

UNITED NATIONS
ECONOMIC
AND
SOCIAL COUNCIL



Distr.
GENERAL

E/CN.4/Sub.2/NGO/41
8 January 1965

ORIGINAL: ENGLISH



COMMISSION ON HUMAN RIGHTS
SUB-COMMISSION ON PREVENTION
OF DISCRIMINATION AND
PROTECTION OF MINORITIES
Seventeenth session
Item 4 of the agenda

Dual Distribution

DRAFT INTERNATIONAL CONVENTION ON THE ELIMINATION
OF ALL FORMS OF RELIGIOUS INTOLERANCE

Memorandum submitted by the Co-ordinating Board of Jewish
Organizations, a non-governmental organization in
consultative status, Category B

The Secretary-General has received the following memorandum, which is circulated in accordance with paragraphs 28 and 29 of Economic and Social Council Resolution 288 B (X).

Received 30 December 1964

The Co-ordinating Board of Jewish Organizations (CBJO) having noted with satisfaction that the Sub-Commission on Prevention of Discrimination and Protection of Minorities has placed the item "Draft Convention on the Elimination of all forms of Religious Intolerance" on its agenda, submits the following comments and suggestions for its consideration in preparing a draft convention:

1. The General Assembly decided at one and the same session, indeed on the very same day, to ask the Commission on Human Rights to draft declarations and conventions both on the elimination of all forms of racial discrimination and on the elimination of all forms of religious intolerance. It is thus obvious that the General Assembly thought of the two conventions as being twin instruments, which should be as alike as possible. This does not mean that the wording of every article of the two conventions should be alike. This

GE.65-152

would be impracticable since each subject item is concerned with different problems. Nonetheless, both have many aspects in common, and, therefore, the texts of the two conventions should not differ substantially. Although at the present moment the final text of the Convention on Racial Discrimination is not yet known, the Commission on Human Rights has already adopted the texts of most substantive articles of the Convention, which undoubtedly will form the basis of the final texts. Thus a text exists which could well serve as a model for a draft convention on the elimination of all forms of religious intolerance.

2. The first difficult problem to be faced when drafting a convention, which has to be a legal instrument, is the phrase "religious intolerance". When drafting the Convention on Racial Discrimination no such difficulty existed. The term discrimination is a clear term and in addition there are precedents in the ILO Convention on Discrimination in Employment and Occupation and in the UNESCO Convention on Discrimination in Education. But "intolerance" is a term which can have several meanings. It can indicate an attitude, a state of mind which need not necessarily lead to any action; it can indicate an attitude leading to incitement or an attitude leading to action (e.g. discrimination or violence). It is self-evident that one cannot legislate (nationally or internationally) against a state of mind. A state of mind can be changed by education, but not by law. One can, however legislate against action, whether it be discrimination or violence or incitement to either. The preamble of the resolution 1781 (XVII) makes it clear that the General Assembly, when requesting the drafting of a declaration and a convention against religious intolerance, had in mind the actions resulting from an attitude and not the attitude per se.

3. The first paragraph of the first substantive article of a convention must therefore state unambiguously what is meant by the term "intolerance". It might be expressed in the following way: "The aim of the convention is to eliminate all forms of religious intolerance which are calculated to lead to discrimination or violence against groups or individuals because of their religion or belief." A word like "calculated" or "tending to" is essential, as the convention should also combat incitement even if it has not yet led to actual discrimination or violence.

4. The second paragraph of article I, could follow closely the article I, par. 1, of the Draft Convention on Racial Discrimination as prepared by the Commission on Human Rights, except that the words "religion or belief" would replace the words "race, colour or ethnic origin".

5. A separate article would have to enumerate exceptions, i.e. situations which would not constitute discrimination in the meaning of the convention - following the example of article I, par. 2, of the ILO Convention on Discrimination in Employment or article II, of the UNESCO Convention on Discrimination in Education. Such an article would have to stipulate that it should not be regarded as discrimination if an institution, essentially devoted to the purposes of a particular religion, denomination or belief, restricted its membership or its official positions to adherents of this religion, denomination or belief. That would apply not only to churches, synagogues, mosques, temples, etc., but also to religious schools, cemeteries, welfare bodies, etc. The word "essentially" seems important in this context. A religious institution that, as a sideline, occupies itself with non-religious matters, would not be deprived of the benefits of the exception while, on the other hand, an institution in which religious aspects play only an incidental role should not benefit from the exceptions. A second paragraph of this article would have to stipulate that such separate religious institutions should not be misused by the authorities for either compulsory religious segregation or for giving one or more religious bodies a preference in the fields of education, welfare, etc. Article II of the UNESCO Convention could provide the pattern for such a stipulation.

6. As to the substantive articles of a convention on the elimination of all forms of religious intolerance the text of the articles II, par. 1, IV, V, VI and VII, of the Draft Convention on Racial Discrimination (prepared by the Commission on Human Rights) could be easily used as a pattern. Article II, par. 2 and article III, would not be applicable to a convention on religious intolerance. Naturally some textual changes would impose themselves. The words "racial discrimination" would have to be replaced whenever they occur by either "religious discrimination" or "religious intolerance calculated to lead to discrimination", and the words "race, colour or ethnic origin" by "religion or religious groups". We would also recommend the addition of the following sentence in article III, par. 10 "Each State party

undertakes to withhold or withdraw licences, subsidies or other State grants from organizations, groups or persons that apply discrimination in the meaning of this Convention against individuals or groups on the ground of religion."

7. However, if a convention against religious intolerance is to be really effective the above-type articles, standing alone, would not be sufficient. They would protect the individual adhering to a particular religion or belief against discrimination but they would not necessarily protect the religious group as such (as distinct from the individual) against discrimination in the practice of its religion or belief. The freedom to practice religion or belief is a collective right. Not only the individual, adhering to a particular religion or belief, has to be protected against discrimination; the religious group must be equally protected by being guaranteed all those rights which make the practice of the religion possible. The practices of most religions is not confined to religious worship alone. Religious groups must also -- in order to fulfill the commands of their religion -- have the freedom to create local, regional and national organizations of their adherents; freedom to teach their religion; freedom to obtain the ritual requirements for the practice of their religion; freedom to set up religious welfare bodies; etc. The convention, therefore, needs an article (or several articles) which guarantee non-discrimination in these fields too. Articles VI - XII of the preliminary draft of a declaration on the elimination of all forms of religious intolerance (as submitted by the Sub-Commission to the twentieth session of the Commission on Human Rights) contains all the essential points. The text would, of course, have to be changed from the declarative form to the conventional form; it might be advisable, in this connexion, to have separate initial articles, one spelling out the rights of individuals, the other, the rights of the community. To avoid the danger that prescriptions of one religion or belief might interfere with the freedom of another religion or belief, or endanger public health, public order or general welfare, a separate article could (on the lines of article XIII, par. 2 of the Sub-Commission's preliminary draft) lay down the possibility of restrictions.

8. No convention can be successful unless it provides for effective implementation procedures. This principle applies both to the convention against racial discrimination and the convention against religious intolerance. As both

conventions are based on almost identical General Assembly resolutions and are therefore likely to be similar in structure, and even in wording, it should be possible to institute the same machinery for implementation for both conventions. The Sub-Commission has already submitted an article (article X) to the Commission on Human Rights which would set up a reporting system for the Convention against Racial Discrimination. In our view this article does not go far enough, because it demands regular reports about the implementation of the convention only from the States parties to the conventions. The practice of the ILO has shown that reports by governments on the implementation of conventions are of practical use only if there exists a non-political body (like the ILO Experts Committee) having the right to study the reports to ask, if necessary, supplementary questions from governments, and to express their opinion and recommendations as to the effectiveness of the implementation by the States parties to a convention. Secondly in the ILO, non-governmental organizations have their say in the reporting system. Although for constitutional reasons the ILO system could not in this respect be duplicated in the United Nations, it would be possible to give non-governmental organizations, in consultative status with the Economic and Social Council, a role in the reporting system similar to the one which already exists with regard to reports on Human Rights.

9. When preparing the draft on racial discrimination, the Sub-Commission also had before it a number of draft articles on additional measures of implementation, which were submitted to the Commission on Human Rights as an expression of the general views of the Sub-Commission. This draft follows closely the terms of the Protocol to the UNESCO Convention against Discrimination in Education. In the view of CBJO the establishment of such a fact-finding and conciliation committee would appear to be essential. But here too, in our view, a role should be given to non-governmental organizations in consultative status. They, too, should have the right to submit cases of non-fulfillment of obligations to the fact-finding and conciliation committee, which would then be free in each case to decide whether such submission is receivable or not. The experience of the European Convention on Human Rights (where individuals and organizations can submit complaints to the European Human Rights Commission) shows that States are reluctant to complain against other States - and if they do so,

it is principally for political reasons. On the other hand, individuals and organizations are far less reluctant to use the complaint procedures. The European experience also shows that the Commission was well able to decide quickly on the receivability of such complaints so that the fear of the implementatic organ being swamped by irresponsible complaints has proved unjustified. A small number of individual complaints, however, which the European Commission upheld as justified, have led already to a change in the law of two European countries.