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30 November 1947

ORIGINAL: ENGLISH

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

FIRST SESSION

SUMMARY RECORD OF THE NINTH MEETING

held at the Palais des Nations, Geneva,  
on Saturday, 30 November 1947 at 10.00 a.m.

Present:

Chairman: Mr. E.E. Ekstrand (Sweden)

Vice-Chairman: Mr. Herard Roy (Haiti)

Rapporteur: Mr. Joseph Niset (Belgium)

Members:

- Mr. W.M.J. McNamara (Australia)
- Dr. C.H. Wu (China)
- Mr. Samuel Spanien (France)
- Mr. M.R. Masani (India)
- Mr. Rezazada Shafaq (Iran)
- Mr. A.P. Borisov (Union of Soviet Socialist Republics)
- Miss Elizabeth Monroe (United Kingdom)
- Mr. J. Daniels (United States of America)

Representative of the  
Commission on the  
Status of Women: Mme. Lefauchaux

Specialized Agencies: Mr. Rodolphe Lopes (ILO)

Miss M.L. Babbie (IRO)

International Non-  
Governmental  
Organizations:

- Mr. Bienenfeld (World Jewish Congress)
- Dr. G.M. Riegner (World Jewish Congress)
- Mr. A.G. Brotman (Co-ordinating Board of Jewish Organizations)
- Prof. J.P. Humphrey
- Mr. Edward Lawson
- Mr. Emile Giraud
- Mr. A.H. Hekimi

Secretariat:

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Items 6, 7 and 8 of the Agenda

1. Discussion of Article 13.

The CHAIRMAN said the amendments dealing with the whole Article would be discussed first. Mr. NISOT had joined with Mr. McNAMARA and Dr. WU and their proposal now read: "Subject to any general law not contrary to the principles of the United Nations Charter and adopted for specific and explicit reasons of security or in the general interest there shall be liberty of movement and free choice of residence within the territory of each State. Subject to the same reservation each individual shall be free to emigrate and renounce nationality."

Miss MONROE (United Kingdom) agreed with the first part of the proposal up to the words "each State". She felt, however that the reservation should not apply to the right to emigrate. If an individual wished to change his nationality and another country was willing to accept him it would be wrong, in her opinion, to limit his freedom.

Mr. ROY (Haiti) suggested voting on the proposal in two parts.

Mr. SHAFaq (Iran) thought that a Declaration of Human Rights should not encourage individuals to renounce their nationality, particularly as other Articles emphasised the necessity for loyalty to one's country.

Mr. McNAMARA (Australia) wished to add the words "purpose and" before the word "principles". He thought that both the purpose and principles of the United Nations Charter should be mentioned.

Mr. NISOT (Belgium) said that he and Dr. WU were

willing to accept Mr. McNamara's proposal. They also wished to delete the words "and explicit" which seemed to be redundant.

Mr. MASANI (India) agreed with Mr. SHAFaq that disloyalty should not be encouraged, but he felt that the desire to emigrate was not necessarily evidence of disloyalty. He thought that criminals or traitors would be subject to some law preventing their emigration, and it was only the rights of honest citizens which were under discussion. He felt that there should be no reservation to the second part of the proposal.

Miss MONROE (United Kingdom) said that she had proposed the wording: "to change their nationality to that of any country willing to accept them" because she felt that the original wording might encourage people to lose one nationality without taking on another and thus to owe no allegiance to any State.

Mr. SPANIEN (France) proposed a new amendment for the second part of the Article: "Each individual shall have liberty of movement outside the territory of each State and shall be free to emigrate and renounce his nationality". He considered it important to add liberty of movement in the international field as a specific right. He did not think that any reservation should be applied to the last part of the Article.

Mr. McNAMARA (Australia) said that it would be unrealistic to try to do away with the reservation. In his opinion there were certain types of emigration which

would have to be regulated. He mentioned as an example the emigration of technical experts whose contribution was necessary to the welfare of their country. He thought that if there were no restrictions, criminals might be able to emigrate and thus escape punishment.

Dr. WU (China) agreed with Mr. SPANIEN's proposal, but he thought that this addition would increase the necessity for the reservation. He wondered whether Mr. SPANIEN wished to abolish passports.

Mr. NISOT (Belgium) agreed with Mr. SPANIEN's proposal but he considered the reservation to be necessary. He pointed out that countries were being asked to make their laws in conformity with the purposes and principles of the United Nations Charter, and he thought that that was sufficient safeguard to freedom.

Mr. DANIELS (United States of America) supported Miss MONROE's proposal. He said that the question of criminals and traitors was covered elsewhere.

Miss MONROE (United Kingdom) pointed out that the case of criminals was covered by Article 5 of the Draft Convention. She was in sympathy with the principles of Mr. SPANIEN's proposal but she felt that it raised the question of passports and she therefore preferred her own wording.

Mr. SPANIEN (France) said that it was the Sub-Commission's duty to draft general principles and not to make regulations concerning passports. His proposal would naturally be subject to the provisions of the Charter, safeguarding the sovereignty of States. He did not consider that the wording of Miss MONROE's proposal expressed the idea of liberty of movement clearly enough.

MR. BORISOV (Union of Soviet Socialist Republics) said that he preferred the Drafting Committee's wording for the first part of Article 13. He thought that the reservation should apply to both parts of the Article. He alleged that emigrants had often been exploited as cheap labour in the past and that they had not been given full rights. He felt that the right to emigrate without any restrictions would encourage people to renounce their nationality.

Mr. NISOT (Belgium) suggested that if Mr. SPANIEN'S proposal were adopted it might mean that States would have to allow aliens to enter and circulate freely without any restrictions.

Mr. SPANIEN (France) replied that aliens would be subject to the general laws of the country they entered, including any restrictions as to their liberty of movement within that country which might be applied in accordance with the reservation to the first part of Article 13.

The CHAIRMAN declared the discussion closed. He put to the vote the first part of the proposal by Mr. Nisot, Mr. McNamara and Dr. Wu. "Subject to any general law not contrary to the purposes and principles of the United Nations Charter and adopted for specific reasons of security or in the general interest, there shall be liberty of movement and free choice of residence within the territory of each State."

The proposal was adopted by 10 votes with 1 abstention.

Mr. BORISOV (Union of Soviet Socialist Republics) explained that he had abstained from voting because he preferred the Drafting Committee's wording.

The CHAIRMAN called for a vote on Mr. SPANIEN'S amendment to the second part of Article 13: "Each individual shall have liberty of movement outside the territory of each State and shall be free to emigrate and renounce his nationality."

The proposal was rejected by 5 votes to 2, with 4 abstentions.

Miss MONROE (United Kingdom) and Mr. DANIELS (United States of America) explained that they were in favour of the idea but had abstained from voting because they were not sure of its legal effect.

Mr. ROY (Haiti) said that he had abstained because the proposal did not take existing laws and regulations into account.

The CHAIRMAN called for a vote on Miss MONROE'S amendment to the second part of Article 13: "Individuals shall be free to leave their own country and to change their nationality to that of any country willing to accept them."

The proposal was adopted by 6 votes to 5.

The CHAIRMAN put the new version of Article 13 as a whole to the vote: "Subject to any general law not contrary to the purposes and principles of the United Nations Charter and adopted for specific reasons of security or in the general interest, there shall be liberty of movement and free choice of residence within the territory of each State. Individuals shall be free to leave their own country and to change their nationality to that of any country willing to accept them."

The proposal was adopted by 8 votes to 2 with 1 abstention.

Mr. McNAMARA (Australia) asked that the following note be added to the Sub-Commission's Report: "Further, any general law referred to herein, shall not be inconsistent with Article 6 of the proposed International Declaration on Human Rights as amended by this Sub-Commission."

Mr. SHAFIQ (Iran) withdrew his amendment as his point was covered by Article 5 of the Draft Convention.

Article 15

The CHAIRMAN said that the Sub-Commission would now discuss Article 15.

Mr. BORISOV (Union of Soviet Socialist Republics) said that in his opinion the Drafting Committee wished the Sub-Commission to examine Article 15 only in reference to the status of women and the right to contract marriage. He asked for information as to the contents of the Report of the Commission on the status of women.

Mme. LEFAUCHEUX (Delegate of the Commission on the Status of Women) pointed out that the Commission on the Status of Women would not meet before January, at Lake Success.

Mr. MASANI (India) asked whether the discussion should only be confined to the status of women. He thought that all of Article 15 should be discussed, and if this view were to be accepted, he wished to add after the word "counsel" the words "of his choice".

Dr. WU (China) asked for an explanation as to the full meaning of the words "independent and impartial tribunals".

The CHAIRMAN indicated that the Sub-Commission should at that time decide whether Article 15 should be discussed wholly, partly, or not at all.

Miss MONROE (United Kingdom) said that she was against discussing Article 15 immediately for two reasons; first, she had been informed that the United Kingdom Representative on the Human Rights Commission would propose that the subject of this Article be introduced into the Convention in another form; secondly, she was not prepared to discuss the question of marriage.



Mr. SHAFaq (Iran) said that he supported the proposal of Mr. MASANI (India) that Article 15 should now be discussed as a whole.

Mr. DANIELS (U.S.A.) said that he supported Dr. WU (China), and thought that the Sub-Commission should not discuss questions which did not relate directly either to discrimination or to minorities.

Mr. McNAMARA (Australia) felt that the phrase of "status in law" required some explanation. He suggested adding the words "on the basis of Article 6" before the word "status".

Mr. SPANIEN (France) said that, in his opinion, the Sub-Commission should now discuss all of Article 15, because he considered that the question of access to courts involved the issue of discrimination.

Mr. MASANI (India) said that evidently the consensus of opinion of Members was against the discussion of Article 15, and that he would hand in a written statement on this question to be included in the Report.

Mr. BORISOV (Union of Soviet Socialist Republics) said that he was surprised to hear from Mme. LEFAUCHEUX (Delegate of the Commission on the Status of Women) that the Commission on the Status of Women had made no recommendation on this subject.

Miss MONROE (United Kingdom) moved that Article 15 should not be discussed at that time. She suggested that Members might individually submit their views to the Commission on Human Rights.

The CHAIRMAN put Miss MONROE's motion to the vote. There were 7 votes in favour, 2 against, and 2 abstentions.

Mr. BORISOV (Union of Soviet Socialist Republics) said that he had abstained from voting because he considered that a vote should have been taken only as to a discussion on the right to contract marriage.

Mr. MASANI (India) and Miss MONROE (United Kingdom) indicated that they would each submit written statements for inclusion in the Report.

#### Article 28

The CHAIRMAN said that the Sub-Commission should now discuss Article 28.

Dr. WU (China) and Miss MONROE (United Kingdom) said that they agreed with Article 28 as already drafted.

Mr. DANIELS (United States of America) moved that the Article be accepted as drafted.

Mr. NISOT (Belgium) seconded the motion.

Mr. BORISOV (Union of Soviet Socialist Republics) said that the first part of the Article was clear, but that the second part was not clear to him. He considered that examinations might conceal methods of discrimination, and that some constitutions did not provide for examinations for public employment.

Dr. WU (China) said that the reason for this part of the Article was to ensure that such examinations should be conducted in secrecy and with maximum objectivity.

Mr. BORISOV (Union of Soviet Socialist Republics) repeated that examinations might be a subtle discrimination against individuals. He said that, for example, in the United States of America there was an indirect discrimination against Negroes desiring to stay in first-class hotels.

Miss MONROE (United Kingdom) moved that the Sub-Commission vote on Article 28 as a whole.

Mr. DANIELS (United States of America) seconded this motion.

Mr. SHAFIQ (Iran) said that the objection raised by Mr. BORISOV (Union of Soviet Socialist Republics) was not relevant to the subject matter. He asked Mr. BORISOV how access to examinations might be discriminatory.

Mr. BORISOV (Union of Soviet Socialist Republics) said that examinations could be discriminatory, in his opinion, as a particular set of examiners could favour certain types of candidates. He pointed out that although there had been a secret vote for the election of Members of the Sub-Commission, an influential country might have influenced other countries, both openly and behind the scenes. He thought that the same method of discrimination could apply even to secret examinations. He moved that the Sub-Commission vote on Article 28, divided into the two sentences.

The CHAIRMAN took the vote on the first sentence. It was adopted unanimously.

The CHAIRMAN then took the vote on the second sentence. There were 9 votes in favour, 1 against and 1 abstention.

The whole of Article 28 was then put to the vote. There were 9 votes in favour and 2 abstentions.

The CHAIRMAN asked Members to submit any proposals, in writing, to the Secretary of the Sub-Commission before 10 a.m. on 1 December. He also asked Members to submit their proposals on Article 36 by the afternoon of 29 November if possible.

The meeting rose at 12.45 p.m.