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Fourth Session

SUMMARY RECORD OF THE EIGHTIETH MEETING

Held at Headquarters, New York,
on Thursday, 11 October 1951, at 3.30 p.m.

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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. BORATYNSKI*	(Poland)
	Mr. CHANG	(China)
	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)

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Representative of a specialized agency:

Mr. METRAUX	United Nations Educational, Cultural and Scientific Organization (UNESCO)
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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 Organiza- tions

Mr. JACOBY	} World Jewish Congress
Mr. PERLZWEIG	

Mr. RONALDS	World Union for Progressive Judaism
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Secretariat:

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

DECISION OF THE ECONOMIC AND SOCIAL COUNCIL TO DISCONTINUE THE SUB-COMMISSION,
AND FUTURE WORK OF THE UNITED NATIONS FOR THE PREVENTION OF DISCRIMINATION AND
THE PROTECTION OF MINORITIES

Draft resolution submitted by Miss Monroe and Mr. Daniels (E/CN.4/Sub.2/L.4)

(continued)

Part IV

Mr. SHAFAGH (Iran) suggested a number of formal changes in Mr. Nisot's amendment to paragraph 5 of Part IV of the proposal submitted by Miss Monroe and Mr. Daniels.

Mr. NISOT (Belgium) accepted the changes proposed by Mr. Shafagh.

Mr. ZONOV (Union of Soviet Socialist Republics) thought the paragraph was superfluous since it dealt with the implementation of the covenant, a question which was under consideration by the Commission on Human Rights. There was no reason to adopt a text which proposed the establishment of an agency to be made responsible for matters already being dealt with by the Commission on Human Rights

/The CHAIRMAN

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The CHAIRMAN put to the vote Mr. Nisot's amendment, as slightly amended.

The amendment, as slightly amended, was adopted by 10 votes to none, with 2 abstentions.

Paragraph 6

In reply to a question from the CHAIRMAN concerning the panel of experts provided for in paragraph 6, Miss MONROE (United Kingdom) explained that she and Mr. Daniels used the expression to mean an appropriate agency which would deal only with minorities.

Mr. NISOT (Belgium) thought that the Sub-Commission would be deceiving itself if it thought that governments would be likely to call upon the services of such experts.

Mr. ZONOV (Union of Soviet Socialist Republics) considered it paradoxical, when the Economic and Social Council had decided to terminate the Sub-Commission's work, to propose the establishment of a panel of experts which would be given the same work to do. He pointed out that the authors of the proposal were none other than the experts of those countries whose representatives in the Economic and Social Council had recommended the discontinuance of the Sub-Commission, and he admitted that he failed to understand the situation.

Mr. SHAFAGH (Iran) agreed with Mr. Zonov on that point.

The CHAIRMAN put to the vote the whole of Part IV, as amended of the resolution submitted by Miss Monroe and Mr. Daniels.

Part IV of the resolution was adopted by 10 votes to 2.

Addendum

Miss MONROE (United Kingdom) indicated a number of minor corrections to be made in the text of the addendum.

/Mr. SHAFAGH

Mr. SHAFAGH (Iran) asked what the authors of the addendum meant by the words "the above work" which appeared at the beginning of the text. Did they mean the general question of minorities and non-discrimination or the work of the Sub-Commission in the field of protection of minorities? If the latter, the list of documents would give only an incomplete idea of the subject, since the latter was also dealt with in other documents -- as, for example, the reports of the Trust Territories -- and in documents other than those of the United Nations.

Miss MONROE (United Kingdom) replied that the words referred to future work in the field of protection of minorities.

The CHAIRMAN recalled that document E/CN.4/Sub.2/128 already contained a bibliography.

Mr. ZONOV (Union of Soviet Socialist Republics) opposed the proposal made by Miss Monroe and Mr. Daniels, explaining that if the intention was to provide a bibliography of United Nations documents concerning the Sub-Commission's work, impartiality would demand that the bibliography should include all documents relating to the work of the last five years, which would mean the inclusion of a very large number of other documents including document E/CN.4/Sub.2/104.

Miss MONROE (United Kingdom) pointed out that not all the documents were of equal worth and that it was preferable to select the best among them.

Mr. ZONOV (Union of Soviet Socialist Republics) replied that that was a question of judgement and that the Sub-Commission could not be satisfied with two persons' opinion.

The CHAIRMAN put to the vote the text as a whole, as amended.

The text as a whole, as amended, was adopted by 10 votes to 2.

Proposal of Mr. Masani (E/CN.4/Sub.2/L.5)

/The CHAIRMAN

The CHAIRMAN said that he had drafted his proposal in the light of the observations made by the members of the Sub-Commission. He agreed to the substitution of the word "body" in the third line of paragraph 1 (English text) for the word "machinery" and he recalled that the Sub-Commission had agreed unanimously that the proposed organ which was to replace the Sub-Commission should be composed of experts and not of representatives of governments.

Mr. SPANIEN (France) explained that the position was that the Economic and Social Council recognized the need to continue the work begun by the Sub-Commission but proposed to distribute the latter's functions among various organs of the United Nations. For his own part, he considered that that was an undesirable method and that dispersion could only lead to disorder and confusion. Before even considering Mr. Masani's proposal, the Sub-Commission should, he thought, decide unequivocally in principle whether the task of continuing and synthesizing the Sub-Commission's work should pass to a separate and independent body.

The CHAIRMAN proposed that the discussion should be confined to the functions of the body in question.

Mr. ZONOV (Union of Soviet Socialist Republics) thought, on the contrary, that it was difficult to discuss the functions of a body which did not yet exist. No one had any idea whether it would be a committee, a sub-committee or a panel of experts; and even if it was to be the present Sub-Commission, assuming that it was not discontinued, it clearly already had its terms of reference. It would therefore be appropriate to examine the nature of the body, which was a fundamental question, before its functions, which were dealt with in subparagraphs (a) (b) and (c) of Mr. Masani's proposal.

Mr. ROY (Haiti) recalled that the final paragraph of the draft resolution submitted by Mr. Ekstrand, Mr. Masani, Mr. Meneses-Pallares and himself (E/CN.4/Sub.2/L.11) ended by stating that the functions of prevention of

/discrimination and

discrimination and protection of minorities should be carried out by a body of experts appropriate to the purpose. He considered that Mr. Masani's proposal should be added on to the phrase in question, so as to constitute the terms of reference of the proposed body of experts.

The CHAIRMAN did not agree that it was easier to establish a body without determining its functions than to determine functions without a knowledge of the body which was to exercise them, and maintained that the Sub-Commission should first decide what functions were to be assumed in the field which had hitherto lain within its own competence.

He pointed out that his draft had many points in common with Mr. Shafagh's proposal and the draft resolution submitted by Miss Monroe and Mr. Daniels. He therefore considered that the Sub-Commission should accept sub-paragraphs (a) to (e), either because they were of interest, or because they were linked to the two proposals already adopted, and should leave it to a drafting committee to combine all the individual points in a single text.

Mr. SHAFAGH (Iran) also thought that the Sub-Commission should proceed immediately to examine the functions to be exercised in the field of prevention of discrimination and protection of minorities and should then return to the question of the nature of the body which would assume those functions.

The CHAIRMAN asked the members of the Sub-Commission to state their views on sub-paragraphs (a) to (e).

Miss MONROE (United Kingdom) did not see how the body in question would be able to contact governments, or what would be its position with regard to the provisions of article 52 of the draft covenant, which laid down the procedure to be followed if a State Party to the covenant considered that another State Party was not giving effect to the provisions of the covenant.

/Mr. ZONOV

Mr. ZONOV (Union of Soviet Socialist Republics) noted that sub-paragraph (a) would give the as yet undefined organ or machinery which it was proposed to establish wide powers of negotiation, mediation, conciliation and arbitration -- functions which did not lie within the competence of a subsidiary organ. Inasmuch as the organ or machinery which was to continue the work of the Sub-Commission would not rank any higher than the Sub-Commission in the hierarchy of United Nations organs, it could not exercise wider functions. He would therefore vote against sub-paragraph (a).

Mr. SPANIEN (France) said that Mr. Zonov's argument was irrefutable. The Sub-Commission, whose function had never included more than the carrying out of studies and the formulation of recommendations could not consider conferring upon the organ or machinery which was to succeed its powers which would include arbitration.

Mr. SEAFASH (Iran) did not think that the organ or machinery in question was specifically intended to replace the Sub-Commission. Its role, which would be to see that the protection of minorities became a reality, would be an active role. He recalled that by adopting Mr. Nisot's resolution, the Sub-Commission had proposed the establishment, as part of the general implementation of the covenant on human rights, of international machinery directly accessible to minorities: that meant that the body in question would have functions much wider than its own.

Mr. BORATYNSKI (Poland) thought that the Sub-Commission was going much too far in contemplating machinery for conciliation and arbitration. Nothing in the Charter made it possible for the Economic and Social Council to establish an organ with powers of mediation and arbitration.

Mr. NISOT (Belgium) associated himself with Mr. Boratynski's remarks.

Mr. CHANG (China) considered that the Sub-Commission had to take a decision on two questions: the establishment of international machinery which

/would enable

would enable a direct watch to be kept on the protection of minorities, and the establishment of an organ to assume the functions which the Sub-Commission itself exercised. As a separate document, the draft resolution was superfluous and the only way to make use of it would be to add it to Part IV, paragraph 5, of the draft resolution submitted by Miss Monroe and Mr. Daniels, so as to constitute the terms of reference of the proposed international machinery.

The CHAIRMAN suggested amending his proposal so as to make paragraph 1 begin as follows:

"That among the measures to be taken by the United Nations in the field of prevention of discrimination and protection of minorities should be the following:"

In that case, sub-paragraph (d) would be omitted or redrafted.

Mr. BORATYNSKI (Poland) noted that the Sub-Commission was engaged in a discussion of the functions of the United Nations itself. That being so, it was only necessary to refer to the Charter to see that the United Nations did have powers of mediation, but that these were limited to certain cases and that in any event it was clear from Article 33 that the Security Council was the only body which could call upon the parties to settle their disputes by such means.

The CHAIRMAN explained the difference between arbitration as understood in the article of the Charter quoted by Mr. Boratynski, and arbitration as envisaged in his proposal: in the first case, arbitration between States was concerned, and in the second, arbitration between a State and a minority. He did not think that Chapter VI of the Charter applied in the latter instance, since what was there involved were good offices which the United Nations could lend to individuals or groups of individuals, and since the draft in no way proposed that the parties should be compelled to agree to arbitration. He was afraid that Mr. Boratynski's objection was designed to widen the scope of national competence and thus restrict the competence of the United Nations.

/Mr. SHAFAGH

Mr. SHAFAGH (Iran) associated himself with the Chairman's remarks.

Mr. BORATYNSKI (Poland) said that he had no intention of limiting the competence of the United Nations, but he felt that the Charter must be respected and would protest against violation of any of its provisions. The Economic and Social Council and the Sub-Commission had no competence in the field except on the basis of Chapters IX and X of the Charter, neither of which mentioned mediation or conciliation.

Mr. ZONOV (Union of Soviet Socialist Republics) failed to find in the Charter, and in particular in Chapter X, any provision authorizing the Sub-Commission to adopt sub-paragraph (a). Intervening between a State and a minority was no different from intervening in the domestic affairs of a State. Article 2, paragraph 7 of the Charter stated clearly: "Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any State".

Furthermore, the Sub-Commission was a subsidiary body of the Economic and Social Council, and the Council's terms of reference made no mention of arbitration or conciliation. Consequently to adopt sub-paragraph (a) would be tantamount to amending the Charter.

Mr. SHAFAGH (Iran) did not think that the "international machinery" referred to in Mr. Nisot's amendment and the "appropriate machinery" mentioned in Mr. Masani's proposal were mutually exclusive; they could be one and the same body.

Mr. NISOT (Belgium) explained that his text provided only for machinery which might be established to implement the future covenant on human rights.

Mr. MENESES-PALLARES (Ecuador) thought that the reason for the misunderstanding was the way sub-paragraph (a) was drafted. It would be enough to explain that the appropriate body, instead of directly seeking the solution of urgent problems by negotiation and other means, would assist in negotiations in which mediation, conciliation and arbitration would be used. In other words, it would be a subsidiary body with strictly advisory functions.

/Mr. NISOT

Mr. NISOT (Belgium) said that there would then be a new body of the United Nations assisting the United Nations; the situation would be anomalous.

Mr. SHAFAGH (Iran) wished to know the exact meaning of the phrase "international machinery directly accessible to minorities" in Mr. Nisot's amendment to Miss Monroe's and Mr. Daniels' proposal just adopted by the Sub-Commission. For his part, he failed to see how an international body for the protection of minorities could act in any way but that suggested by the Chairman in his proposal, that is, by means of mediation, conciliation, etc.

Mr. NISOT (Belgium) emphasized that the international machinery provided for in his amendment would be directly accessible to minorities in that they would address their complaints directly to it.

With reference to Mr. Borawynski's remarks, he said that the Charter contained so little on the subject of implementation that a whole international covenant had been drafted to ensure implementation.

Miss MONROE (United Kingdom) was sorry to note that the several proposals to set up international machinery were apparently based on the idea that the covenant on human rights would be ineffective and that additional measures would be needed to remedy its obvious deficiencies; but the draft covenant could still be amended and improved and it was for the Sub-Commission to make proposals to that effect. The Chairman's proposal (E/CN.4/Sub.2/L.5) had the same failing, in that it took no account of the proposal to set up a standing human rights committee to implement the international covenant.

The CHAIRMAN stressed the fact that the proposal to set up that committee had not yet been finally approved.

Mr. ZONOV (Union of Soviet Socialist Republics) felt that the idea in Mr. Meneses-Pallares' amendment to the Chairman's proposal was so self-evident and general that it required no action on the part of the Sub-Commission;

beyond any doubt, any body set up by the United Nations would be called upon to give the United Nations the benefit of its assistance in the field of its particular competence.

At the request of Mr. ZONOV (Union of Soviet Socialist Republics), Mr. SCHWELB (Secretariat) read out the terms of reference of the Sub-Commission as defined by the Commission on Human Rights at its fifth session (E/CN.4/350, page 6).

Mr. ZONOV (Union of Soviet Socialist Republics) noted that there was nothing in the Sub-Commission's term of reference authorizing it to seek the solution of problems in the field of prevention of discrimination and protection of minorities by means of conciliation, mediation, arbitration, etc. Furthermore, the Economic and Social Council had never asked the Sub-Commission to carry out such tasks. He therefore failed to see any basis for proposals to entrust such functions to the Sub-Commission, if it should be maintained, or to any other organ which might carry on its work.

Mr. BORATYNSKI (Poland) added that the Economic and Social Council itself was not competent to take action by means of conciliation, mediation and arbitration, as was clear from Article 62 of the Charter which defined its functions.

Mr. ROY (Haiti) was surprised that members of the Sub-Commission who, when it came to Mr. Shafagh's proposal and to Miss Monroe's and Mr. Daniels' proposal as amended by Mr. Nisot, had accepted eagerly the idea of setting up an international organ, without worrying about its membership and powers, should raise so many objections with regard to a similar proposal submitted by the Chairman.

The CHAIRMAN shared Mr. Roy's surprise.

Mr. NISOT (Belgium) emphasized that the international machinery which the Sub-Commission had accepted in principle by adopting his amendment would be established as part of the general implementation of the covenant on human rights, which meant it would be determined by international conventions governing the implementation of that instrument.

/Mr. ROY

Mr. ROY (Haiti) said that in that case it should be made clear that the international machinery mentioned in the Chairman's proposal would be established as part of the general implementation of the international covenant on human rights.

Mr. EKSTRAND (Sweden) felt that the Sub-Commission should first define the character of the proposed machinery, explain that it would be a body established as part of the implementation of the international covenant on human rights, and then consider whether it should be entrusted with the functions suggested by the Chairman in the fields of prevention of discrimination and protection of minorities. He therefore proposed that in paragraph 1 of the Chairman's proposal, in the passage preceding the list of functions, the words "as part of the general implementation of the International Covenant on Human Rights" should be inserted after the word "establishment".

Mr. CHANG (China) said that it would be better to describe those functions in paragraph 5 of Miss Monroe's and Mr. Daniels' proposal as amended by Mr. Nisot, since it dealt precisely with the establishment of international machinery for the protection of minorities as part of the general implementation of the covenant on human rights.

Mr. ZONOV (Union of Soviet Socialist Republics) emphasized that paragraph 5, already adopted by the Sub-Commission, dealt with a body the functions of which would be limited to the implementation of the international covenant on human rights and which, moreover, might never be established whereas the organ proposed by the Chairman would seem to be rather similar in nature to the present Sub-Commission.

The CHAIRMAN said that he had limited his proposal to certain ideas contained in the draft convention on prevention of discrimination and protection of minorities submitted by him jointly with Mr. Ekstrand and Mr. Meneses-Pallares (E/CN.4/Sub.2/127). That document provided for the establishment, in order to secure the implementation of the covenant, of a special organ, similar to that proposed in the draft covenant under the name of standing human rights committee

/The authors

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The authors of the draft convention had not thought it impossible for the same organ to see to the implementation of both instruments. In other words, the organ described in the Chairman's proposal was entirely unlike the present Sub-Commission. It would be very similar to the organ provided for in Mr. Nisot's amendment to paragraph 5 of Miss Monroe's and Mr. Daniels' proposal, and might even be merged with it.

He therefore accepted Mr. Ekstrand's amendment and invited the Commission to vote on the text of the introductory passage of his proposal as amended.

Mr. SHAFAGH (Iran) thought that the Sub-Commission should consider the functions to be entrusted to the future organ before deciding on its character. He proposed that the words "arbitration ... bilateral or regional agreements" in sub-paragraph (a) should be deleted.

Mr. ZCNOV (Union of Soviet Socialist Republics) felt, on the contrary, that the character of the proposed organ should be determined before any of its functions were defined.

Mr. NISOT (Belgium) found it impossible to vote on the introductory passage without knowing the content of the various sub-paragraphs defining the functions.

Mr. SHAFAGH (Iran) formally moved that the Sub-Commission should examine sub-paragraphs (a) to (h) of paragraph 1 before considering the introductory passage.

That proposal was rejected by 4 votes to 3.

Mr. ROY (Haiti) thought that the introductory passage might well follow the lines of paragraphs already adopted by the Sub-Commission with regard to the future activities of the United Nations in the field of protection of minorities. He therefore suggested that it should be amended to read:

"Recommends that the future work of the United Nations envisaged in resolution No. _____ of the Economic and Social Council (E/CN.4/Sub.2/134) should include:

/"Establishment,

"Establishment, as part of the general implementation of the covenant on human rights, of an appropriate machinery for securing the prevention of discrimination and the protection of minorities."

The CHAIRMAN accepted Mr. Roy's amendment.

Mr. ZONOV (Union of Soviet Socialist Republics) remarked that the Sub-Commission would be voting on the establishment of an organ of the character and composition of which it knew nothing, not even whether it would be composed of experts or government representatives. In his view, the Sub-Commission could not take a decision on so important a question on the basis of so vague a text.

The CHAIRMAN said that the text of Mr. Nisot's amendment to paragraph 5 of Miss Monroe's and Mr. Daniels' proposal, just voted by the Commission, was no more definite.

The introductory passage, as amended, was adopted by 5 votes to 2, with 4 abstentions.

Mr. NISOT (Belgium) had abstained from the vote not because he was opposed to the idea contained in the introductory passage, but because he did not know the content of the sub-paragraphs to follow.

The meeting rose at 5.40 p.m.