

Document Symbol:

E/CN.4/Sub.2/SR/3

Best copy available

ECONOMIC
AND
SOCIAL COUNCILCONSEIL
ECONOMIQUE
ET SOCIALE/CN.4/Sub.2/SR.3
26 November 1947

ORIGINAL: ENGLISH

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

FIRST SESSION

Summary Record of the Third meeting
Held at the Palais des Nations, Geneva,
on 26 November 1947 at 10.00 a.m.

Present:

Chairman: Mr. E.E. Ekstrand (Sweden)

Vice-Chairman: Mr. Herard Roy (Haiti)

Rapporteur: Mr. Joseph Nisot (Belgium)

Members: Mr. W.M.J. McNamara (Australia)

Dr. C. H. Wu (China)

Mr. Samuel Spanien (France)

Mr. M.R. Masani (India)

Mr. Rezazada Shafaq (Iran)

Mr. A.P. Borisov (Union of Soviet
Socialist Republics)

Miss Elizabeth Monroe (United Kingdom)

Mr. J. Daniels (United States of America)

Specialized Agencies: Mr. Rodolphe Lopes (I.L.O.)

Miss M.L. Babbie (I.R.O.)

International Non-
Governmental
Organizations:Mr. Bienenfeld (World Jewish
Congress)

Secretariat:

Prof. J.P. Humphrey

Mr. Edward Lawson

Mr. Emile Giraud

Mr. A.H. Hekimi

RECEIVED

8 JAN 1949

UNITED NATIONS
ARCHIVES

1. Continuation of the General Discussion.

Mr. MASANI (India) emphasized that the Members of the Sub-Commission were not Representatives of their countries but individuals from all over the world expressing their own personal views. He thought that the Indian approach to the problem might be of value to the Sub-Commission. India, like Iran, had a good record of non-discrimination and had always been ready to welcome and assimilate people of different races and ethnic groups. He was himself a member of one of the smallest minorities in India consisting of about 100,000 people which had been absorbed into the country twelve centuries ago. India, like the United States of America, was made up of people of many different races. In recent times foreign rule had made difficult the development of society, which had become fixed in the caste system. That had arisen from the Government's desire not to intervene in the affairs of the native population. Another result was the continued state of illiteracy and the consequent survival of superstitions and religious bigotry. The incidents taking place in India today were the legacy of that policy. The Government of India was doing its best in the difficult task of combating the ignorance and prejudice of the masses.

India had set up a democratic State with equal rights for all without discrimination. In January 1947 the Constituent Assembly had passed a resolution guaranteeing the rights of minorities and the principles of that resolution had been embodied in legislation in the following article:

"No person shall be deprived of his life or liberty without due process of law, nor shall any person be denied equality before the law within the territories of the Union." He emphasized the fact that the word "person" and not "citizen" was used, indicating that the provision was to apply to all without discrimination. To ensure the practical application of that

provision India had set up an independent Court of Law to which anyone might appeal, on the lines of the British and American Law Courts.

It was the aim of India to see the same conditions prevailing throughout the world and it was to that end that the Government had raised the question of South Africa at the General Assembly of the United Nations. India also desired to help all countries which were not yet full Sovereign States to achieve independence.

In India the difference between a formal declaration of rights, and their implementation, was fully realized. The problem of implementation was even more delicate for the Sub-Commission since it could take no steps which might limit the sovereignty of States. The question should not, however, be avoided and it was the Sub-Commission's duty to make recommendations on the subject. It might suggest the right of appeal to the General Assembly or to a Court of Human Rights.

The problem of dealing with petitions from minorities should be considered, he stated. He agreed with the spirit of the proposals made by Mr. Daniels on the subject. The fate of such petitions was an important matter and the precedent of the League of Nations should not, in his opinion, be followed. He quoted a passage from Lord Cecil's book "A Great Experiment" indicating how petitions were handled by the League of Nations. According to that book, petitions at first were handled in secret. No concrete information was published on the results obtained until 1929 when it was stated that 57 petitions had been made of which 26 were declared "non-receivable". Statistics were published in subsequent years but there was never any report on the action taken or any explanation of why so many were considered to be "non-receivable"; and the petitioners were never informed of the Government's reply to their petition.

He emphasized the fact that discrimination was not always directed against a minority but sometimes against a majority, as alleged in the case in South Africa. As far as discrimination on grounds of language was concerned the Members of the Sub-Commission had before them the example of Switzerland where several languages existed side by side and the rights of all were respected. In the case of countries like India and Palestine there was also the question of protecting the written language of the minority.

The four categories of minorities mentioned in the Terms of Reference were not exhaustive, he felt. Others such as vocational minorities, consisting of workers who refused to belong to the State-recognized Union, should be remembered. Political minorities were becoming increasingly important. It was no longer a case of oppression by a King or a group of aristocrats but of an all-powerful State repressing dissident groups of thought.

He went on to say that he would like to see the right of asylum revived and given international sanction. The United States, the United Kingdom, France and Switzerland had a great record of giving asylum to political refugees and without this right of asylum several great men would never have been able to achieve their work.

Dr. C.H. WU (China) mentioned the two guiding principles of his country. The first was, "all men are brothers;" and the second, "all brothers are men." These two principles, he believed, covered all the problems of human rights.

In the whole of China's history there had been no religious or racial persecution. There were five main races in China, but none had been added to the Republic by military conquest.

The minorities in China, he stated, were given more than equal representation. Because of the principle that minorities must

have a minimum number of delegates, the frontier provinces had a higher proportion of representation than those in the interior. Political parties were also treated with equality and justice. Since the revolution China had passed through three stages, the military stage, the years of political tutelage and finally the constitutional stage in which all parties were regarded as equal before the law.

As there were no other speakers, the CHAIRMAN declared the general discussion closed.

2. Item 6 of the Agenda. Terms of Reference.

Miss Elizabeth MONROE (United Kingdom) opened the discussion with a statement relating to document E/CN.4/Sub.2/18 which she had submitted. The Terms of Reference of the Sub-Commission were very wide, she felt, and from the practical point of view the Sub-Commission would do well to set up definite targets. She suggested that the Members should first discuss the Articles in the draft Declaration on Human Rights which were recognized as coming within the province of the Sub-Commission, and then consider any further matters which might be brought to the notice of the Commission on Human Rights for inclusion in the draft Declaration or Bill. She considered it important that all Members should be clear in the matter of terminology, and for this reason she had tried in her document to explain her conception of the meaning of Terms of Reference. Prevention of discrimination, she felt, was the wider of the two subjects. It ranged from deliberate discrimination, which could be corrected by legal processes, to discrimination which was simply a matter of custom among backward people and which could only be corrected by changing public opinion. The first of these types of discrimination would be their primary concern.

She defined "prevention of discrimination" as the prevention of any action which denies to individuals or to groups of people

assimilations which they may wish, and "protection of minorities" as the protection of minorities against assimilations which they do not wish. She emphasized the point that a minority was not necessarily numerically smaller than the majority but was simply the non-dominant group, irrespective of its size.

She approved the point made by Mr. Shafaq, differentiating between genuine and artificial minorities. A genuine minority, she felt, was one which owed undivided loyalty to the State in which it lived. Minorities with divided loyalties, as in the case of the Suedeten Germans had always been recognized as a fruitful cause of war.

Complete uniformity of treatment for minorities was not always just, and sometimes it was necessary to discriminate in favour of minorities, she stated. She suggested that the word "discrimination" be used only in the case of unfair treatment and that discrimination in favour of minorities necessary to their attainment of real equality should be called "differential treatment". This principle, she felt, had already been accepted by the United Nations in its Trusteeship Agreements.

Mr. NISOT (Belgium) agreed with Miss MONROE and proposed that the Sub-Commission should begin to study the Articles.

Mr. ROY (Haiti) asked whether they were still discussing Item 6 of the Agenda, or if they had already passed to Items 7 and 8.

The CHAIRMAN said that it had been proposed that they should begin the discussion of the Articles.

Mr. ROY (Haiti) said that he had something to say on the subject of the Terms of Reference.

Mr. NISOT (Belgium) replied that it was not within the Members' competence to discuss the Terms of Reference, which had been laid down

by the Commission on Human Rights. He thought that the subject had been dealt with on the previous day.

Mr. ROY (Haiti) considered that it was within the competence of the Members to discuss their Terms of Reference, and if necessary to suggest alterations or additions. He thought that the present Terms of Reference should be made less vague.

Mr. NISOT (Belgium) maintained that it was only the Commission on Human Rights itself which could change their Terms of Reference. He renewed his proposal that they should pass on to the discussion of the Articles.

Mr. SHAFAG (Iran) was of opinion that Items 6 and 7 were actually under discussion. The problem was first of all one of definition and, as such, Miss MONROE's remarks had been very much to the point.

Mr. DANIELS (United States of America) interpreted paragraph (a) of the Terms of Reference as meaning "what can be done in the fields of discrimination and minorities."

Mr. ROY (Haiti) agreed with Mr. DANIELS' interpretation. He was of opinion that the Terms of Reference must be followed; on the other hand, the Sub-Commission could make suggestions regarding them to the Commission on Human Rights and, if necessary, ask for clarification of particular points.

Mr. McNAMARA (Australia) disagreed with Mr. NISOT's views. In his opinion, there was no lack of clarity, at least in the functions with which the Sub-Commission was charged. He felt it was necessary to define the line of demarcation between the two aspects of the Terms of Reference before proceeding to an examination of specific Articles. It was precisely for that reason that he had previously proposed the establishment of two Sub-committees.

Miss MONROE (United Kingdom) thought the Terms of Reference were clear, and could be interpreted as meaning "to examine what terms should be used in defining these principles." That being so, she suggested that discussion of the Articles should be started; from that discussion would emerge a body of principles which could be used and recommended to their parent Commission.

Mr. NISOT (Belgium) said that he had understood that principles would be discussed in the course of the study of specific Articles. He asked that the Members should proceed to that study.

Mr. DANIELS (United States of America) supported Mr. NISOT's proposal, which he felt would facilitate their work. He placed particular emphasis on the words in the Terms of Reference "principles which are to be applied."

The CHAIRMAN felt the Sub-Commission's Terms of Reference did not in any way prohibit the making of suggestions; such suggestions would be formulated from their discussions on specific Articles referred to them for consideration. He felt that no practical purpose would be served in appointing sub-committees until the opinion of Members of the Sub-Commission had been expressed.

Mr. ROY (Haiti) said he was quite willing to go on to discussion of Items 7 and 8, provided it was clearly understood that discussion of Item 6 at a later date was not precluded; in other words, provided it was decided to study Items 6, 7 and 8 together.

The CHAIRMAN and Mr. McNAMARA (Australia) agreed with Mr. ROY's interpretation of the position.

M. SPANIEN (France) agreed with Mr. NISOT that the Terms of Reference could not be modified by the Sub-Commission. He thought the best procedure would be to start the study of specific Articles, with the reservation that the discussion on the Terms of Reference remained open.

The CHAIRMAN, in summing up, said it was agreed that the general discussion was closed. It was also agreed that the Terms of Reference could not be changed, but that suggestions could be made regarding them. Should questions bearing upon the Terms of Reference arise during consideration of the Articles, it was agreed that discussion of the Terms of Reference would be allowed.

III. ITEMS 6, 7 AND 8 OF THE AGENDA

The CHAIRMAN said the first Article for consideration was Article 6 (Document E/CN.4/21, page 74).

Mr. BORISOV (Union of Soviet Socialist Republics) reminded the Sub-Commission that it had been decided that discussion of the Articles would be confined to preliminary remarks from the Members, and that the Sub-Commission would not be concerned with drafting. No objection had been raised to this procedure, and he understood that Mr. SPANIEN had also agreed to it.

The CHAIRMAN considered that their expressions of opinion must be presented in some way to the Drafting Committee and would to that extent need to be drafted or at least written out in some form.

Mr. DANIELS (United States of America) suggested that Members might indicate points of agreement or disagreement with an Article and leave the drafting of the Report to the Rapporteur.

The CHAIRMAN supported this suggestion.

Mr. NISOT (Belgium) agreed to this on the understanding that only points on which a vote had been taken would be incorporated in the Report and that individual viewpoints expressed in the meetings need not be included.

The CHAIRMAN, on the other hand, felt that reservations made on any particular point would have to be included in the Report.

Mr. BORISOV (Union of Soviet Socialist Republics) contended that Mr. NISOT'S point ran counter to a previous decision. The Sub-Commission had not been entrusted with the task of drafting, either by the Drafting Committee or by the Commission on Human Rights; and it therefore had no legal power to do so. He contended that each Member should be free to express opinions on the Articles, and the Report to the Drafting Committee should reflect these opinions. It remained for the Drafting Committee to prepare the draft Articles.

Mr. MASANI (India) considered that an expression of the opinion of the Sub-Commission as a whole was required. He agreed with Mr. NISOT that only matters voted upon should be embodied in the Report, but, as already stated by the Chairman, any minority point of view would also be recorded.

Mr. NISOT (Belgium) stated that the usual procedure, in cases where a reservation had been expressed, was for the Member concerned to draft a text to be included in the Report.

Mr. SPANIEN (France) pointed out that in his opinion there were two aspects to their task: first, to submit a report to the Human Rights Commission; secondly, to submit to the Drafting Sub-Commission of the Commission on Human Rights the results of their study and discussion of specific Articles. He considered it best that the Report should embody the conclusions of the majority of the Members; should reservations be made, the Member concerned should draft a text for inclusion in the Report.

Mr. BORISOV (Union of Soviet Socialist Republics) pointed out that, because of legal considerations, the Secretariat had not originally included examination of specific Articles in the Agenda. He felt that opinions expressed might be sent both to the Drafting Sub-Commission and to the Commission on Human Rights. He maintained that the Commission had not asked the Sub-Commission

to do any drafting and he therefore felt that all remarks made by Members of the Sub-Commission with regard to these Articles should be embodied in the Report.

Mr. NISOT (Belgium) felt that there was some misunderstanding. He had not expressed the opinion that the Sub-Commission was a drafting committee. He had said that the Report should embody the opinions of the majority, and in addition any reservations that might be made. The opinions expressed in the course of the meetings would, of course, be embodied in the summary records of the meetings. In due course, Rapporteur's Report would be presented to the Members for approval or amendment. He felt this point was now clear, and that they could now begin to study Article 6.

Mr. DANIELS (United States of America) supported the views expressed by Mr. NISOT.

Mr. BORISOV (Union of Soviet Socialist Republics) said that, had it not been for the legal aspect of the question, he could have shared the point of view of Mr. NISOT. However, the terms of reference did not charge the Sub-Commission with the task of voting upon and approving the Articles in question. All that was required was, in his opinion, an expression of the opinions of the Members, not of the Sub-Commission as such. By adopting the procedure proposed by Mr. NISOT, they would be exceeding their terms of reference. The study of these Articles was not their essential task. He therefore proposed that the opinions of each Member with regard to the Articles should be recorded.

The CHAIRMAN asked Mr. Borisov whether he would agree to the Report being drafted in such a way as to indicate points of agreement or dissent, without stating that a vote had been taken.

Mr. BORISOV (Union of Soviet Socialist Republics) said he would prefer that this section of the Report should be formulated

as he had proposed and added in the form of an Annex.

Miss MONROE (United Kingdom) could not agree to the proposal of Mr. BORISOV. The opinion of the Sub-Commission had been asked for, both by the Commission on Human Rights and by the Drafting Committee. She cited paragraphs 13 and 14 of document E/CN.4/Sub.2/5 to support this contention. It was part of their task to make recommendations, she felt whether these were arrived at after a vote or otherwise was immaterial. However little they might wish to become a Drafting Committee, it was necessary that they find words in which to express their opinions.

Mr. SHAFAQ (Iran) said that he was in favour of voting on specific points and recording the consensus of opinion in the Report. He felt that sufficient time had been wasted in discussing procedure.

Mr. DANIELS (U.S.A.) moved that the Rapporteur should record the action of the Sub-Commission on each of the provisions. Where reservations were made he should, if requested, incorporate a statement drafted by the Member concerned. Dr. WU (China) seconded the motion. The CHAIRMAN put the motion to the vote and it was carried by ten votes, with one abstention.

Mr. BORISOV (Union of Soviet Socialist Republics) said he wished to record a reservation on the point. In his opinion, the Members had adopted a procedure contrary to the decisions of the Commission on Human Rights.

The meeting rose at 12.55 p.m.