

COMMISSION ON HUMAN RIGHTS

SECOND SESSION

SUMMARY RECORD OF THIRTYTHIRD MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 11 December, 1947, at 3 p.m.

PRESENT:

Chairman: Mrs. Franklin D. Roosevelt (United States of America)

Rapporteur: Dr. C. Malik (Lebanon)

Members: Col. W.R. Hodgson (Australia)

Prof. F. Dehousse (Belgium)

Mr. A.S. Stepanenko (Byelorussian S.S.R.)

Sen. E. Cruz Coke (Chile)

Dr. C.H. Wu (China)

Mr. O. Loutfi (Egypt)

Prof. R. Cassin (France)

Mrs. Hansa Mehta (India)

Mr. A.G. Pourevaly (Iran)

Gen. C.P. Romulo (Philippine Republic)

Mr. M. Klekovkin (Ukrainian S.S.R.)

Mr. A.E. Bogomolov (U.S.S.R.)

Lord Dukeston (United Kingdom)

Mr. A.J.C. Victorica (Uruguay)

Dr. V. Ribnikar (Yugoslavia)

Representatives of the Commission on the Status of Women: Mrs. B. Begtrup, Chairman

Mrs. E. Uralova, Rapporteur

Secretariat: Prof. J.P. Humphrey

Specialised Agencies:

Mr. J. de Givry (I.L.O.)

Miss Barble (Preparatory Commission
for the International
Refugee Organization)

**Non-Governmental
Organizations:**

Category A:

Miss Toni Sender (American
Federation of Labour)

Mr. A.J.S. Serrarens (International
Federation of Christian
Trade Unions)

Mr. A.A.J. Fanistendael (Inter-
national Federation of
Christian Trade Unions)

**Non-Governmental
Organizations:**

Category B:

Mr. O.F. Nolde (Commission of the
Churches on International
Affairs)

Mr. J.M.E. Duchosal (International
Red Cross Committee)

Dr. Bienenfeld (World Jewish
Congress)

Miss de Romer (International Union
of Catholic Women's
Leagues)

Miss van Eeghen (International
Council of Women)

Mr. A.G. Brotman (Co-ordinating
Board of Jewish
Organizations)

M. Pilloud (International Red
Cross Committee)

Dr. Easterman (World Jewish
Congress)

Mrs. B. Eder (International
Council of Women)

Mr. Winn (Consultative Council
of Jewish Organizations)

1. Report of the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities.
(E/CN.4/52, E/CN.4/W.19).

General ROMULO (Philippine Republic) suggested a plan for regrouping the items of the Resolution (document E/CN.4/W.19). He thought that the Resolution should be divided into five parts as follows:

1. a preamble which would consist of the first part of the document which the Commission had already approved;
2. the instructions to the Sub-Commission;
3. the opinions expressed by the Commission;
4. the decisions of the Commission, which would include a decision on communications and on the revision of the terms of reference of the Sub-Commission;
5. the recommendations to the Economic and Social Council.

He repeated the proposal he had made at the morning meeting to the effect that the word "approves" should be replaced by "notes" throughout the document.

The CHAIRMAN said that the document under discussion had been based on the order of items in the Sub-Commission's Report. She thought that the Commission should continue to work from document E/CN.4/W.19, but suggested that General ROMULO's plan would be most useful to the Rapporteur in arranging the final Report. She agreed that General ROMULO's proposal to substitute the word "notes" for "~~approves~~" would help the Commission to adopt the less important paragraphs quickly.

She welcomed the Chilean Representative to the Commission and explained the method of work to him.

General ROMULO (Philippine Republic) accepted the CHAIRMAN's proposal to refer his plan to the Rapporteur.

Professor CASSIN (France) pointed out that the draft Resolution under discussion was based on the index of the Sub-Commission's Report. The item then under discussion came under Section IV of the Report "Machinery for the Prevention of Discrimination and Protection of Minorities". He suggested that each new group of ideas should be kept together under the title of the appropriate section of the Report. In the case of recommendations to the Economic and Social Council or instructions to the Sub-Commission, the ideas could be grouped according to subject matter irrespective of the section of the Report to which they belonged.

The CHAIRMAN said that Professor CASSIN's suggestion would also be referred to the RAPPORTEUR. She read the third paragraph on page 2 of the working paper substituting "notes" for "approves":

"Notes the view expressed by the Sub-Commission that the implementation of the rights formulated in those parts of the proposed Declaration and Convention on Human Rights which deal with the prevention of discrimination and the protection of minorities will be of vital importance;"

She put the paragraph to the vote. It was adopted by 11 votes to 4.

The CHAIRMAN put the next paragraph to the vote:

"Notes the recognition by the Sub-Commission that the machinery covering this matter forms but one part of the machinery for implementation of human rights as a whole;"

The paragraph was adopted unanimously.

The CHAIRMAN read the text which Mrs. MEHTA had proposed to substitute for the next paragraph:

"Invites the Sub-Commission to examine the proposals for implementation as formulated by the Commission on Human Rights and to make its suggestions to the Commission."

Dr. RIBNIKAR (Yugoslavia) thought that no vote should be taken on that paragraph until after the discussion of the Report of the Working Group on implementation, since it was not certain that the Commission would make any decision on the subject.

The CHAIRMAN thought that Dr. RIBNIKAR's point could be met by amending the text to read:

"Invites the Sub-Commission to examine such proposals for implementation as may be formulated by the Commission on Human Rights and to make its suggestions to the Commission;"

Mrs. MEHTA (India) accepted the change in her text.

The CHAIRMAN put the paragraph to the vote. It was adopted by 12 votes to 1 with 3 abstentions.

The CHAIRMAN read the sixth paragraph on page 2 of the working paper:

"Notes the view expressed by the Sub-Commission, that prevention of discrimination is the prevention of any action which denies to individuals or groups of people equality of treatment which they may wish;"

Mr. VICTORICA (Uruguay) said that he had made a proposal at the morning meeting suggesting that matters of substance should be considered separately. That proposal had not been adopted but he emphasised the importance of the constructive part of the Commission's work. He felt that too much time was being given to general principles

so that the constructive part was not progressing.

The CHAIRMAN said that the discussion on substantive matters would begin when the Reports of the three Working Groups were discussed. She felt however that it would be best to finish discussion of Item 7 of the Agenda before proceeding to discussion of the other Reports.

Mr. VICTORICA (Uruguay) said that the paragraph under discussion was a matter of substance and that if a vote were taken he would have to reserve his position.

Dr. MALIK (Lebanon) said that the paragraph under discussion needed more careful consideration than those which had just been adopted. The Sub-Commission had been fulfilling part of its terms of reference in submitting the definition of the prevention of discrimination, but he felt that the definition which had been submitted was loose and unscientific for two reasons. First, the mention of equality of treatment without any qualification could not be accepted since absolute equality of treatment was obviously impossible to achieve. He suggested adding the word "justified" before "equality". Secondly, he objected to the words "which they may wish". He felt that prevention of discrimination should be independent of the wishes of the people and that they should be helped to achieve equality of treatment even if they were unaware of the discrimination and had not expressed a wish for equality.

Mr. BOGOMOLOV (Union of Soviet Socialist Republics) said that the paragraph under discussion and the last paragraph on page 2 were related to Article 36 of the Declaration. He therefore proposed postponing the study of those two paragraphs until the discussion on Article 36 of the Declaration.

Colonel HODGSON (Australia) opposed the proposal. He pointed out that the Commission was only noting the definition and not approving it and he therefore felt that the paragraph could be accepted even if the definition was not quite correct.

Professor CASSIN (France) thought that the discussion of the two paragraphs should not be postponed. He pointed out that the definition was continued in the next paragraph and thought that Dr. MALIK's objections might be overcome if he were to read both paragraphs together. He agreed that the word "justified" should be added before the word "equality" but he thought that the definitions were very judicious and should not only be noted but approved by the Commission.

Dr. MALIK (Lebanon) said that when superior bodies took note of something it did imply a certain amount of approval. The Commission had already taken note of the whole Report so that if no approval was implied in taking note of the details, it would not be necessary to note them at all. He proposed that the first definition be deleted from the draft Resolution.

Mr. BOGOMOLOV (Union of Soviet Socialist Republics) agreed with Dr. MALIK that there was some significance in taking note of the details of the Report.

The CHAIRMAN put Mr. BOGOMOLOV's proposal to the vote that the study of the two paragraphs be postponed until the Reports dealing with Article 36 were under discussion. There were 6 votes in favour, 6 against and 4 abstentions; the proposal was therefore rejected.

Dr. WU (China) said that the two definitions had been the subject of lengthy discussions by the Sub-Commission. He pointed out that all the terms in the definitions should be understood in their legal sense, and that the word

"equality" should not be taken to mean absolute equality. In his opinion the word "equality" meant fair or justified equality and there was no need to put a qualifying adjective. With regard to Dr. MALIK's second objection he said that there were certain groups in a State which did not wish to be assimilated to the majority but wished to keep their own customs and traditions. In his opinion such groups should not be compelled to be assimilated to the majority. He agreed with Professor CASSIN that the two paragraphs should be taken together.

Mr. CRUZ COKE (Chile) thanked the CHAIRMAN for her words of welcome. He agreed with Dr. MALIK's remarks about the words "which they may wish", but he felt that the subject was too important for it to be possible simply to delete the paragraph. If the paragraph were deleted the Commission would be rejecting the spirit as well as the words, and the definition had been drawn up with a desire to give as much protection as possible to minorities. He agreed with Mr. VICTORICA that the Commission should proceed as quickly as possible to the constructive part of its work.

Mr. DEHOUSSE (Belgium) opposed Dr. MALIK's proposal that the paragraph be deleted. He pointed out that the Commission had already taken note of the whole Report and he agreed with Professor CASSIN that the paragraph should be specifically approved and not simply noted. In view of the complexity of the last paragraph on page 2 he proposed that it should be voted on by division.

The CHAIRMAN reminded members that the Commission had to vote on the deletion of the sixth paragraph on page 2, as requested by the representative of the Lebanon.

Mr. VICTORICA (Uruguay) proposed that the paragraph should be amended rather than entirely deleted. He agreed with the representative of Chile as to the necessity for protecting minorities everywhere. He felt that the first part of the definition was acceptable. From the legal point of view, however, the words "which they may wish" introduced a criterion which it would be very difficult to define. That criterion might even redound against the interests of minorities. He proposed that those words be replaced by "granted to them in accordance with international law concerning the protection of the rights of individuals or groups."

Mrs. MEHTA (India) wanted the text to be retained, since the Sub-Commission had stated on page 14 of its Report that it had not attempted to frame a definition. She supported the proposal that the concluding words of the text, which were vague, be replaced by the phrase suggested by the representative of Uruguay.

Dr. MALIK (Rapporteur) explained that he had not formally moved the deletion of the text. He had merely drawn the Commission's attention to the fact that the definition in question might give rise to serious difficulties in the future. He did not ask for the deletion of the text if it were found possible to improve its wording. He therefore accepted the amendment proposed by the representative of Uruguay.

The CHAIRMAN pointed out that those rights were not affirmed by international law. It would therefore be better to say: "in accordance with the just principles of the rights of individuals or groups".

Professor DEHOUSSE (Belgium) confirmed the fact that there was no provision in international law for the

protection of human rights. He hoped that this would one day be the case but at present it was still a mere hope. It would be begging the question to demand the application of a law which did not exist. The members of the Minorities Sub-Commission were experts who had not adopted the phrase "which they may wish" without due reflection. It also complied with the elementary principles of democracy; an individual could not be forced to belong to a minority. He therefore asked for the text to be kept and declared that he would vote against the amendment proposed by the delegation of Uruguay.

Lord DUKESTON (United Kingdom) also wanted the words "which they may wish" to be retained. Whereas some minorities might wish to preserve the characteristics which distinguished them from other groups, it was also possible that in certain cases members of majority groups might enjoy privileges which minorities should be able to enjoy. He would vote against the amendment proposed by the delegation of Uruguay.

Dr. RIBNIKAR (Yugoslavia) pointed out that if the Commission made the slightest alteration to the text proposed by the Sub-Commission, it could not use the term "approve" since the act of changing the text indicated disapproval.

The CHAIRMAN read out the text of the paragraph on which a vote was to be taken:

"Approves the view expressed by the Sub-Commission, that the prevention of discrimination is the prevention of any action which denies to individuals or groups of people equality of treatment in accordance with the just principles of the rights of individuals or groups;"

Professor DEHOUSSE (Belgium) on a point of order emphasised the relevance of the remark made by the representative of Yugoslavia. He pointed out to the Chairman that she could not call for a vote on a text which had not been approved by the Sub-Commission and was therefore not an expression of its views.

The CHAIRMAN proposed the following text:

"Takes note of..... that the prevention of discrimination is the prevention etc"

General ROMULO (Philippine Republic) wondered what the Commission was taking note of. It should vote on what was in the Report or else not vote at all.

The CHAIRMAN proposed, in order not to attribute opinions to the Sub-Commission, that the text should read as follows:

"The Commission considers that the prevention of discrimination is the prevention of etc."

Colonel HODGSON (Australia) held that the Commission might approve or not approve the text, but it could not amend it since it formed part of the actual Report of the Sub-Commission.

Professor CASSIN (France) stated that the Sub-Commission had not sought to provide a definition; it had clearly stated in its Report that it had put forward psychological considerations. In his view a given measure could in one case be discriminatory and, in another, merely constitute the differential treatment desired by a particular minority. The whole thing depended on circumstances, which might in some cases be complex. If the Commission modified the phrase "which they may wish", the text would become a legal definition, whereas the Commission had not had sufficient time for a serious study of such a definition.

The CHAIRMAN reminded members that the Commission had in the first instance to vote on the text successively amended by the representatives of Uruguay and the United States.

Professor DEHOUSSE (Belgium), on a point of order, expressed serious doubts as to whether a vote could be taken on such a text. He recalled that paragraph 1, which had been adopted by the Commission, began with the words "Takes note of the Report". The Commission was now engaged in demolishing a very important point of that Report, and in such circumstances a vote would be illogical and inconsistent. With regard to the wording of the new text, which mentioned equal treatment in accordance with the just principles of human rights, he wondered whether perchance there might not be principles of human rights which were not just.

Mr. VICTORICA (Uruguay) replied that no inconsistency was involved; the Commission was merely stating its own opinion and its phrase was worded in the same spirit as that of the Sub-Commission. He felt that the application of the principle of equality could not be left solely to the discretion or wishes of the individual. Such equality of treatment should be clearly defined in the spirit of the provisions of the Charter and the Statute of the International Court of Justice. He had submitted his amendment in the hope of bringing about a general declaration which would serve as a broad protection for the rights of individuals and groups. The Commission should not discuss questions of detail, but should outline a practical policy for the protection of human rights.

The CHAIRMAN called for a vote on the text as amended by the representatives of Uruguay and the United States:

"The Commission on Human Rights
considers that the prevention of discrimination is
the prevention of any action which denies to individuals
or groups of people equality of treatment in accordance
with the just principles of human rights policy".

Decision: This text was rejected by seven votes
to three, with five abstentions.

The CHAIRMAN called for a vote on the **original text**,
with the word "notes" replaced by "approves":

"The Commission on Human Rights
approves the view expressed by the Sub-Commission,
that the prevention of discrimination is the prevention
of any action which denies to individuals or groups of
people equality of treatment which they may wish."

Decision: This text was adopted by seven votes
to one, with six abstentions.

General ROMULO (Philippine Republic) stated, on a point
of order, that the discussion upon which the Commission had
embarked was the very thing he had wished to avoid when he
made his proposal at the beginning of the meeting. He
felt that the Commission would make speedier progress if its
members would consider the two following proposals:

On the following day the Commission might decide that
a preamble was sufficient, or it might agree to the
suggestion made by the representative of Australia and take
note of the Report without recording either approval or
disapproval. He feared that if the Commission went on
debating as it had done during the last few days, it would
not have time to examine the three essential questions on
its agenda: the Declaration, the Convention and the
Implementation of the Convention. He suggested that when
the Commission came to discuss the Articles in the

Declaration and the Convention relating to minorities or discrimination, representatives should not recapitulate the remarks they had already made during discussion of the Report of the Minorities Sub-Commission.

Mr. BOGOMOLOV (Union of Soviet Socialist Republics) urged that the Secretariat should state as early as possible which questions were to come up for discussion the next day and the days following. It was difficult to discuss problems without due warning; moreover, procedure of that kind would only impede the progress of the work. Further, delegations should have an opportunity of studying the documents connected with the problems brought up for discussion. He also asked that the problems to be discussed be listed in the order of their priority.

The CHAIRMAN stated that in accordance with the suggestion made by the representative of the Philippines, the Secretariat would prepare a parallel list of the Articles in the Declaration and in the Convention which referred to one and the same question.

The meeting rose at 6.20 p.m.
