

UNITED NATIONS
ECONOMIC
AND
SOCIAL COUNCIL



GENERAL

E/CN.4/Sub.2/113
23 January 1950
ENGLISH
ORIGINAL: FRENCH

COMMISSION ON HUMAN RIGHTS
SUB-COMMISSION ON PREVENTION OF DISCRIMINATION
AND PROTECTION OF MINORITIES

Third session

Observations by Mr. Spanien on the Implementation of the
Questions on the Agenda of the Sub-Commission on Prevention
of Discrimination and Protection of Minorities

I - After hearing the report of its Committee on the Prevention of Discrimination, the Commission on Human Rights requested the Sub-Commission to postpone consideration of questions of implementation until its third session. It appears to have taken this decision at its 37th meeting in the belief that it might be able to elaborate such measures itself in the course of its fifth session. However, the Draft Covenant which emerged from the Commission's labours does not include any such measures, which are to be elaborated during the session to be held in March 1950. As it proved impossible to reach agreement on proposed measures for implementation, the Commission decided to instruct the Secretariat to send States Members a questionnaire to be approved by the Commission together with various other documents, and to ask for their observations to be submitted by 1 January 1950. The Sub-Commission is not among the recipients of these documents.

II - It would not appear that the Sub-Commission is required from a general point of view to give its views on questions of implementation lying outside the scope of its own terms of reference.

Subject to these two reservations, the Sub-Commission wishes to place the following considerations before the Commission:

- (a) A covenant which failed to provide for implementation would be necessarily ineffective and devoid of any real value.

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/(b) There can be

(b) There can be no serious question as to the right to initiate proceedings on matters of human rights. The nature of that right remains to be defined.

1. The signatory Governments have the duty, referred to on six occasions in the Charter, of achieving international co-operation by promoting and encouraging respect for human rights.

2. The competence of the General Assembly in this respect is defined in Article 13 (2) and that of the Economic and Social Council in Article 62 (2) of the Charter.

The International Commission set up for that purpose drafted a Universal Declaration of Human Rights adopted without opposition by all the United Nations.

3. The view may be taken that human rights and fundamental freedoms are an integral part of the international juridical order.

(c) While the fear of being imposed upon, however legitimate, must not be allowed to paralyze good intentions, it can readily be understood that States desire to protect themselves against any abuse of the right to initiate proceedings by Governments not signatories to the Convention. Such abuse might injure the freest States and spare the most authoritarian. Indeed, it is natural that the Commission, in order to ensure that the restrictions of sovereignty entailed by the right to initiate proceedings should be applied on a basis of equality and reciprocity, and to approximate as far as possible to the desired universality without prejudice to future progressive adjustments, should so far have provided only for the initiation of proceedings by States.

With regard to the protection of minorities, however, it should be pointed out, firstly, that in view of the situations envisaged in Article 6 of the Sub-Commission's definition of minorities, action by States is exposed to certain difficulties and dangers, and secondly, that if States alone are granted the right to initiate proceedings, this will be a retrograde step in comparison with the provisions for the protection of minorities instituted by the treaties concluded between the two world wars.

/ (d) The protection

(d) The protection of minorities necessitates more than simply a procedure for appeal against violations of the provisions laid down for protection either in the ordinary law or in special instruments.

By its very nature, and in view of its optional and voluntary character, the enforcement of the rights of minorities must raise difficulties and lead to disputes which can only be settled by a juridical body. The Commission on Human Rights should therefore, subject to the requisite guarantees, give the necessary powers either to the body which it proposes to set up or to a section of that body. The Sub-Commission could give any assistance that might be desired in this connexion.

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From the standpoint of effective measures against discrimination, the Sub-Commission considered the application of the principles stated and referred to in provisional Article 2 and in Article 20 of the Draft Covenant preferable to the enumeration of special texts to be promulgated or rescinded. But this, in the view of the Sub-Commission, applies to discrimination affecting individuals as such. As the Draft Convention now stands, individuals considered as members of a group might still be subject to many types of exaction and persecution by reason of such membership.

Of course, the object of the Convention on Genocide is to abolish the gravest form of discrimination, i.e. the physical destruction of the members of the group in question, or measures tantamount to their physical destruction. As it stands the text of the Convention is not free from objection on many points.

With regard to its responsibilities as laid down by its own terms of reference in particular, the Sub-Commission feels obliged to draw attention to political groups. For its part, the Sub-Commission rightly limited its studies and recommendations to groups possessing stable characteristics; but while, in accordance with the principles of Article 2 of the Universal Declaration, political groups as such were provided for in the original drafts of the Convention on Genocide, they have been excluded from the final text.

The Sub-Commission must also draw attention to the fact that at present no provision is made for effective legal protection against those violations of human rights (occurring most often in the dual sphere of discrimination and minorities) which are described by the rather infelicitous expression "cultural genocide".

/The Sub-Commission

The Sub-Commission believes that it would be logical to attach the special institution set up to punish the violations of human rights just mentioned to the international jurisdiction which it is proposed to establish to take effective measures against the crime of genocide. The attention of the International Law Commission might usefully be drawn to this point.

In conclusion, the Sub-Commission believes that guarantees should be provided to protect the liberties of groups formed on the basis of political or other opinions, provided, of course, that such political or other opinions do not find their outlet in criminal activity designed to destroy the purposes and principles of the Universal Declaration (Article 22 of the Draft Covenant); that these guarantees should be defined; that this is an urgent task; and that the Sub-Commission should take its due share in this work.

Moreover, while it does not wish to encroach on the domain of its parent Commission, the Sub-Commission expresses the view that at the present time the international protection of human rights would appear to be bound up with the establishment of a single permanent body having broad powers of conciliation and arbitration and inspiring justified confidence by virtue of its indisputable competence on a strictly non-political plane.

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