

Document Symbol:

E/CN.4/Sub.2/SR/15

Best copy available

ECONOMIC
AND
SOCIAL COUNCILCONSEIL
ECONOMIQUE
ET SOCIALE/CN.4/SUB.2/SR/15
3 December 1947ENGLISH
ORIGINAL: FRENCHCOMMISSION ON HUMAN RIGHTSSUB-COMMISSION ON THE PREVENTION OF DISCRIMINATION
AND THE PROTECTION OF MINORITIES

FIRST SESSION

SUMMARY RECORD OF THE FIFTEENTH MEETING

Held at the Palais des Nations, Geneva, on
Wednesday, 3 December 1947 at 3 p.m.Present:

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

Vice-Chairman: Mr. Herard Roy (Haiti)

Rapporteur: Mr. Nisot (Belgium)

Members: Mr. W.M. McNamara (Australia)
Dr. C.H. Wu (China)
Mr. A.M. Pallares (Ecuador)
Mr. Jonathan Daniels (United States
of America)
Mr. Samuel Spanien (France)
Mr. R.M. Masani (India)
Mr. Rezazada Shafaq (Iran)
Miss Elizabeth Monroe (United Kingdom)
Mr. A.P. Borisov (Union of Soviet
Socialist Republics)

Secretariat: Mr. E. Giraud
Mr. A.H. Hekimi

1. Consideration of the proposal by Miss MONROE (United Kingdom)
regarding definitions of terminology. (Document E/CN.4/SUB.35)

Mr. MASANI (India) wished to suggest some amendments to the proposal submitted by Miss MONROE. These amendments were contained in document E/CN.4/SUB.2/36. He proposed that the words "equality of treatment" be substituted for the words "assimilations which they may wish", so that a distinction might be drawn between the prevention of discrimination and the problem of minorities. The opposite of discrimination was equality.

RECEIVED

JAN 27 1948

Miss MONROE (United Kingdom) accepted Mr. MASANI's amendment.

Mr. SHAFaq (Iran) pointed out that a definition of minorities as a group possessing basic characteristics of a distinctive nature would include dominant groups. Furthermore, to define the prevention of discrimination as the recognition of a minority's right to assimilation would be to characterize as discrimination the refusal of a small group to be assimilated by a dominant group intent on assimilating it in order to eliminate it.

Mr. NISOT (Belgium) wished to make an objection in principle to the whole of the document. Non-discrimination and the protection of minorities could only be defined on the basis of actual texts. Their definition should therefore be deferred until the Commission on Human Rights had produced the final text of a Declaration or Convention.

Miss MONROE (United Kingdom) stated that the amendment proposed by Mr. MASANI met Mr. SHAFaq's objection. On the other hand, she felt that if the course recommended by Mr. NISOT were followed the Sub-Commission would find itself in a vicious circle. In any case she had proposed these definitions merely as a basis for discussion. Finally, she would prefer to transfer the second sentence in the first paragraph to the end of the second paragraph.

The CHAIRMAN stated that the Sub-Commission would therefore begin by considering the first sentence of the first paragraph only.

Mr. SPANIEN (France) could not accept the objection raised by Mr. NISOT. The Sub-Commission had been appointed to assist the main Commission in drawing up the texts by submitting its opinion on the definition of principles which the Commission was required to define and make known. It was therefore not

irrelevant to work out definitions. In attempting to draw a distinction between the problem of discrimination and that of minorities, Miss MONROE had produced a useful working paper which the Sub-Commission would be well advised to take as a basis of discussion. If the Sub-Commission added that it favoured national and international machinery for the prevention, in practice, of discrimination and the protection of minorities, it would be entitled to feel that it had performed a useful task.

Mr. BORISOV (Union of Soviet Socialist Republics) supported the statement made by Mr. NISOT. The present discussion could have only an abstract character, and decisions could only be taken on the basis of final texts. It was impossible to give a clear definition of these terms so long as the Sub-Commission was ignorant of the final form the main Commission would give to the articles adopted in the course of its meetings. He felt that from a juridical point of view the present discussion was irregular.

Mr. ROY (Haiti) disagreed with the objection raised by Mr. NISOT. There was a fundamental difference between taking decisions and defining principles. It had been decided the day before that the Sub-Commission was not competent to take decisions in regard to petitions and similar questions since no rules as yet existed. None the less, the Commission on Human Rights had been entrusted with the task of elaborating them. With this in view, therefore, the Sub-Commission's Report should include definitions of the principles which would serve as a basis for the rules which the Commission was to frame.

Mr. PALLARES (Ecuador) stated that in his opinion the text submitted by Miss MONROE was an excellent working paper and should be regarded as such.

Miss MONROE (United Kingdom) observed that the object of her proposal, as Mr. SPANIEN and Mr. ROY had realised, was to help the main Commission. She had not meant to draft any final text, but merely to submit recommendations to the Commission. The Sub-Commission should therefore regard her document simply as one to work on.

Mr. SHAFaq (Iran) asked if the word "discrimination" in this document was meant in a general sense or a pejorative one.

Dr. WU (China) did not think Miss MONROE's proposal could be adopted as it stood. Miss MONROE seemed to him to have confused prevention of discrimination with prevention of discrimination against minorities, which was only one aspect of the problem. Moreover to declare that the word "minority" had no numerical significance led to confusion. All discrimination was not directed against minorities, and all groups subjected to discrimination were not minorities.

Mr. McNAMARA (Australia) asked the Sub-Commission to postpone its final decision on this proposal till later, because he had prepared a text which he thought more complete than the one before the Sub-Commission. Before expressing his views he would like the Sub-Commission to be in possession of his document, which the Secretariat was then typing out.

Mr. DANIELS (United States of America) raised a point of order. At this stage of the discussion proposals on the subject should be submitted as amendments, not as new proposals.

Mr. McNAMARA (Australia) stated that his document was an amendment. In Miss MONROE's proposal, the distinction between the ideas "prevention" and "protection" was not sufficiently clear. "Prevention" was action taken against any discrimination before it occurred. "Protection" was action to eliminate discrimination already in existence. In addition Miss MONROE's

proposal confused prevention of discrimination with the problem of minorities, mentioned in the same paragraph.

The CHAIRMAN observed that only the first sentence of the first paragraph was under discussion.

Mr. McNAMARA (Australia), continuing, said that this document (Miss MONROE's proposal) should be studied in its entirety. It had only been brought to his notice that morning and he had consequently not been able to prepare his amendment in time. However in order to speed up the discussion he was ready to withdraw his amendment provided it was inserted in the Report as a personal reservation in respect of the text to be adopted. He would therefore abstain from voting.

Mr. BORISOV (Union of Soviet Socialist Republics) thought that in the matter of discrimination on grounds of sex it was not possible to speak of assimilating women to men. It was premature in his opinion to draw up these definitions before the Commission had drafted the final text of the Declaration.

Mr. ROY (Haiti) remarked that in the paragraph in question the words "assimilations which they may wish" had been replaced by "equality of treatment", which could be applied to sex. In addition he asked that final decision be deferred till the Sub-Commission was in possession of Mr. McNAMARA's document, which might be of great assistance. Lastly he emphasized that the word "discrimination" had a pejorative meaning and that in all other cases the words "differential treatment" were used.

Mr. MASANI (India) stated that after studying paragraphs 1 and 2 of Mr. McNAMARA's amendment, which had just been circulated to members of the Sub-Commission, he preferred Miss MONROE's text. Paragraph 1 of Mr. McNAMARA's amendment differed from Miss MONROE's proposal in two particulars:

1. - It added the word "essential" before the words "equality of treatment"; he did not see the need for this addition since there was no mention of equality of treatment in merely minor matters.

2. - At the end of the sentence it added the words "on the grounds (inter alia) of race, distinctive national origin, language, and religion". This enumeration merely created new difficulties since it failed to include all the categories mentioned in Article 6.

Paragraph 2 of Mr. McNAMARA's amendment contained the words "whereas 'protection' refers to steps taken to correct such discriminatory action after it has been originated". Protection, however, could also mean the grant of further privileges to a minority that wished to retain its language and culture. The distinction made by Mr. McNAMARA between prevention and protection did not therefore seem to him a correct one.

Mr. DANIELS (United States of America) raised a point of order. He requested closure of discussion on this paragraph and suggested that the Sub-Commission proceed to vote.

The Sub-Commission accepted Mr. DANIELS' suggestion.

Decision: The Sub-Commission adopted the first sentence of the first paragraph of Miss MONROE's proposal by 9 votes to 1 with 2 abstentions.

2. Examination of Paragraph 2 of Miss MONROE's proposal.

The CHAIRMAN reminded the meeting that the second sentence of the first paragraph now came after the second sub-paragraph of paragraph 2.

Mr. ROY (Haiti) asked, in view of the fact that only paragraphs 1 and 2 of the amendment submitted by Mr. McNAMARA had been discussed, whether or not the other paragraphs of his amendment should also be regarded as a personal reservation.

Mr. McNAMARA (Australia) replied that he would submit the whole of his document as a reservation.

Mr. DANIELS (United States of America) thought that paragraph 2 raised an essential point. It had always been held in America that there was no minority problem, only a problem of discrimination. The definition of the word "minority" proposed here was so wide as to risk covering not only genuine but also artificial minorities.

Mr. MASANI (India) proposed the following amendments:

1. Add, after the word "individuals", the words "belonging to such groups".
2. Alter the words "of a distinctive nature" to "distinguishing them from the majority of the population".
3. In line 3 after the word "group" add the words "which is not a dominant group".
4. In line 2 of the second sub-paragraph after the word "religion" add the words "political or other opinion".

These amendments appear in document Sub.2/36.

Mr. PALLARES (Ecuador) supported Mr. DANIELS. The document submitted by Miss MONROE provided the elements of a definition but did not actually constitute one. Moreover in his opinion one of the important elements to be mentioned was the psychological one. He himself would define a minority as a group which by virtue of its cultural or physical characteristics stood out from the environment in which it lived and regarded itself as the subject of discrimination. In any case what the meeting was engaged on was merely preliminary work, done in common, which should be submitted as such to the main Commission.

The CHAIRMAN recognised the difficulty of framing a definition. The business of the Sub-Commission was merely to recommend to the main Commission that it should consider, among other elements, those submitted to it by the Sub-Commission.

Mr. NISOT (Belgium) supported the CHAIRMAN. In Connection with the use of the word "assimilation" he drew the Sub-Commission's attention to the fact that one of the clauses usually found in minority treaties dealt with facilitating acquisition of the country's nationality, and hence assimilation.

Mr. SHAFaq (Iran) proposed two amendments:

1. He would like to insert the word "non-dominant" before the word "group" and to delete the words "which is not a dominant group" in amendment 3 proposed by Mr. MASANI.
2. He would like the definition of "minority" to contain the following words: "which is spontaneously conscious of its state as a minority", in order to emphasise the psychological element.

Mr. BORISOV (Union of Soviet Socialist Republics) wished to know whether the 15 million negroes, the 5 million Jews, the 5 million Mexicans and the 77,500 Chinese in the United States were not a minority. Mr. DANIELS could not claim that other countries had minorities while the United States had none. Other members had stressed the psychological element and had spoken of dominant and non-dominant groups. The definitions given here would not alter the facts, and attempts to deal with the problem without considering concrete cases seemed to him pointless.

Mr. DANIELS (United States of America) stated that the reason the groups referred to by Mr. BORISOV did not constitute minorities was because they wished for assimilation.

Miss MONROE (United Kingdom) then proposed a new draft text to take into account the observations made by Mr. NISOT, Mr. PALLARES and Mr. SHAFaq, the amendments of Mr. MASANI, and the Chairman's suggestion. The wording was as follows:

"The Sub-Commission submits to the Human Rights Commission that the final drafting of Articles on the prevention of discrimination and the protection of minorities may be facilitated by the following considerations:

Protection of minorities is the protection of non-dominant groups which, while wishing in general for equality of treatment with the majority, wish for a measure of differential treatment in order to preserve basic characteristics which they possess and which distinguish them from the majority of the population. The protection applies equally to individuals belonging to such groups and wishing the same protection."

The end of paragraph 2 from the words "It follows that" remain unaltered. Finally Miss MONROE wished to delete paragraph 3.

Mr. NISOT (Belgium) proposed that the following sentence be added at the end of paragraph 2: "The foregoing does not exclude the possibility of making certain distinctions between the individuals belonging to the groups in question, according to whether they are or are not citizens of the country."

Mr. SPANIEN (France) stated that he would vote for the amended text. He would like to know whether Mr. DANIELS and Mr. SHAFaq intended to revert to the proposal they had made

regarding the collection of documents by the Secretariat on the distinction between genuine and artificial minorities. If they desired to insert a third paragraph on this point he would have a proposal to put forward.

Mr. SHAFaq wished to submit the following text regarding the definition of protection of minorities:

"The Protection of minorities is the protection extended to citizens (whether groups or individuals) against assimilation for which they do not wish. This not meaning that the dominant group is not subject to the same protection.

A minority is a non-dominant group possessing basic characteristics of a distinctive nature which is spontaneously conscious of its state as a minority."

The text naturally overlapped in part that of Miss MONROE.

Mr. MCNAMARA (Australia) suggested that in the English text the word "owe" on the third line of Sub-paragraph 2 be replaced by the word "observe". He also suggested that the word "undivided" after "must owe" be deleted; for this allegiance was owed as much to the United Nations as to the Government.

Mr. BORISOV (Union of Soviet Socialist Republics) asked that the various amendments proposed by Mr. SHAFaq, Mr. NISOT and M. MCNAMARA be put in writing.

Mr. MCNAMARA (Australia) said he would not press for his suggestions to be regarded as amendments.

Mr. BORISOV (Union of Soviet Socialist Republics) proposed the adjournment of the meeting, since the Sub-Commission could not proceed to vote before the written texts of the amendments were made available.

Mr. ROY (Haiti) stated that he was opposed to this proposal.

Mr. MASANI (India) pointed out that there were two proposals before the Sub-Commission: the revised proposal of Miss MONROE and the proposal of Mr. SHAFAG, which was very similar. He suggested that these two proposals be accepted and that their authors be asked to meet privately the next day in order to prepare a text which they would submit to Mr. NISOT for inclusion in the report. He was opposed to the idea of a meeting of the Sub-Commission taking place the following morning.

The CHAIRMAN stated that Documents Nos. 23, 13, 17, 29, 31 and items 9, 10, and 11 of the agenda still remained to be considered. It was therefore essential for the Sub-Commission to meet the next morning. He proposed that the Sub-Commission should vote on the revised proposal of Miss MONROE.

Miss MONROE (United Kingdom) said she accepted Mr. NISOT's amendment, which would be inserted as a new sub-paragraph after the first sub-paragraph of paragraph 2.

Mr. MCNAMARA (Australia) considered that Mr. NISOT's proposal left the door open to discrimination of the kind practised by Hitler.

Mr. NISOT (Belgium) observed that Hitler had discriminated between German nationals, while the Sub-Commission was now dealing with differential treatment as between nationals and aliens.

Mr. SPANIEN (France) stated that Mr. MCNAMARA's observation seemed to him pertinent, as Hitler had begun by excluding certain groups from nationality altogether, in order to persecute them.

Miss MONROE (United Kingdom) proposed the following formula: "Its members must be citizens of the country."

Mr. PALLARES (Ecuador) thought that Mr. NISOT's amendment was out of place at this stage. He hoped Mr. NISOT would agree to withdraw it.

Mr. NISOT (Belgium) stated that he had put forward the amendment to facilitate acceptance of the text. The obligation to accord equality of treatment to nationals and aliens might appear strange. In point of fact, all the minority treaties had made a distinction between them.

Mr. ROY (Haiti) asked for a vote on the question of whether the Sub-Commission wished to take a vote on the texts submitted by Miss MONROE and Mr. SHAFQAQ.

The Sub-Commission decided to take this vote by 8 votes to 2, with 2 abstentions.

Miss MONROE stated that she accepted Mr. NISOT's amendment in the following modified form: "To insert the following sentence after the second sub-paragraph: Its members must also be nationals of the country." She did not accept amendment No. 4 put forward by Mr. MASANI.

Mr. MASANI (India) stated that he withdrew his amendment.

Mr. CHAIRMAN put Miss MONROE's final proposal to the vote.

Decision:

The Sub-Commission adopted Miss MONROE's proposal by 7 votes to 3, with 2 abstentions.

The CHAIRMAN put Mr. SHAFQAQ's proposal to the vote.

Mr. SHAFQAQ (Iran) wished to stress two points bearing on his proposal:

1. - He considered that protection against assimilation should be extended to dominant groups in cases where a minority wished to assimilate a majority.

2. - He believed that the psychological element was essential in the definition of minorities. That element was not brought out in Miss MONROE's proposal.

Mr. PALLARES (Ecuador) suggested that the word "wish" used by Miss MONROE in her revised proposal seemed to him to take cognisance of this element:

Decision:

Mr. SHAFIQ's proposal was rejected by 3 votes to 1, with 8 abstentions.

Mr. MCNAMARA (Australia) handed to the Chairman the Document containing his reservation on the text adopted by the Sub-Commission.

The meeting rose at 6.15 p.m.