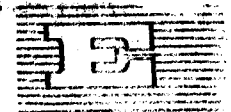


UNITED NATIONS
ECONOMIC
AND
SOCIAL COUNCIL



GENERAL 17
E/CN.4/Sub.2/SR.69
26 October 1951

ORIGINAL: ENGLISH

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

SUMMARY RECORD OF THE SIXTY-NINTH MEETING

Held at Headquarters, New York,
on Wednesday, 3 October 1951, at 3 p.m.

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(E/CN.4/Sub.2/L.3)

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Joint proposal on a draft convention for the protection of
minorities (E/CN.4/Sub.2/127)

Chairman: Mr. MASANI (India)

Rapporteur: Mr. MENESES-PALLARES (Ecuador)

Members:

Mr. BORATYNSKI	(Poland)
Mr. CHANG	(China)
Mr. DANIELS	(United States of America)
Mr. EKSTRAND	(Sweden)
Miss MONROE	(United Kingdom of Great Britain and Northern Ireland)
Mr. NISOT	(Belgium)
Mr. ROY	(Haiti)
Mr. SHAFAGH	(Iran)
Mr. SPANIEN	(France)
Mr. ZONOV	(Union of Soviet Socialist Republics)

Also present: Miss BERNARDINO Commission on the Status of Women

Representatives of non-governmental organizations:

Category A:

Miss KAHN	World Federation of Trade Unions (WFTU)
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Category B:

Mr. LEWIN	Agudas Israel World Organization
Mr. MOSKOWITZ	Consultative Council of Jewish Organizations
Mr. RONALDS	World Union for Progressive Judaism

Secretariat:

Mr. SCHWELB	Representative of the Secretary-General
Mr. LAWSON	Secretary of the Sub-Commission

DRAFT RESOLUTION SUBMITTED BY MR. MENESES-PALLARES (E/CN.4/Sub.2/L.3)

The CHAIRMAN asked the Sub-Commission to take a decision on the draft resolution.

Mr. LEWIN (Agudas Israel World Organization) supported Mr. Meneses-Pallares' proposal that the future Covenant should include a general article bearing discrimination in regard to economic, social and cultural rights, but thought it should likewise include a specific reference to religious rights.

/History

History showed that discrimination on grounds of religion had exerted a most powerful and detrimental influence throughout the ages. In Germany, where it had been practised most ruthlessly under Hitler, a new movement to foment it had already sprung up. During the current year, the City Council of Munich had adopted, by a two-thirds majority, a resolution banning the slaughtering of animals in accordance with Jewish religious rites. Under pressure of universal condemnation, the Council had not given effect to that decision. Nevertheless, the resolution had not been rescinded or repealed and the situation remained stalemated as at 24 September 1951, according to information guaranteed by the Office of the United States High Commissioner for Germany. In view of the continued threat and prevalence of religious discrimination, therefore, the article suggested by Mr. Meneses-Pallares should specifically include a reference to it.

Mr. SHAFAGH (Iran) emphasized that the general principle of non-discrimination had already been embodied in the current version of the Covenant provisions. Its application to economic rights admittedly had not been adequately ensured. If, however, specific references were to be made to religious rights, then, to be consistent, all the various categories of rights would have to be enumerated.

Mr. ZONOV (Union of Soviet Socialist Republics) took issue with the clause in Mr. Meneses-Pallares' proposal which qualified as "an essential complement" to civic and political rights the economic, social and cultural rights to which it would apply the non-discrimination principle. The latter category included the most basic human rights, without which civic and political rights could not become a reality. Moreover, the proposal added nothing to the guarantees already contained in the draft Covenant and Mr. Zonov would accordingly abstain in the vote on it.

The CHAIRMAN called for a vote on the draft resolution submitted by Mr. Meneses-Pallares (E/CN.4/Sub.2/L.3).

The draft resolution was adopted by 8 votes to none, with 3 abstentions.

DRAFT RESOLUTION SUBMITTED BY MR. ZONOV (E/CN.4/Sub.2/104)

Mr. BORATYNSKI (Poland) strongly supported the draft resolution.

The Sub-Commission had, to a great extent, assumed responsibility for the incorporation in the future Covenant on Human Rights of adequate safeguards against discrimination and for the protection of minorities. The Covenant would impose upon States the legal obligation to enforce those guarantees. Among them, an important place should be given to the right to participate in government, to elect and be elected and to national self-determination, as proposed by Mr. Zonov. Explicit safeguards of those rights were imperative especially as constitutional provisions in certain countries did not offer sufficient protection. Similarly the draft Covenant should legally require signatory States to prohibit, by law, fascist-Nazi propaganda in favour of racial and national superiority. As experience had shown, the implementation of such concrete provisions could succeed in eliminating the causes of internal and international conflict where vague statements of principle often failed.

The CHAIRMAN put Mr. Zonov's draft resolution (E/CN.4/Sub.2/104) to a vote.

The draft resolution was rejected by 6 votes to 2, with 3 abstentions.

Mr. ROY (Haiti), explaining his abstention, recalled that the first part of Mr. Zonov's draft resolution contained proposals submitted by Mr. Borisov and rejected by the Sub-Commission at a previous session because they were then covered in the Universal Declaration of Human Rights. The additional proposals upon which the vote had been taken were covered in the draft Covenant and, following Mr. Zonov's own example in the vote on Mr. Meneses-Pollares' proposal, he had abstained on those grounds.

Mr. SHAFAGE (Iran) had abstained on both proposals because he felt that their provisions duplicated those of the draft Covenant.

/Mr. ZONOV

Mr. ZONOV (Union of Soviet Socialist Republics) thought that his position had been misinterpreted. There was a great difference between the Declaration and the Covenant. Unlike the Declaration and Mr. Meneses-Pallares' proposal, which enunciated general principles, the Covenant would require governments to assume responsibility for the protection of minorities. He had stated concretely the fields in which governments would undertake to guarantee fundamental rights by specific legislative measures.

Mr. MENESES-PALLARES (Ecuador) had abstained in the vote on Mr. Zonov's proposal because the essential rights enumerated in its first part were too broad for inclusion in the framework of an international treaty on human rights like the Covenant and had already been proclaimed in the Declaration. The right to national self-determination, on the other hand, was not within the scope of the Covenant, which dealt only with individual rights.

JOINT PROPOSAL ON A DRAFT CONVENTION FOR THE PROTECTION OF MINORITIES
(E/CN.4/Sub.2/127)

The CHAIRMAN opened the general discussion of the document submitted jointly by Mr. Ekstrand, Mr. Masani and Mr. Meneses-Pallares.

In reply to a request for clarification from Mr. ZONOV (Union of Soviet Socialist Republics), he explained that if the Sub-Commission decided to adopt the draft convention forming Annex A of the document before it, it would recommend it for the consideration of the Economic and Social Council. As a body of experts, its business was to examine it carefully and make the changes and additions it found necessary in the hope that a document might emerge which would be worthy of the attention of governments. The Council, after further revision, would communicate the draft convention to the various governments.

Mr. SHAFAGH (Iran) felt that it was premature to attempt to draft a convention on the protection of minorities and thus risk duplication of the work of the Commission on Human Rights and a possible weakening of the Covenant which that body might eventually adopt. The Covenant itself might realize the Sub-Commission's aims regarding the principle of the protection of minorities.

Miss MONROE (United Kingdom) commended the authors of the draft convention upon their work. She was, however, disappointed in the results. The principal defect lay in the fact that the document dealt with the protection of minorities and prevention of discrimination under a single umbrella heading. Yet the Sub-Commission had, at its three previous sessions, clearly affirmed its decision to separate the two questions and had subscribed to a definition of minorities warranting international protection, which underlined that distinction. Moreover, where it dealt with the prevention of discrimination, the proposed draft convention blurred and duplicated the draft Covenant and consequently weakened it.

Moreover, it was doubtful that the proposed agreement would help minorities. As had been emphasized in the statement submitted by the Consultative Council of Jewish Organizations (E/CN.4/Sub.2/NGO/1), it was not the function of the Sub-Commission to formulate minority rights separate and distinct from human rights. The Consultative Council feared that to single out minorities for protection was not in their interest. Moreover, as the Consultative Council had further stated, the special interests of minorities varied with the nature of the group, and with the country in which it lived. Some of those interests could be better guaranteed on a reciprocal basis by bilateral agreements. Any action envisaging protection, outside the scope of the Declaration and the Covenant, would require thorough study of the particular situation of each minority group. The best course therefore was to reinforce the Covenant, without duplicating it, by a series of bilateral supplementary instruments.

In addition, as the document submitted by the World Jewish Congress had indicated, it should be noted that articles 7 to 15, inclusive, of the proposed convention constituted some, but not all, examples of the general non-discrimination clause (article 6). Governments might well infer that non-discrimination was being guaranteed only in the fields covered by those examples. It was clearly almost impossible to cover all possible cases of discrimination in a single convention; the Convention on Upper Silesia, for example, contained no less than 600 articles.

/Finally, the

Finally, the Sub-Commission should take into account an important psychological factor in its relationship with its parent commission. It would be poor psychology to presume, as a subsidiary body, to draft a convention in a single short session which would carry more weight than, or would bypass a Covenant which had been worked on for seven successive sessions of the Commission on Human Rights. There did not appear to be any short-cut to safeguards for the protection of minorities, unless by means of a series of interim measures, as had been suggested by Mr. Daniels. Such interim measures had some chance of bringing out the urgency of the problem and of persuading the Commission on Human Rights to consider them before proceeding to the completion of the draft Covenant.

The proposed draft convention was unsatisfactory and she could not support it. She felt, however, that the Sub-Commission should assert itself in some manner that would persuade the parent commission to examine its efforts more seriously. It should come forward with some project sufficiently arresting to make a positive contribution to the work on the protection of minorities.

Mr. MENESES-PALLARES (Ecuador) warned against the fallacy of considering the Covenant a panacea for all the ills that relate to human rights. At best, it would afford only limited protection and many States might fail to ratify it.

In reply to Miss Monroe's objection to joint treatment of the two questions, protection of minorities and prevention of discrimination, he indicated that no convention on the protection of minorities could dispense with a general clause on discrimination, because minorities suffered most especially from that evil and consequently had a special outlook. He agreed however that articles 7 to 15 should clearly be examples only.

Moreover, while admittedly all minorities could not be helped in equal measure owing to their different nature, some convention should ensure protection of their fundamental rights; other rights could be safeguarded in the Covenant.

Finally, with regard to psychological considerations, it would seem that a limited convention covering a small fragment of the field of minority rights would have a better chance of approval than an all-embracing treaty like the Covenant.

/Mr. SPANIEN

Mr. SPANIEN (France) felt that the document under consideration was worthy of study, but wished to stress certain broad principles, in connexion with the statements of Miss Monroe and Mr. Shafagh.

The Sub-Commission had always held the view that some new action should be taken in the field of prevention of discrimination and protection of minorities, but it had wished to draw all possible help from the work of the parent Commission. Moreover, it had always upheld the principle that its task could not be satisfactorily achieved through a new set of bilateral treaties such as those concluded at the end of the First World War. Since the Second World War the problem of the prevention of discrimination and the protection of minorities had been accepted as within the scope of international law, and it had been generally agreed that the best solution of the problem lay in the extension of the rights guaranteed by the United Nations Charter.

The Sub-Commission had many times reiterated its view that there could be no real protection of minorities without an effective system of implementation of whatever plan was adopted. He thought it unreasonable to expect that a separate convention, on a problem which had proved so delicate and controversial owing to its relationship to the question of domestic sovereignty, could be effectively implemented outside the framework of a general covenant on human rights. He agreed that the Sub-Commission should endeavour to leave behind it some worthwhile testimonial to the work it had done, regardless of the eventual adoption or non-adoption of the draft Covenant on human rights. He objected, however, in particular, to the proposal, on page 2 of document E/CN.4/Sub.2/127, for the establishment of a standing body of experts. While the Sub-Commission had been a group of independent experts, the proposed new group, which would be appointed by the Secretary-General and responsible to the Council, would have no independence of action and no real powers, since the governments could scarcely be expected to accept them as a court of appeal competent to interpret national constitutional provisions.

He pointed out that the Commission on Human Rights, at its preceding session, had devoted some weeks' study to certain parts only of the draft Covenant, which represented only one item of its agenda. The

/Sub-Commission

Sub-Commission must adopt a realistic attitude, and not attempt to do more than the parent Commission had been able to do, nor to duplicate any part of the work of the Commission. In his opinion, the Sub-Commission would do well to keep its recommendations on a modest scale and to ensure that they were of a practical nature and capable of implementation, such as the recommendations previously forwarded, at the suggestion of Mr. Daniels, concerning the use of minority languages in schools and courts of law.

The CHAIRMAN had certain comments to make with regard to the observations put forward by Miss Monroe. First, as regards her objection to preparing a single convention on both prevention of discrimination and protection of minorities, he thought that objection applied to the title of the draft convention, rather than to its substance, since the text itself dealt with discrimination only as applied to minorities. Accordingly, he proposed that the words "prevention of discrimination" should be deleted from the title. He pointed out that one purpose of the document under consideration was to fill a gap in the previous work of the Sub-Commission, which had thus far concentrated its attention almost exclusively on the question of prevention of discrimination.

As regards Miss Monroe's query whether such a convention would in reality benefit minorities throughout the world, that was a question which the Sub-Commission must decide. In his own view, it would be of considerable benefit provided it was adopted; and the Sub-Commission could only proceed on the assumption that its recommendations, whatever they might be, would be adopted.

With respect to the question of psychological approach raised by Miss Monroe, the Chairman held the opposite view. In his opinion, it was precisely the duty of the Sub-Commission, entrusted to it by the Commission on Human Rights, to study the question of protection of minorities and make recommendations to the Commission for the solution of the problem. That was one of the purposes for which the Sub-Commission was established.

The Chairman agreed with Miss Monroe concerning the merits of Mr. Daniels' approach to the problem through the recommendation of interim measures. He felt, however, that at the final stage of the Sub-Commission's

work, it should not confine itself to interim measures, but should endeavour to recommend some major project, based upon its survey of what remained undone in its field of activity -- a project which could be made to bear fruit at some later date. Since Miss Monroe herself apparently shared that point of view, he hoped that she would find it possible to suggest an alternative project if the draft convention under consideration did not meet with her approval.

Mr. SHAFAGH (Iran) said that on grounds of principle he would be entirely willing to discuss the proposed draft convention, which had some points in common with his own proposal. He would feel envious of certain minorities, however, if the proposed draft convention was adopted before the Covenant on Human Rights.

Mr. DANIELS (United States of America) supported the view that the Sub-Commission should recommend some important and significant action. He felt, however, that the stress laid upon protection of minorities in the proposed draft convention constituted a departure from the Sub-Commission's previous position that no person, whether member of a minority or majority group, should be the object of discrimination. He considered the draft convention worthy of close consideration, but thought that in its present form it was far from being the type of action which the Sub-Commission should recommend to the Commission.

Mr. CHANG (China) regarded the draft convention as a useful working paper, but felt that if it were to constitute an annex to the draft Covenant on Human Rights, in accordance with the Sub-Commission's debates at its preceding session, it had been drafted in too much detail. It should, rather, be limited to a very few articles to be attached to the Covenant.

The meeting rose at 5.40 p.m.