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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION
AND PROTECTION OF MINORITIES

Ninth Session

SUMMARY RECORD OF THE TWO HUNDRED AND EIGHTH MEETING

Held at Headquarters, New York,
on Wednesday, 27 February 1957, at 3.10 p.m.

CONTENTS

PRESENT:

Chairman:	Mr. AWAD	(Egypt)
Rapporteur:	Mr. INGLES	(Philippines)
Members:	Mr. AMMOUN	(Lebanon)
	Mr. CHATENET	(France)
	Mr. FOMIN	(Union of Soviet Socialist Republics)
	Mr. HALPERN	(United States of America)
	Mr. HISCOCKS	(United Kingdom of Great Britain and Northern Ireland)
	Mr. KETRZYNSKI	(Poland)
	Mr. ROY	(Haiti)
	Mr. SAARIO	(Finland)
	Mr. SANTA CRUZ	(Chile)
Also present:	Miss MAÑAS	Commission on the Status of Women

Representatives of specialized agencies:

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

Representatives of non-governmental organizations:

Category A:	Mr. THORMANN	International Federation of Christian Trade Unions
	Miss KAHN	World Federation of Trade Unions
	Mr. BARRATT-BROWN	World Federation of United Nations Associations
Category B and Register:		
	Mr. LEWIN	Agudas Israel World Organization
	Mrs. VERGARA	Catholic International Union
	Mr. MICHELI	Commission of the Churches on International Affairs

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PRESENT: (continued)

Representatives of non-governmental organizations (continued):

Category B and Register (continued):

	Mr. LISKOFSKY	Consultative Council of Jewish Organizations
	Mr. JOFTES	Co-ordinative Board of Jewish Organizations
	Miss BEDARD	International Catholic Child Bureau
	Miss SMITH Mrs. BYER Mrs. HIRSCHMAN	International Federation of Women Lawyers
	Mrs. ROITBURD	International League for the Rights of Man
	Mrs. BAKER	Women's International League for Peace and Freedom
	Mrs. JACOBY	World Jewish Congress
	Mr. PENCE	World Alliance of Young Men's Christian Associations
	Mrs. ANDERSON	World Alliance of Young Women's Christian Associations
Secretariat:	Mr. HUMPHREY	Director, Division of Human Rights
	Mr. SCHACHTER	Director, General Legal Division, Office of Legal Affairs
	Mr. LAWSON	Secretary of the Sub-Commission

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STUDY OF DISCRIMINATION IN EDUCATION (E/CN.4/Sub.2/181 and Corr.1, E/CN.4/Sub.2/184, E/CN.4/Sub.2/L.103, L.105, L.106/Rev.1, L.107, L.108, L.109, L.110 and L.113) (continued)

The CHAIRMAN suggested that the fundamental principles set forth in the sub-paragraphs of paragraph 6 of the revised joint draft (E/CN.4/Sub.2/L.106/Rev.1) should be discussed one by one, together with Mr. Halpern's amendments thereto (E/CN.4/Sub.2/L.108).

Mr. FOMIN said that some of Mr. Halpern's texts were not really amendments but entirely fresh proposals and hence not entitled to be put to the vote first. In order to save time, he would not raise the question if the majority of the members of the Sub-Commission were of that opinion.

Mr. HALPERN contended that his amendments came within the meaning of rule 60 of the rules of procedure of the functional commissions of the Economic and Social Council.

The CHAIRMAN said in each specific instance he would rule whether Mr. Halpern's texts constituted amendments.

The principle set forth in paragraph 6 (1) of document E/CN.4/Sub.2/L.106/Rev.1 was adopted.

The CHAIRMAN said that Mr. Halpern's amendment to the principle set forth in paragraph 6 (2) was an amendment within the meaning of the rules.

Mr. FOMIN said that the Special Rapporteur's original text, which had been reproduced in paragraph 6 (2) of the revised joint draft, was preferable to Mr. Halpern's proposed text. The latter did not place the whole emphasis on non-discrimination, which was the Sub-Commission's chief concern, and appeared to deal rather with education in general. Besides, the reference to special educational measures for certain language groups could be twisted so as to serve as an excuse for discriminatory practices.

Mr. HALPERN said that the first sentence of his amendment reproduced the language of article 26 of the Universal Declaration of Human Rights. The reference in the revised joint draft to "compulsory education prescribed by law" suggested that a country could conceivably satisfy the principle even if the education prescribed by its laws failed to meet the requirements of the Declaration. The phrase "prescribed by law" left it to each country to decide what to prescribe by way of compulsory education. It might fail to prescribe compulsory education

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in the elementary stage as required by the Declaration or it might prescribe different kinds of education for different elements of the population, but so long as the law was carried out, there would be no violation of the principle as set forth in the joint draft. That to him seemed to be a step backward. If there was to be any reference to compulsory education in the statement of principles, the reference ought to be to compulsory education in the terms of the Declaration and not in the terms of whatever a country might prescribe by law.

The second sentence of his amendment had been drawn up with the assistance of experts in education and was intended to cover, by means of a general wording, not only the rural population and indigenous and nomadic groups, but also other groups which might require particular educational measures or methods.

Mr. HISCOCKS said the fundamental principles were so important that the text embodying them had to be drafted very carefully. He therefore suggested that a working group, composed of Mr. Santa Cruz, Mr. Ammoun and Mr. Halpern, should be appointed to prepare an agreed text.

Mr. SANTA CRUZ said it was not necessary that the statement of the principle should repeat the language of article 26 of the Universal Declaration of Human Rights, for the opening clause of paragraph 6 of the revised joint draft expressly stated that all the fundamental principles were being proclaimed "in further elaboration of the principles enunciated in the Universal Declaration of Human Rights".

He therefore referred the text of paragraph 6 (2) of the revised joint draft to that of Mr. Halpern's amendment. Similarly, because it made the purpose of the clause explicitly clear, the passage referring to the rural population and to indigenous and nomadic groups was, he thought, preferable to the corresponding passage in Mr. Halpern's text. Nevertheless, in deference to Mr. Halpern's observations concerning "other groups", he would propose the addition of the words "and of other groups which may require particular educational measures or methods".

Mr. INGLES agreed with Mr. Santa Cruz that it was not necessary to repeat the language of article 26 of the Universal Declaration of Human Rights, in view of the terms of paragraph 6 of the revised joint draft.

Mr. AMMOUN, Special Rapporteur, said he had prepared a report on discrimination in education and not a report on education.

(Mr. Ammoun)

He had referred in his report (E/CN.4/Sub.2/181, paragraphs 58 to 60) to article 26 (1) of the Declaration of Human Rights. He had pointed out that education in some countries might not measure up to the standards set in that article in the same way as education in certain other countries and had referred to that situation as international discrimination. The Sub-Commission had asked him not to enter into the question of inequalities as between one country and another but to concentrate on discrimination properly so called.

He therefore considered it desirable to retain the original text as proposed by him and as reproduced in the revised joint draft; unlike Mr. Halpern's amendment, it made no reference to any given educational levels or to free education.

He agreed with the proposal made by Mr. Santa Cruz for the addition of a reference to other groups which might require particular educational methods or measures.

Mr. ROY suggested that the expression "compulsory education prescribed by law" should be replaced by the words "compulsory education prescribed by article 26 of the Universal Declaration of Human Rights". That might meet Mr. Halpern's point.

Mr. AMMOUN replied that even if a country had not fully applied article 26 of the Declaration it should still be called upon not to practice discrimination in the provision of such education as the law prescribed.

Mr. SAARIO said the language of the revised joint draft was preferable to that of Mr. Halpern's amendment because the Sub-Commission was only dealing with discrimination in education and not with education in general.

The purpose of the principle under discussion was that there should be no discrimination in the application of compulsory education such as prescribed by the law of each country, irrespective of the level of education involved and of the question of free education.

Mr. HALPERN, in recognition of the points which had been raised, revised his amendment to retain the portions of the original text of the joint draft, assuring the education referred to, both in law and in fact, to every person or group of persons and specifying that special attention should be given to the needs of particular groups, in the language of the original text rather than in the more general language which he had proposed.

Mr. SANTA CRUZ did not think a working group, as suggested by Mr. Hiscocks, was necessary at that stage and he for one would not wish to serve on it. After its full discussion the Sub-Commission was ready to vote on paragraph 6 (2) of the revised joint draft. He therefore moved the closure of the debate on the particular paragraph.

Mr. CHATENET and Mr. ROY supported the motion.

Mr. HISCOCKS moved the adjournment of the debate, for the purpose of appointing a working group.

The motion for adjournment was rejected by 6 votes to 3, with 2 abstentions.

Mr. HISCOCKS opposed the closure of the debate; for the Sub-Commission to cut the discussion short would be an abdication of its responsibilities.

Mr. HALPERN also opposed the closure. The Sub-Commission was apparently unwilling to give proper consideration to a serious difference of views on a matter of principle.

The motion for closure of the debate was adopted by 7 votes to 2, with 2 abstentions.

The CHAIRMAN put to the vote Mr. Halpern's amendment, as revised by its author, in the following terms:

"Education shall be compulsory in the elementary stage and shall be free at least in the elementary and fundamental stages, as provided in the Universal Declaration of Human Rights, and shall be assured both in law and in fact, to every person or group of persons, special attention being paid to the needs of the rural population and of indigenous and nomadic groups and of other groups which may require particular educational measures or methods."

The amendment was rejected by 5 votes to 4, with 2 abstentions.

Mr. SANTA CRUZ said that in the French version of document E/CN.4/Sub.2/L.106/Rev.1, which had been based on Mr. Ammoun's French original, the words obligation scolaire were used; in his view, their meaning was not accurately conveyed by "compulsory education", or by the corresponding words in the Spanish text. It might therefore be preferable for the Sub-Commission to vote on the French text.

After a brief discussion on the exact meaning of obligation scolaire, Mr. CHATENET explained that in French law the expression denoted, firstly, the

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duty of the State to provide schools and, secondly, the duty of the parents to send their children to those schools.

The CHAIRMAN said that the exact wording in English and Spanish could be reserved, and the vote could be taken on that understanding.

The principle set forth in paragraph 6 (2) of document E/CN.4/Sub.2/L.106/Rev. with the addition proposed by Mr. Santa Cruz, was adopted by 10 votes to none, with 1 abstention.

Mr. HALPERN referred to his amendment to paragraph 6 (3) of the revised joint draft. The amendment stressed the idea, which was not brought out clearly enough in any of the principles proposed in the joint draft, that the main condition governing admission to a scholastic institution should be individual merit. The first sentence of the amendment was taken directly from the Universal Declaration of Human Rights. While it might be thought unnecessary to repeat the provisions of the Declaration, some repetition was unavoidable if the statement of fundamental principles was to stand as a complete document elaborating the provisions of the Declaration. The revised joint draft merely said that the requirements should be "the same" for all - but that condition might be fulfilled even if admission was not based on merit. The word "same" did not sufficiently convey the idea of equal treatment for all. The requirements might be discriminatory in character but if the same requirements were applied to all, it could be argued that the proposed principles as set forth in the joint draft had been satisfied. On the other hand, the word "same" might be so construed as to produce an unduly rigid result. Under it a religious school might, for example, be prohibited from giving preference to members of the particular denomination concerned, or a vocational school for boys might be compelled to admit girls. In his amendment, such possibilities were precluded by the express stipulation that equal treatment should be accorded to all on the basis of merit, and flexibility was assured by the provision that no one should be arbitrarily denied admission on any of the grounds condemned by the Universal Declaration of Human Rights. The word "arbitrarily" left schools free to apply reasonable limitations. The words "special educational needs" in the last sentence of the amendment were intended to cover inter alia blind or otherwise handicapped persons.

The CHAIRMAN, speaking in his personal capacity, said that Mr. Halpern's text contained the same ideas as the revised joint draft but did not convey them ar

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more clearly. The purpose of special schools was usually determined by law, and they were not required to admit unsuitable students; thus the situations feared by Mr. Halpern simply did not arise.

Mr. HISCOCKS thought that the words "entrance requirements" included individual merit. Merit could not, however, be the only requirement, since compulsory education should extend to all, regardless of merit. Mr. Halpern's second point could be met by the insertion of the words "established by the public authorities" after the words "scholastic institutions".

Mr. FOMIN stated that Mr. Halpern's amendment was not acceptable. The idea that education should be accessible on the basis of merit was in direct contradiction to the principle of compulsory education just endorsed by the Sub-Commission. At most, that idea could apply to higher education. Furthermore, the last sentence of the amendment related to education generally, not to discrimination in education. He therefore supported the text of the revised joint draft which was shorter, clearer, and more happily worded.

Mr. AMMOUN drew attention to paragraph 730 of his report (E/CN.4/Sub.2/181), in which he had explained that, although he had been aware of the difficulties involved, he had deliberately stated the fundamental principles in absolute terms, expecting them to be interpreted in the light of article 29 (2) of the Universal Declaration. He had hoped that the Sub-Commission would tighten the drafting; now there seemed to be some danger of the opposite.

Mr. SANTA CRUZ agreed with Mr. Ammoun. He hoped that authors of amendments would remember that the principles would be governed by article 29 (2) of the Declaration and that it was therefore unnecessary to provide for possible exceptions in every single case.

Mr. HALPERN said that inclusion of the word "same" in paragraph 6 (3) of the revised joint draft would leave the door open to discrimination, since it was possible to envisage circumstances in which entrance requirements would, in fact, be the "same" for all and yet discriminate arbitrarily against a particular group. In formulating its draft resolution, the Sub-Commission should be guided by the idea of equality as expressed in the Universal Declaration of Human Rights.

Defending the use of the word "arbitrarily" in his amendment, he said that word automatically excluded cases in which schools might draw up a reasonable

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classification of applicants on religious or other grounds to conform to the purpose of the school in question. The word "arbitrarily" did not, in his judgement, permit a country to prescribe by its own law anything which it pleased; the word was the equivalent of "unreasonable" or "in violation of fundamental principles". In that connexion, he said he was unable to accept the addition suggested by Mr. Hiscocks. He added that he would not press for a vote on his amendment.

Mr. SANTA CRUZ said that the word "arbitrarily", which was often used in contrast to "legal" or "permissible", was unnecessary and might leave the way open to legislative provisions permitting discrimination. With that omission, he was prepared to accept the relevant sentence in Mr. Halpern's amendment.

Mr. KETRZYNSKI agreed with Mr. Santa Cruz' remarks, but added that he could not accept any amendment which said that the principles to be proposed by the Sub-Commission should relate only to public and State-operated schools.

Mr. INGLES, Mr. ROY and Mr. AMMOUN thought that the idea contained in Mr. Halpern's sentence was already contained in paragraph 6 and paragraph 6 (1).

The principle set forth in paragraph 6 (3) of document E/CN.4/Sub.2/L.106/Rev.1 was adopted by 9 votes to none, with 2 abstentions.

Mr. HISCOCKS, in explanation of his abstention, expressed his regret that paragraph 6 (3) had been adopted with so much haste; he feared that many points had not been sufficiently considered.

Mr. HALPERN said, in explanation of his abstention, that the terms of paragraph 6 did not adequately cover the problem of entrance requirements.

In reply to a question by Mr. ROY, arising out of a motion presented at the previous meeting for the reconsideration of a decision taken by the Sub-Commission and concerning the authority of the Sub-Commission to reconsider an earlier decision, the CHAIRMAN said that Mr. Schachter, Director of the General Legal Division, had given an opinion. He read out the opinion. In Mr. Schachter's view, it was difficult to conclude that the Sub-Commission would be legally prohibited from reconsidering a matter if it so decided.

When the existing rules of procedure had been drafted the Council had decided against including a rule relating to the reconsideration of decisions and at the

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time representatives had indicated that the matter should be left to practice rather than restricted by a specific rule. In certain cases the President of the Council had ruled against reconsideration, but his reasons had been based on considerations of practical convenience rather than on strictly legal grounds. The whole matter would thus seem to be left to the discretion of the Sub-Commission for its determination in particular cases.

After Mr. FOMIN, Mr. ROY and Mr. SCHACHTER had briefly discussed the latter's opinion, Mr. SANTA CRUZ said he agreed that reconsideration was not absolutely barred, although for practical reasons Presidents of the Council had ruled against it in certain cases. He expressed the view that the question of reconsideration should be decided by the Chairman.

Mr. FOMIN said that he did not regard Mr. Schachter's opinion as binding on the Sub-Commission. The opinion might establish an undesirable precedent in that it suggested that reconsideration could be decided upon by a simple majority, whereas, in his opinion, at least a two-thirds majority should be required. He stated that no decision of the Sub-Commission on that question could be considered as a precedent for the future.

Mr. AMMOUN agreed with Mr. Santa Cruz that the possibility of reconsideration was open to the Sub-Commission; he thought that the question whether the ruling was to be made by the Sub-Commission or by the Chair should be settled by the Chairman himself.

Mr. HALPERN agreed with Mr. Schachter's opinion and asked the Chairman to allow the motion for reconsideration to be put to the vote.

Mr. ROY said that according to the conclusions reached by Mr. Schachter the Sub-Commission itself was competent to give the final decision. In the event of a vote on the motion for reconsideration, he thought that a two-thirds majority should be required; in his opinion, a simple majority was not enough.

Mr. HISCOCKS expressed his appreciation of the statement made by Mr. Schachter, and wished to associate himself with the views expressed by Mr. Ammoun and Mr. Santa Cruz; he was prepared to abide by any decision made by the Chairman.

The CHAIRMAN said that since the views of the Sub-Commission were not unanimous on that point he would waive his prerogative.

The motion for reconsideration was not adopted, 4 votes being cast in favour and 4 against, with 3 abstentions.

Mr. SANTA CRUZ stated, in explanation of his abstention, that the members of the Sub-Commission were too greatly influenced by their own individual positions; he regretted that the Chairman had waived his prerogative to rule on the matter.

The meeting rose at 6.10 p.m.