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PROTECTION OF MINORITIES

Third Session

SUMMARY RECORD OF THE SIXTIETH MEETING

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<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. SHAFaq	(Iran)
	Mr. SPANIEN	(France)

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Category B: Mrs. PARSONS International Council of Women

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Codification of International Law

Mr. LAWSON Secretary of the Sub-Commission

OTHER QUESTIONS ON THE AGENDA (E/CN.4/Sub.2/114, E/CN.4/Sub.2/114/Rev.)

Examination of proposals for measures of implementation of the International Bill  
of Human Rights

1. The CHAIRMAN called upon members of the Sub-Commission to express their  
views on the draft resolution on genocide (E/CN.4/Sub.2/114, E/CN.4/Sub.2/114/Rev1)  
drawn up by Mr. Spanien at the Sub-Commission's request.

2. He pointed out that in the fourth paragraph of the draft, the words  
"the Commission on Human Rights" should be replaced by "the International Law  
Commission", as it was the latter which had to study the advisability of setting  
up an international judicial organ. Moreover, only the Economic and Social  
Council was empowered to make recommendations to the International Law Commission;  
the Sub-Commission should take that into consideration in deciding whether it  
wished to adopt the draft resolution in its own name or prepare it on behalf of  
the Commission on Human Rights for transmission to the Economic and Social Council.

It was decided that the draft resolution submitted by Mr. Spanien should be  
submitted as a draft from the Sub-Commission.

3. The CHAIRMAN opened discussion on Mr. Spanien's draft resolution paragraph by paragraph.

First paragraph

The first paragraph was adopted on condition that the English text should be brought into full conformity with the French.

Second paragraph

The second paragraph was adopted on condition that the word "whereas" should be replaced by "considering".

Third paragraph

4. Mr. SCHWELB (Secretariat) recalled that the recommendations appearing in that paragraph had already been made at its fourth session by the General Assembly, which had invited Governments which had not yet signed or ratified the Convention on Genocide to do so as soon as possible. He added that the Secretariat regularly published the names of States ratifying the Convention.

5. Mr. SHAFQAQ (Iran) thought that in the circumstances the third paragraph was superfluous.

6. Mr. SPANIEN (France) agreed to the deletion of the third paragraph.  
The third paragraph was deleted.

Fourth paragraph

7. Mr. SCHWELB (Secretariat) recalled that at its third session the General Assembly had adopted a resolution inviting the International Law Commission to study the desirability and possibility of establishing an international judicial organ to try persons accused of genocide or other crimes. As the matter was already before the International Law Commission, no further action was required.

8. Mr. LIANG (Secretariat) confirmed that the International Law Commission was already seized of the question, and had appointed two rapporteurs to submit a report on the subject at its next session. It was therefore to be expected that the International Law Commission would make recommendations to the General Assembly at its fifth session.

9. Mr. SPANJEN (France) agreed that, in the circumstances, it was unnecessary to recommend to the Economic and Social Council that it should ask the Commission on Human Rights to expedite its work. He therefore proposed the deletion of the fourth paragraph.

The fourth paragraph was deleted.

Fifth paragraph

10. Mr. SPANJEN (France) explained that the purpose of the paragraph was to guarantee the protection of certain rights which had been excluded from the Convention on Genocide on the grounds that they fell within the field of protection of human rights in general. In that connexion, he read paragraph 38 of document E/CN.4/Sub.2/80, stating that "a number of Governments claimed that it (cultural genocide) should not be included in the Convention on the grounds that so-called 'cultural' genocide was not true genocide, that it was merely a violation of human or minority rights, and that it was a problem to be referred to the authorities having jurisdiction in these two fields".

11. Mr. Spanjen felt it essential that the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities should take the necessary steps to protect the rights deliberately excluded from the Convention because they fell within their respective fields. If they did not do so, they would be seriously failing in their duty.

12. The CHAIRMAN thought that the word "provisions" would be preferable to the word "guarantees".

13. Miss MONROE (United Kingdom) proposed roughly the following drafting, based on the text which Mr. Spanjen had just read, for that paragraph of the preamble:

"Considering that a number of provisions were omitted from the Convention on Genocide because they might more appropriately be taken care of by the Commission on Human Rights "

14. Mr. LIANG (Secretariat) confirmed Mr. Spanien's remarks, but thought that words such as "omitted" or "removed" might give rise to misunderstanding. It could not be said that States had "removed" the provisions in question; they had merely "thought fit" not to adopt certain provisions for the reasons given in the text Mr. Spanien had read. It should therefore be said that "various States Members did not adopt certain provisions of the Convention on Genocide on the ground that they might more appropriately be taken care of by the Commission on Human Rights."

15. Mr. SPANIEN (France) thought that not only the Commission on Human Rights, but also the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities, should be mentioned in the paragraph.

16. The CHAIRMAN wondered whether it would not be better to clarify in the text of the paragraph the idea that members of the Sub-Commission had in mind, that is, the protection of political groups and the measures to be taken against cultural genocide.

17. Mr. SPANIEN (France) thought the expression "cultural genocide" was vague and very liable to criticism. It would not in any way clarify the text.

18. Mr. NISOT (Belgium) said that as a result of the amendments to the draft resolution the first two paragraphs were superfluous. He thought the draft should include only three paragraphs in its preamble: the first would take note of the existence of a Convention on Genocide; the second would note the fact that the Convention did not cover the protection of certain rights; and the third would be the amended text of the existing paragraph 5.

19. Mr. SPANIEN (France) admitted that the second paragraph of his draft was now superfluous, but thought that the first paragraph should be retained because of its restrictive nature.

20. The CHAIRMAN proposed the following formula for the fifth paragraph:  
"Considering that the reason why the General Assembly did not see fit that certain provisions contained in the original draft Convention on Genocide should be retained..."

21. Following on a remark by Mr. NISOT (Belgium), Mr. SPANIEN (France) recalled that the General Assembly had merely adopted a draft elaborated by the Sixth Committee. It was in the latter that there had been objections to the inclusion of certain groups.

22. The CHAIRMAN thought that it might then simply be said:  
"Considering that the reason why certain provisions contained in the original draft were not ultimately adopted is that..."

23. Miss MONROE (United Kingdom) shared the Chairman's point of view and proposed the following text:

"Considering that the reason why certain provisions contained in the original draft of the Convention on the Prevention and Punishment of the Crime of Genocide were not ultimately adopted is that, in the view of a majority of States Members, these provisions could more appropriately be taken care of in international instruments concerning the protection of human rights, the prevention of discrimination and the protection of minorities..."

That text was adopted.

Sixth paragraph

24. Mr. SHAFaq (Iran) asked whether it was to be concluded from the operative part that the Sub-Commission had solved the problem.

The CHAIRMAN recalled that there was an amendment by Mr. Spanien which partly answered Mr. Shafaq's question.



26. Mr. SPANIEN (France) said that the situation occupying the Sub-Commission's attention was the following: the Sub-Commission so far had only defined stable groups, that is, ethnic, religious, racial and linguistic minorities. The Sixth Committee had excluded the political groups covered by article 2 of the Declaration of Human Rights from the Convention on Genocide, whereas they were mentioned in the original draft convention prepared by the Secretariat. The result was, therefore, that those groups were not protected; in Mr. Spanien's opinion they were very important for, at the present time, it was mainly because of his political opinions that an individual was liable to physical extinction. It was therefore obvious that the Sub-Commission should take measures in that connexion. Since the Commission on Human Rights was called upon to settle the question of implementation of measures of protection, the Sub-Commission should indicate to it the omissions it had noted. If it did not do so, the Commission on Human Rights might not take them into account and the groups in question would not be protected.

27. Mr. SHAFAG (Iran) agreed concerning the substance of the problem, but he wondered whether the Sub-Commission intended to make recommendations to the Commission on Human Rights in the form of a resolution. He was not sure that that method would be effective enough.

28. Miss MONROE (United Kingdom) thought the attention of the Commission on Human Rights could be drawn to political groups by stating that, in the Sub-Commission's opinion, the position of those groups deserved study. The Sub-Commission could also state the reasons for its opinion.

29. Miss Monroe proposed the insertion of a new paragraph which would recall that political groups had been excluded for the reasons given in the fifth paragraph, and would indicate that the Commission had thought those groups should be protected, in spite of the fact that its terms of reference did not expressly call for the study of that problem.

30. The CHAIRMAN thought it would be preferable not to mention the Sub-Commission's terms of reference.

31. Mr. SPANIEN (France) said the Commission should take a final decision as to what it intended to do and as to the position it wished to adopt. It should itself decide whether it thought its terms of reference allowed it to deal with political minorities. If it finally reached the conclusion that it could not deal with those minorities, it was obviously useless for it to place that question on its agenda and it only remained for it to ask the Commission on Human Rights for a clarification of its terms of reference.

32. The Sub-Commission must also decide whether, in its opinion, attacks on collective freedom of opinion did not justify measures of protection. Obviously the Sub-Commission could not commit itself before the General Assembly itself thought fit to entrust it with the question of political minorities.

33. In order to meet the objection which might arise because of the allusion to the terms of reference of the Sub-Commission, Miss MONROE (United Kingdom) proposed that the following paragraph should be inserted:

"Considering that these groups are often victims of discrimination and that such a situation undoubtedly falls within the terms of reference of the Sub-Commission..."

34. Mr. CHANG (China) was also of the opinion that for the time being no reference should be made to the terms of reference of the Sub-Commission. The important point was to call the attention of the Commission on Human Rights to the necessity of protecting political groups. Accordingly, he proposed that in line three of the operative part the words "including those of political groups" should be added after the words "rights eminently deserving of respect".

35. Mr. NISOT (Belgium) and Mr. SPANIEN (France) approved Mr. Chang's proposal.



36. Mr. SHAFaq (Iran) asked whether the Sub-Commission was considering a minority group as such, or whether the formula used might possibly apply to a political party. If that were the case, he wondered whether the Sub-Commission was really competent in the matter. The situation of individuals belonging to a party was already covered in the Declaration of Human Rights.

37. The CHAIRMAN explained that for the purposes of the resolution under consideration it should be understood that the groups involved were composed of individuals professing the same opinion. Actually, the Declaration of Human Rights contained provisions relating to that aspect but it should not be forgotten that the Declaration of Human Rights had no executive force.

38. Miss MONROE (United Kingdom) considered that the amendment proposed by Mr. Chang provided a perfect solution of the question. Nevertheless, in her opinion, it would be appropriate to specify that the Sub-Commission was particularly interested in the question of the rights of political minorities. She, therefore, proposed the following modification of that amendment: "and particularly those of political groups".

Mr. Chang's amendment, as modified, was adopted.

39. The CHAIRMAN proposed that the words "and the procedure for appealing" in lines 2 and 3 of the operative paragraph of the resolution should be deleted.

40. Mr. SPANIEN (France) could not accept the Chairman's suggestion. Actually, the expression "implementation" was not legal and in order to eliminate any possible doubt that expression should be clarified.

41. Replying to various remarks by Mr. Shafaq, Mr. Spanien said that the essential point was to inform the Commission on Human Rights of the Sub-Commission's opinion in whatever form.

42. Following a suggestion by Miss MONROE (United Kingdom), Mr. NISOT (Belgium) proposed that the title of the draft resolution should be amended as follows:

"Draft resolution on certain matters not covered  
in the Convention for the Prevention and Punishment of the  
Crime of Genocide".

That proposal was adopted.

43. The CHAIRMAN read the amended text of Mr. Spanien's draft resolution.  
Mr. Spanien's draft resolution, as amended, was unanimously adopted.

DRAFT RESOLUTION ON THE PROBLEM OF IMPLEMENTATION (E/CN.4/Sub.2/115)

44. The CHAIRMAN called upon the Sub-Commission to turn to the examination of the draft resolution on the problem of implementation submitted jointly by Miss Monroe, Mr. Spanien and himself (E/CN.4/Sub.2/115) and read it.

45. Mr. NISOT (Belgium) asked who would be the parties to be reconciled, should conciliation procedure be set up.

46. The CHAIRMAN replied that, in his opinion, the parties to be reconciled would be the petitioner or petitioners and the State against which the complaint was laid.

47. Mr. NISOT (Belgium) very much doubted whether the Governments would accept such a procedure.

48. The CHAIRMAN thought that the Sub-Commission should in any case assert the view that petitions from individuals or groups against a Government should always be receivable, whatever the opinion of the Governments might be.

49. Miss MONROE (United Kingdom) asked Mr. Nisot, with his great experience in such matters, who had been the parties between whom the arbitrating body had acted as intermediary under former treaties relating to minorities.

50. Mr. NISOT (Belgium) explained that they had always been States, one State defending the cause of the minority which had initiated the petition. He pointed out that there had been one exception, the case of Upper Silesia, in which a special tribunal had been set up.
51. Miss MONROE (United Kingdom) drew the conclusion that under the former treaties a minority group wishing to make a petition had therefore had to begin by finding a State willing to defend it.
52. Mr. NISOT (Belgium) asked whether the proposed international tribunal would be accessible only to States or also to individuals acting on behalf of a petitioning minority.
53. Miss MONROE (United Kingdom) thought that that idea was very important. If the text voted upon referred to groups or individuals, she would abstain, because other points in the draft resolution would then receive less emphasis than they did in the existing text.
54. Mr. NISOT (Belgium) thought that to accord an individual member of a minority the right to summon a Government before an international court would be to give him greater resource than that of a member of the majority, who could appeal only to the domestic courts of his country.
55. Miss MONROE (United Kingdom) feared that the Sub-Commission might go rather too far in the matter and maintained that reference to individuals should be avoided.
56. Mr. SPANLEN (France) reminded Mr. Nisot of the case of a petition in Upper Silesia about 1933. The Sub-Commission would be right to say, as stated in the text drafted jointly with Miss Monroe, that there were dangers in granting the right to initiate proceedings for the protection of minorities to States alone and that it would be a retrograde step in relation to the status of the former minorities - provided that it stopped there.

57. The situation, however, was no longer the same as it had been at the time after the First World War when <sup>the</sup> treaties for the protection of minorities had been drafted. Those treaties had been imposed by the victorious Powers on the defeated countries, and that was not always the case with regard to the new minorities. A regime could not be totally changed. The only thing that mattered was to recognize that complaints could be laid by an individual and that that individual should subsequently have to lay it before an Attorney General, a lawyer appointed by the court or some other person, no matter who. The principle which must be maintained at all costs was that the right of initiating proceedings should not be left to States alone. Everything else was a matter of procedure.

58. Mr. NISOT (Belgium) recalled that, under the system in force in the League of Nations, a petition had never been more than a matter of information. The procedure had been set in motion by the State seized of the complaint.

59. Mr. SPANLIEN (France) noted that the procedure could, therefore, begin upon the complaint of an individual.

60. Mr. NISOT (Belgium) admitted that a State could have had recourse to the Council of the League of Nations on the basis of a complaint from an individual or even on the basis of a news article; but such cases were exceptional. On the other hand, it must not be forgotten that an individual might initiate a petition at the instigation of a Government other than his own, another procedure which was not without its dangers.

61. Mr. SHAFaq (Iran) thought that in the circumstances, it was not a question of procedure. Document E/CN.4/Sub.2/85 recognized the right of petition to two categories of petitioners: a minority, considered as a legal entity, and an individual as a member of a minority. Mr. Shafaq wondered who would submit the petition in those circumstances.

62. The CHAIRMAN wished to point out some rather serious errors and omissions in document E/CN.4/Sub.2/115 under consideration.

63. The proper place for the last sub-paragraph on page 2 was at the bottom of page 1, after paragraph (a). On page 2, following the last sub-paragraph of paragraph (b), the two sub-paragraphs of paragraph (c) of Mr. Spanien's study of the problem of implementation (E/CN.4/Sub.2/115) were missing.

64. The Chairman then pointed out certain minor corrections to be made in the English text of the document thus completed. The members of the Sub-Commission would have to examine the draft resolution paragraph by paragraph at the next meeting and he invited any one who might have amendments to propose to submit them at that time, in order to facilitate and speed up the discussion.

65. Miss MONROE (United Kingdom) requested some clarification from Mr. Nisot and Mr. Spanien. It had been her understanding that under the terms of the old treaties, an individual desiring to present a petition had first had to try to interest a State in his cause. It was well known what the results of that procedure had been, for example, in the case of Mr. Henlein. Mr. Nisot and Mr. Spanien, however, had just drawn attention to the important fact that the then Commission for Upper Silesia had used a different procedure. Miss Monroe said that it might perhaps be useful to take note of that precedent, and asked the Secretariat to make a statement on the subject at the next meeting.

The meeting rose at 5 p.m.