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

Second Session

SUMMARY RECORD OF THE TWENTIETH MEETING

Held at Lake Success, New York,
on Monday, 13 June 1949, at 3 p.m.

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<u>Chairman:</u>	Mr. EKSTRAND	Sweden
<u>Rapporteur:</u>	Miss MONROE	United Kingdom
<u>Members:</u>	Mr. BORISOV	Union of Soviet Socialist Republics
	Mr. DANIELS	United States of America
	Mr. McNAMARA	Australia
	Mr. MASANI	India
	Mr. MENESES PALLARES	Ecuador
	Mr. NISOT	Belgium
	Mr. ROY	Haiti
	Mr. SPANLEN	France
	Mr. SHAFAG	Iran
<u>Secretariat:</u>	Mr. HUMPHREY	Representative of the Secretary-General
	Mr. LAWSON	Secretary of the Sub-Commission

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ADOPTION OF THE AGENDA (E/CN.4/Sub.2/39/Rev.1) (discussion continued)

Mr. BORISOV proposed that item 8 should be deleted. Measures for implementing the Bill of Human Rights, the subject of item 8, fell within the province of each Member State; Article 2, paragraph 7, of the Charter affirmed the sanctity of each State's domestic jurisdiction. The Sub-Commission was not competent to discuss such an item.

He proposed that the remaining items on the agenda should be considered in an order which would permit the study of the available documents on each. For example, the members had just received a lengthy document (E/CN.4/Sub.2/40) and had not had time to study it. Although the document had been circulated for information only, it was necessary at least to read it before item 4 could be considered.

Mr. Borisov proposed, therefore, that the Sub-Commission, after disposing of item 3, should proceed to items 7, 5, 4, 6 and 9 in that order.

Mr. ROY, on a point of order, remarked that Mr. Borisov's objection to item 8 need not detain the Sub-Commission since, as a footnote to that item in the agenda stated, "At its fifth session the Commission on Human Rights requested the Sub-Commission to postpone consideration, until its third session, of questions of implementation of human rights". The question was, therefore, automatically deleted from the agenda of the current session.

Mr. MENESES PALLARES admitted that Mr. Borisov's point was important, since it had a bearing on the orderly way in which the Sub-Commission was to discharge its functions.

Recalling the previous meeting's discussion, he emphasized the necessity to make up for lost time. No criticism of the Secretariat was implied, but it would be hard to over-estimate the effect of omitting an entire session of a body such as the Sub-Commission, particularly when it would have considered the articles of the Declaration of Human Rights on the prevention of discrimination and the protection of minorities. Being denied that opportunity, the Sub-Commission had been prevented from providing the General Assembly with a clear opinion which might have served as the basis for more enlightened discussion than had taken place at the first part of its third session. At the moment, therefore, any procedure liable to make up for time lost should be welcomed.

/Mr. Daniels

Mr. Daniels had pointed out, at the previous meeting, the need for relevant documentation. That too was particularly important in view of the Sub-Commission's new terms of reference, under which its functions had become largely consultative and analytical.

Mr. MASANI agreed that Mr. Roy had been in order in drawing attention to the footnote to item 8. Mr. Borisov's proposal, however, differed from the footnote in that it asked for the elimination of the item. The Sub-Commission could not entertain such a proposal. The concept that national sovereignty might interfere with the implementation of human rights was out of date; the suggestion cut at the very root of the Bill of Human Rights. The item should be retained, but the Sub-Commission would not be able to consider it until the Commission on Human Rights had formulated proposals regarding measures for implementing the Bill of Human Rights. To defer consideration would not mean to drop the subject.

Mr. McNAMARA declared that a misunderstanding concerning the wording seemed to have occurred. Item 8 of the agenda referred to the "examination of proposals". The term "examination" did not imply that the Sub-Commission should examine the item with a view to taking action, but rather that it should simply study it. The Sub-Commission would be foregoing a valuable opportunity if it did not examine the question. Moreover, the fact that the provisional agenda had been prepared on 23 May, a week after the adoption by the Commission on Human Rights of the resolution concerned, seemed to imply that the Sub-Commission was not out of order in thinking of examining the matter of implementation. Mr. McNamara thought that the item should be left as it stood until some later time.

The CHAIRMAN asked the Secretary to explain why item 8 had been placed on the agenda.

Mr. LAWSON (Secretary of the Sub-Commission) quoted the report of the Commission on Human Rights to the Economic and Social Council at its sixth session (E/600), chapter VIII, paragraph 38:

"In this connexion, the Commission requested the Sub-Commission to examine any proposals for measures of implementation of the International Bill of Human Rights formulated by the Commission, and to submit to it suggestions in this respect."

During the discussion of the terms of reference of the Sub-Commission, it had been brought to the attention of the Commission on Human Rights that the question of implementation was on the former's agenda, but that there were as yet no "proposals for measures of implementation... formulated by the Commission" for it to discuss. The Commission had thereupon passed the resolution referred to by Mr. McNamara, expecting that such proposals would be available before the Sub-Commission's third session opened. It was for the Sub-Commission itself to decide whether to act on that request or not.

Mr. NISOT believed that the decision of the Commission on Human Rights definitely excluded item 8 from the agenda of the current session, without, however, eliminating it altogether. There was thus no incompatibility between Mr. Borisov's proposal and the point raised by Mr. Roy. He stressed that the issue raised by Mr. Borisov would remain open if the item were merely deferred.

Mr. SHAFAT thought that the members were unanimous on postponement, and proposed that a vote should be taken on Mr. Roy's point of order, leaving the question of deletion to be considered later with Mr. Borisov's consent.

Mr. SPANLEN said that, if it were merely a question of postponing consideration because there were no proposals to discuss, the members would be in sympathy with a point of order as a matter of common sense.

The discussion had taken another turn, however, when Mr. Borisov had raised the issue of the Sub-Commission's competence to examine the question at any time. At the moment consideration could only be deferred; otherwise the issue of competence would be prejudged. The issue might properly be raised when the time came for the Sub-Commission to decide on the substance of the question.

Mr. BORISOV emphasized that, in proposing to delete item 8 from the agenda, he had acted as an expert who knew and respected the provisions of the Charter of the United Nations, because, under the provisions of Article 2, paragraph 7, the Sub-Commission was not competent to deal with the matter.

/With regard

With regard to Mr. McNamara's distinction between "examination" and "consideration", there was little difficulty. The words expressed two sides of the same process, and the difference was so slight that the argument was practically untenable.

Mr. ROY stressed that the Sub-Commission could not consider the question of deletion because the Commission on Human Rights had ordered the item postponed. The members could not vote on the substance of a question which they had not considered, and they could not consider it because it was not on the agenda.

The CHAIRMAN asked Mr. Borisov if he agreed to postpone consideration of the item, provided no mention was made of the motives for so doing.

Mr. BORISOV requested that a vote be taken on his proposal.

The CHAIRMAN pointed out that the Commission had made a request, but, since no other body could decide the contents of the Sub-Commission's agenda, the Sub-Commission must itself come to a decision.

Mr. McNAMARA disagreed with both Mr. Borisov and Mr. Roy. The question of implementation was a vital issue; it was true that the Commission on Human Rights had adopted a resolution requesting the Sub-Commission to postpone consideration of questions of implementation of human rights until its third session, but that resolution had not yet been ratified by the Council; until that time, the Sub-Commission should not remove the question from its agenda for the current session, though it should acknowledge the Commission's wishes on that point.

Mr. McNamara stressed that, while the Commission on Human Rights was composed of accredited representatives of Governments, the members of the Sub-Commission served in their personal capacity as experts. Moreover, while the Commission was primarily concerned with human rights as enjoyed by the individual, the Sub-Commission was interested in the application of those rights to minority groups. Consequently, the Sub-Commission's approach to the question of implementation would be a different and a valuable one; the Commission could not forbid the Sub-Commission to initiate work on certain aspects of implementation.

As regards Mr. Borisov's proposal to delete the item altogether, it was out of order since, even if that proposal were carried, the matter might be referred to the Sub-Commission again at a subsequent session.

Mr. DANIELS remarked that time might be saved if the issues connected with item 8 were not discussed until that item came up.

Mr. SHAFaq agreed with Mr. Roy that any discussion of item 8 was out of order in view of the fact that the Commission on Human Rights, which had originally proposed the item, had subsequently requested the Sub-Commission to postpone its consideration until the following session.

Mr. NISOT, replying to the suggestion made by Mr. Daniels, remarked that item 8 had, to all intents and purposes, been already discussed at some length. He formally proposed the deferment of item 8 until the following session, on the understanding that all members were free to reserve their opinions on the substance of the question of implementation.

The CHAIRMAN observed that that reservation was a matter of course if the item was deferred. He put to the vote Mr. Borisov's proposal to delete item 8 from the Sub-Commission's agenda.

The proposal was rejected by 9 votes to 1, with 1 abstention.

Mr. ROY reiterated his view that the deferment of item 8 should result automatically from the request of the Commission on Human Rights to that effect and should therefore require no vote.

The CHAIRMAN put to the vote his ruling that that request was not binding on the Sub-Commission.

The ruling was upheld by 7 votes to 1, with 2 abstentions.

Mr. SHAFaq requested that the decision just adopted should appear in the report with a reference to the request of the Commission on Human Rights in that connexion.

It was so decided.

Turning to Mr. Borisov's proposal to re-arrange the items on the agenda, Mr. SHAFaq remarked that the provisional agenda had been drawn up with careful consideration regarding the correlation between various items. Moreover, he feared that Mr. Borisov's proposal might give rise to a lengthy discussion. He therefore proposed that the agenda should be adopted as it stood.

Mr. DANIELS wished to propose an additional item for inclusion in the agenda. He recalled that at the first session of the Sub-Commission he had proposed that the latter should hear individual petitions relating to subjects considered important or urgent. Since that time, the Sub-Commission had adopted the practice of hearing certain communications confidentially, in closed meetings. Although he realized that the examination of petitions was a delicate matter closely linked to the question of the national sovereignty of States, he believed the examination to be unsatisfactory, and therefore wished to propose the establishment of small special committees to study important petitions. He would entitle the proposed item "Handling of Petitions", and would have the text of his proposal distributed to the Sub-Commission very shortly.

Replying to the CHAIRMAN, who wondered at what place in the agenda Mr. Daniels wished his additional item to be included, Mr. DANIELS said that he did not want it to be considered in conjunction with item 6 because that item would be discussed in closed session, while he was anxious to have the additional item discussed in public.

He stressed that he was submitting his proposal in his individual capacity as expert and was not acting under instructions from his Government.

Mr. McNAMARA suggested that the item proposed by Mr. Daniels and any other items proposed in the course of the session might be grouped under the general heading "other business" and discussed towards the end of the session.

Mr. DANIELS was unwilling to accept that suggestion as he felt that members should have advance notice of the inclusion of any additional item in the agenda.

The CHAIRMAN added that, if a general heading of that kind were introduced, there would be a risk of needless re-opening of issues already disposed of.

Mr. NISOT considered that the item proposed by Mr. Daniels was one aspect of the question of implementation, and should not be included in the agenda in view of the decision to defer consideration of the question to the following session.

Miss MONROE felt that the proposed item was outside the new terms of reference of the Sub-Commission (E/CN.4/209, resolution A), and stressed that it was difficult to form a definite opinion on the proposal before having seen it in writing.

Mr. DANIELS said, in reply to Mr. Nisot, that his proposal was entirely unconnected with the implementation of human rights. Replying to Miss Monroe, he remarked that his proposal came within the terms of sub-paragraph (a) of the Sub-Commission's new terms of reference which provided that the Sub-Commission should "undertake studies, particularly in the light of the Universal Declaration of Human Rights". Taking into account Miss Monroe's objection, he expressed the view that his proposal might most conveniently be considered in conjunction with item 4.

Mr. BORISOV said that he had proposed a re-arrangement of the items on the agenda for purely practical reasons, taking into account the availability of materials necessary for the consideration of each item. He continued to believe that item 7 of the provisional agenda could be studied immediately, as its subject was familiar to all members. On the other hand, item 4 should be considered somewhat later, particularly in view of the fact that Mr. Daniels was proposing the inclusion of an additional item under that heading. Mr. Borisov agreed with Miss Monroe that it was impossible to take any decision on the additional item before it had been distributed in writing, and suggested that final adoption of the agenda should be postponed to the following meeting.

Mr. ROY supported Mr. Borisov's suggestion concerning the order of items. He emphasized that the main part of the Sub-Commission's work would be in connexion with items 4 and 6; consequently, those

items should not be considered until other and less controversial matters had been disposed of.

The CHAIRMAN, supported by Miss MONROE, considered it essential that item 4 should be considered before any other items were taken up. He favoured Mr. Shafaq's proposal to adopt the agenda as it stood, and to leave the way open for the inclusion of the item proposed by Mr. Daniels. He also pointed out that a further additional item, namely, extension of an invitation to the Commission on the Status of Women to send a representative to attend the session of the Sub-Commission, should be included immediately after item 3.

Mr. McNAMARA said that he would prefer item 7, which he had proposed, not to be discussed first; he believed that the need for the suggestion contained in part (b) of his proposal might become more apparent to members after some discussion on other items of the agenda. He stressed that the word "and" at the end of sub-paragraph (a), item 7, of the provisional agenda should be replaced by the word "or", which would thus make it clear that sub-paragraph (b) contained an alternative suggestion.

Mr. SPANLEN recalled that document E/CN.4/Sub.2/40, which was connected with item 4, had not yet been distributed in French. If that item were discussed forthwith, the French-speaking members would therefore not be in a position to take full part in the debate.

Mr. HUMPHREY (Representative of the Secretary-General) explained that the document referred to contained background material only; it was in effect one of the studies which the Sub-Commission had requested the Secretary-General to undertake. The only text needed for consideration of item 4 was the resolution of the Commission on Human Rights containing the Sub-Commission's new terms of reference.

The CHAIRMAN put to the vote Mr. Shafaq's proposal to adopt the agenda as it stood and to leave the way open for the inclusion of additional items.

The proposal was adopted by 9 votes to none, with one abstention.

INVITATION TO THE COMMISSION ON THE STATUS OF WOMEN TO SEND A REPRESENTATIVE
TO ATTEND THE SUB-COMMISSION'S MEETINGS

The CHAIRMAN proposed that the Sub-Commission should extend to the Commission on the Status of Women an invitation to send a representative to attend the current session.

There being no objection, it was decided accordingly.

The meeting rose at 5.30 p.m.