

UNITED NATIONS
ECONOMIC
AND
SOCIAL COUNCIL



Distr.
GENERAL

E/CN.4/Sub.2/SR.104
22 October 1952
ENGLISH
ORIGINAL: FRENCH

COMMISSION ON HUMAN RIGHTS
SUB-COMMISSION ON PREVENTION OF DISCRIMINATION
AND PROTECTION OF MINORITIES
Fifth Session
SUMMARY RECORD OF THE HUNDRED AND FOURTH MEETING

Held at Headquarters, New York,
on Tuesday, 7 October 1952, at 10.30 a.m.

CONTENTS

Action to be taken under the Economic and Social Council resolution
of 26 June 1952 (E/CN.4/Sub.2/L.14/Rev.1, E/CN.4/Sub.2/L.41/Rev.1)
(continued)

PRESENT:

Chairman: Mr. ROY
Members: Mr. BLACK*
Mr. EKSTRAND
Mr. FOMIN*
Mr. HISCOCKS*
Mr. MASANI
Mr. NISOT
Mr. SHAFaq
Mr. TSAO*
Mr. WINIEWICZ

Also present:

Miss MAÑAS Commission on the Status of
Women

Representatives of non-governmental organizations:

Category A: Miss SENDER International Confederation of
Free Trade Unions (ICFTU)

Category B and Register:

Mr. LEWIN Agudas Israel World
Organization
Mr. MOSKOWITZ Consultative Council of Jewish
Organizations
Mr. HALPERIN Co-ordinating Board of Jewish
Organizations
Mr. KARBACH World Jewish Congress
Mrs. POLSTEIN World Union for Progressive
Judaism

Secretariat:

Mr. HUMPHREY Director, Division of Human
Rights
Mr. LAWSON Secretary of the Sub-Commission

* Alternate

ACTION TO BE TAKEN UNDER THE ECONOMIC AND SOCIAL COUNCIL RESOLUTION OF
26 JUNE 1952 (E/CN.4/Sub.2/L.14/Rev.1, E/CN.4/Sub.2/L.41/Rev.1)(continued)

Designation of a spokesman to represent the Sub-Commission before the Commission
on Human Rights

Mr. EKSTRAND, returning to a matter he had raised at the previous meeting, suggested that the Sub-Commission's spokesman before the Commission on Human Rights should be the Chairman, but, should he be unable to attend, he should consult the Vice-Chairman and the Rapporteur.

The CHAIRMAN felt the Sub-Commission should specify when and how the Chairman would get in touch with the Vice-Chairman and the Rapporteur. It should be clearly understood, moreover, that the Sub-Commission's spokesman, whoever he might be, should confine himself to reporting the decisions taken by a majority of the Sub-Commission.

Mr. NISOT, referring to Mr. Ekstrand's proposal, observed that the Commission on Human Rights would have to decide, first whether it should invite a representative of the Sub-Commission to appear before it for the purpose of giving information concerning the Sub-Commission's report, and secondly, if that question was decided in the affirmative, at what stage of the Commission's session it should hear him. Only after that second decision had been taken should the Secretariat communicate with the Chairman of the Sub-Commission, who would attend only the meeting or meetings at which the Commission would examine the Sub-Commission's report. That fact should be taken into consideration in estimating the financial implications for the United Nations of the participation of the Chairman of the Sub-Commission in the work of the Commission.

Mr. HUMPHREY (Secretariat) said that the Commission on Human Rights was going to divide its forthcoming session into two parts. It would complete the draft covenants on human rights during the first part and would not consider the Sub-Commission's report until the second. It could, however, decide in principle at the beginning of the first part whether the Sub-Commission's Chairman would be invited. The Secretariat would then make the necessary arrangements.

It was decided that the Chairman should act as the Sub-Commission's
spokesman before the Commission on Human Rights and, if unable to do so, he
would consult the Vice-Chairman and the Rapporteur.

Mr. Masani, Mr. Meneses Pallares and Mr. Shafaq: revised joint proposal (E/CN.4/Sub.2/L.14/Rev.1); Mr. Daniels: revised amendment to the revised joint proposal (E/CN.4/Sub.2/L.41/Rev.1) (continued)

Mr. SEFAQ said that the sponsors of the joint proposal had decided to make the following amendments to the revised text: in paragraph 4 of the operative part of section A to insert the word "provisional" before "plan"; in paragraph 5 to insert the words "in the light of the provisional plan of work" before "to recommend"; to alter the beginning of paragraph 5, sub-paragraph (a) to read "For a request to governments to supply...". The purpose of the last-mentioned amendment was to meet the objections of members who had expressed the view that the Special Rapporteur's provisional plan of work could not be circulated to governments since it would have no standing as an official document.

Mr. BLACK, introducing the revised text of Mr. Daniels' amendment, said that the words "in the United Nations Charter," should be inserted in part 2 of that text after the word "defined". In the paragraph (on page 2) beginning "Decides that the Sub-Commission will study..." the words "the Commission on Human Rights to authorize" should be inserted between "will request" and "the Secretary-General".

Mr. NISOT pointed out in connexion with part 2 of Mr. Daniels' amendment that the international covenants on human rights were still in draft form and hence **could not yet** be regarded as a source of law. Accordingly, the closing passage of that part should preferably read: "and to be defined in the draft international covenants on human rights".

Mr. BLACK accepted Mr. Nisot's suggestion.

Mr. HUMPHREY (Secretariat) observed in connexion with Mr. Black's second revision to Mr. Daniels' amendment that the only authorization which the Commission on Human Rights would have to give the Secretary-General would be authority to issue a printed document or to circulate it to governments. It might be as well for the Sub-Commission to acquaint itself with the document before requesting its publication or circulation to governments.

Mr. BLACK said that in view of the Secretariat's explanation he would retain the text of the paragraph as it stood in document E/CN.4/Sub.2/L.41/Rev.1.

Following a question of procedure raised by Mr. MASANI, the CHAIRMAN ruled that rule 60 of the rules of procedure applied and that Mr. Daniels' amendment would be regarded as a genuine amendment, not as a new proposal.

After a brief discussion, in which Mr. NISOT, Mr. MASANI, Mr. HISCOCKS and Mr. FOMIN took part, the CHAIRMAN said that the Sub-Commission would hold a general debate on the joint proposal and on Mr. Daniels' amendment; then, in accordance with the rules of procedure, it would first vote on the amendment, then on the joint proposal. The Secretariat would present the two texts arranged in synoptic form.

He invited Mr. Lewin, the representative of the Agudas Israel World Organization, to make a statement.

Mr. LEWIN (Agudas Israel World Organization) said that the General Assembly in its resolution 103 (I), adopted on 19 November 1946, had declared that it was in the higher interests of humanity to put an immediate end to religious and so-called racial persecution and discrimination and had called on the governments to take the most prompt and energetic steps to that end. Admittedly, that was not an easy task, since discrimination was deeply rooted in many organized human societies. It manifested itself either in specific measures or as an accepted attitude.

Discrimination could not be separated from a country's general legal structure nor from its historic origins. In that connexion he cited Sir Frederick Pollock's Essays in the Law. Religious discrimination, in particular, deserved careful study, for it often assumed disguised forms. The authors of the joint proposal had proposed that the Sub-Commission should study various forms of discrimination and Mr. Daniels, in his amendment, had made a similar proposal. Mr. Lewin urged the Sub-Commission to add religious discrimination to the various forms of discrimination to be studied.

The Agudas Israel World Organization attached great importance to the study of religious discrimination, particularly in view of the existing discrimination against the Jewish religion. His organization had published a book entitled Religious Freedom: The Right to Practise Shehitah in which it pointed out how the Nazis, in their propaganda, had attacked the method prescribed by the Jewish religion for slaughtering animals and had succeeded in prohibiting the practice, not only in Germany but in other countries, some of which had not yet repealed their laws on the subject. He also pointed out that in some countries it was difficult for persons who practised the Jewish religion to observe the Sabbath. Those injustices were the result of old practices deeply rooted in the daily life of human societies.

In conclusion he said that if the Sub-Commission added religious discrimination to the forms of discrimination mentioned in document E/CN.4/Sub.2/L.14/Rev.1, the organization he represented would gladly co-operate in supplying information on the discrimination existing in various countries against persons who practised the Jewish religion.

Mr. SHAFIQ said he was not opposed to the revised text of Mr. Daniels' amendment, which embodied some suggestions made by Mr. Ekstrand and Mr. Hiscocks. However, he asked for further particulars on two points: firstly, why the amendment dispensed almost entirely with the enumeration of the fields in which discriminatory measures should be studied. A definition of the various fields of study would serve as guidance for more

detailed studies and would show the Commission on Human Rights what plan the Sub-Commission proposed to follow. Moreover, members of the Sub-Commission had recognized that a precise definition of discrimination was required for the purpose of the protection of minorities.

Secondly, he wondered what was the object of the amendment's proposal to postpone the appointment of the Special Rapporteur. The Rapporteur could surely do useful work, even between the end of the current session and the opening of the sixth session. He would ensure the continuity of the Sub-Commission's work and serve as a link between its members and the Secretariat.

Mr. HISCOCKS hoped that the authors of the draft resolution and the amendment would agree to add to the cases of discrimination to be studied, discriminatory measures based on religion, of which the representative of the Agudas Israel World Organization had just spoken.

Turning to the joint proposal, he was pleased to discern both in that text and in the amendment the intention to incorporate the suggestions of other members of the Sub-Commission and to reconcile their views. He asked the authors of the proposal to accept the amendment for, in his opinion, it provided the only way of securing a satisfactory majority; without it he would be unable to support the proposal.

The Sub-Commission had been criticized for devoting its time to general discussion rather than to drafting practical recommendations and for producing resolutions for the Human Rights Commission that were too vague, with the result that the Commission had not studied them. The Sub-Commission should therefore endeavour to produce clearer and more precise texts. In that connexion, he pointed out to Mr. Shafaq that the authors of the joint amendment had not dispensed with, but condensed, the enumeration. The amendment also remedied another defect of the joint proposal, which had set forth a long-term programme before planning the methods of work for the immediate future.

The Rapporteur, he continued, could perform a very useful task, for he would act as co-ordinator, enabling the Sub-Commission more easily to resume its work at the beginning of each session. But those advantages would be lost if there was the slightest ambiguity concerning the way in which the Rapporteur was to carry out his task. The joint proposal, ignoring the fact that the Rapporteur would not assume his duties until June of the following year, was asking him to perform a considerable task and have it completed at latest six weeks before the sixth session. Mr. Hiscocks preferred the solution advocated by Mr. Daniels, namely, to use the existing Secretariat facilities until the Commission on Human Rights had made the necessary financial arrangements.

Furthermore, he did not approve of the amendment proposed by Mr. Shafaq to paragraphs 4 and 5 of the operative part, for he saw little point in setting the ministerial machinery of Member States in motion merely for the sake of a provisional plan of work to be drafted by the Rapporteur.

Lastly, he thought it was entirely illogical to decide at that juncture what the Sub-Commission was to deal with at its seventh session. Rather, the Sub-Commission should do as Mr. Daniels' amendment proposed and at the end of each session draw up its programme for the following session. Priorities could not be decided so far in advance.

Mr. WINIEWICZ congratulated the authors of the joint proposal for having taken into account the opinions expressed by the members of the Sub-Commission and having submitted a revised text likely to be almost universally acceptable. He was particularly glad to note that the academic tone of the original proposal had disappeared and that the text had become clearer and more practical. He also thanked Mr. Daniels for having withdrawn his original proposal and presented a new amendment, which he did not think could be accepted in full, although some of its points were useful. He, personally, would confine his remarks to the joint proposal, to which he would propose some amendments of style and of substance.

As a point of style, he proposed changing the place of the third paragraph of the general preamble which began with the words: "Bearing in mind" and putting it first, in order to focus attention on General Assembly resolution 103(I) and the urgency of the Sub-Commission's task.

As regards substance, he was in favour of deleting the first paragraph of the preamble to part A, which referred to the memorandum on the "Main Types and Causes of Discrimination", as the latter was only a document submitted for additional information. He also proposed that the second paragraph should be revised to read: "Considering it to be the Sub-Commission's urgent duty to suggest recommendations on concrete measures for speeding the extirpation of such discrimination". He suggested that the third paragraph should read: "Considering that in order to pave the way for elaboration of such recommendations, objective studies of actual conditions in various parts of the world should be undertaken". In the operative part, he proposed two more important amendments. Firstly, to replace the words "Discrimination in the field of education ..." in paragraph 1 by the words "Discrimination in the social field, including education, culture and health ..." and the words "Discrimination in the field of employment and occupation ..." by the words "Discrimination in the economic field, including employment and occupation ...". Secondly, to insert between paragraphs 1 and 2 of the operative part a new paragraph, to read: "Decides that at its sixth session, the Sub-Commission shall discuss and suggest measures to be taken for the cessation of all forms of propaganda for racial and national exclusiveness, hatred or contempt".

As regards the proposal as a whole, he was not yet sure whether he would be able to support it entirely, since Mr. Daniels' amendment seemed to him not without merit. He hoped to find enlightenment in the Secretariat's synoptic table and in the rest of the discussion.

Mr. MASANI said that the authors of the joint proposal had done all in their power to incorporate the suggestions of their colleagues in the text and thus ensure it unanimous acceptance. Although he found certain points in Mr. Daniels' amendment which he was ready to accept, he also found others which would destroy the proposal they were intended to amend. He was ready to show goodwill but that goodwill must be reciprocal. He felt that the value of the proposal and the amendment must not be considered in the abstract, but in the light of the

Sub-Commission's past work and the attitude towards it adopted by the Commission on Human Rights. He recalled the attempts made to discontinue the Sub-Commission and noted with satisfaction that the majority of Member States had voted against those reactionary attacks. He felt that the adoption of Mr. Daniels' amendment would be a fatal blow to the work of the Sub-Commission and to the work of the United Nations in the field of discrimination.

In reply to criticism of the joint proposal, he said that as far as the general preamble was concerned, he believed that it was necessary to refer expressly to the General Assembly resolutions which related to the Sub-Commission's work, and not simply to refer to a resolution adopted by the Economic and Social Council under pressure from the Assembly. Moreover, the preamble incorporated the essential features of the draft resolution submitted by Mr. Fomin and the authors of the proposal, who had accepted that text, were bound to defend it. Lastly, to delete the preamble to the joint proposal would mean to deprive it of its raison d'être and would weaken the Sub-Commission's position. He would therefore oppose its deletion strenuously.

As regards the introductory clauses to draft resolution A, he felt that the first was important and that the second provided the necessary link between the Sub-Commission's duty and the studies to be undertaken. Turning to the list in paragraph 1 of the operative part, he said that he was much in favour of clarity and concision, but that he would not allow himself to be turned away from the question which it was the Sub-Commission's duty to study. The Economic and Social Council had not asked the Sub-Commission for a programme for one year or two, but for a long-term programme. That being so, Mr. Daniels' amendment would emasculate the joint draft. He was equally opposed to anything which would compromise the balance between the question of minorities and that of discrimination. Originally, the two questions had been on an equal footing, but persistent efforts were being made to give prominence to the question of minorities, which was perfectly agreeable in some quarters in view of the discrimination which existed there. However, he himself was too anxious over the existence of discriminatory measures to allow that manoeuvre to succeed and would oppose it strongly.

He did not understand why the authors of the amendment shied away from concrete measures, and why they wished to delay for a year the appointment of a rapporteur who would be able to do useful preliminary work in the year ahead.

He had two comments to make on the subject of the text of the amendment. On page 1 the wording of point 2 should probably be changed for it spoke of studies which were outside the competence of the Sub-Commission. Moreover, the Commission on Human Rights was not entitled to make financial arrangements of the kind referred to in the penultimate paragraph of point 3. The approval of the Economic and Social Council was needed for that.

He was grateful to Mr. Winiewicz for the spirit in which he had presented his amendments to the revised text of the joint proposal. For himself he had no objection to changing the order of the paragraphs in the preamble and beginning by recalling General Assembly resolution 103 (I), nor would he oppose the deletion of the first paragraph of part A. He would not express an opinion on the amendments to the second and third paragraphs until he had seen a written text. He could not accept Mr. Winiewicz's amendments to paragraph 1 of the operative part, for they would make the draft resolution lose its specific nature and excessively widen the field of study. Such studies would become positively encyclopaedic for the social field was almost boundless and the same was true of the economic field. Nor could he accept Mr. Winiewicz's last amendment; when the Sub-Commission had broached that matter at its previous session, it had adopted a certain formula which it ought to use again.

He urged the authors of the amendment to try to improve the joint proposal instead of producing a truncated version which would not be taken seriously by the Commission on Human Rights.

Mr. HISCOCKS enquired how the new amendments were going to be dealt with. He asked whether the Sub-Commission could not vote on Mr. Winiewicz's amendments at once.

The CHAIRMAN said that the end of the session was drawing near and asked members if they would agree to fix a time-limit for the submission of new amendments.

Mr. FOMIN said that the rule was that the members of the Sub-Commission were entitled to submit amendments until the time of the vote.

Mr. MASANI felt that it was not appropriate to fix a time-limit for the submission of amendments unless one was also fixed for the general discussion.

Mr. NISOT said that the Sub-Commission must impose some time-limit on the submission of amendments because under rule 51 of its rules of procedure amendments had to be submitted in writing.

The CHAIRMAN then put to the vote a proposal to fix a time-limit for the submission of amendments.

The proposal was not adopted, 5 votes being cast in favour and 5 against.

The meeting rose at 12.45 p.m.