

## COMMISSION ON HUMAN RIGHTS

## SUB-COMMISSION ON THE PREVENTION OF DISCRIMINATION

## AND THE PROTECTION OF MINORITIES

## Second Session

## SUMMARY RECORD OF THE TWENTY-SECOND MEETING

Held at Lake Success, New York,  
on Wednesday, 15 June 1949, at 11 a.m.

CONTENTS: Business arising out of the new terms of reference of  
the Sub-Commission (E/CN.4/209, E/CN.4/Sub.2/42, E/CN.4/Sub.2/43)  
(discussion continued)

|                    |                      |                                     |
|--------------------|----------------------|-------------------------------------|
| <u>Chairman:</u>   | Mr. EKSTRAND         | Sweden                              |
| <u>Rapporteur:</u> | Miss MONROE          | United Kingdom                      |
| <u>Members:</u>    | Mr. BORISOV          | Union of Soviet Socialist Republics |
|                    | Mr. CHANG            | China                               |
|                    | 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                                |

Any corrections of this record should be submitted in writing, in either of the working languages (English or French), and within two working days, to Mr. E. Delavenay, Director, Official Records Division, Room F-852, Lake Success. Corrections should be accompanied by or incorporated in a letter, on headed notepaper, bearing the appropriate symbol number and enclosed in an envelope marked "Urgent". Corrections can be dealt with more speedily by the services concerned if delegations will be good enough also to incorporate them in a mimeographed copy of the record.

Also Present: Miss ZUNG

Commission on the Status  
of Women

Secretariat: Mrs. MYRDAL

Representative of the  
Secretary-General

Mr. LAWSON

Secretary of the Sub-  
Commission

BUSINESS ARISING OUT OF THE NEW TERMS OF REFERENCE OF THE SUB-  
COMMISSION (E/CN.4/209, E/CN.4/Sub.2/42, E/CN.4/Sub.2/43)  
(discussion continued)

The CHAIRMAN proposed that, in order to clarify the terms of reference, the members of the Sub-Commission should confine their discussion to the two basic issues: the studies to be undertaken and the recommendations to be made. In his opinion, studies could be undertaken either on the initiative of the Sub-Commission itself, or at the request of other organs of the United Nations, of other organizations or of individuals. The recommendations should concern the prevention of discrimination, the protection of minorities, measures of implementation and communications. They should be presented only to the Commission on Human Rights and not to Governments or to the authors of communications.

Mr. DANIELS agreed with the Chairman, but he thought that no progress would be made by discussing generalities. He therefore suggested that a concrete proposal should be considered: namely, the proposal he had submitted the previous day (E/CN.4/Sub.2/42). He had made a similar proposal in Geneva, at a time when the terms of reference of the Sub-Commission were still limited. The proposal did not concern the implementation of the Covenant or of the Declaration of Human Rights, but merely outlined a procedure that would allow the Sub-Commission to perform its functions effectively.

Paragraph 1 referred to communications on discrimination, and requested the Secretary-General to communicate petitions which indicated the existence of urgent problems to the Sub-Commission.

Paragraph 2 provided for the classification of petitions and allowed the Sub-Commission great flexibility in investigating them. It suggested the appointment of a committee of three members to examine certain particular cases. The Committee would be authorized to request information and to tender its assistance informally to the State concerned with a view to reaching a solution. If necessary, it would delegate its powers to the Secretariat, with which it would

/work

work. The work of the committee would be carried on without publicity, which would have the advantage of making it possible for the question to be settled before it reached the political level.

The last paragraph emphasized that the proposal remained within the limits imposed by the Charter on matters within domestic jurisdiction.

Mr. NISOT thought that the suggestion, in paragraph 2 of Mr. Daniels' proposal, that a committee should be created to consider petitions and to request further information and explanations from the States concerned, would tend to set up a process of inquiry and investigation that might act against any State. The State would be asked to justify itself and to give such information as the Committee, basing itself on the facts, true or false, supplied by the petitioner, might deem necessary. Even if the State invoked the provisions of Article 2, paragraph 7, of the Charter, the merits of any allegation would be subjected to the scrutiny of the Sub-Commission.

Such<sup>a</sup> method was in contradiction to the Charter, for a State could not be forced to submit to a procedure which it had not previously accepted in a convention. If the Sub-Commission adopted Mr. Daniels' proposal, it would be exceeding the limits of its terms of reference in that it would be providing for the implementation of the protection of human rights, which the Commission on Human Rights had specifically requested it not to do. It would violate the principle arising from resolution 75(V), amended by resolution 116(VI) A, according to which the Commission on Human Rights and the Sub-Commission were not entitled to take any action on complaints concerning human rights.

For those reasons, he would vote against Mr. Daniels' proposal, and would make use of his right to give the reasons for his attitude in the Sub-Commission's report.

Mr. LAWSON (Secretary) said that the Secretariat had thought the members of the Sub-Commission might care to know what had been the procedure followed by the Sub-Commission on Freedom of Information and of the Press in dealing with communications and petitions. Documents E/CN.4/Sub.1/70 and E/CN.4/Sub.1/87, which dealt with that question, would therefore be distributed.

/Mr. DANIELS

Mr. DANIELS wondered how it would be possible to undertake studies and make recommendations without investigating problems of discrimination in detail. The terms of reference were clear in that respect: they requested the Sub-Commission to undertake studies; it was not to limit itself to theoretical considerations. Mr. Nisot had raised some interesting points, but it was not to be forgotten that the members of the Sub-Commission were experts and worked as such, without their Governments being involved. The last paragraph of his proposal gave the answer to the objection concerning the provisions of Article 2, paragraph 7 of the Charter.

Miss MONROE agreed with the Chairman that recommendations made by the Sub-Commission could be addressed only to the Commission on Human Rights. The committee on petitions proposed by Mr. Daniels would in fact be an organ of the Sub-Commission. It would not, therefore, appear possible to authorize it to offer its services to the Governments, even informally, without exceeding the powers accorded to the Sub-Commission. Moreover, there was a danger that the Governments might reject such an offer; that might jeopardize the work of the Sub-Commission and, indirectly, that of the Commission on Human Rights.

Mr. MENESES PALLARES thought, contrary to the opinion expressed by Mr. Daniels, that the general debate on the scope of the Sub-Commission's new terms of reference should be continued before concrete proposals were examined.

He had already observed that although the new terms of reference seemed to be broader than the previous ones, they were actually just as restrictive as the latter had been. Their limits were determined by several factors: the difficulty of safeguarding respect for human rights by means of an international organization; the fear of intervening in matters which were essentially within the domestic jurisdiction of States; and perhaps also the diffidence of the Commission on Human Rights in refusing to assume the right to take any action on complaints regarding violations of human rights and, in consequence, refusing to accord such powers to the Sub-Commission.

Mr. Meneses Pallares deplored that situation, with its attendant danger that the Sub-Commission's work -- and even its very existence -- might become useless unless some remedy were found. He hoped that the future would render such fears baseless but felt that it was his duty to set out the facts as he saw them. Until it was possible to find some  
/more drastic

more drastic remedies for the Sub-Commission's impotence, he thought it would avoid disappointment if that body did not undertake tasks which it had not the power to carry out and confined itself to making the greatest possible use of the limited range of action afforded by the new terms of reference.

Mr. MASANI could see no advantage in continuing the general debate on the scope of the Sub-Commission's new terms of reference. The best method of discovering the extent and limits of those terms would be to pass on to the examination of concrete proposals to set up machinery by which the Sub-Commission would be enabled to perform its functions.

Mr. Daniels' proposal contained nothing which was contrary to the Sub-Commission's terms of reference. It was perfectly legitimate for the committee on petitions to request the informal co-operation of States in the preliminary stages of the investigation of a petition. That would be no more than a gesture of good faith on the part of a group of experts, which was well within the competence of the Sub-Commission. The danger that the Governments might refuse such co-operation had, in his opinion, been exaggerated. In point of fact, more Governments than was anticipated would be prepared to accord such collaboration. In any case, the last paragraph of the proposal provided that a Government could refuse to supply information on the grounds that a matter essentially within its domestic jurisdiction was involved and that in such a case the committee should merely report that fact and await guidance from the Sub-Commission.

He would not at that stage go into the details of the proposal, which, he thought, could be improved in certain places; but it did, in his opinion, make a positive contribution, the more noteworthy in view of the diffidence of which other organs of the United Nations had given evidence in that field. The members of the Sub-Commission were experts; their decisions in no way bound their Governments; they could make innovations.

Mr. SHAFAG supported Mr. Daniels' proposal in principle. He suggested, however, the deletion of the last part of the second sentence in paragraph 2 beginning with the words "with authorization to request...". The Sub-Commission could confine itself to indicating that the committee would be instructed to examine the question. The committee could always request the State concerned to supply certain information, without necessarily being specifically authorized to do so.

/Miss ZUNG

Miss ZUNG (Commission on the Status of Women) reminded the Sub-Commission that discrimination against women was still practised in many countries. At its recent session in Beirut, the Commission on the Status of Women had made a number of recommendations in that connexion, although fully aware that some of them could not yet be adopted. Such recommendations had been made with reference to political, economic, social and cultural rights.

It seemed to her that the Sub-Commission could, in the same way, do pioneer work without considering the reactions of the Governments. By influencing public opinion the Sub-Commission's recommendations would achieve the desired results in the long run. The Sub-Commission could draw up questionnaires in addition to making recommendations. As for the committee on petitions proposed by Mr. Daniels, while maintaining contact with the United Nations Secretariat it would be working outside the Organization and could thus, in her opinion, address the Governments informally.

Mr. CHANG thought that the questions raised by the Sub-Commission's new terms of reference could be examined in their general aspect or in relation to a concrete proposal. The latter method would be preferable in view of the uncertainty entertained by a number of members with regard to the exact scope of the contemplated studies. When the Sub-Commission had completed its examination of Mr. Daniels' proposal, it might perhaps be able to acquire a more definite idea of the scope of its terms of reference.

Mr. SPANLEN thought that the Chairman was right in directing the Sub-Commission's attention towards an analysis of the scope and limits of the terms of reference given to it, but it would be as well to combine such an analysis with the study of concrete cases.

The Sub-Commission's decision on Mr. Daniels' proposal, for example, would depend to a great extent on its idea of its terms of reference and of the limits of its competence. It was not too late, therefore, for the Sub-Commission to assess what it had gained --or lost --in acquiring its new terms of reference.

He did not agree with Mr. Meneses Pallares that the new terms of reference were much more restricted than the previous ones. A comparison of the two texts would clearly show that the Sub-Commission had initially been called upon only to settle urgent problems and had therefore been temporary in character. The new terms of reference adopted by the Commission on Human Rights on 16 May 1949 made the Sub-Commission a permanent institution which dealt not only with urgent problems, but also with long-term studies. The Sub-Commission could thenceforth deal fully and, as it were, independently with the problems entrusted to it.

/It was

It was perfectly true that the States Members of the United Nations were jealous of their sovereignty. But the Sub-Commission should not be dismayed; its objective was precisely to make recommendations and to propose changes wherever they were necessary. Naturally, it must not propose derogations from the provisions of the Charter, but it was its duty to recommend any changes compatible with those provisions.

He did not agree that the Sub-Commission was incapable of doing any useful work, as Mr. Meneses Pallares had hinted. When the General Assembly had dealt with the question of minorities (resolution 217 (III) c) it had decided that the problem was too complex and difficult to be settled without consulting the Economic and Social Council, the Commission on Human Rights and the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities. The fact that the Assembly had mentioned the Sub-Commission explicitly showed that the latter had in fact a part to play.

He came next to the question of petitions. In his opinion, the state of affairs in that field was intolerable. Resolution 75 (V) of the Economic and Social Council which established methods for handling petitions, condemned the Commission on Human Rights, and hence the Sub-Commission, to absolute impotence.

In the report he had drawn up for the purpose of bringing that situation to an end, the Secretary-General proposed inter alia that a distinction should be made between the various communications addressed to the organs concerned. Although that step was accepted in itself, however, it was not altogether reassuring, since at the same time the Secretary-General seemed to propose certain restrictions on the powers of the Commission on Human Rights and on the Sub-Commission with regard to petitions.

The Secretary-General said in his report that it would be possible to institute a new system of provisions for the handling of petitions after the adoption of the Covenant on Human Rights which was being considered by the Commission on Human Rights. At the same time, he explained that such a system would only apply to the States which had signed and ratified the Covenant.

The situation was therefore as follows: for the time being, the Sub-Commission was not entitled to examine petitions. When the Covenant on Human Rights gave it that power, it would only be able to exercise it in respect of those countries which had signed the Covenant and would have to continue to conform to resolution 75 (V) with regard to petitions coming from other countries.

/ He considered

He considered that even if the Sub-Commission were only to succeed in remedying that state of affairs, it would not have wasted its time. He would not therefore oppose Mr. Daniels' proposal. The proposal could form part of the list of demands which the Sub-Commission would be able to submit at the end of its work.

For the time being, the Sub-Commission must take into account the limitations imposed on it. It must begin by establishing methods, a programme and a plan of work which would enable it subsequently to draw up a list of groups of human beings which could claim minority status. In that connexion, he recalled the recently adopted Universal Declaration of Human Rights and said that he had been extremely pleased to see a reference in Mr. Daniels' draft resolution (E/CN.4/Sub.2/43) to the minority rights set forth in the draft Covenant on Human Rights. The Covenant was of great importance, for in signing an instrument of that kind, States would be undertaking to respect those rights.

If, among the communications it received, the Sub-Commission found petitions showing that minority rights had been violated, it must not hesitate to say so and to recommend any useful measures.

Mr. DANIELS wished to explain that his proposal did not constitute a cut and dried plan of action and that it could be amended if necessary.

The question which had to be settled immediately was one of principle which was not connected with the details of his proposal. It must be decided whether the Sub-Commission was to undertake creative work or whether it was to withdraw into the attitude of "timidity" already mentioned.

He himself considered that the Sub-Commission should take active steps. There would be no risk of its taking the wrong path, for above it there were nationalist jurists and diplomats who would lead it back to the right path, should it go astray. It must adopt recommendations, insist upon those recommendations being implemented, and fight against the "timidity" which was hindering the work of the higher organs of the United Nations.



Mr. McNAMARA firmly supported Mr. Daniels' proposal. The only reproach he would be tempted to make was that it was not strong enough in certain respects. Thus, under the terms of the proposal, only States, United Nations organs and specialized agencies would be authorized to submit petitions to the Sub-Commission. That right should be extended to the non-governmental organizations, which were the most important source of information on minority rights.

He approved the provisions regarding the delegation of certain powers to the Secretary-General and co-operation with the Secretariat; those provisions would help to ensure the continuity of the Sub-Commission's work.

He did not share Mr. Nisot's fears regarding the proposal. In his view, it presented no danger; all that the proposed committee would be authorized to do would be to ask Governments to supply information and to offer them its unofficial assistance. Moreover, according to the end of paragraph 2, petitions would be examined privately, thus safeguarding Governments which for reasons of prestige did not wish to divulge certain facts regarding the position of minorities. Lastly, paragraph 4 of the proposal supplied all the necessary assurances to Governments which were jealous of their national sovereignty.

He thought that those guarantees even went so far as to weaken the effect of the proposal as a whole. Nevertheless, he was ready to support the proposal, because he considered that by adopting it, the Sub-Commission would have taken an important step in its work.

Mr. BORISOV said that he was about to hand the Secretariat the Russian text of his proposals regarding the treatment of minorities, so that they could be translated and distributed to the members of the Sub-Commission.

Mr. SHAFIQ noted, in reply to Mr. McNamara, that the Sub-Commission's task was to undertake studies and formulate recommendations. There was now a proposal that it should enter into relations with Governments. Such a course was contrary to its terms of reference.

The meeting rose at 1.10 p.m.