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COMMISSION ON HUMAN RIGHTS

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

Second Session

SUMMARY RECORD OF THE TWENTY-THIRD MEETING

Held at Lake Success, New York,
on Wednesday, 15 June 1949, at 2.30 p.m.

CONTENTS: Business arising out of the new terms of reference
of the Sub-Commission (E/CN.4/209, E/CN.4/Sub.2/40,
E/CN.4/Sub.2/42, E/CN.4/Sub.2/47, E/CN.4/Sub.2/48,
E/CN.4/Sub.2/49, E/CN.4/Sub.2/50)

<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. SHAFAGH	Iran

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Also present: Miss ZUNG Commission on the Status of Women

Representative of a specialized agency:

Mr. ARNALDO United Nations Scientific, Educational
and Cultural Organization (UNESCO)

Secretariat: Mr. HUMPHREY 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.2/40, E/CN.4/Sub.2/42, E/CN.4/Sub.2/47,
E/CN.4/Sub.2/48, E/CN.4/Sub.2/49, E/CN.4/Sub.2/50)

Mr. BORISOV observed that under the proposal with regard to the handling of petitions submitted by Mr. Daniels (E/CN.4/Sub.2/42) a member of or person collaborating with the Secretariat would have unlimited powers to determine which of the petitions received from Members of the United Nations or even from the principal organs of the United Nations should be examined. Thus, the members of the Sub-Commission would be deprived of the possibility of acquainting themselves with all petitions sent in. Furthermore, even those petitions which were selected would not be examined by the whole Sub-Commission but by a small committee consisting of three members assisted by the Secretariat.

The proposal submitted by Mr. Daniels was therefore unacceptable. Mr. Borisov would vote against it because it advocated a system of arbitrary selection of petitions, and was thus inconsistent with the functions and aims of the Sub-Commission.

Mr. MASANI formally moved the suggestion made by Mr. McNamara at the previous meeting that the words "or by any non-governmental organization having consultative status with the Economic and Social Council in accordance with Article 71 of the Charter" should be added after the words "Article 63 of the Charter" in Mr. Daniels' proposal.

Mr. SHAFAGH presented his amendments (E/CN.4/Sub.2/48) to Mr. Daniels' proposal.

/In answer

In answer to a question by Mr. NISOT, he explained that he also proposed the deletion of paragraph 4 of Mr. Daniels' proposal.

Miss MONROE felt it would be advisable to postpone voting on the proposal submitted by Mr. Daniels and the amendments thereto until the Sub-Commission had dealt with the item on communications relating to the prevention of discrimination and the protection of minorities. Once the Sub-Commission had had the opportunity of seeing what kind of petition was likely to be presented, it might be in a better position to decide upon Mr. Daniels' proposal.

Mr. SHAFAGH stressed that Mr. Daniels' proposal was one of principle, and could hardly be affected by the consideration of actual communications.

Mr. MENESES PALLARES, recalling his remarks at the previous meeting, welcomed the desire of the members to resist any attempt to limit the Sub-Commission's rights. The Sub-Commission had tremendous responsibilities in the struggle against discrimination, and it must not take any course of action which might jeopardize the attainment of good results. He reminded the members of the restrictions in their terms of reference, and of the constitutional basis on which those terms rested. Mr. Nisot's objection to Mr. Daniels' proposal at the previous meeting could not be overlooked.

The Sub-Commission should use its powers to the fullest, but should remain strictly within its terms of reference; otherwise it risked having its proposals, even such excellent ones as that of Mr. Daniels, decried as unconstitutional by the Commission on Human Rights, the Economic and Social Council, or the General Assembly.

He requested that his speech of the previous meeting should be reproduced verbatim in the summary record.

Mr. NISOT made the same request with respect to his own speech at the previous meeting.

Mr. LAWSON (Secretary of the Sub-Commission) explained that the rules of procedure of the Economic and Social Council,

its Commission and Sub-Commissions, provided for summary records only. The records were as complete as possible, but the limitation on their length forbade the inclusion of speeches verbatim. If any member handed in the text of his remarks, it would be used to make the summary record correspond more closely to the original speech, but it would be difficult to reproduce the latter in full.

In answer to a request for clarification from Mr. ROY, Miss MONROE explained that the members needed a ruling as to what subject was actually under consideration. The original intention had been to consider Mr. Daniels' proposal in conjunction with business arising out of the new terms of reference, as a sample of the kind of recommendation that the Sub-Commission might submit to the Commission on Human Rights. If the members proceeded to amend and pass the proposal before they had clearly established the scope of the new terms of reference, it might not be received very gratefully by the Commission. The Sub-Commission should continue to examine its terms of reference, and consider Mr. Daniels' proposal as a later item on the agenda.

Mr. SHAFACH did not think that consideration of Mr. Daniels' text was out of order at the moment. In any case, it would be best to take a decision on it while the members still had the points at issue clearly in mind.

Mr. McNAMARA urged that a vote should be taken. In answer to the argument that a better proposal might be drafted after the petitions had been considered, he declared that the reverse was rather the case; the members might be in a better position to act upon petitions after having taken a decision on Mr. Daniels' proposal.

Mr. SPANIEN and Mr. NISOT agreed with Miss MONROE. The Sub-Commission had decided that Mr. Daniels' proposal would be a good starting point for the clarification of the terms of reference, but the members ought not to take a decision until their opinions had crystallized. A vote on the proposal should not come until the item had been disposed of.

Mr. MASANI said that Miss Monroe would have been right in making her suggestion if the time available were unlimited. The

Sub-Commission had, however, already discussed its terms of reference; the members' ideas were, to a large extent, crystallized. In any case, they could take no action on the terms of reference, which had been handed down to them. He urged a vote on Mr. Daniels' proposal.

After some further discussion, the CHAIRMAN put to the vote Miss Monroe's proposal to postpone decision on Mr. Daniels' resolution until the Sub-Commission was clearly informed about its terms of reference, and until it had studied the various communications.

The proposal was adopted by 7 votes to 4, with one abstention.

Mr. CHANG explained that he had abstained because he had not been sure whether Mr. Daniels' proposal came properly under the heading of rules of procedure or of communications.

Mr. SPANIER pointed out that Mr. Daniels' proposal had been considered so far only from the point of view of its acceptability under the Sub-Commission's new terms of reference; the substance of the proposal had by no means been prejudged by that discussion.

Mr. NISOT agreed with that view.

Mr. DANIELS assumed that the effect of the Sub-Commission's decision would be to place his proposal on the agenda immediately after the item on communications at an open meeting.

Miss MONROE proposed a text clarifying the new terms of reference. It should be made clear that the Sub-Commission interpreted its terms of reference as entitling it to undertake the studies and recommendations which it was called upon to make either on its own initiative, on that of the Commission on Human Rights, on that of outside organizations or persons or on the initiative of the Secretary-General.

Furthermore, it should be stated explicitly that for the time being the Sub-Commission could make such recommendations only to its parent Commission, but not directly to Governments or to the originators of communications.

Mr. MASANI believed that Miss Monroe's points were quite correct, but that the language of the terms of reference was sufficiently explicit, especially with regard to the fact that recommendations could only be made to the Commission on Human Rights.

Mr. McNAMARA did not think that Miss Monroe's proposal to specify who might initiate studies added anything to the powers and authorities given to the Sub-Commission. He referred to the views expressed by the Belgian representative at the 50th meeting of the Commission on Human Rights (E/CN.4/SR 85) to the effect that the Sub-Commission's new terms of reference "were both general and complete and that to add to them would have the effect of restricting the Sub-Commission's work."

The French representative had said at the same meeting that the new terms of reference were "sufficiently broad to enable the Sub-Commission to devote itself to the study of concrete problems...".

Miss MONROE agreed to withdraw the second part of her suggestion. The parent Commission's request to avoid the subject of implementation, however, seemed to infer that the Sub-Commission was not competent to initiate studies on that issue. The Sub-Commission should make it quite clear that it considered itself competent to study matters on its own initiative.

Mr. LAWSON (Secretary of the Sub-Commission) recalled that, under the Sub-Commission's original terms of reference, its functions had been limited to the study of the principles involved in the prevention of discrimination and protection of minorities; furthermore, they had been restricted to dealing only with urgent problems in those fields. He stressed that, in revising the Sub-Commission's terms of reference, both the Committee on the Prevention of Discrimination and the Protection of Minorities and the Commission on Human Rights itself had aimed at eliminating those restrictions and vesting additional rights and powers in the Sub-Commission.

As regards the implementation of human rights, Mr. Lawson explained that in the sense in which it was used by the Commission on Human Rights, that term as used by the Commission applied only to international measures of enforcement, to be established in connexion with the covenant of human rights. In asking the Sub-Commission to refrain, for the time being, from considering measures of implementation, the Commission had by no means meant that it should not consider practical /proposals

proposals with regard to prevention of discrimination and protection of minorities, but only that it should leave aside matters connected with the actual machinery for the international enforcement of human rights. Consequently, the Sub-Commission was free to proceed as it deemed fit in its own field.

Miss MONROE thanked Mr. Lawson for his explanation, in view of which she would not press for consideration of her proposal.

The CHAIRMAN also expressed appreciation of Mr. Lawson's remarks. The discussion on the new terms of reference had been most illuminating and valuable; the interpretation arrived at would prove of great value to the Sub-Commission future work.

Mr. SPANIEN remarked that, while Mr. Lawson's statement had cleared up a number of points connected with the Sub-Commission's new terms of reference, the agenda item currently under consideration could not be considered as complete until the Sub-Commission had listed the studies it intended to undertake and had established an order of priorities.

Mr. MENZES PALLARES drew attention to the proposal he had submitted (E/CN.4/Sub.2/47), which was intended to give concrete substance to the Sub-Commission's general terms of reference.

Mr. McNAMARA also wished to submit a proposal to be considered in conjunction with the item currently under discussion, namely, that a time limit should be set for all proposals to be submitted not later than 11 a.m. on Friday, 17 June 1949.

There being no objection, that proposal was adopted.

Mr. McNAMARA then suggested that a sub-committee should be set up to co-ordinate and classify all the proposals already handed in and any others that might still be submitted; referring to an objection raised by Mr. Borisov at an earlier meeting, he stressed that such a sub-committee would not be empowered to exclude proposals from consideration.

Mr. BORISOV emphasized that the time limit imposed on the submission of proposals did not apply to possible amendments thereto.

/With regard

With regard to the establishment of a sub-committee as suggested by Mr. McNamara, he remarked that no such step would be necessary if all proposals were promptly distributed, not only in English but also in Russian and French, so that members might acquaint themselves with them in good time.

Mr. LAWSON (Secretary of the Sub-Commission) drew attention to rule 31 of the rules of procedure. English and French only were the working languages of the Sub-Commission: consequently, the Secretariat was not formally required to translate working documents into Russian. It did, however, endeavour to have documents distributed in Russian whenever possible. Under rule 38, all resolutions, recommendations and other formal decisions had to be made available in all the official languages: that meant that while texts of adopted proposals had to be reproduced in all five official languages, that was not, strictly speaking, necessary before a proposal was adopted.

Mr. BORISOV stressed again that all proposals should, as a matter of course, be made available in Russian as well as the other official languages; the translation of short documents could hardly present insuperable technical difficulties.

Mr. NISOT said that, in his opinion, Mr. Lawson was discharging his duties satisfactorily, and could not be blamed for adhering to the rules of procedure.

Mr. SEAFAGH suggested that the officers of the Sub-Commission together with the Secretary should classify the proposals received in connexion with the item on business arising out of the new terms of reference of the Sub-Commission, either according to their subjects or to the date of their submission.

It was decided accordingly.

Mr. BORISOV stressed that, as far as chronological priority was concerned, his proposal on the fate of minorities had been submitted before all others. (E/CN.4/Sub.2/50).

Mr. McNAMARA remarked that the word "ensure" in the first sentence of the English translation of Mr. Borisov's proposal required clarification.

/The CHAIRMAN

The CHAIRMAN suggested that, pending the receipt and classification of proposals connected with the item on business arising out of the new terms of reference, the Sub-Commission should at its following meeting take up the consideration of part C of General Assembly Resolution 217 (III) on the fate of minorities.

Mr. ROY remarked that that item was so closely connected with the proposals which were still outstanding or not yet classified that it would be preferable to postpone discussion on it and take up instead the consideration of communications relating to the prevention of discrimination and the protection of minorities.

After some discussion, it was decided that the Sub-Commission should at its following meeting take up the consideration of part C of General Assembly Resolution 217 (III) on the fate of minorities.

The meeting rose at 5.30 p.m.