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SUB-COMMISSION ON PREVENTION OF DISCRIMINATION
AND PROTECTION OF MINORITIES
Third Session

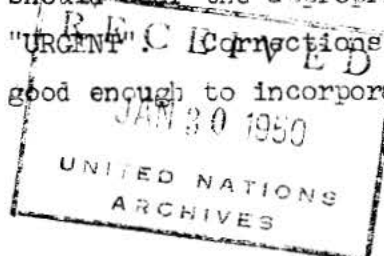
SUMMARY RECORD OF THE SIXTY-FIRST MEETING

Held at Lake Success, New York,
on Wednesday, 25 January 1950, at 11 a.m.

CONTENTS: Examination of proposals for measures of implementation of the
International Bill of Human Rights (E/CN.4/Sub.2/115/Rev.1,
E/CN.4/Sub.2/116 and E/CN.4/Sub.2/118)
Programme of future work.

<u>Chairman:</u>	Mr. MASANI	(India)
<u>Rapporteur:</u>	Mr. MENESES PALLARES	(Ecuador)
<u>Members:</u>	Mr. BLACK	(United States of America)
	Mr. CHANG	(China)
	Mr. EKSTRAND	(Sweden)
	Miss MONROE	(United Kingdom of Great Britain and Northern Ireland)
	Mr. NISOT	(Belgium)
	Mr. ROY	(Haiti)
	Mr. SHAFAG	(Iran)
	Mr. SPANIEN	(France)

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Representatives of specialized agencies:

Mr. Soto de la JARA	International Labour Organisation (ILO)
Mr. ARNALDO	United Nations Educational Scientific and Cultural Organization (UNESCO)

Consultant from a non-governmental agency (Category A):

Miss T. SENDER	American Federation of Labor
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Consultants from non-governmental agencies (Category B):

Mr. BERNSTEIN	Co-ordinating Board of Jewish Organizations
Mr. MOSKOWITZ	Consultative Council of Jewish Organizations
Mr. STEINER	Commission of the Churches on International Affairs
Mr. DEER	International League for the Rights of Man

Secretariat:

Mr. SCHWELB	Assistant Director, Division of Human Rights
Mr. LAWSON	Secretary of the Sub-Commission

EXAMINATION OF PROPOSALS FOR MEASURES OF IMPLEMENTATION OF THE INTERNATIONAL BILL OF HUMAN RIGHTS (E/CN.4/Sub.2/115/Rev.1, E/CN.4/Sub.2/116 and E/CN.4/Sub.2/118)

1. The CHAIRMAN announced that the Sub-Commission had before it the draft resolution on the problem of implementation proposed by the drafting committee (E/CN.4/Sub.2/115/Rev.1) and the amendments to that text submitted by Miss Monroe (E/CN.4/Sub.2/116, and Mr. Meneses Pallares (E/CN.4/Sub.2/118). He proposed that the Sub-Commission should take up the draft resolution and amendments paragraph by paragraph.

Paragraphs 1 and 2

2. The CHAIRMAN proposed the deletion of the word "draft" in line 1 of paragraph 2 and the substitution of the word "proposed".

3. Mr. NISOT (Belgium) proposed the insertion of the word "subsequent" before the word "implementation" in line 1 of paragraph 2.

4. Mr. SHATAQ (Iran) proposed the deletion of the word "effective" in line 3 of paragraph 2.

Paragraphs 1 and 2 were adopted in the following form:

"The Sub-Commission on Prevention of Discrimination and Protection of Minorities,

"Having examined the question of the subsequent implementation of the proposed International Covenant on Human Rights from the point of view of the prevention of discrimination and protection of minorities;"

Paragraph 3

Paragraph 3 was adopted without amendment.

5. The CHAIRMAN pointed out that Miss Monroe had submitted an alternative text of the paragraph (E/CN.4/Sub.2/116). He suggested that the word "prevent" should be substituted for the phrase "ward against" in line 1 of that text and that the word "such" should be substituted for the words "the said" in line 2.

6. Mr. NISOT (Belgium) proposed that the phrase "that may be" should be inserted after the word "procedure" in line 2 of Miss Monroe's text.

7. The CHAIRMAN drew attention to the fact that Miss Monroe's text omitted the reference to non-signatory States contained in the text proposed by the drafting Committee.

8. Miss MONROE (United Kingdom) proposed that the phrase "in particular by States not parties to the Covenant" should be inserted after the word "abuse" in line 2 to meet the Chairman's point.

/The text

The text of paragraph 4 proposed by Miss Monroe was adopted in the following form:

"And while appreciating the natural desire of States to prevent abuse, in particular by States not parties to the Covenant, of the procedure that may be envisaged for such implementation, on the ground that such abuse might adversely affect States in which there is full freedom of expression, while leaving authoritarian States unaffected;"

Paragraph 5

9. The CHAIRMAN announced that Miss Sender of the American Federation of Labor had requested an opportunity of addressing the Sub-Commission before a vote was taken on the draft resolution. He invited Miss Sender to express her views.

10. Miss SENDER (American Federation of Labor) pointed out that the prestige of the United Nations had suffered in the past from the adoption of measures without the necessary provisions for their enforcement. It was desirable that it should not lay itself open to such criticism where measures for the protection of minorities were concerned. She therefore urged that the draft resolution should leave no doubt that the measures proposed would be put into effect.

11. She considered it essential that the right to initiate petitions should not be confined to States but should be extended to groups and individuals. She suggested that the handling of petitions by non-governmental organizations would obviate possible reprisals against their originators and urged that non-governmental organizations should be given an opportunity in that field.

Sub-paragraph 5 (a)

12. The CHAIRMAN invited Mr. Schwelb of the Division of Human Rights to inform the Sub-Commission of the procedure followed in Upper Silesia under the League of Nations, to which a reference was made in Miss Monroe's text.

13. Mr. SCHWELB (Secretariat) said that in considering the Geneva procedure, it was necessary to distinguish between the theory as laid down in the appropriate instruments, and the practice evolved by the organs of the League

14. All the minorities treaties, the peace treaties regulating the
/situation

situation of minorities, and most of the declarations made before the League of Nations' Council contained a provision under which any member of the Council was entitled to bring to its attention any infraction or any danger of infraction of the obligations assumed in regard to minorities. That provision had not in fact been applied in this form and there was no recorded instance in which an individual member of the Council had drawn the Council's attention to a violation of the provisions for the protection of minorities.

15. Resolutions adopted by the Council of the League laid down detailed regulations for the handling of petitions from minority elements. The minorities treaties contained no provisions for the handling of petitions, but resolutions adopted by the Council provided for their reception and screening by the Secretary-General and, if they complied with certain conditions, for their submission to a committee composed of three to five members of the Council of the League.

16. The relevant resolutions laid down that the act of drawing the Council's attention to alleged infractions was not legally equivalent to the submission of the matter to the Council or a request for its intervention but was merely a petition or purely and simply a report. The Council only became competent to deal with the question when its attention was drawn to the infraction by one of its members. In practice, however, the decision to bring a case to the Council's notice by placing it on the agenda for the following session, was taken by the Minorities Committee. The propriety of that practice had been challenged, in particular, by the Polish Government. In a statement made before the Permanent Court of International Justice, it pointed out that the initiative in submitting questions to the Council should be taken by individual members of the Council and not by a committee. That argument was rejected by the Court in its advisory opinion of 10 September 1923 which stated:

"So far as concerns the procedure of the Council in minority matters, it is for the Council to regulate it. On the other hand, it is impossible to say that the present matter has not been brought to the attention of the Council by any of its members in accordance with the provisions of Article 12.

The report of M. da Gama opens with the statement that the matter had been brought to the attention of the Council by a report presented by three of its members, and it does not matter that these members were members of a committee formed under the Resolution of the Council of 25 October 1920 to facilitate the performance by the Council of its duties in minorities matters."

17. Furthermore, a resolution adopted by the Council in 1925 precluded the appointment to the committee of the representative of any State to which members of the minority in question belonged or of the representative of a neighbouring State or of a State the majority of whose inhabitants belonged to the same ethnic group as the minority concerned. During the period in which it was a member of the League, Germany was debarred by that provision from membership of the committee when questions affecting German minorities were under consideration.

18. The procedure laid down for Upper Silesia was different. Article 72 of the Geneva Convention provided for the general procedure laid down in the minorities treaties. In addition, however, article 147 gave the minorities the right of directly petitioning the Council of the League. It laid down that the Council of the League was competent to pronounce on all individual or collective petitions relating to the protection of minorities and directly addressed to it by members of a minority. The Convention further provided for the establishment of Minorities Offices in the German and Polish parts of Upper Silesia and for the handling of petitions by those offices and by the President of the Mixed Commission. Under article 149 petitioners dissatisfied with the action taken by the administrative authorities were accorded the right to appeal to the Council of the League.

19. Miss MONROE (United Kingdom), in introducing her proposed text, said that the first two sentences were a mere redrafting of the text proposed by the drafting committee. The remainder of her text was, however, an amendment of substance and had been made in the light of the information given at the previous meeting, on the provisions made for Upper Silesia. Unlike other arrangements for the protection of minorities under the League of Nations, the Convention for Upper Silesia had offered minorities two other recourses in addition to recourse to a State. She considered that the Sub-Commission had made an unsufficient study of the subject to justify the recommendations contained in the last sentence of the text proposed by the drafting committee. If her own proposal was adopted, the door would be left open for further study of the question in the light of the experience of the League of Nations.

20. Mr. MENESES PALLARES (Ecuador), introducing his proposed text, (E/CN.4/Sub.2/118), felt that his proposal was self-explanatory. The right to petition was vital to the implementation of human rights and it would be absurd to exclude minority groups from its advantages.

21. The CHAIRMAN suggested that the Sub-Commission should adopt the first and third sentence of the amendment submitted by Mr. Meneses Pallares, followed by the third and fourth sentence of the amendment to sub-paragraph (a) submitted by Miss Monroe. By doing so, it would deal first with the general question of petitions regarding human rights as a whole, and subsequently with petitions related to the protection of minorities in particular.

22. He agreed with Mr. Meneses Pallares that the Sub-Commission should explicitly and emphatically accept the general principle of the right of individuals and non-governmental organizations to submit petitions. Petitions were already being received by United Nations organs concerned with human rights; the Sub-Commission itself, though it could only take very limited action with regard to such petitions, studied them and so recognized the right of individuals and groups to submit complaints. Failure to recognize that right would represent a retrograde step not only in comparison with the provisions of certain minority treaties concluded between the two wars, but also with procedure followed after the Second World War.

23. As far as the specific question of protection of minorities was concerned, he considered Miss Monroe's text acceptable. There was no reason why the two amendments should not be merged into one.

24. Mr. NISOT (Belgium) remarked that no one could be denied the right to submit petitions; the question was whether petitions by individuals or non-governmental organizations should be considered sufficient to initiate procedure for the enforcement of human rights.

25. Mr. SPANLEN (France) believed that the Sub-Commission should set down as its opinion that the right of individuals or groups to submit petitions could not be seriously contested. On the other hand, there could as yet be no question of initiating procedure for the enforcement of human rights because no such procedure had been established.

After some discussion, it was decided to give sub-paragraph (a) the heading "Submission of petitions or complaints".

The first sentence of Mr. Meneses Pallares' amendment was adopted in the following form:

"The right to petition the United Nations in the field of human rights should be granted both to individuals and to groups."

It was decided to delete the second sentence of Mr. Meneses Pallares' amendment.

The third sentence of Mr. Meneses Pallares' amendment was adopted in the following form:

"The Sub-Commission, therefore, considers it of the utmost importance that non-governmental organizations and groups as well as individuals should be given adequate place in a comprehensive machinery for the implementation of the proposed Covenant on Human Rights."

26. The CHAIRMAN called upon the Sub-Commission to consider the third sentence of Miss Monroe's amendment to sub-paragraph (a) of the operative part, beginning with the words "The Sub-Commission is of the opinion that, for this reason...".

27. Mr. NISOT (Belgium) remarked that the experiment of Upper Silesia, referred to in Miss Monroe's text, had been carried out under special circumstances and could hardly be considered applicable on a general world-wide scale. He did not see why Miss Monroe had singled out that case while omitting to refer to other minority treaties concluded under the League of Nations.

28. Miss MONROE (United Kingdom) replied that she had referred to the case of Upper Silesia because it was the only example of a treaty providing minorities with recourses other than petition through Governments. She had not meant to imply that the methods followed with regard to Upper Silesia should serve as a pattern for the future.

29. Mr. SCHWELB (Secretariat) confirmed that under minority treaties, other than the treaty on Upper Silesia, minorities as such had had no recognized standing in League of Nations proceedings. The usual procedure had been that petitions sent in by individuals or groups had been received and examined by the Secretary-General, transmitted by him to the Committee of Three and, if found to be of sufficient importance, transmitted by that Committee i.e. by the members represented on that Committee to the League of Nations Council. Both that procedure and the method adopted in the case of Upper Silesia were, in his view, a matter for attention.

After some discussion, the third sentence of Miss Monroe's amendment to sub-paragraph (a) of the operative part was adopted in the following form:

"The Sub-Commission is of the opinion that, for this reason, every effort must be made to provide a minority with other recourses, and that due attention should be paid to the experience of the League of Nations in general, and, in particular, to the lesson of the experiment in the direction of alternative recourses carried out, under the auspices of the League of Nations, in Upper Silesia."

30. The CHAIRMAN proposed the deletion of the last sentence of Miss Monroe's amendment to sub-paragraph (a).

31. Miss MONROE (United Kingdom) explained that the purpose of that sentence was to show that the Sub-Commission was prepared to make a further study of the subject of submission of petitions. She would therefore prefer it to be retained.

32. Mr. NISOT (Belgium) and Mr. BLACK (United States of America) shared Miss Monroe's view. It should be made clear that the Sub-Commission's opinions were as yet only tentative in nature and based on general principles rather than on detailed study.

33. The CHAIRMAN withdrew his suggestion.

34. Mr. SPANLEN (France) agreed that the sentence should be retained, but suggested that it should be framed in such a way as not to convey the impression that the Sub-Commission's views, as expressed in the earlier part of the sub-paragraph, were insufficiently well-founded.

The last sentence of Miss Monroe's amendment to sub-paragraph (a) was adopted in the following form:

"The Sub-Commission intends further to study this and other possible solutions of the intricate problem described above."

35. Miss MONROE (United Kingdom) said that she would abstain from voting on sub-paragraph (a) as a whole because she did not feel the subject had been studied with sufficient thoroughness to warrant endorsement of the second sentence of Mr. Meneses Pallares' text.

36. Mr. NISOT (Belgium) and Mr. BLACK (United States of America) associated themselves with that statement.

Sub-paragraph (a), as redrafted, was adopted by 6 votes to none, with 4 abstentions.

37. The CHAIRMAN suggested that sub-paragraph (b) should have the heading "Machinery of Implementation".

It was so decided.

38. Mr. SHAFaq (Iran) remarked that in his opinion the wording of the first sentence of sub-paragraph (b) implied that the establishment of a new international court or tribunal, independent of the International Court of Justice, was contemplated. The text should be changed so as to make it clear that what the Sub-Commission actually envisaged was the creation of a special body within the framework of the International Court of Justice.

39. The CHAIRMAN recalled that it had been decided to leave aside the question of the technical organization of such a body in view of the problems involved in revising the Statute of the International Court of Justice. He suggested that Mr. Shafaq's point might be met by the deletion of the words "the establishment of", and by placing the words "International Court or Tribunal" in lower case.

It was so decided.

40. Mr. BLACK (United States of America) thought that the opinion expressed in the first sentence of the sub-paragraph was not based on proper study. He would therefore abstain from voting on the sub-paragraph as a whole.

41. Miss MONROE (United Kingdom) associated herself with that statement.

42. Mr. SCHWELB (Secretariat) felt that the establishment of an international court or tribunal and that of a "unified body having broad powers of supervision and conciliation" should not be proposed in the form of alternative methods. Even if an international tribunal were created, it would still be necessary to set up special machinery for the preliminary examination of petitions and for purposes of conciliation and fact-finding. In that connexion, he pointed out that, following a recommendation by the Economic and Social Council, the International Labour Organisation had recently established a fact-finding and conciliation commission for the protection of freedom of association.

43. Mr. SPANIEN (France) remarked that the special machinery referred to by Mr. Schwelb could be set up within the Secretariat and would not have to be of the nature contemplated in the second sentence of sub-paragraph (b). He would prefer that sentence to be retained without substantial change.

After some discussion, the second sentence of sub-paragraph (b) was adopted in the following form:

"If the Commission on Human Rights feels, however, that such a step is not immediately feasible, the next most effective method of securing the prevention of discrimination and the protection of minorities through the execution of the International Covenant on Human Rights would be the establishment of a single permanent non-political body having broad powers of supervision and conciliation, which would indeed be needed in any event."

44. Mr. EKSTRAND (Sweden) proposed the deletion of the third sentence of sub-paragraph (b).

It was so decided.

Sub-paragraph (b), as redrafted, was adopted by 7 votes to none, with 3 abstentions.

45. Miss MONROE (United Kingdom) submitted her amendment to the third sub-paragraph of the operative part (E/CN.4/Sub.2/116, Section III). She suggested that that sub-paragraph should be given the heading "Recognition of minorities".

It was so decided.

Miss Monroe's amendment to the third sub-paragraph was adopted in the following form:

"(c) Recognition of Minorities.

The Sub-Commission is of the opinion that the protection of minorities calls for more than a mere remedy of violations of minority rights. The very demand for minority status may raise complications and give rise to disagreements which only an impartial judicial body can settle. If the rights of minorities are to be adequately protected, the Commission on Human Rights should make provision for placing the relevant powers of decision in the hands of any panel or court which it may recommend, or of some sub-section of such a panel or court."

/Sub-paragraph

Sub-paragraph (c) was adopted by 9 votes to none, with 1 abstention.

46. The CHAIRMAN put to the vote the joint draft resolution as a whole, as amended.

At the request of Mr. Nisot (Belgium), a vote was taken by roll-call.

The result of the vote was as follows:

In favour: Mr. Chang (China), Mr. Ekstrand (Sweden), Mr. Masani (India),
Mr. Meneses Pallares (Ecuador), Mr. Roy (Haiti), Mr. Spanien
(France).

Against: None.

Abstentions: Mr. Black (United States of America), Miss Monroe (United
Kingdom), Mr. Nisot (Belgium), Mr. Shafaq (Iran).

The draft resolution, as amended, was adopted by 6 votes to none, with 4
abstentions.

47. Mr. NISOT (Belgium) requested that the results of the vote should be included in the report, as well as the explanations of their vote given by the abstaining members in the course of the debate.

48. Mr. MENESES PALLARES (Ecuador), Rapporteur, said that would be done.

PROGRAMME OF FUTURE WORK

49. The CHAIRMAN read out a list of five items which the Sub-Commission had decided to include in the provisional agenda of its fourth session, and asked whether members wished to propose any other items for inclusion.

50. Miss MONROE (United Kingdom) said that it would be useful if the Secretariat could make additional information available on the subject of international protection of minorities under the League of Nations, dealt with in document E/CN.4/Sub.2/6.

51. The CHAIRMAN noted that there were no further proposals regarding the agenda of the fourth session.

/52. Mr. SHAFaq

52. Mr. SHAFAG (Iran) suggested that the following session of the Sub-Commission should take place in Geneva at the end of the summer or the beginning of the autumn of 1951.

53. Mr. ROY (Haiti) remarked that it was essential that the sessions of the Sub-Commission should precede those of the Commission on Human Rights, which, in turn, should precede those of the Economic and Social Council.

54. The CHAIRMAN proposed that, with the reservation made by Mr. Roy, the question of the time and place of the following session should be left to the organ responsible for the planning of programmes.

The meeting rose at 1.15 p.m.