

# UNITED NATIONS ECONOMIC AND SOCIAL COUNCIL



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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 ELEVENTH MEETING

Held at Headquarters, New York, on Friday, 1 March 1957, at 10.40 a.m.

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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, L.112, L.113, L.114 and L.115) (continued)

Also present:

## PRESENT:

Chairman: Mr. AWAD (Egypt)

Rapporteur: Mr. INGLES (Philippines)

Members: Mr. AMMOUN (Lebanon)

Mr. CHATENET (France)

Mr. FCMIN (Union of Soviet Socialist Republics)

Mr. HAIPERN (United States of America)

Mr. HISCOCKS (United Kingdom of Great Britain and

Northern Ireland)

Mr. KEIRZYNSKI (Poland)

Mr. ROY (Haiti)

Mr. SAARIO (Finland)

Mr. SANTA CRUZ (Chile)

Representatives of specialized agencies:

Mr. SNYDER International Labour Organisation

Mr. MAHEU United Nations Educational, Scientific an

Cultural Organization

Commission on the Status of Women

Representatives of non-governmental organizations:

Miss MAÑAS

Category A: Mr. THORMANN International Federation of Christian

Trade Unions

Miss KAHN World Federation of Trade Unions

Mrs. ROGGER World Veterans Federation

Category B and Register:

Mr. MOSKOWITZ Consultative Council of Jewish

Organizations

Mr. MANUIIA International Association of Penal Law

Mrs. EVANS International Federation of University

Women

Mrs. HIRSCHMAN) International Federation of Women Lawyers

Miss SMITH

Mrs. ROITBURD International League for the Rights of Ma

Miss BAKER Women's International League for Peace an

Freedom

# PRESENT (continued):

# Representatives of non-governmental organizations (continued):

Category B and Register (continued):

Mr. PENCE World Alliance of Young Men's Christian

Associations

Mrs. ANDERSON World Alliance of Young Women's Christian

Associations

Mr. JACOBY World Jewish Congress

Secretariat: Mr. HUMPHREY Director, Division of Human Rights

Mr. LAWSON Secretary of the Sub-Commission

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, L.112, L.113, L.114 and L.115) (continued)

The CHAIRMAN called upon the Sub-Commission to proceed with the discussion of the revised draft resolution (E/CN.4/Sub.2/L.106/Rev.1), continuing its consideration of the principles set forth in paragraph 6. Mr. Halpern had proposed an amendment (E/CN.4/Sub.2/L.108) to principle 7.

Mr. HALPERN said that the purpose of his amendment was to make it clear that principle 7 referred solely to discrimination which was condemned in article 2 of the Universal Declaration of Human Rights and based on one of the grounds enumerated at the beginning of paragraph 6.

Mr. AMMOUN saw no need for a separate statement in the case of each principle specifying that it referred only to discrimination expressly condemned in the Universal Declaration of Human Rights, since that was made clear once and for all at the beginning of paragraph 6. An exception might perhaps be made in the case of principle 7, but he thought that it would suffice to add the words "in violation of any of the principles previously mentioned" after the word "travel". Furthermore, it would be more logical to place principle 7 after principle 8.

Mr. HALPERN said that he was willing to accept the text proposed by Mr. Ammoun but that it would require some drafting changes.

The CHAIRMAN proposed that principle 7 should be adopted, with the amendment suggested by Mr. Ammoun.

The proposal was adopted.

The CHAIRMAN asked the Sub-Commission to consider principle 8.

Mr. HISCCCKS said that the sponsors of the draft resolution had reproduced the text proposed by Mr. Ammoun in his draft resolution (E/CN.4/Sub.2/L.105), adding the words "by public authorities".

Mr. CHATENET pointed out that no equivalent of the term "by public authorities" appeared in the French text of principle 8. He requested that the words "par les autorités publiques" should be added after the word "distinction".

Mr. AMOUN said that he had already accepted that amendment to his text.

Mr. KETRZYNSKI expressed surprise that the principles apparently referred to public establishments only. Discrimination might occur also in private establishments where, for example, the regulations excluded certain persons or groups of persons.

Mr. HALPERN pointed out that no distinction had been made between public and private establishments in the other principles. Nevertheless, as far as principle 8 was concerned, he felt that there was justification for the addition of the words "by public authorities" to make it clear that in this particular instance reference was made only to them.

The CHAIRMAN endorsed Mr. Ketrzynski's observations; for example, grants to private establishments which were made subject to discriminatory restrictive clauses should certainly be condemned in principle 8 (b).

He proposed that the Sub-Commission should adopt principle 8, leaving the necessary drafting changes to be made by the Style Committee.

It was so decided.

The MIAIRMAN asked the Sub-Commission to consider principle 9.

Mr. HALPERN said that he wished to change his own amendment (E/CN.4/Sub.2/L.108) and to propose the following text: "In the case of assistance furnished by the public authorities to educational establishments (in the form of grants, tax relief etc.), no distinction should be made solely on the ground that pupils belong to a particular group, for the purpose of discriminating against that group on any of the grounds enumerated above."

He pointed out that in many countries where there was separation of Church and State the Constitution prohibited public assistance to denominational achools. That was not discrimination within the meaning of the Universal Declaration of Human Rights and it should therefore be expressly stated that principle 9 condemned only distinctions made for the purpose of discriminating against any group on the grounds enumerated at the beginning of paragraph 6.

Mr. AMMOUN was opposed to that amendment on grounds of principle. It would be impossible to provide exceptions for each princple and to do so would only weaken the text. He requested that Mr. Halpern's amendment should be put to the vote in parts.

Mr. HALPERN said that the purpose of his amendment was to avoid the need to draw up lists of exceptions. He desired to insert in the statement of principles a general qualifying clause which would provide sufficient flexibility and which would make it clear that the principle was directed only against discriminatory action in violation of the Universal Declaration of Human Rights. That would make it unnecessary to list any exceptions.

The CHAIRMAN called for a vote on the first part of Mr. Halpern's amendment: "In the case of assistance furnished by the public authorities to educational establishments (in the form of grants, tax relief etc.) no distinction should be made solely on the ground that pupils belong to a particular group".

The first part of Mr. Halpern's amendment to principle 9 (E/CN.4/Sub.2/L.108) was adopted by 10 votes to none with 1 abstention.

The CHAIRMAN put to the vote the second part of Mr. Halpern's amendment: "for the purpose of discriminating against that group on any of the grounds enumerated above".

The second part of Mr. Halpern's amendment to principle 9 was not adopted, 2 votes being cast in favour and 2 against, with 7 abstentions.

Mr. AMMOUN proposed that the text that had just been adopted should be referred to the Style Committee for the necessary drafting changes.

Mr. PTSCOCKS accepted that proposal on condition that the members of the Sub-Commission should have an opprotunity to express their views on those changes.

Mr. FOMIN objected to the discussion being reopened later in order to allow the Sub-Commission to examine any changes the Style Committee might make. The task of that Committee was simply to make stylistic improvements in the text. He proposed that a vote should be taken at once on the whole of paragraph 6 of the draft resolution.

Mr. AMMOUN agreed with Mr. Fomin. The Sub-Commission should, however, decide on the composition of the Style Committee.

The CHAIRMAN suggested that the Committee should consist of Mr. Ammoun, Mr. Hiscocks and Mr. Maheu and that it should meet when the Sub-Commission was not in session.

Mr. HISCOCKS declined the Chairman's invitation to serve on the Style Committee. He did not altogether approve of that type of Committee and felt that it would have been better to have had a drafting committee in the first place.

Mr. CHATENET pointed out that, on the contrary, the composition of the Style Committee would be more balanced if it were to include a member whose mother tongue was English, for it would have to deal not only with the French but also with the English text.

Mr. AMMOUN suggested that the Sub-Commission should vote forthwith on the whole of paragraph 6 of the draft resolution and abandon the idea of setting up a style committee.

Mr. HALPERN expressed the view that it would be useless at the present time to attempt to put the princples in final form in regard to style. As there was a deep division within the Sub-Commission on matters of substance, as shown by the fact that one proposal had been rejected by a vote of 3 to 3 and another by a vote of 2 to 2, with a majority of the Sub-Commission abstaining. He felt that it would be necessary for the Commission on Human Rights, possibly with the aid of UNESCO, to revise the entire statement of principles.

Mr. FOMIN said that it would be useful to appoint a working group composed of two or three members of the Sub-Commission to examine the text of the principles solely from the point of view of style. He suggested that the Sub-Commission should ask the Chairman, the Special Rapporteur and the representative of UNESCO to undertake that task.

The CHAIRMAN felt that it was imperative to set up a style committee. He proposed that it should be composed of Mr. Chatenet, Mr. Ammoun and Mr. Maheu, the representative of UNESCO.

#### It was so decided.

The CHAIRMAN said that the Style Committee should complete its work by Monday, 4 March, at the latest, so that the Sub-Commission could draft the part of its report concerning the study of discrimination in education, in accordance with the Secretary-General's suggestions on the arrangement of its business (E/CN.4/Sub.2/L.104).

## (The Chairman)

He put to the vote the whole of paragraph 6 of the draft resolution (E/CN.4/Sub.2/L.106/Rev.1), with the amendments that had been agreed upon.

Paragraph 6, as amended, was adopted by 8 votes to 1, with 2 abstentions.

The CHATRMAN asked the Sub-Committee to take up paragraph 7 of the draft resolution (National and local measures).

Mr. HALPERN thanked Mr. Hiscocks and Mr. Santa Cruz for having taken several of his suggestions into account in drafting the text of that paragraph. He noted, however, that while they had used the word "local" in the title of the paragraph, as he had recommended, they had failed to include it in the first line. Moreover, he had suggested at an earlier meeting that the word "measures" in the English text should be replaced by the word "activities", since some of the recommendations in the different parts of the paragraph could not properly be called "measures". As a compromise, he suggested that in both the title and the first line of paragraph 7 the words "and activities" should be added after the word "measures".

He thought, too, that it would be preferable to replace the expression "would be appropriate" by the words "should be given consideration", since the application of the measures envisaged was not "appropriate" for all countries.

Mr. ROY pointed out that it would be impossible to amend the French text along the lines suggested by Mr. Halpern.

Mr. FOMIN felt that the changes recommended by Mr. Halbern would weaken the text. The wording of the draft resolution was more precise and more categoric and should not be amended.

The CRAIRMAN suggested that the word "measures" should be replaced by the word "action".

Mr. ATSCOCKS proposed that paragraph 7 should be entitled "National and local Action" and paragraph 8 "International Action". With regard to Mr. Halpern's last suggestion, be preferred the expression "would be appropriate" to "should be given consideration".

Mr. ANMOUN recalled that Mr. Hiscocks himself had pointed out earlier that the expression "Demestic Action" should be avoided, for were it used the Sub-Commission's recommendations might be liable to come up against the provisions of Article 2, paragraph 7, of the Charter.

The CHAIRMAN pointed out that the expression "Domestic Action" would also raise problems in translation.

The CHAIRMAN said that he would prefer the wording "Action on the national and local level", which could both serve as a title and appear in the first sentence of paragraph 7.

Mr. HALPERN did not think that the statement that all the measures enumerated were appropriate was suitable, since it implied a judgement of value which the Sub-Commission was not prepared to make. Paragraph 7, sub-paragraph (a) (2), was based on a New York State law which was itself an innovation and an experiment in its field. There was no certainty that measures of that type could be applied in all countries. It would therefore be better to find a less categorical expression.

At Mr. SNYDER's suggestion, Mr. HALPERN proposed the following text: "Further recommends that, where practicable and necessary, the following steps should be taken, on the national and local level to apply these principles."

Mr. INGLES pointed out that the reservation proposed by Mr. Halpern was already to be found at the beginning of sub-paragraph (a) (2), which read: "steps should be taken, where necessary, to establish special bodies..."

Mr. HALPERN stated that as his amendment would make the expression "where practicable and necessary" applicable to all six points in sub-paragraph (a), the words "where necessary" in sub-paragraph (a) (2) could be deleted.

Mr. HISCOCKS proposed that the words "without excluding other possibilities" should be inserted after the words "Recommends further that".

Mr. FOMIN thought that the amendments proposed would weaken the effect of the text and that the original text was preferable.

Mr. HALPERN in response to the views expressed, amended his proposal to read "where practicable and appropriate".

Mr. AMMOUN stated that when he had prepared his study of discrimination in education he had not intended to undertake a survey of the extremely complex problems which arose in Federal States and had confined his attention to the national level. He would vote against the insertion of the word "local".

Mr. HISCOCKS said that in some countries education was a local not a federal matter. If the passage in question did not contain the word "local", the recommendation might be addressed to authorities not concerned with education and hence might remain nugatory.

Mr. ROY, supported by Mr. FOMIN, asked for separate votes to be taken. He would vote in favour of the original text and against the amendments.

Mr. Hiscocks' proposal for the addition of the words "without excluding other possibilities" was adopted by 7 votes to 1, with 2 abstentions.

Mr. INGLES asked for separate votes on the words "practicable and" and "appropriate".

The words "practicable and" were rejected by 5 votes to 2, with 3 abstentions. The words "where appropriate" were adopted by 5 votes to 3, with 2 abstentions

The CHAIRMAN put to the vote the amended text, from the words "National and local measures" to the words "these principles".

The text, as amended, was adopted by 8 votes to none, with 2 abstentions.

Mr. HISCOCKS pointed out that paragraph 7 (a) (1) of the revised draft resolution (E/CN.4/Sub.2/L.106/Rev.1) reproduced the corresponding paragraph of Mr. Ammoun's draft resolution (E/CN.4/Sub.2/L.105), with one small addition.

Mr. AMMOUN said that the idea underlying sub-paragraph (a) (1) was that public opinion was often in advance of legislation and that newly acquired social habits should be converted into legal obligations.

Mr. HALPERN endorsed, in principle, the idea expressed by Mr. Ammoun in the final passage of sub-paragraph (a) (1) but pointed out that a distinction shoul be made between the direct effect of a law, which was to prevent the commission of any acts prompted by prejudice, and its indirect effect, perhaps even more importan

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which was to eradicate the prejudice itself little by little. By adding an idea that was not necessary Mr. Ammoun had weakened the text. He asked for a separate vote on the passage in question.

Mr. SAARIO pointed out that whereas the title of sub-paragraph (a) spoke of judicial measures, sub-paragraph (a) (1) referred to financial steps. That inconsistency should be rectified.

The law could declare certain acts unlawful but could hardly form new habits. He would accordingly prefer the final phrase of sub-paragraph (a) (1) to be deleted.

Mr. FOMIN supported the principle stated in sub-paragraph (a) (1) but considered that its proper context was the beginning of sub-paragraph (5). That was a mere suggestion on his part, not a formal proposal.

Mr. AMMOUN said that he would agree to sub-paragraphs (1) and (5) being combined, if that seemed a better arrangement.

He admitted that paragraph 7 would have been more orderly if it had been possible to classify the various types of measures under different sub-headings, but it was not always easy to make a distinction between administrative and financial measures. Moreover, in some countries it was difficult to distinguish between the legislative authority and the judicial authority; in the United States, for example, some courts had such broad powers of interpretation that they in fact exercised legislative powers.

As an illustration of the role played by the legislator in a country's social development, he mentioned the case of Turkey, where a series of laws enacted early in the twentieth century had abolished customs that had been in practice for thousands of years.

Mr. HALPERN said that Mr. Ammoun's remarks raised fundamental questions of jurisprudence with which the Sub-Commission could not concern itself. In a democratic system of government, the term "judicial measures" was inappropriate; it improperly suggested that the decisions of judges were subject to governmental directions. Furthermore, judges had no legislative power; they could only interpret the law.

(Mr. Halpern)

He proposed that the word "judicial" in the heading of part (a) should be replaced by the word "financial" and that a new heading, "Judicial enforcement", should be introduced before sub-paragraph (3). He added that sub-paragraph (a) (3) (a) was an unnecessary repetition of sub-paragraph (a) (1).

The CHAIRMAN suggested that the word "judicial" in the heading of paragraph 7 (a) should be replaced by the word "financial".

## It was so agreed.

The CHAIRMAN put the following text of sub-paragraph (a) (1) to the vote:
"(1) All necessary legislative, administrative and financial steps
should be taken to prevent discrimination in education."
That text was adopted by 8 votes to none, with 2 abstentions.

The CHAIRMAN invited comments on paragraph 7 (a) (2).

Mr. KETRZYNCKI said the sub-paragraph as drafted might limit the competence of the agencies empowered to receive complaints, for it might imply that those agencies could act only by means of mediation or conciliation. He therefore proposed that the words "whenever possible" should be inserted after the words "eliminate such practices".

Mr. HISCOCKS said that Governments could hardly be asked to set up rival agencies to the Government themselves. It should be specified that the agencies were to be conciliation bodies only.

Mr. FOMIN said that the situation varied from country to country; in some countries such bodies might have more power than in others. He suggested that the word "in particular" should be added after the words "eliminate such practices".

Mr. HALPERN supported the proposals put forward by Mr. Fomin and Mr. Ketrzynski.

Mr. HISCOCKS said that he would not object to Mr. Ketrzynski's proposal if it was made clear that the reference was to administrative bodies.

Mr. AMMOUN observed that the French text of his study contained the words organismes specialisés, not speciaux, since they were to be bodies that were neither completely judicial nor completely administrative.

Mr. KETRZYNSKI thought that the introduction of the words "in particular" might tend to weaken the provision and that it would be better to say "whenever possible" or "above all". If, however, the Sub-Commission preferred the words "in particular", he would not press the point.

Mr. HISCOCKS said that the words "special bodies" used in the English text might convey the idea of professional bodies.

Mr. HALPERN proposed that the words "special agencies" should be used in the English text and the words organismes specialisés retained in the French text.

It was so agreed.

The CHAIRMAN suggested that the Sub-Commission should adopt sub-paragraph (a) (2), with that amendment and with the addition of the words "whenever possible" after the words "eliminate such practices", as proposed by Mr. Ketrzynski.

The Chairman's suggestion was adopted by 10 votes to none, with 1 abstention.

The CHAIRMAN invited debate on paragraph 7 (a) (3).

Mr. SAARIO said it was unnecessary, from the legal point of view, to provide that persons subjected to discrimination should have the right of appeal, since that was self-evident.

Mr. KETRZYNSKI recalled that Mr. Ammoun had agreed that the words "or to any competent bodies" should be inserted after the words "to the courts".

Mr. HALPERN appreciated Mr. Saario's point but explained that, with the exception of sub-paragraph (c), which referred more particularly to the courts, sub-paragraph (3) dealt with legislative measures.

Mr. AMMOUN confirmed his acceptance of Mr. Ketrzynski's amendment; so far as other points were concerned he referred to his earlier explanations.

Mr. HALPERN said that he was prepared to accept sub-paragraph (a) (3) if the words "by law" were inserted after the words "should be given", in order to make it quite clear that the passage was concerned with legislative measures only.

Mr. AMMOUN said that the words "should be given the right" indicated clearly that the reference was to a statutory right.

Mr. HISCOCKS suggested that Mr. Ketrzynski's amendment should be modified by replacing the words "competent bodies" by the words "other competent bodies".

The CHAIRMAN suggested that the Sub-Committee should adopt sub-paragraph (a) (3) as amended by Mr. Halpern, Mr. Ketrzynski and Mr. Hiscocks

The Chairman's suggestion was agreed to.

The CHAIRMAN invited comments on paragraph 7 (a) (4).

Mr. HALPERN said that at its eighth session the Sub-Commission had debated at length the propriety of legislative measures forbidding certain forms of free expression. He had no wish to reopen the debate, and would merely state that his position had not changed and that in a democracy like the United States it was not for the Government to correct the errors of its citizens; it was for the citizens to correct the errors of Government. In his view, therefore, sub-paragraph (a) (4) was out of place in a section dealing with legislative measures, since it would be contrary to the fundamental principle of freedom of expression.

The CHAIRMAN pointed out that the word "combat" could be given a very wide interpretation.

Mr. KETRZYNSKI said that Mr. Halpern was leading the Sub-Commission in a philosophical discussion on the basis of his personal convictions. In some countries, for instance, pornography was prohibited by administrative and legislative measures and the law in Poland forbade any warlike propaganda. Ever country should be left to choose its own methods of combating discrimination in education.

Mr. FOMIN endorsed Mr. Ketrzynski's remarks. He referred to the provisions of article 26 of the draft covenant on civil and political rights which were based on the proposal of the Sub-Commission, slightly modified. Efforts to combat propaganda favouring discrimination were of particular importance for unless such propaganda was brought to an end other anti-discriminatory measures were unlikely to achieve success. Various forms of propaganda were already prohibited, not only on the national but also on the international level and in particular in relation to freedom of information, the banning of pornographic publications and so on. The law in certain States

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of the United States touched on questions of propaganda; thus, even in that country, the principle was unexceptionable.

The CHAIRMAN requested the members of the Sub-Commission to limit the length of their speeches to two minutes if possible.

Mr. INGLES said that if legislative measures to combat discrimination were admitted it would be necessary to accept all the consequences and to enact legislation making incitement to discrimination a punishable offence. He proposed that the phrase "which constitutes an incitement to" should be added between "propaganda" and "discrimination".

Mr. HISCOCKS thought that in deference to Mr. Halpern's views sub-paragraph (4) should be transferred to paragraph 7 (b).

The CHAIRMAN said that he knew from experience that in some countries, such as the United Kingdom, it was unnecessary to take legislative measures against propaganda in connexion with discrimination; in other countries, however, the need to keep a balance between the various groups made such measures essential.

Mr. AMMOUN agreed with the Chairman; in Lebanon such measures were necessary to ensure the unity of the State. He accepted Mr. Ingles, amendment as more accurately reflecting the intention of the draft.

Mr. HALPERN said that sub-paragraph (4) should definitely not form part of paragraph 7 (a). He pointed out that legislation relating to pornographic matter concerned a very specific subject and that article 25 of the draft covenant on civil and political rights had been altered by the Commission on Human Rights, which had decided to introduce the idea of incitement to hatred, whereas the Sub-Commission had spoken only of incitement to violence. However, in view of the broad interpretation of the word "combat" which the Chairman had given, without objection from any other member, and, in view of the acceptance of Mr. Ingles' amendment, he would not vote against the provision but he suggested that the word "discrimination" in that amendment should be changed to "discriminatory action in violation of law".

Mr. AMMOUN pointed out that the text proposed by Mr. Halpern would be tautological, since enything unlawful was ipso facto prohibited.

Mr. KETRZYNSKI considered that the French text (combattre) did not correspond exactly to the English text, which said "Efforts should be made...".

The CHAIRMAN suggested that the vote should be taken on the French text. It was so agreed.

The CHAIRMAN put Mr. Halpern's amendment to the vote.

The amendment was not adopted, 4 votes being cast in favour and 4 against, with 2 abstentions.

Mr. HALPERN asked that it be noted in the summary record that Mr. Ingles, who was the author of the phrase which he had sought to amend, had voted in favour of his amendment.

The CHAIRMAN put to the vote the original text of sub-paragraph (a) (4) with the addition of the words "which constitutes an incitement tc".

The Sub-paragraph, as amended, was adopted by 8 votes to none, with 2 abstentions.

Mr. HISCOCKS and Mr. HALPERN said that they had abstained because in their opinion the proper context for the provision in question was paragraph (7) (b)

The CHAIRMAN referred to paragraph 7 (a) (5); he added that the word "equal" should be inserted before the word "access".

 $\underline{\text{Mr. HALPERN}}$  proposed that all the words after "end to schools" should be deleted.

Mr. AMMOUN said that only the word "daily" should be deleted.

The CHAIRMAN put to the vote sub-paragraph (a) (5) with the addition of the word "equal" and as amended by Mr. Halpern.

The sub-paragraph was adopted unanimously.

The CHAIRMAN invited debate on paragraph 7 (a) (6).

Mr. HALPERN said that the word "assistance" might be misleading. He proposed that the text should be revised to read: "Encouragement and assistance should be given to all private organizations engaged in combating discrimination in the field of education".\*

The CHAIRMAN put to the vote sub-paragraph (a) (6) so amended. The sub-paragraph was adopted unanimously.

The meeting rose at 1.10 p.m.

Change not affecting the French text.