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

FIRST SESSION

(24 November - 6 December 1947)

REPORT SUBMITTED TO THE COMMISSION ON HUMAN RIGHTS

Rapporteur: Mr. Joseph NISOT (Belgium)

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(20 p.)

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## INTRODUCTION

The Sub-Commission started the work of its first session on 22 November 1947, and finished it on 6 December, having held 18 meetings.

The following were present:

Mr. W.M.J. McNAMARA	(Australia)
Mr. J. NISOT	(Belgium)
Dr. C.H. WU	(Alternate for Mr. C.F. Chang China)
Mr. A. Meneses PALLARES	(Ecuador)
Mr. S. SPANIEN	(France)
Mr. H. ROY	(Haiti)
Mr. M.R. MASANI	(India)
Mr. Rezazada SHAFaq	(Iran)
Mr. E. EKSTRAND	(Sweden)
Mr. A.P. BORISOV	(Union of Soviet Socialist Republics)
Miss E. MONROE	(United Kingdom)
Mr. J. DANIELS	(United States of America)

Mme. LEFAUCHEUX (France), representing the Commission on the Status of Women, also took part in the discussions insofar as they dealt with discrimination on grounds of sex.

The International Labour Office and the Secretariat of the United Nations Educational, Scientific and Cultural Organization were represented by observers.

The Secretariat of the United Nations was represented by Professor J.P. HUMPHREY, Mr. E. LAWSON, Professor E. GIRAUD and Mr. A.H. HEKIMI.

The Sub-Commission appointed Mr. E. EKSTRAND as Chairman, Mr. H. ROY as Vice-Chairman, and Mr. J. NISOT as Rapporteur.

The present Report gives the result of the work of the Sub-Commission's first session. In particular, it contains, in addition to the recommendations or proposals made by the Sub-Commission, dissident opinions or other observations, drafted in their own terms, by certain members of the Sub-Commission who asked for their insertion in the Report.

### Terms of Reference of the Sub-Commission

The Sub-Commission's terms of reference had been laid down by the Commission on Human Rights as follows:

- "(a) In the first instance, to examine what provisions should be adopted in the definition of the principles which are to be applied in the field of the prevention of discrimination on grounds of race, sex, language or religion, and in the field of the protection of minorities, and to make recommendations to the Commission on urgent problems in these fields.
- "(b) To perform any other functions which may be entrusted to it by the Economic and Social Council or the Commission on Human Rights."

SECTION 1

Draft Declaration on Human Rights

The Sub-Commission had before it the draft International Declaration on Human Rights drawn up by the Drafting Committee (E/CN.4/21, Annex F). It noted that certain articles in the draft were designed to prevent discrimination and protect minorities. Consequently, although the Draft Declaration had not yet been officially communicated to it, the Sub-Commission considered that it should take that important document into account. It felt that the best way of obtaining concrete results of immediate value was to start by dealing with the subjects coming under its terms of reference within the framework of those articles of the Draft Declaration which had been brought to its notice by the Drafting Committee as relating to those terms of reference.

The Sub-Commission therefore proceeded to study the following articles of the Draft Declaration: article 6, article 13, article 15, article 28, and article 36. For the most part this study resulted in amendments being proposed.

ARTICLE 6

Text proposed by the Sub-Commission:

"Every one is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, sex, language, religion, political or other opinion, property status, or national or social origin." (1)

(Adopted by 9 votes to 1, with 1 abstention).

The Sub-Commission, in adopting the text, thought there was no need for a special mention of "colour", as that was embodied in the word "race".

It also considered that in extending by the words "political or other opinion, property status, or national or social origin", the enumeration given in Article 6 as drawn up by the Drafting Committee ("without distinction as to race, sex, language, or religion"), it had not added to that enumeration, but had interpreted and clarified it by means of examples. The Sub-Commission's text ("without distinction of any kind such as race .....etc.") is, moreover, intended to show that its enumeration is not exhaustive.

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(1) The Drafting Committee's text was as follows:

Every one is entitled to the rights and freedoms set forth in this Declaration without distinction as to race, sex, language, or religion.

It will be seen that the Sub-Commission has referred in the article to "all the rights .... etc." It intended to show in this way that it was not necessary to develop the idea further in Article 6, as the substance of the rights and freedoms was established in the other articles of the Declaration.

Finally, the Sub-Commission wished to make it clear that the words "national origin" should be interpreted by taking this conception, not in the sense of citizen of a State, but in the sense of national characteristics.

Remarks by Mr. Nisot (Belgium):

"I abstained from voting on Article 6, since, in my view, it should have reproduced only the enumeration found in the Charter: 'without distinction as to race, sex, language or religion', instead of increasing this enumeration. The terms of the Charter, beyond all possible dispute, are binding upon all the Members of the United Nations. It would, therefore, have been wise strictly to adhere to them owing to the organic nature of the text in question (the Declaration)."

Remarks by Mr. Spanien (France):

The French expert is compelled for the following reasons to abstain from voting on the second part of the amendment to Article 6 which was proposed by the Soviet expert under the heading: "Mr. BORISOV's opinion".

The place proposed for this amendment within Article 6 of the Draft Declaration; its introduction in a passage dealing with principles and not, as would have been logical, in a passage concerned with implementation; the vagueness of its provisions, at least as they appear in the French translation, in which incongruous notions are assimilated to each other; the arbitrary splitting up of the text, which results from a vote taken phrase by phrase. All this, in his view, makes it impossible for him to follow a course other than abstention.

The French expert, however, anxious to avoid any ambiguity or misunderstanding, would like to make it clear that he approves of Mr. BORISOV's idea - if that is indeed the sense of his proposal - of applying penal sanctions to any infringements of the principle of non-discrimination.

Furthermore, the French expert feels he should state that when the Sub-Committee is in a position, at the present or at a later session, to enter into the discussion of this problem, he will be prepared to advocate or propose any text based on the following principles:

I. The principle of making it compulsory for the various national constitutions and laws to include in their relevant statutes provisions for the punishment of infringements of the principles of non-discrimination and for redress of such infringements.

II. The principle of setting up an International Tribunal of Human Rights.

to be enforced by means of conventions based on an appropriate limitation of national sovereignty.

IV. The principle of the responsibility of public officials before the municipal and the international law.

V. The principle of repudiating the plea of immunity based either on sovereign power or on obedience to higher orders.

In addition, the role which the Sub-Commission might have to play, in an informal fashion, in facilitating conciliation during the period preceding any formal procedure, would deserve a special study.

Mr. McNAMARA and Dr. WU submitted a text amending the second paragraph of a proposal by Mr. BORISOV. Its wording was as follows:

"Any advocacy of national, racial and religious hostility and any action establishing a privilege or a discrimination based on distinctions of race, nationality or religion shall be prohibited by the law of the State."

This text was not adopted, there being 5 votes for and 5 against, with 1 abstention.

On the other hand, the Sub-Commission adopted, by 10 votes with 1 abstention, the following recommendation:

"The Sub-Commission recommends to the Commission on Human Rights the inclusion in the Declaration of Rights or in the proposed Convention, in the appropriate places, of clauses condemning incitement to violence against religious groups, nations, races, or minorities."

### ARTICLE 13

#### Text proposed by the Sub-Commission:

"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." (1)

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#### 1) Text established by the Drafting Committee:

"There shall be liberty of movement and free choice of residence within the borders of each State. This freedom may be regulated by any general law adopted in the interest of national welfare and security.

"Individuals may freely emigrate or renounce their nationality."

(Adopted by 8 votes to 2, with 1 abstention).

Discussion centred on the right to move freely outside the country and to emigrate and to change nationality. In the text proposed by the Sub-Commission, the right to emigrate and change nationality is unconditional.

Remarks by Mr. McNAMARA (Australia):

"Mr. McNAMARA proposes the following addition to the first paragraph of the text for consideration by the Commission on Human Rights, and by any Drafting Committee:

"Further, any general law referred to herein shall not be inconsistent with Article 6 of the International Declaration on Human Rights, as amended by this Sub-Commission."

Remarks by Mr. NISOT (Belgium):

"I was unable to agree to Article 13, because of the absolute bearing of its second sentence, which is not subject to the reservation (concerning laws in conformity with the Charter) by which the first sentence is governed. In the absence of such a reservation, the possibility for individuals to leave their country or relinquish their nationality is made dependent, in principle, on their sole will, without the State being able, even for reasons of general interest or national security, to limit this possibility, in particular by making it contingent on authorisation. Such a radical provision cannot, in my view, but diminish the probabilities of the Declaration being, on this point, accepted or observed by Governments."

Remarks by Mr. Meneses PALLARES (Ecuador):

"In my opinion, paragraph 2 of Article 13 should also embody the following concepts:

"No State may refuse to grant its nationality to persons born upon its soil;

"No person may be deprived of the nationality of his birth, unless by his own free choice he acquires another nationality;

"Every person is obliged to renounce the nationality of his birth or adoption upon acquiring a new nationality."

ARTICLE 15.

Article 15 of the Drafting Committee's text<sup>(1)</sup> gave rise to discussion.

Finally, by 7 votes to 2 (with 2 abstentions), the Sub-Commission decided to take no decision on this Article at the present stage, since the Commission on the Status of Women, which was to meet in January next, was the proper body to make an exhaustive study of the Article, particularly from the point of view of marriage, and the Sub-Commission should await its findings.

(1) Text established by the Drafting Committee:

(1) "Everyone has the right to a status in law and to the enjoyment of fundamental civil rights.

"Everyone shall have access to independent and impartial tribunals for the determination of his rights, liabilities and obligations under the law. He shall have the right to consult with and to be represented by counsel."

Remarks by Mr. SPANIEN (France):

Apart from the right of consultation and representation, Article 15 should cover the idea of assistance by counsel before the courts.

On the one hand, the right to be assisted by counsel constitutes the most essential guarantee for the defendant. On the other hand, in a penal procedure, under which the accused is liable to detention, representation by counsel is not permitted under the laws of some countries.

Remarks by Mr. McNAMARA (Australia):

"Mr. McNAMARA submitted the following text for consideration by the Human Rights Commission or by a Drafting Committee:

"The following words to be added after 'Everyone has the right':

"On the basis of Article 6 as amended by this Sub-Commission".

Remarks by Mr. MASANI (India) and Mr. DANIELS (United States):

"In view of the decision of the Sub-Commission that this Article was not open to discussion at this stage, in the absence of any recommendations from the Commission on the Status of Women, we would like to place on record our view that this Article should guarantee the right to everyone to consult with and be represented by counsel of his own choice."

Remarks by Miss MONROE (United Kingdom):

"Since the Sub-Commission decided that there should be no discussion on the merits of Article 15, Miss MONROE wished it to be recorded that the right to be represented by counsel does not exist in some Native Courts in the British Colonial Empire. Representation by counsel has proved to be an alien importation into the judicial process of many backward people, and since it is the British practice to allow Native Courts to develop in the manner best suited to the community which they serve, some Courts still adhere to their customary procedure. Since the right to be represented by counsel is recognized in higher courts, including those which hear appeals from the Native Courts in question, the practice is not discriminatory."

## ARTICLE 28

### Text adopted by the Sub-Commission:

"Everyone shall have equal opportunity to engage in public employment and to hold public office in the State of which he is a citizen. Access to examination for public employment shall not be a matter of privilege or favour." (1)

(Adopted by 9 votes to one with 2 abstentions)

This article was adopted in the form in which it had been drawn up by the Drafting Committee, after a discussion in the course of which the value of examinations as an impartial method of selection was questioned by certain members of the Sub-Commission.

### Remarks by Mr. McNAMARA (Australia):

"In the second sentence of Article 28, the words 'and the subject matter of such examinations' should be inserted after the words 'public employment'."

### Remarks by Mr. MENESES (Ecuador):

In the second sentence of Article 28, the words "when required by the State" should be inserted after the words "public employment".

## ARTICLE 36

### Text proposed by the Sub-Commission:

"In States inhabited by well defined ethnic, linguistic or religious groups which are clearly distinguished from the rest of the population and which want to be accorded differential treatment, persons belonging to such groups shall have the right as far as is compatible with public order and security to establish and maintain their schools and cultural or religious institutions, and to use their own language and script in the press, in public assembly and before the courts and other authorities of the State, if they so choose." (2)

(Adopted by 6 votes to 4, with 2 abstentions)

(1) Text drawn up by the Drafting Committee.

"Everyone shall have equal opportunity to engage in public employment and to hold public office in the State of which he is a citizen. Access to examination for public employment shall not be a matter of privilege or favour."

(2) The following was the text prepared by the Drafting Committee: "In States inhabited by a substantial number of persons of a race, language or religion other than those of the minority of the population, persons belonging to such ethnic, linguistic or religious minorities shall have the right as far as compatible with public order to establish and maintain their schools and cultural or religious institutions, and to use their own language in the press, in public assembly and before the courts and other authorities of the State".

Remarks by Mr. NISOT (Belgium):

"This Article has given rise to a long debate, bearing, in particular, on the question whether its benefit should be limited to nationals, or, on the contrary, should be extended to all individuals, nationals or aliens, members of the groups concerned. The latter solution prevailed: the word "persons" was inserted in the text in preference to the word "citizens". This is why I was unable to agree to Article 36. It appeared to me indeed excessive to grant the differential treatment in question to aliens. These, moreover, may be established on the territory only temporarily (tourists, migrant workers....etc.). It is hardly necessary to recall that the treaties and declarations on minorities which came into being between the two wars apply, in this connection, to nationals alone. It will be for the Commission on Human Rights to study the Draft Declaration from the view point of its compatibility with paragraph 7 of Article 2 of the Charter, which forbids organs of the United Nations to intervene in matters essentially within the domestic jurisdiction of the member States. In my view, such a study will be particularly indicated with respect to Article 36 as adopted by the Sub-Commission."

Remarks by Miss MONROE (United Kingdom) and Mr. SPANIEN (France):

Mr. SPANIEN and Miss MONROE submitted the reservation that it would be necessary to make the word "persons", in the article as drafted, subject to a definition which excludes aliens from the privileges accorded to minority groups within the framework of national unity.

Remarks by Mr. McNAMARA (Australia):

Mr. McNAMARA proposes to modify as follows the text of the Drafting Committee:

1. Delete the words "a substantial number of"
2. Delete the words, "as far as compatible with public order," - and substitute for them the words, "on the basis of loyalty to the State of which they are resident members";
3. Add the words, "where they have not a practicable facility in the official language" between the words "and" and "before"; in the last line but one.

## SECTION II

### COMMUNICATIONS CONCERNING DISCRIMINATION AND MINORITIES

#### 1st decision:

The Sub-Commission considers that its task would be facilitated if the Economic and Social Council were requested by the Human Rights Commission to modify and extend its resolution of August 5th, 1947, on "communications concerning Human Rights", and to direct the Secretary-General to perform the same service for the Sub-Commission with respect to communications dealing with discrimination and minorities; and with respect to such communications, to give the members of the Sub-Commission the same facilities as are enjoyed by members of the Commission.

(Adopted by 10 votes to 1 with 1 abstention)

#### 2nd decision:

The Sub-Commission asks the Economic and Social Council through the Human Rights Commission to extend its decisions in its Resolution of August 1947 concerning communications so as to include the following words: 'that the Secretary-General tactfully request by official letter, the governments affected to give any comment or information they desire on the petitions'.

(Adopted by 2 votes to 1 with 8 abstentions)

## SECTION III

### COMMUNICATION FROM THE INTERNATIONAL DEMOCRATIC FEDERATION OF WOMEN.

Mr. BORISOV had proposed that the Sub-Commission should study the communication from the International Democratic Federation of Women. The Representatives of China and Australia proposed an alternative text to replace Mr. BORISOV's proposal. After discussion the following decision was taken:

#### Decision of the Sub-Commission:

"The Sub-Commission recommends to the Commission on Human Rights that the petition from the International Democratic Federation of Women be considered by this Sub-Commission after it has been studied by the Commission on the Status of Women."

(Adopted by 6 votes to 2 with 4 abstentions)

#### Remarks by Miss MONROE (United Kingdom)

Miss MONROE abstained because to single out this one society for most favoured treatment was invidious and unfair to other women's organizations who may have submitted petitions of equal weight.

## SECTION IV

### MACHINERY FOR THE PREVENTION OF DISCRIMINATION AND THE PROTECTION OF MINORITIES

"1. The Sub-Commission is of the view 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."

(Adopted by 11 votes with 1 abstention)

"2. The Sub-Commission recognizes that the machinery covering this matter forms but one part of the machinery for implementation of Human Rights as a whole. The Sub-Commission feels, however, that its opinion on the formulation of such part of that machinery as concerns it might be of service to the Human Rights Commission, and it, therefore, recommends that the Sub-Commission be invited to meet and formulate its proposals for the machinery in question at the earliest appropriate date."

(Adopted by 8 votes to 2 with 2 abstentions).

Remarks by Mr. NISOT (Belgium)

Mr. NISOT was of the opinion that the report of the Sub-Commission should have given concerning this Article the following explanation:

Several members of the Sub-Commission submitted proposals for the establishment of an organised system for the examination of petitions, powers being conferred for this purpose on the Secretary-General of the United Nations, special committees (committees of three) and on the International Court of Justice.

The Sub-Commission had considered these solutions premature, seeing that no Declaration on Human Rights or Conventions had yet been adopted and, moreover, the Sub-Commission had not been asked to go into the matter.

Remarks by Miss MONROE (United Kingdom)

Miss MONROE was opposed to any interim arrangements for the handling of petitions. As no international declaration or convention as yet exists, any attempt to implement them by international action is premature.

Remarks by Mr. MASANI (India)

I must record my regret that the majority of the members of the Sub-Commission, while expressing broad agreement with the machinery for implementation set out in my proposal (Document E/CN.4/Sub.2/27), decided not to consider the matter at this meeting but to take it up at the next meeting, some time in 1948. I fear this will mean that the Sub-Commission has denied itself an opportunity to express itself effectively in regard to implementation.

Remark by Mr. McNAMARA (Australia):

Reservation to Paragraph 2 of the decision on "Machinery".

I demur strongly to the delay in achieving some effective

machinery for handling petitions which is involved in Paragraph 2 of this decision.

I submit that some, at least, of the machinery proposed in Document E/CN.4/Sub.2/11, 2/12, 2/27, should receive careful consideration by the Human Rights Commission with a view to adopting some of them during the present session of the Commission.

Remarks by Mr. Meneses PALLARES (Ecuador)

"The enumeration is indeed exemplary and not exhaustive, but in order to preserve intact the organic unity and correlation of the Charter and its subsidiary Instruments I should prefer the following text:

"Every one is entitled to all the rights and freedoms set forth in this Declaration without distinction of any kind, such as race, sex, language or religion, or on such grounds as political or other opinion, property status and national or social origin."

The enumeration should have also instanced the right to protection against arbitrary discrimination in the provisions and application of the law because of race, religion, sex or any other reason".

SECTION V

SCOPE OF THE TERMINOLOGY REGARDING PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES.

Decision of the Sub-Commission

The Sub-Commission submits to the Human Rights Commission that the final drafting of Articles on the prevention of discrimination and the protection of minorities may be facilitated by the following considerations:

1. Prevention of discrimination is the prevention of any action which denies to individuals or groups of people equality of treatment which they may wish.

2. Protection of minorities is the protection of non-dominant groups which, while wishing in general for equality of treatment with the majority, wish for a measure of differential treatment in order to preserve basic characteristics which they possess and which distinguish them from the majority of the population. The protection applies equally to individuals belonging to such groups and wishing the same protection. It follows that differential treatment of such groups or of individuals belonging to such groups is justified when it is exercised in the interest of their contentment and the welfare of the community as a whole. The characteristics meriting such protection are race, religion and language. In order to qualify for protection a minority must owe undivided allegiance to the Government of the State in which it lives. Its members must also be nationals of that State.

If a minority wishes for assimilation and is debarred, the question is one of discrimination and should be treated as such.

(Paragraph 1 was adopted by 9 votes to 1, with 2 abstentions; Paragraph 2 was adopted by 7 votes to 3 with 2 abstentions.)

The opinion was put forward in the Commission that it was not possible, at the present stage, to frame definitions which could be made binding upon Member States; in other words, juridical definitions. The formulation of such definitions pre-supposes, in fact, the existence of rules which are to be enforced, or, in this case, of a Declaration or a Convention. However, such instruments are still in process of drafting and have by no means reached their final form.

Although this point of view was not shared by all its members, the Sub-Commission decided not to submit definitions, and to confine itself to indicating the considerations which in its opinion should be taken into account in framing provisions (Declaration or Convention) to be put into effect. Such, therefore, is the scope of the above texts, which relate on the one hand to the prevention of discrimination, and on the other to the protection of minorities.

Remarks by Mr. Meneses PALLARES (Ecuador)

Unless the right to self-determination is enforced, not only in regard to ethnical groups, but also to the individual men and women comprising such groups, by means of an international authority, and unless in such way, the trend to assimilation is fostered, the result will be the stratification of cultural pockets which can be used as tools for international friction and may eventually lead to armed conflict.

The various cultures within a Nation must be given every opportunity to develop and expand, reveal their innate qualities and contribute to the larger group, in order to promote the creation of such conditions as will permit their fusion into a single common culture under the individual sign of a single national ideal.

In the complex process of aculturization as a whole, the persistence of a minority represents a transitional and rather anomalous status, and every effort should be made to accelerate their natural trend for assimilation."

Remarks by Mr. McNAMARA (Australia)

Reservation to the clause "Its members must also be nationals of that State" (at the end of Paragraph 2 of V):

The retention of these words opens the way to extremely dangerous discriminatory practices, including denial of religious freedom to refugees and aliens who may not have been resident long enough to acquire citizenship.

Remarks by Mr. SHAFIQ (Iran)

"While not in disagreement with the text proposed as to the definition of Discrimination and of Protection of Minorities, may I declare that the main reasons of my abstention from voting are as follows:

"1. It fails to extend the protection offered to a minority, not wishing assimilation, to the majority. The majority should also be given the right to refuse assimilation with a minority in the sense of intermarriage and the like.

"2. It fails to mention that a minority's wish for differential treatment on certain scores must be conscious and spontaneous. Unless this is mentioned the description given fails to draw a sufficient distinction between a genuine minority and one artificially created for spurious political purposes."

Mr. SHAFaq submits the following amendments:

"Protection of minorities is the protection extended to them, as citizens (whether groups or individuals) against assimilation for which they do not wish, this not meaning that the dominant group is not subject to the same protection."

"A minority is a non-dominant group possessing basic characteristics of a distinctive nature which is spontaneously conscious of its status as a minority."

Remarks by Mr. McNAMARA (Australia)

Mr. McNAMARA makes the following reservations concerning Document E/CN.4/Sub.2/35, as amended and adopted (Protection of Minorities):

"1. "Prevention of Discrimination" is the prevention of any action which denies to individuals, or to groups, essential equality of treatment, on the grounds (inter alia) of race, distinctive national origin, language and religion.

"2. "Prevention" is distinguished from "protection" by referring to steps taken to forestall the origination of such discriminatory action, whereas "protection" refers to steps taken to correct such discriminatory action after it has been originated.

"3. "Discrimination" is any action, as referred to in 1 above.

"4. "Protection of Minorities" is the protection (as defined in 2 above) of groups or individuals against discriminatory action (as defined above).

"5. Differential treatment of such groups or individuals is justified when it is exercised in their interest and for the welfare of the community as a whole.

"6. "Protection", as defined, can be claimed only on the basis of allegiance to the Government against which such protection is claimed.

"7. The term "minority" in the above contexts has no necessary numerical significance, but connotes an unequal discriminatory status.

(In the above attempt at a definition of the terms referred to us for definition, all the terms (and not only some, as in E/CN.4/Sub.2/35, as amended) are defined, including

"Prevention" as distinct from "Protection": and I feel that there is a unity in it that is lacking in E/CN.4/Sub.2/35, as well as an avoidance of a number of dangerous new problems raised by E/CN.4/Sub.2/35).

## SECTION VI

### STUDIES TO BE UNDERTAKEN

#### Texts adopted by the Sub-Commission

##### 1. Discrimination

"The Sub-Commission recommends that the Economic and Social Council be moved to request the Secretary-General to organize studies and prepare analyses designed to assist this Sub-Commission in determining the main types of discrimination which impede the equal enjoyment by all of human rights and fundamental freedoms, and the causes of such discrimination. He will consider whether any groups involved are of recent or long historic origin, and whether in the past they have been in the nature of active protesting minorities. Such statement to be made available to delegates to the Sub-Commission on Minorities and Discrimination."

(Adopted by 7 votes to 2 with 3 abstentions).

#### Remarks by Mr. DANIELS (United States):

"Mr. DANIELS suggested that, in connection with the proposed studies, the Secretariat take into consideration the statement of the American Federation of Labor contained in Document E/CN.4/Sub.2/16."

##### 2. Minorities

"The Sub-Commission considers that, in order satisfactorily to fulfil its task and effectively to protect minorities, it must have at its disposal, for purposes of its future work, all information that it may require in order to distinguish between genuine minorities and spurious minorities which might be created for propaganda purposes."

"It therefore recommends the Commission on Human Rights to secure the adoption by the Economic and Social Council of such measures as are necessary to this end."

(Adopted by 8 votes to 1 with 2 abstentions).

Remarks by Mr. SHAFaq (Iran)

I believe this Sub-Commission is not called upon to protect the minorities. The protection of minorities is within the rights of United Nations. Therefore, in spite of the fact that a part of the first paragraph is suggested by myself, I propose to suppress the phrase: "and effectively to protect minorities."

SECTION VII

EDUCATION

1. Education Programme

Decision of the Sub-Commission:

"The objectives of the United Nations in the fields of the prevention of discrimination and protection of minorities can be achieved only as the peoples of the world are willing to end discrimination and to give due respect to the rights of minorities;

"This can result from universal recognition of the dignity and worth of the human person and of the equal rights of men and women and of peoples;

"Therefore the Economic and Social Council requests the Secretary-General:

1. In connection with any studies which he may be directed to make in the fields of the prevention of discrimination and the protection of minorities, to keep in mind the desirability of formulating effective educational programs in these fields and to report any findings that may assist the Sub-Commission on the Prevention of Discrimination and Protection of Minorities in making appropriate recommendations to this end.

2. To advise UNESCO of the interest of the United Nations in such programs, to request UNESCO to make available any relevant material or analyses that may result from that Organization's proposed study of Social Tensions or from any other UNESCO programs, and to suggest collaboration between the United Nations and UNESCO in the formulation of such a program.

3. To suggest that UNESCO consider, as a first step, the desirability of initiating and recommending the general adoption of a program of disseminating scientific facts with regard to race."

(Adopted by 10 votes to 1 with 1 abstention).

Remarks by Mr. McNAMARA (Australia):

Mr. McNamara, endorsed by the Chairman, the Vice-Chairman, Mr. Daniels, Dr. Wu, Miss Monroe, Mr. Meneses Pallares and Mr. Spanien, held that the intention behind the last paragraph would be clearer if it ended with the words: "..... since all these facts tend to remove racial antagonisms and discriminatory practices

2. Committee on Education

Decision of the Sub-Commission:

and practice, which should make it its business to study and select the most common and basic principles of a democratic and universal education in order to combat any spirit of intolerance or hostility as between nations and groups."

(Adopted by 5 votes to 3 with 4 abstentions)

### SECTION VIII

#### PEACE TREATIES: PROTECTION OF MINORITIES

##### Decision of the Sub-Commission:

"The Sub-Commission requests the Human Rights Commission to declare that in any peace treaties still to be ratified there be included wherever appropriate specific clauses seeking to protect minority rights."

(Adopted by 6 votes to 4 with 2 abstentions)

##### Remarks by Mr. NISOT (Belgium)

"The possibility of introducing clauses into treaties normally arises during negotiation prior to signature. A treaty may not be ratified and yet be already signed. In such a case it is too late to act."

### SECTION IX

#### SURVIVAL OF CERTAIN TREATIES AND DECLARATIONS

##### Communication from the Sub-Commission to the Commission on Human Rights

"The attention of the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities has been drawn to League of Nations document C.L.110.1927 (Annex), which reproduces a large number of texts of treaties and declarations relating to international obligations undertaken to combat discrimination and protect minorities."

"The question has been raised whether, and to what extent, these treaties and declarations should be regarded as being still in force, at least for as much as they would entail, between contracting States, rights and obligations of which the existence would be independent of their guarantee by the League of Nations."

"The Sub-Commission has not attempted to answer this question. However, because of its bearing upon the matter in issue, the Sub-Commission feels unable to abstain from bringing it to the notice of the Commission on Human Rights. In so doing, the Sub-Commission confines itself, for its part, to expressing the view that there is here involved a juridical situation which, owing to its implications and possible consequences, should, in any event, be elucidated, possibly through a request for an advisory opinion addressed by the Economic and Social Council to the International Court of Justice."

(Adopted by 8 votes to 1)

Remarks by Mr. NISOT (Belgium)

More than fifteen declarations or treaties came into existence between the two wars; they are of great interest in combating discrimination and protecting minorities. In particular, they go further in that direction than the draft Declaration proposed by the Drafting Committee. While the latter (Article 5) would seem, in the matter of equality of treatment, to prescribe only equality in law, the above-mentioned texts prescribe in addition equality in fact. The difference is essential (cf.: Permanent Court of International Justice, Advisory Opinions, No.6 and No. 7). The competent organs of the United Nations cannot pursue their activity in this domain without concerning themselves as to what remains at this time of the international rights and obligations resulting from these declarations and treaties. It would seem that one could not do better to elucidate this question than in consulting the International Court of Justice.

SECTION X

TERMS OF REFERENCE OF THE SUB-COMMISSION

There were several discussions in the course of the session as to the exact meaning of its terms of reference, and the Sub-Commission finally decided to submit the following recommendation:

"The Sub-Commission on the Prevention of Discrimination and the Protection of Minorities recommends that the Commission on Human Rights be good enough to re-examine its terms of reference in order to clarify them and extend their scope".

This recommendation was adopted by 9 votes with 3 abstentions

ANNEX

CONVENING OF THE NEXT SESSION OF THE SUB-COMMISSION

"The Sub-Commission on the Prevention of Discrimination and the Protection of Minorities,

Considering it essential that the findings reached at its next session be submitted to the Human Rights Commission well in advance of the date on which they are due for discussion by the Commission,

Requests the Secretary-General to take steps to convene the Sub-Commission in time to enable this objective to be attained and to prevent any overlapping between the meetings of the Commission and the Sub-Commission."

(Adopted by 10 votes to 0 on 6 December 1947).

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