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

SUMMARY RECORD OF THE FIFTY-EIGHTH MEETING

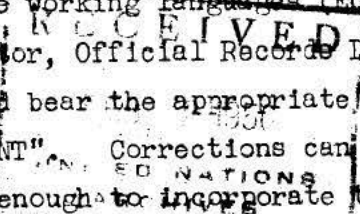
Held at Lake Success, New York,
on Monday, 23 January 1950, at 2 p.m.

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- Yearbook on minorities (E/CN.4/Sub.2/89)
- Additional items
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<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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and he had derived from it four main ideas as to the possible contents of a yearbook on minorities. It might incorporate:

6. (1) A selection of articles and studies relating to the question of minorities and the various kinds of discrimination practised with respect to them. That section might mention any criticisms of the definition of minorities just given by the Sub-Commission which might have been made in the meantime;
7. (2) Definitions and comments on the geographical distribution of minorities, their history and their existing social status;
8. (3) A selection of articles or studies which had appeared in the press in connexion with important events which might have occurred in connexion with minorities or discrimination since the appearance of the previous yearbook;
9. (4) Documentation dealing with the activity of the various organs of the United Nations in the field of minorities or of discrimination, based on the resolutions of those organs and so co-ordinated that members of the Sub-Commission or anyone else who was interested in the question could obtain information without having to undertake long and tedious research.
10. While advocating in particular the four main types of information he had mentioned, Mr. Shafaq did not preclude the possibility of incorporating other information in the yearbook, if necessary.

11. Miss MONROE (United Kingdom) thought it was premature to consider the publication of such a yearbook. A yearbook was, after all, a sort of textbook. Its contents should therefore, like those of a textbook, comply with certain rules and be based on concrete and tangible facts. At the present time, however, the only tangible data existing was the definition of minorities just formulated by the Sub-Commission, which obviously was not enough.

12. So far only one type of minority had been officially recognized -- the so-called "frontier" minorities established by treaties between the two world wars -- but it had now been laid down by resolution of the General Assembly that there were other types of minority. It was therefore important to classify them in order to be able to identify minorities before attempting to produce a yearbook on the subject. Groups desirous of claiming minority status should be able to cite an international instrument in support of their

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claim. If a yearbook were published before that could be done, there would be a danger that the term "minority" might be applied to groups which did not wish to be so described.

13. At the stage which had been reached in the study of the question of minorities, the publication of a yearbook would therefore be premature, and the expense it would entail might be avoided.

14. Mr. SHAFQAQ (Iran) did not think the yearbook in question could be compared to a textbook, for many texts would have a place in it which would be out of place in a textbook. For example, the yearbook might give an account of problems, whether they had been solved or not, principles which were under discussion, resolutions which had been proposed, possible definitions, whether they had been adopted or not, and legislative texts; all that documentation would be given for information purposes, as was done by the United Nations Yearbook.

15. The CHAIRMAN wondered whether, in view of Miss Monroe's observations, Mr. Shafaq could not indicate, if possible before the end of the current session, the nature of the studies or subjects which he suggested should be included in the yearbook. The Secretary-General might then be asked to prepare them for submission to the Sub-Commission at its next session, perhaps in the form of separate publications.

16. Mr. SHAFQAQ (Iran) remarked that studies already had been made by the Secretariat. It would be sufficient to collect them in one publication, adding any new decisions and resolutions.

17. The CHAIRMAN asked Mr. Shafaq whether the existing texts would be sufficient to form a special volume.

18. Mr. SHAFQAQ (Iran) recalled that he had originally proposed the publication of a yearbook on minorities every three years only.

19. The CHAIRMAN thought that if, when considering item 13 of its agenda, the Sub-Commission were to call for a series of studies to be carried out, it might at its next session have sufficient material for a yearbook. In his opinion there was not yet enough.

/20. Mr. SHAFQAQ

20. Mr. SHAFIQ (Iran) was convinced, on the contrary, that the material available was already adequate. It would suffice to collect all the documents which had been submitted to the Sub-Commission, the articles of the Universal Declaration and of the Draft Covenant on Human Rights which dealt with minorities, summaries of the studies made by the Secretariat and of external publications dealing with the same subject.

21. The CHAIRMAN did not share that opinion.

22. Mr. LIN MOUSHENG (Secretariat) wished to give some information regarding current United Nations publications. He pointed out, in particular, that the Human Rights Yearbook contained information on the protection of minorities. Under the terms of existing resolutions, Governments would be requested to supply information on the laws, administrative provisions and legal decisions of their respective countries in connexion with the protection of minorities. If the Governments transmitted enough information, there would be nothing to prevent the publication of a special volume on the subject.

23. The Sub-Commission on Freedom of Information had similarly collected a great deal of information which it had decided to publish in book form; the first volume was in course of printing.

24. It was difficult for the time being to state what the contents of a yearbook on minorities would be. A decision as to whether such a publication would be useful could be made only after the information had been received from Governments.

25. Moreover, studies were being undertaken on special subjects, to be included in the Yearbook of Human Rights. Thus the volume in preparation would contain a study on the electoral legislation of various countries. There was no reason against considering the incorporation in the forthcoming Human Rights Yearbook of a special study on the protection of minorities; a separate yearbook could be published later if the need arose.

26. Mr. SPANIEN (France) stated that the conclusion to be drawn from the remarks of the Secretariat representative seemed to be that in so far as texts on the protection of minorities could be assembled and made the basis of

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continued study, they could well be included in the Human Rights Yearbook. In order to satisfy Mr. Shafaq, therefore, it would be sufficient for the Sub-Commission to take note of that communication.

27. As the group which assembled texts for the Human Rights Yearbook could also collect material relating to the struggle against discrimination and the protection of minorities, a yearbook on minorities seemed superfluous for the time being. It would therefore seem advisable to defer consideration of Mr. Shafaq's proposal.

28. After Mr. LIN MOUSHENG (Secretariat) and Miss MONROE (United Kingdom) had again observed that the entire matter depended on the amount of information which Governments would transmit, Mr. SHAFQAQ (Iran) said that he would not press his proposal.

29. The CHAIRMAN proposed that the Sub-Commission should place the question of a yearbook on minorities on the agenda of its next session.

It was so decided.

ADDITIONAL ITEMS

30. The CHAIRMAN pointed out that the consideration of the above item of the agenda would be the last opportunity for members of the Sub-Commission to submit new proposals. He recalled that the question of genocide was to be considered in connexion with that item of the agenda.

31. In reply to a question by Mr. SHAFQAQ (Iran), the CHAIRMAN stated that the question as to who should assert the rights of minorities really related to item 10 of the agenda, in view of the fact that, if the clause under consideration by the Sub-Commission were adopted, the problem would come within the framework of measures for implementation of the International Bill of Human Rights.

32. Mr. SHAFQAQ (Iran) stated, in connexion with the Secretary-General's memorandum (E/CN.4/Sub.2/85), that he would have a proposal to make regarding the rights of minorities which had not yet been defined and which might exist in the future.

/33. The CHAIRMAN

33. The CHAIRMAN thought that the Sub-Commission should first complete its consideration of the question of genocide. The question raised by Mr. Shafaq could be studied subsequently.

34. Mr. SPANIEN (France) recalled that it was he who had requested that the question of genocide should be considered. Nevertheless, after attempting to restate the problem of implementation (E/CN.4/Sub.2/113), it seemed to him that the problem of genocide came within the framework of the implementation of measures for protection.

35. A solution was required for the problem of genocide because, in the struggle against discrimination, the most irreparable and odious form of discrimination, the physical destruction of an individual on the pretext that he belonged to a certain group, must be prevented. That was the aim of the Convention on Genocide which also condemned acts which were tantamount to physical destruction. Since the Sub-Commission was dealing with the struggle against discrimination, it could not ignore that instrument.

36. Nevertheless there were gaps in the Convention on Genocide. For example, it was regrettable that the definition of the crime of genocide did not include the idea of the active participation or tacit consent of Governments. In his opinion that was a specific and fundamental characteristic of genocide. If that aspect of the crime were disregarded, it would be unnecessary to try to establish a new definition of murder, a crime which was already covered by legislative provisions in every country. Furthermore, the Convention on Genocide had not maintained the category of political groups which appeared in the original draft proposed by the Secretariat on the analogy of the Universal Declaration of Human Rights.

37. The choice to be made between national and international jurisdiction was not clearly indicated. The relevant article of the Convention on Genocide established a plurality of jurisdiction. If the circumstances in which recourse to international jurisdiction was justified, were not specified, States concerned would be able to engage in every kind of manoeuvre, and that provision would become a snare and a delusion. National courts could not be empowered to judge their own Governments. Moreover, ^{the} international criminal jurisdiction provided for by the Convention on Genocide was optional in character.

/38. He thought

38. He thought that the Sub-Commission might have comments and recommendations to make with regard to those different problems.

39. Finally, all the provisions relating to what was known as cultural genocide, a term which in his opinion was very vague, had also been excluded from the measures for repression. That fact imposed added duties on the Sub-Commission.

40. To justify the omission of those provisions, it had been said that cultural genocide consisted essentially of violations of human rights and therefore came within the competence of specialized organs in that field. Hence the question would arise at the time of the coming into force of the Convention on Human Rights.

41. Mr. Spanien wondered whether it might not be appropriate to request the Commission on Human Rights to consider setting up an organ to judge crimes of genocide to be associated with the International Court of Justice.

42. The Sub-Commission should therefore decide what gaps still remained to be filled in that field, so as to be able to take them into consideration when taking up the question of implementation.

43. In reply to a question by Mr. SHAFARQ (Iran), Mr. SPANIEN (France) reiterated that the distinguishing feature of genocide was the direct intervention or the consent of the Government, since the murder of an individual, even if it was committed because the individual belonged to a certain group, fell naturally within the normal provisions of law.

44. The CHAIRMAN remarked that, in those circumstances, the steps to be taken could be considered at the same time as item 10 of the agenda.

45. Mr. SPANIEN (France) said that the document he had prepared for submission to the Sub-Commission was not intended to be final. It could be used as a starting point for studying the steps to be taken in order to fill the gaps he had mentioned.

46. Miss MONROE (United Kingdom) said that there were actually two distinct subjects: firstly the question of the implementation of the Covenant on Human Rights and secondly any opinions on genocide which the Sub-Commission might see fit to formulate. In her opinion, it would create confusion if two separate documents were prepared.

47. Mr. LIN MOUSHENG (Secretariat) pointed out that the Convention on Genocide was a separate document which had already been adopted, although it had not yet come into force. It was article VI of that Convention, covering the effective punishment of genocide, which had a bearing on the current discussion. He recalled that the Convention provided for the establishment of an international penal tribunal. That tribunal had not yet, however, been established and the International Law Commission was in the process of considering the point. In those circumstances it would be difficult for the Sub-Commission to decide at that stage on specific provisions relating to the Convention as such, but it could consider special measures for the protection of minorities.

48. Mr. SPANLEN (France) thought that the Sub-Commission might well communicate its opinion to the International Law Commission simply for information purposes.

49. The CHAIRMAN agreed to that procedure and called upon members to express an opinion concerning the Convention on Genocide.

50. In reply to a question by Miss MONROE (United Kingdom), Mr. SPANLEN (France) thought that it would be unwise to recommend the revision of a convention, the ratification of which was already hedged round with difficulties. Any action which the Sub-Commission might take ought to be in the direction of helping rather than hindering ratification. He explained that the mention of political groups had been deleted from the draft submitted by the Secretariat as a compromise in order to obtain agreement to the principle that an international criminal court should be established. It was thanks to the compromise that the Convention had been adopted. In that connexion, he added that the organs of the United Nations should as far as possible avoid reaching /unanimity

unanimity by means of compromises which could not really satisfy public opinion.

51. The CHAIRMAN thought that, in those circumstances, the Sub-Commission might perhaps suggest international measures to be taken within the framework of article 6 of the Convention on Genocide.

52. Mr. SPANLEN (France) said that it was quite clear what attitude the Sub-Commission should take. The General Assembly should call upon the International Law Commission to consider the desirability and possibility of establishing an international tribunal for the effective punishment of the crime of genocide. The Sub-Commission could quite well state in its report that it considered such a measure to be most desirable, giving its reasons for that opinion.

53. The CHAIRMAN thought it might be better to suggest some concrete solution: either the establishment of a criminal chamber of the International Court of Justice or the establishment of an independent criminal jurisdiction.

54. Mr. SPANLEN (France) pointed out that the International Law Commission was made up of legal experts who were jealous of their rights. He therefore felt that the Sub-Commission should not suggest a specific solution, especially as it had not given the subject sufficient study to warrant its doing so.

55. The CHAIRMAN pointed out the danger that a vague recommendation might not produce any results. He asked Mr. Spanlen if he would prepare a paper setting forth the reasons why the Sub-Commission thought that an international criminal jurisdiction should be established.

56. Mr. SPANLEN (France) would gladly undertake that task, but pointed out that two factors should be borne in mind: no suggestions should be made which might weaken the Convention on Genocide and the Sub-Commission should avoid entering into any legal details. His paper would therefore be brief and he would simply state that the Sub-Commission took a keen interest in the question and hoped that the International Law Commission would adopt the most effective measures possible.

/57. The CHAIRMAN

57. The CHAIRMAN called upon Mr. Shafaq to submit his proposal on the protection of any rights which might be claimed in the future and which were not covered by the Sub-Commission's resolution or by other international documents.

58. Mr. SHAFQAQ (Iran) said that in order to make it possible in the future to safeguard rights other than those which were included in existing international documents, it would be useful to state, either in a resolution or in the report, that "claims to specific rights not defined by any international document must be examined on their own merits in the light of past and present circumstances as well as in the light of the general principles of the Charter of the United Nations".

59. The CHAIRMAN proposed that that idea should be incorporated in the preface to the report, where it would be stated that the decisions taken by the Sub-Commission were not intended to be final.

It was so decided.

PROGRAMME OF FUTURE WORK

60. The CHAIRMAN opened discussion on item 12 of the agenda and called for proposals concerning the provisional agenda of the Sub-Commission's following session.

61. Mr. SHAFQAQ (Iran) thought that on-the-spot surveys and the classification of minorities should be included among the items on the agenda.

62. The CHAIRMAN declared that the question of classification of minorities was already on the agenda and would be discussed in connexion with the report of the Committee appointed to establish a list of the minorities covered by the resolution defining minorities.

63. Miss MONROE (United Kingdom) thought it would be premature to place the question of on-the-spot surveys on the agenda of the next session, since the position the Sub-Commission would ultimately take on the question would largely depend upon the decisions taken by the Commission on Human Rights

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and by the General Assembly regarding the validity of the old minority treaties.

64. Mr. SHAFAG (Iran) saw no objection to placing the question on the provisional agenda of the next session, subject to later deletion, if it were decided that its consideration would be premature.

65. Miss MONROE (United Kingdom) felt that the agenda of the next session should include only questions which were to be the subject of special study in the meantime.

66. Mr. MENESES PALLARES (Ecuador) shared the view that there was no objection to placing the question of on-the-spot surveys on the provisional agenda of the next session.

67. The CHAIRMAN put to the vote Mr. Shafaq's proposal that the question of on-the-spot surveys should be placed on the provisional agenda of the next session.

The proposal was adopted by 4 votes to none, with 6 abstentions.

68. Mr. SPANLEN (France) felt that it would be useful for the Sub-Commission, at its next session, to study methods of ensuring effective protection of political groups. Such groups were not listed among the groups to be protected enumerated in article II of the Convention on Genocide, nor were they covered by the definition of minorities drawn up by the Sub-Commission, on the ground that they were not sufficiently permanent in character. Since, however, it was indispensable to define the status of opposition parties in a democratic society and to ensure the protection of their rights, the question deserved special study at the Sub-Commission's next session.

69. Mr. CHANG (China) supported the observations made by Mr. Spanien, and regretted that the Convention on Genocide did not cover the protection of political groups. Of all the groups to be protected, political groups in particular merited special protection, in view of the fact that the crimes of genocide committed in the course of the Second World War had been committed for essentially political reasons.

70. He could see no valid basis for the argument that protection of political groups would be impossible because of their lack of permanence. He recalled that in the General Assembly several delegations, including that of the United States, which had originally advocated the inclusion of political groups among the groups enumerated in article II of the Convention on Genocide, had subsequently changed their position for purely practical reasons. He felt that it was unwise to sacrifice principles to expediency, and he therefore supported Mr. Spanien's proposal that the question should be placed on the agenda of the Sub-Commission's next session.

71. The CHAIRMAN agreed that the question of political groups should be included in the agenda of the next session, but wondered whether it would not be advisable to ask the Secretariat to prepare a study on the question.

72. Miss MONROE (United Kingdom) declared that before drawing up a programme of future work, the Sub-Commission should determine what aims it intended to pursue, i.e., whether it was called upon to prepare drafts likely to obtain the widest possible support, or drafts of great intrinsic value, model drafts so to speak, which might not obtain the support of many States. For her part, she hoped to see the Sub-Commission prepare, or encourage the preparation of, model drafts; for that reason she supported Mr. Spanien's proposal.

73. In reply to the Chairmen, Mr. SPANIEN (France) declared that the question of protection of political groups required exhaustive study on the part of the Sub-Commission itself and presented few technical aspects which could be studied by the Secretariat.

/74. Mr. BLACK

74. Mr. BLACK (United States of America) proposed that the Secretariat should be asked to prepare a document containing a summary of the debates in the United Nations on the question of protection of political groups, as well as a study of the provisions relating to the protection of human rights, which appeared in the peace treaties with the Axis countries; and that the Secretariat should distribute that document, together with any other useful documentation, to the members of the Sub-Commission, at least two months before the opening of the next session.

75. Mr. LAWSON (Secretariat) recalled that the documentation prepared for the Sub-Commission for the current session had been completely up to date and had taken account of the last decisions of the General Assembly.

76. The CHAIRMAN proposed that the question of protection of political groups should be placed on the provisional agenda of the next session, in the following manner: "Prevention of discrimination and denial of fundamental freedoms in respect of human rights".

It was so decided.

77. Mr. BLACK (United States of America) inquired whether the Secretariat could present, before the end of the current session, an estimate of the approximate length of time which the Governments would take in replying to the requests for information contained in the resolutions adopted by the Sub-Commission, as well as an estimate of the scope of that information.

78. Mr. LAWSON (Secretariat) replied that the Ad Hoc Committee of the Economic and Social Council on the Implementation of Resolutions had met recently and had fixed time limits for the sending of information by Governments.

79. Mr. SPANIEN (France) requested that the Secretariat should also prepare a report on the activities of other organs of the United Nations which had a bearing upon the work of the Sub-Commission.

The meeting rose at 4 p.m.

1/2. p.m.