries to give effect to them at once and at the same rate.

Mr. HALPERN felt that the Chairman's remarks offered an excellent summing-up of the discussion on paragraphs 39 and 40. With regard to paragraphs 35 and 36, to which he had already referred during the general discussion, he would like to analyse the notion of equality of treatment. If the teaching of only one language was allowed in a country, superficially this might seem to be equality of treatment, but on further reflection it would be perceived that it constituted inequality or discrimination with respect to minority groups

(Mr. Halpern)

whose language did not coincide with the dominant one. He agreed with Mr. Fomin that there was discrimination in such cases. That approach to the question had, however, wider implications than Mr. Fomin might wish to recognize; it also included discrimination based on religion.

Mr. AWAD suggested that it would be better not to discuss the question of languages until the Sub-Commission took up part II, chapter III, which was devoted entirely to that question.

The CHAIRMAN requested the members of the Sub-Commission to bear Mr. Awad's comment in mind.

Mr. HALPERN said he intended to speak on the general notion of discrimination, and not on chapter III. He wished to stress that the individual had a fundamental right to set up private schools at his own expense and without Government interference. The setting up of private schools was justified in many cases by linguistic, religious, political reasons, by educational theories, or by a desire to provide specialized artistic or vocational education. The prohibition of private education constituted discrimination against the group which wished to set up private schools. Private schools should be authorized, provided they met the minimum standards laid down by the Government, and the definition of discrimination should be broad enough to include the prohibition of private schools. In the United States, there were a great many private schools, in particular Catholic parochial schools, but also Jewish and, to a lesser extent, Protestant schools and various non-denominational schools. He hoped the Special Rapporteur would bear those comments in mind when he was revising his report, not only as to chapter III under the heading "Special measures for the protection of minorities", but also in the portion of the report dealing with discrimination. He was speaking here, not of Government aid to minority schools, but of the duty of the Government to refrain from interfering with such schools maintained by the minority at its own expense.

Mr. SANTA CRUZ endorsed Mr. Halpern's proposal, especially with regard to the right of minority groups to use their mother tongue. It would, however, first be necessary for the Sub-Commission to give a precise definition of a minority.

Mr. FOMIN repeated that he supported the right of minorities to be educated in their own language. His country respected that right. Thus, the study on that country (E/CN.4/Sub.2/L.92/Add.11) showed that, in the Ukrainian SSR, children studied in Ukrainian, Russian, Moldavian, Magyar, Romanian and Polish. The only condition was that there should be a sufficient number of children to justify the opening of a school. Mr. Halpern had linked the language question to the question of private schools. Mr. Fomin was unable to share that point of view. The United Nations was composed of States which undertook specific obligations under the Charter. Similarly, under article 2 of the draft covenant on civil and political rights, States undertook to take the necessary steps to give effect to the rights recognized in the covenant. Thus, responsibility must rest with the State. It was the State which chose the path to be followed. In some countries, private schools did useful work but in one country, which would be nameless, it was proposed to use them to maintain discrimination. It was therefore impossible to generalize. There were also private schools in the Soviet Union which, for example, taught the arts and languages, etc. Generally speaking, only schools owned by the State had sufficient resources to provide a good education. In most countries the State was responsible for education. In some colonial territories almost all the schools were private because the State was shirking its responsibilities. The matter should therefore be discussed cautiously and the idea of discrimination should not be dragged in irrelevantly.

The CHAIRMAN pointed out that the teaching of minority languages was dealt with in chapter III of part II of the draft report and it would be better if the Sub-Commission considered it when that chapter was taken up.

Mr. SANTA CRUZ felt that the best text on the question of private schools was article 14, paragraph 3, of the draft covenant on economic, social and cultural rights (E/2573, page 63): "In the exercise of any functions which they assume in the field of education, the States Parties ... undertake to have respect for the liberty of parents and, when applicable, legal guardians, to choose for their children schools other than those established by the public authorities which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious education of their children in conformity with their own convictions."

That text could serve as an excellent guide for the Special Rapporteur.

Mr. ROY wondered whether there existed a responsibility at the international level, as the report implied, or at the national level, as Mr. Fomin seemed to suggest. The Universal Declaration of Human Rights established a responsibility at the international level because it recognized the rights of all men regardless of their nationality. The Universal Declaration laid down the principle that all men were equal. The draft covenants on the other hand recognized that inequalities between men existed and invited all States to remove them progressively. However, the draft covenants also established a responsibility at the international level for they requested States to report on the progress achieved in the exercise of the rights which they guaranteed.

Mr. HALPERN pointed out to Mr. Fomin that there was a difference between affirmative measures for the protection of minorities and interference by the State in their affairs.

In paragraph 31 of his draft report, Mr. Ammoun had quoted paragraph 1 of article 26 of the Universal Declaration of Human Rights. The Sub-Commission should base its report on the Universal Declaration, which had been adopted by the United Nations, rather than on the draft covenants, which were only proposals. However, he completely agreed with Mr. Santa Cruz that article 14, paragraph 3, of the draft covenant on economic, social and cultural rights might be taken as an apt elaboration of the principle implicit in article 26 of the Declaration.

The State was not doing its duty if it did not give all its nationals the opportunity of receiving an education. It did not follow that the State had the right to establish an educational monopoly. The prohibition of private education was an act of discrimination against minority groups which desired such an education to preserve a specific cultural heritage. He supported the request made by Mr. Santa Cruz that the Special Rapporteur should consider the question.

Mr. CHATENET also thought that the question of private schools was very important. It not only involved freedom of religion but also freedom of thought.

It was the State's duty to see that children received an education. As soon as such an education became compulsory it should be free. The fact that the State had such a duty did not mean that it should establish an educational monopoly;

indeed, freedom of thought implied the contrary. Any such monopoly retarded intellectual progress which was fostered by healthy competition between the State educational system and the educational system which the State, in its wisdom and tolerance, was bound to leave room for, provided that certain standards of efficiency and morality were satisfied. Educational monopolies and the prohibition of private schools ran counter to freedom of thought and discriminated against groups which sought to preserve their individuality through a particular type of schooling.

Mr. FOMIN felt that it was not the Sub-Commission's task to find out whether there was an educational monopoly in any given country. The Sub-Commission had not been asked to decide which was better, State education or private education. It lacked the documentation necessary to answer that question although it was evident that State education was better because it was entrusted to specialists. In any case, it was untrue to say that State education was discriminatory merely because it was given by the State. Indeed, as he had already pointed out, there were States where State schools were closed in order to evade the laws against discrimination.

Mr. INGLES thought that the reference to the Universal Declaration in paragraph 36 of the report ("Any inequality of treatment ... which falls within the enumeration in article 2 (1) of the Declaration of Human Rights, is to be condemned.") was insufficient. For example, separate schools for the sexes or for children of different national origin or language were not per se to be condemned as discriminatory. That was why he deplored the omission from the report of the definition of discrimination originally adopted by the Sub-Commission, which qualified as discrimination only the denial of that equality which the individuals or groups affected "may wish". Moreover, there were other discriminatory measures in education besides those based on the factors listed in article 2 (1) of the Declaration. For example, in an African territory, children were refused schooling on the pretext that they were below a certain height, a form of discrimination against certain tribes considered as inferior because their members were small in stature, Classification seemed inevitable under Mr. Ammoun's definition, namely, that every person had the right to equality with other persons living in the same country and under the same conditions.

(Mr. Ingles)

Mr. Ingles believed, however, that any classification, to be permissible, must be reasonable and germane to the fundamental purpose that everyone should have the opportunity of receiving an education.

The CHAIRMAN invited the representative of the Secretary-General to give the explanation which had been requested at the 178th meeting with regard to paragraph 9 of the report.

Mr. SCHWELB (Secretariat) said that, as he had stated at the preceding meeting, the Secretary-General had communicated the Special Rapporteur's enquiries concerning China to the Government representing China in the United Nations. The Secretary-General had been unable to accede to the Special Rapporteur's request that he should address such enquiries also to the Central People's Government of the People's Republic of China. However, the Secretary-General did not wish to prevent any enquiries being undertaken that the Rapporteur might consider desirable. He would certainly raise no objection to enquiries being made of the Government of the People's Republic of China by the Special Rapporteur himself and, if the Rapporteur desired, to the Secretariat assisting him by forwarding his enquiries to that Government.

The CHAIRMAN invited members of the Sub-Commission who might have comments to make on that communication to do so at the following meeting during which the Sub-Commission would continue discussion of paragraph 41 of the report.

The meeting rose at 1.10 p.m.