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Tenth Session

SUMMARY RECORD OF THE FOUR HUNDRED AND FIFTY-FOURTH MEETING

Held at Headquarters, New York,
on Tuesday, 30 March 1954, at 3.20 p.m.

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(10 p.)

54-09749

PRESENT:

<u>Chairman:</u>	Mr. INGLES	Philippines
<u>Members:</u>	Mr. WHITLAM	Australia
	Mr. NISOT	Belgium
	Mr. ORTEGA	Chile
	Mr. CHENG PAONAN	China
	Mr. GHORBAL	Egypt
	Mr. JUVIGNY	France
	Mr. ROUSSOS	Greece
	Mr. DAYAL	India
	Mr. RIZK	Lebanon
	Mr. TYABJI	Pakistan
	Mr. BIRECKI)	Poland
	Mr. FORYS)	
	Mr. ASIROGLU	Turkey
	Mr. SAPOZHNIKOV	Ukrainian Soviet Socialist Republic
	Mr. MOROZOV	Union of Soviet Socialist Republics
	Mr. HOARE	United Kingdom of Great Britain and Northern Ireland
	Mr. GREEN	United States of America
	Mr. MONTERO BUSTAMANTE	Uruguay

Representatives of specialized agencies:

Mr. MANNING	International Labour Organisation
Mr. ARNALDO	United Nations Educational, Scientific and Cultural Organization

Representatives of non-governmental organizations:

<u>Category B:</u> Mr. JOFTES	Co-ordinating Board of Jewish Organizations
Mr. LONGARZO	International Conference of Catholic Charities
Mr. BALDWIN	International League for the Rights of Man
Mr. JACOBY	World Jewish Congress
Mr. RONALDS	World Union for Progressive Judaism

Representatives of non-governmental organizations (continued):

<u>Register:</u>	Miss SMITH	International Federation of Women Lawyers
<u>Secretariat:</u>	Mr. SCHWELB	Deputy Director of the Division of Human Rights
	Mrs. BRUCE) Mr. DAS)	Secretaries of the Commission

REPORT OF THE SIXTH SESSION OF THE SUB-COMMISSION ON PREVENTION OF DISCRIMINATION
AND PROTECTION OF MINORITIES (E/CN.4/703 and Corr.1, E/CN.4/L.359): GENERAL DEBATE
(continued)

Mr. HOARE (United Kingdom) said that the report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities showed that it had accomplished a great deal of work in a very business-like manner at its sixth session. It had attacked with energy the task assigned to it by Council resolution 502 H (XVI) asking it to formulate specific proposals for the carrying out of its studies; the proposals formulated were detailed, specific and well presented and on this it was to be congratulated.

Obviously, however, some parts of the specific proposals were open to criticism by the Commission. The Sub-Commission, for reasons which had seemed good to it, had proposed a marked departure from methods used in the past in suggesting that all the main studies it had in view should be undertaken by special rapporteurs or independent experts. It had further proposed that the special rapporteurs and the independent experts should be paid for their work. If the Sub-Commission employed experts, there would be considerable financial implications, since they would be employed generally on a full-time basis. The payment of special rapporteurs would be an exception to the rule on the non-payment of honoraria to rapporteurs of United Nations bodies laid down by the General Assembly in resolution 677 (VII). The Assembly had not passed that resolution without considerable reflection and a recommendation from the Commission that might create a precedent which would have consequences in many other fields would come amiss. The Council had expressly indicated that it regarded the continuance of the rapporteur on discrimination in the field of education as a special case. It had also indicated its belief that in the future such studies should normally be carried out either by the specialized agencies or by the Sub-Commission itself with the assistance of the Secretariat. It was certainly curious that the Sub-Commission should have decided, in the light of Council resolution 502 H (XVI), that almost every study should be carried out by a rapporteur or expert.

By its terms of reference the Sub-Commission was responsible for making studies and for making recommendations as a result of its studies. In suggesting that the studies should be made by individuals, it seemed to be to some extent shifting

the responsibilities it had assumed when it had been established. The original conception had been that, since the Commission on Human Rights was overburdened with work relating to human rights in general, it should be assisted by a Sub-Commission of experts, on whose recommendations the Commission would pass.

The Sub-Commission had in fact done a good deal of work, such as that on the definition of minorities, without making elaborate studies; that was assumed to be its function. If experts were going to collate material supplied largely by the Secretary-General, it was rather hard to see what the Sub-Commission was going to do except pass upon their conclusions - which the Commission could do equally well. If the system proposed by the Sub-Commission was adopted, all the real work would be done outside it. Some studies, owing to their controversial nature, might not perhaps be suitable for treatment by the Secretariat - although it had very adequately tackled such subjects as the World Social Situation and the status of women in private and family law. It might well be that some modification of the terms of those studies would enable the secretariat to conduct them. The question accordingly arose whether the Sub-Commission had been correct in suggesting that all studies should be farmed out to individuals. True, the Sub-Commission's sessions were short and it could not itself undertake such extensive studies as that which it had entrusted to its rapporteur. If, however, the documentation was prepared by the Secretariat, on the basis of the same material as an individual expert would use, and was submitted six weeks before the opening of the session, the experts on the Sub-Commission could examine it and be prepared to submit recommendations for practical action. The matter was of considerable importance for the Sub-Commission's future work, owing both to the financial implications and to the question of principle involved.

Some of the Sub-Commission's resolutions appeared to be improperly drafted from a technical point of view. Resolution C, for example, was addressed direct to the ILO, whereas technically it would have to be approved first by the Commission on Human Rights and submitted to the Economic and Social Council.

Mr. JUVIGNY (France) said that his delegation, which had been in favour of re-establishing the Sub-Commission, welcomed its long and instructive report, which indicated that the Sub-Commission had taken its work seriously, had addressed itself to many aspects of its task and had carried on its discussions

on a very high level. Such criticism as he had to make was therefore not to be taken as deprecation of the Sub-Commission's efforts.

To begin with, the Sub-Commission's otherwise commendable zeal had led it to explore certain fields not directly related to its work and had blinded it to the possible consequences of some of its suggestions. It was clear that, to a greater extent than in the past, the Commission must act as the Sub-Commission's tutor, taking into account political considerations which might escape the experts. The Economic and Social Council, in its resolution 502 H (XVI), had taken that very view.

In his statement at the morning meeting (E/CN.4/SR.452), the Philippine representative had said that after discussing its methods of work, the Sub-Commission, for good and sufficient reasons, had adjourned the whole problem. The Sub-Commission's resolutions, however, clearly indicated its preference for certain methods, in particular the appointment of special rapporteurs and outside experts. While it was true that the Sub-Commission's sessions were too short to enable it to do all the necessary work itself, the Economic and Social Council had clearly indicated in paragraph 3 of its resolution 502 H (XVI) that it approved the appointment of a rapporteur on discrimination in the field of education as an emergency measure only, not to be regarded as a precedent. In suggesting further recourse to special rapporteurs, therefore, the Sub-Commission had gone much further than the Council itself, a point the Commission should bear in mind.

While the methods advocated by the Sub-Commission no doubt had some advantages, they gave rise to at least two important objections. Firstly, the cost to the United Nations might be considerable, since once it was admitted in principle that frequent use should be made of special rapporteurs and outside experts, other United Nations organs would no doubt wish to employ the same system. Secondly, for members of the Sub-Commission, experts themselves, to call on the services of other experts was paradoxical and might well throw doubt on their own qualifications.

In paragraph 6 (b) of its resolution 502 H (XVI), the Council had asked the Sub-Commission to consider which of the proposed studies on discrimination should be undertaken by the specialized agencies or other bodies concerned and which

directly by the Sub-Commission in collaboration with the Secretary-General. In his view, studies of various aspects of discrimination in fields falling within the province of the specialized agencies should be carried out by those agencies, whether on their own initiative or at the request of the United Nations, and it was only after such studies had been made that the Sub-Commission should attempt to synthesize them and to draw general conclusions from them. It should not appear to instruct a specialized agency to make a "preparatory study", as it did in its resolution C (E/CN.4/703, page 45), giving the impression that it would subsequently pass judgment and then alter the work done by the agency. Such an attitude was not in the interest of good relations between the United Nations and the specialized agencies.

Nevertheless, before entrusting a study to a special rapporteur or an outside expert, the Sub-Commission should explore all other resources, such as the Secretariat, the specialized agencies and other United Nations organs. It was only when those failed - and surely such cases would be exceptional - that the method advocated by the Sub-Commission might be acceptable.

It was to be regretted that, as a result of the criticism to which it had been subjected in the Commission, the Sub-Commission had decided to do no further work on the definition of minorities. That definition had been based on a careful initial study and the French delegation had been impressed by its serious character. It would seem a rash step on the Sub-Commission's part to embark on a study of the present position of minorities in need of special protective measures without a definition of minorities or at least some precise criteria for deciding what was and what was not a minority and for determining which cases should make up the "selective" study of which the resolution spoke. He shared the Secretary-General's misgivings in the matter. The Sub-Commission would seem to be attacking its work with zeal but without having given sufficient consideration to the methods to be followed.

Lastly, the Sub-Commission's request (E/CN.4/703, resolution J, page 84) that it might be permitted to report direct to the Economic and Social Council seemed premature. For a few years at least, the Commission must exercise its role of tutor by carefully studying the Sub-Commission's work and giving it the necessary guidance, in the interest, indeed, of its permanence. He hoped that with such help the Sub-Commission would be able to work out suitable methods and would learn to make use of its own resources.

Mr. GREEN (United States of America), making some preliminary remarks on the Sub-Commission's report, said that the general debate would help to clarify the position with regard to the two different types of resolutions contained in the document. The five draft resolutions in annex I were submitted to the Commission for consideration and approval; the procedure with regard to the ten resolutions in the body of the text, however, was not so clear. The United States delegation hoped that the Commission would consider how it could instruct the Sub-Commission to revise some of those resolutions, as it had done in the past.

Thus, resolution B on discrimination in education had already been approved in principle by the Commission and the Council, and his delegation was generally speaking prepared to endorse it, provided that the extent of the special rapporteur's powers was made quite clear. Furthermore, the resolution reappeared as resolution A in the annex, but that version did not state that it had been approved by the Economic and Social Council. He suggested that an amendment to that effect might be considered.

Resolution C on discrimination in employment and occupation contained the useful provision that the ILO should be invited to deal with the questions involved. Nevertheless, it would be advisable to include a more formal invitation to the ILO from the Economic and Social Council, which, as the organ responsible for co-ordinating the activities of the specialized agencies, would be in a position to determine precisely the extent to which the ILO could undertake the supplementary work entailed.

In resolution D on the prevention of discrimination, the Sub-Commission had made a useful experiment in entrusting preliminary studies to three of its members. At its next session the Sub-Commission would be able to take up those studies one at a time and decide on the most effective methods of preventing discrimination in particular fields. The United States delegation considered, however, that the Sub-Commission might well narrow down the definitions of those subjects to relate them more closely with specific articles of the Universal Declaration of Human Rights. Thus, in connexion with political rights, reference might be made to article 21 of the Declaration; the question of freedom of worship might be related to article 18; and the extremely complex question of freedom of travel,

which the Commission had had such difficulty in defining both in the Declaration and in the covenants, could be restricted for the time being to the provisions of article 13, paragraph 2, of the Declaration.

With regard to the resolutions on minorities, he agreed with the French representative that it was premature to undertake the study proposed in resolution F, in view of the Sub-Commission's inability to provide a general definition of minorities. Much more work should be done on the subject before an expert was appointed to deal with it. The provision in paragraph 6 of the resolution, to the effect that the Secretary-General should assemble relevant material for a selective study, was acceptable. Resolution G seemed to confuse the subjects of discrimination and minorities and the Commission should ask for clarification on whether the proposed method was really the most effective for achieving the Sub-Commission's purposes. The United States delegation considered resolution H to be satisfactory and would support it in the form of draft resolution D in annex I of the report.

Resolution I was restated in the Philippine draft resolution (E/CN.4/L.359). He suggested that the reference to UNESCO and other specialized agencies in sub-paragraph (a) of the Philippine draft should be amended to refer to other interested specialized agencies, in order to make it clear that only a few of the agencies would be concerned. With regard to resolution J, he agreed with the United Kingdom representative that the delicate question of the payment of the expert required careful consideration and agreed with the French representative that the Sub-Commission should not report direct to the Economic and Social Council, especially since the Commission now seemed to be able to find time to deal exhaustively with the Sub-Commission's reports.

Mr. NISOT (Belgium) considered that draft resolution A in annex I of the report raised an important question. The Sub-Commission must carry on its activities under the immediate guidance of the Commission, which could not evade the responsibilities incumbent upon it in that regard. To conduct an investigation among governments and to ask them for information on behalf of the United Nations were not measures to be undertaken lightly. The power of

decision in that connexion must rest with the Commission; it could not be delegated to a Sub-Commission, and still less to one member of that Sub-Commission, whether or not that member was a special rapporteur. The form and content of such a questionnaire might influence the direction in which a whole matter developed and, in particular, might have political consequences; they should receive the prior approval of the Commission, which should exercise its control in order to prevent the United Nations being presented with established trends and faits accomplis. When the Sub-Commission had conducted inquiries in the past, it had done so through the Commission.

Mr. WHITLAM (Australia) expressed his appreciation of the statements made in the debate, which had thrown light on the complexities of the subject. It was obvious that, since the Sub-Commission had been re-established, there had been closer integration of its work, where there had previously been a tendency towards dispersion of effort. The Sub-Commission had clearly realized that many of the questions before it must be dealt with in stages. The general debate had been most valuable in enabling the Commission to view the report in its proper perspective.

Mr. ORTEGA (Chile) and Mr. HOARE (United Kingdom) moved the adjournment of the meeting.

The motion for adjournment was adopted unanimously.

The meeting rose at 5 p.m.