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COMMISSION ON HUMAN RIGHTS

Sixth Session

SUMMARY RECORD OF THE HUNDRED AND SEVENTIETH MEETING

Held at Lake Success, New York,
on Wednesday, 26 April 1950, at 11 a.m.

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<u>Chairman:</u>	Mrs. ROOSEVELT	United States of America
<u>Members:</u>	Mr. WHITLAM	Australia
	Mr. NISOT	Belgium
	Mr. VALLENZUELA	Chile
	Mr. CHANG	China
	Mr. SORENSON	Denmark
	Mr. RAMADAN	Egypt
	Mr. CASSIN	France

Members (continued):

Mr. KYROU	Greece
Mrs. MEHTA	India
Mr. MALIK	Lebanon
Mr. GARCIA	Philippines
Mr. HOARE	United Kingdom of Great Britain and Northern Ireland
Mr. ORIBE	Uruguay
Mr. JEVREMOVIC	Yugoslavia

Also present:

Mrs. GOLDMAN	Commission on the Status of Women
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Representative of a specialized agency:

Mr. LEMOINE	International Labour Organisation (ILO)
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Representatives of non-governmental organizations:

<u>Category A:</u>	Mrs. BERG	World Federation of United Nations Associations (WFUNA)
<u>Category B:</u>	Mrs. ALETA	Catholic International Union for Social Service
	Mr. NOLDE Mrs. NOLDE }	Commission of the Churches on International Affairs
	Mr. MOSKOWITZ	Consultative Council of Jewish Organizations
	Mr. HALPERIN	Co-ordinating Board of Jewish Organizations
	Miss TOMLINSON	International Federation of Business and Professional Women
	Miss ROBB	International Federation of University Women
	Mr. GROSSMAN	World Jewish Congress
<u>Secretariat:</u>	Mr. SCHWELB	Assistant Director, Division of Human Rights
	Mr. LIN MOUSHENG Mr. DAS }	Secretaries of the Commission

DRAFT INTERNATIONAL COVENANT ON HUMAN RIGHTS (ANNEXES I AND II OF THE REPORT OF THE FIFTH SESSION OF THE COMMISSION ON HUMAN RIGHTS, DOCUMENT E/1371) (continued)
Freedom of Information: joint draft resolution submitted by Egypt, France, India and Lebanon (E/CN.4/439, E/CN.4/439/Corr.1); United States amendment to the joint draft resolution (E/CN.4/442)

1. The CHAIRMAN invited the Commission on Human Rights to consider the joint draft resolution submitted by Egypt, France, India and Lebanon (E/CN.4/439, E/CN.4/439/Corr.1).
2. The Chairman, speaking as the representative of the United States of America, felt that the Commission had not to take any action with respect to the draft convention on freedom of information which was on the provisional agenda of the fifth session of the General Assembly. The Commission had not considered the draft convention and was not in a position to pass judgment upon it.
3. The articles of the draft convention could be found in document E/CN.4/Sub.1/106. If the Commission were to undertake a revision of the draft convention, it should proceed to discuss it article by article. It would do better to complete its study of the draft international covenant on human rights. The General Assembly would, in any event, consider ^{the question of} the draft convention on freedom of information and the Commission had not been requested to give its views on that draft convention. In the absence of such a request, all the Commission could do was to proceed with its work on the draft international covenant on human rights.
4. Furthermore, proposals similar to those before the Commission had already been defeated in the Economic and Social Council and the General Assembly. On 20 October 1949, the representative of Lebanon had proposed that the General Assembly should express its intention to complete its consideration of the final text of the draft convention at its fifth regular session. That proposal had been rejected by 26 votes to 17, with 9 abstentions. The General Assembly had, however, thoroughly considered five articles of the draft convention. On 15 February 1950 the Economic and Social Commission, for its part, had refused

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to recommend to the General Assembly that it should complete consideration of the draft convention at its fifth session. The Council had felt that it was not in a position to make a recommendation as it had not had the time to consider in detail the articles of the draft convention.

5. Such were the reasons for which the Commission on Human Rights should reject the draft resolution before it. Article 17 of the draft international covenant on human rights must in no way be construed as prejudging the General Assembly's decision with respect to the draft convention on freedom of information. Just in case the Commission were to retain the joint draft resolution by Egypt, France, India and Lebanon, the United States delegation had, therefore, submitted an amendment (E/CN.4/442) to it which suggested that the last paragraph of the joint draft resolution should be replaced by a text which made it clear that the Commission had no intention of prejudging in any way the decision to be taken by the General Assembly as to whether or not the drafting of a convention on freedom of information was desirable.

6. In the opinion of the United States delegation, it was useless for the Commission to take any decision on the matter.

7. Mr. MALIK (Lebanon) observed with surprise that the United States representative had submitted her amendment before the authors of the draft resolution had had any opportunity of submitting their text. He protested against that procedure, as being likely to influence the opinion of the Commission.

8. The CHAIRMAN, speaking as the representative of the United States of America, apologized for having inopportunately submitted her amendment. She had been under the impression that the authors of the draft resolution had already submitted their proposal at the previous meeting when she had not been present.

9. Mrs. MEHTA (India) observed that when the Commission had considered article 17 of the draft international covenant on human rights she had pointed out that if the General Assembly were to consider the draft convention on freedom of information, as it seemed to intend to do, it was useless for the Commission to adopt a very detailed article, as a text of a very general nature would amply suffice for the covenant.

/10. The aim

10. The aim of the draft resolution submitted to the Commission was to remind the General Assembly that it would be advisable to adopt a special convention on freedom of information rather than to keep to the broad general provisions of article 17.

11. Mr. MALIK (Lebanon) pointed out that under resolution 313 (IV) the General Assembly had requested the Commission "to include adequate provisions on freedom of information in the draft international covenant on human rights". The question which faced the Commission was therefore to decide whether article 17 of the draft covenant contained such provisions. If only as a matter of courtesy, a subsidiary body must reply to such a request from the General Assembly.

12. The word "adequate" was certainly somewhat ambiguous, as provisions which might be adequate for the covenant might not be so for the convention. He did not think that it could reasonably be maintained that the provisions adopted by the Commission in connexion with article 17 of the covenant could be considered as adequate for a special convention on freedom of information. It could not be said that the General Assembly had dissociated itself from the question; it had simply referred the matter to the Commission so that the latter might include an article on freedom of information in the covenant. In doing so, the Assembly had not given up the idea of adopting a convention. Nor could it be said that article 17 of the covenant took suitable account of all the elements of freedom of information; certain Commission members were not even sure that that article was adequate for the covenant.

13. The United States representative had pointed out that the Economic and Social Council and the General Assembly had rejected certain proposals, but, said Mr. Malik, they had rejected them and had referred the whole question to the Commission because neither of them had wished to prejudge the question and because they had desired first of all to have the Commission's opinion. The only conclusion which could be drawn from the General Assembly's decision was that the Commission must study the question of freedom of information. Furthermore, it was quite natural that a United Nations body which had begun the study of a problem should continue to interest itself in the study of that problem. The Lebanese representative feared that the Human Rights Commission might lose prestige if it dissociated itself from the question of freedom of information.

14. Mrs. Roosevelt had said that the Commission should consider the draft convention on freedom of information article by article. He doubted the validity of that argument and observed that two years ago the Commission had already taken a first decision without proceeding to a detailed study of the draft convention.

15. As to the joint draft resolution now before the Commission, he observed that in that resolution there was no question of the convention studied in 1949 by the General Assembly but of the preparation of a special convention. The United States amendment would have the effect of preventing the Commission from taking a decision on the question. He thought, however, that by adopting the joint draft resolution, the Commission would in no way prejudice the General Assembly's opinion. It was merely a question of placing on record that the provisions included in article 17 of the covenant did not adequately take the place of a convention. He thought that that was the least that could be said in the circumstances.

16. Mr. RAMADAN (Egypt) recalled that in February 1946 the United States had proposed that the General Assembly should appoint a committee to study the problem of freedom of information and the measures required to guarantee that freedom. The Economic and Social Council had created the Sub-Commission on Freedom of Information and had convened a conference which had met in Geneva in March and April 1948.

17. During its consideration of the text of article 17 of the draft covenant, the Human Rights Commission had tried to prepare a general text, leaving it to the General Assembly to draft a special convention embodying all the guarantees and limitations. The representatives of Yugoslavia, India and Egypt had submitted substantive amendments to article 17; they had shown that freedom of information entailed heavy responsibilities. The Commission had felt that it could not take any decision on those amendments; Mr. Ramadan had therefore withdrawn the Egyptian amendment, reserving his right to submit it subsequently to the General Assembly.

18. In the circumstances, it was absolutely necessary that the various drafts should be submitted to the General Assembly and that that body should adopt a special convention on freedom of information.

19. Mr. CASSIN (France) pointed out that he had always shown an interest in the general nature of the Commission's mandate. The Commission had begun to study the draft covenant in 1947 and the Drafting Committee entrusted with that study had already given thought to the problems raised by freedom of information. But the Conference on Freedom of Information had been sitting in Geneva at the same time and the members of the Drafting Committee had thought it preferable to await the end of that Conference.

20. The Economic and Social Council and the General Assembly had been called upon to consider the results of the Conference. At its fourth session, the General Assembly had felt that the work of the Commission on Human Rights should not be paralyzed by a detailed discussion of the convention on freedom of information and had therefore given full discretionary powers to the Commission.

21. The French representative believed that the Commission's discussion of article 17 of the draft covenant was entirely in line with the work that the Commission must carry out. The question now was to decide whether the Commission regarded the provisions of article 17 of the draft covenant as adequate to cover all the problems raised by freedom of information.

22. On that point, he observed that the Commission had shown its preference for a brief text embodying broad principles but which neglected a number of very important questions. He had submitted an amendment on technical and economic questions, but that amendment had been rejected. He willingly deferred to the Commission's decision which had meant that the latter favoured limiting article 17 to very general principles. He concluded, however, from that decision that other United Nations bodies would study the problem of freedom of information. In that spirit he had accepted the defeat of the French amendment and had himself voted against certain other amendments.

23. The result was that a large number of problems connected with freedom of information no longer fell within the competence of the Commission, and it was that fact which justified the draft resolution proposed by Egypt, France, India and Lebanon, whereby the Commission shifted the responsibility for dealing with all the problems which it had not itself been able to examine in detail to the General Assembly.

24. The decision

24. The decision taken by the Commission on that draft resolution would decide the part it was to play in the elaboration of human rights. The Commission had prepared a Universal Declaration of Human Rights which did not have complete legal value. It had then been invited to prepare the international covenant which was the expression in legal terms of the Declaration on all points on which the latter could be given mandatory force. However, he believed that it was also necessary to provide detailed rules to govern certain rights and freedoms, including freedom of information and the economic, social and cultural rights. The question would constantly arise, therefore, of what part the Commission on Human Rights was to play in the work of preparation and what part would be played by other organs of the United Nations.

25. In that connexion, the representative of France quoted a passage from a report on the covenant on human rights submitted to the Executive Board of UNESCO on 17 February 1950 (19 EX/44), where it was said that it was not impossible to reconcile the two methods of the covenant and of special international conventions: the covenant would set forth the minimum essential principles in the form of imperative rules of law; it would serve as the legal foundation and source of later conventions. Such conventions would thus have behind them the authority and prestige of the covenant. He laid particular emphasis on the following passage of the report:

"In this way, the Declaration would enunciate the general principle, the covenant would express it in legal terms with mandatory force, and the convention would complete its implementation by laying down precise rules for its application."

26. So far, the Commission had dealt only with rights and freedoms the implementation of which did not require special conventions or covenants. If the Commission decided to adopt the draft resolution submitted to it, it would protect itself from two opposing dangers: it would not risk taking upon itself a super-human task beyond its powers, by claiming that no other organ could discuss human rights, and, on the other hand, it would not give the impression of resigning from the fray as it would do by recognizing that as soon as there was a special conference on a particular right or freedom, it disassociated itself from it entirely. The draft resolution submitted to the Commission prepared an intermediate solution avoiding both dangers and laid the foundations of a genuine policy for the Commission on Human Rights which could be applied in all similar cases.

27. Mr. KYROU (Greece) said that he was in full agreement with the principles invoked by the Lebanese representative in support of the joint draft resolution, but that the same principles led him to an entirely different conclusion.

28. In the first place, he believed that it had never been the intention of the General Assembly or the Economic and Social Council to impose upon the Commission on Human Rights, with whose heavy programme of work they were acquainted, the task of submitting to them a draft convention on freedom of information. The word "adequate", used in General Assembly resolution 313 (IV), undoubtedly simply envisaged the inclusion of an article of that kind in the covenant on human rights. From that point of view, the Commission could be regarded as having fulfilled its mandate.

29. Moreover, Mr. Malik had stressed the need not to prejudge the General Assembly's decision; but the amendment which he defended had precisely that result as it contained a recommendation which was tantamount to an instruction and expressed the opinion that the only means of ensuring freedom of information was to elaborate a convention.

30. For the reasons just set forth, the Greek delegation would be unable to vote for the joint draft resolution and it would give its support to the amendment submitted by the United States of America.

31. He agreed with the Indian representative, however, that the Commission was in duty bound to inform the Economic and Social Council that it did not consider that article 17 of the draft covenant was an adequate substitute for a convention. He reminded the Commission that he had taken it upon himself during the debate to propose that a statement to that effect should be included in the records.

32. Mr. SORENSON (Denmark) said that in the absence of instructions from his Government he was speaking solely as a member of the Commission on Human Rights. His position on the problem under discussion would be guided solely by his anxiety to ensure the effective protection of human rights.

33. He agreed with the observations of the French representative and emphasized that everything pertaining to human rights came within the Commission's general terms of reference. It was the duty of the Commission not only to follow all work done in that field but also to encourage the other organs of the United Nations in their own efforts. The Commission was, therefore, fully qualified

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on those grounds to inform the General Assembly of its views and to submit to it whatever recommendations it deemed useful.

34. He himself would vote for the joint draft resolution, which, in his opinion, in no way prejudged the decision of the General Assembly. It was to be noted, furthermore, that that resolution and the United States amendment were not mutually exclusive; he would have voted for the latter if it had not been submitted as a substitution for the joint text.

35. Mr. JEVREMOVIC (Yugoslavia) also said that he would vote for the joint draft resolution. In order to avoid any subsequent misunderstanding, however, he must explain that his vote in favour of it should not be interpreted as meaning that the Yugoslav Government approved the text of the draft convention on which the General Assembly would be called upon to decide. The position of the Yugoslav delegation on that matter was well known.

36. Mr. Jevremovic thought nonetheless that the Assembly would have to take that problem under consideration, as it was undeniable that general agreement on a convention of that kind would not fail to contribute to the establishment of friendly relations among nations and to promote the aims of the United Nations. He would therefore vote against the United States amendment.

37. Mr. NISOT (Belgium) noted that all representatives were in agreement in stating that the Commission in drafting article 17 had not intended to prejudge any decision which the General Assembly might take with regard to a convention on freedom of information; the United States amendment said nothing to the contrary and Mr. Nisot said that he would vote in favour of that amendment.

38. Mr. KYROU (Greece), in reply to the remarks made by the representatives of France and Denmark, acknowledged that it was incumbent upon the Commission on Human Rights to give the Economic and Social Council and the General Assembly the benefit of its advice on all matters pertaining to human rights; he believed, however, that by submitting to them the draft covenant prepared by it, and more particularly article 17, the Commission would have discharged that obligation.

39. The CHAIRMAN, speaking as the representative of the United States of America, drew the Commission's attention to paragraph 2 of resolution 313(IV), which expressed the General Assembly's intentions very clearly. The joint draft resolution when considered in the light of that resolution would be seen to be not merely superfluous but even undesirable, owing to the fact that it prejudged the subsequent decision of the Assembly. It was that to which the United States delegation was principally opposed.

40. Mr. CASSIN (France) expressed the opinion that what the General Assembly had meant by "adequate provisions" were provisions which were adequate by reference to the covenant and not provisions which would deal exhaustively with the problem of freedom of information as a whole.

41. The votes which the Commission had taken on the subject bore out that view. It had deliberately confined article 17 to a statement of principles, considering that the regulation, properly speaking, of the exercise of freedom of information should be dealt with in a convention drawn up for that particular purpose.

42. The Commission had a precise task to fulfil. If it failed to indicate its views on the safeguarding of freedom of information, it would betray the trust which the General Assembly had placed in it.

43. Mr. CHANG (China) traced the history of the draft convention on freedom of information and pointed out that the world situation had inevitably had its effect on the course of the United Nations' work. The Conference on Freedom of Information had been convened in Geneva in 1948 in accordance with a decision taken two years earlier. The Conference had drawn up three draft conventions, which had been examined in turn by the Economic and Social Council and by the General Assembly. It had not proved possible to adopt the third draft at the Council's ninth session on account of the large number of amendments submitted at a late stage by certain delegations; it should be borne in mind that at that time positions had hardened. It therefore seemed wiser to allow a certain period to elapse. The General Assembly had abstained from taking a final decision in the matter; it had preferred to refer it to the Commission on Human Rights and to ascertain the general lines of the article on freedom of

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information to be included in the covenant on human rights. Such was the actual situation; the Commission had drafted article 17 and would submit it to the General Assembly, which would of course take the final decision in the matter.

44. In all the circumstances, Mr. Chang felt that the time had come to take a vote. Outlining his views on the two texts before the Commission, he pointed out with reference to the joint draft resolution that the preparation of a convention was one means but not the only means of ensuring freedom of information and proposed that the text should be amended accordingly. Where the United States amendment was concerned, the desirability of preparing a convention on freedom of information had already been recognized by the General Assembly four years earlier. The only decision it was still required to take was related to the text of that convention. It would therefore be preferable to use the phrase "with respect to a special convention".

45. Mr. CASSIN (France), Mr. RAMADAN (Egypt), Mrs. MEHTA (India) and Mr. MALIK (Lebanon) agreed to amend their joint draft resolution on the lines suggested by the representative of China.

46. The CHAIRMAN, speaking as the representative of the United States of America, said that she preferred her delegation's amendment in its original form. She was, however, prepared to put the Chinese representative's proposal to the vote, if he wished her to do so.

47. The Chairman put to the vote the United States amendment to replace the third paragraph of the joint draft resolution by the text in document E/CN.4/442.

That amendment was rejected by 7 votes to 3, with 3 abstentions.

48. Mr. NISOT (Belgium) then submitted, on behalf of his delegation, a new amendment identical to that of the United States except that the words "with respect to a special convention" were substituted for the words "with respect to the desirability of drafting a special convention."

That amendment was rejected by 7 votes to 5, with 2 abstentions.

49. Mr. KYROU (Greece) in turn submitted a proposal that the text proposed by the Belgian representative, which had not been accepted to replace the third paragraph, should be added at the end of the joint draft resolution.

50. Mr. MALIK (Lebanon), on a point of order, recalled that, under rule 58 of the rules of procedure, after the voting had commenced, no representative should interrupt the voting except on a point of order in connexion with the actual conduct of the voting. In the circumstances, the Belgian amendment was not admissible since it had been submitted when the Commission was about to vote on the joint draft resolution. The Commission could not continue by now agreeing, in flagrant violation of the rules of procedure, to consider the Greek amendment.

51. Mr. NISOT (Belgium) thought the Commission should not be excessively formal and that it should admit the Greek amendment which was of a compromise nature.

52. Mr. KYROU (Greece) said that every delegation had, up to the last moment, the right to submit any amendments it considered necessary.

53. The CHAIRMAN, while recognizing that there might be two opinions on the subject, pointed out that there were precedents in which amendments submitted at the last minute had been considered. She therefore declared the Greek amendment in order.

54. Mr. MALIK (Lebanon) protested against the Chairman's decision as being contrary to the formal provisions of the rules of procedure. In answer to the Belgian representative's remarks, he stated that no one could be less of a stickler for rigid formality than he was provided the rules of fair play were observed. But it was obvious that the Greek delegation was attempting to re-introduce, in a different form, what the Commission had already rejected.

55. Mr. CASSIN (France) said the rules of procedure were not based solely on procedural considerations but also on considerations of substance. The Commission could not take a decision on an amendment submitted at the last minute, before discussing it. He therefore proposed that it should vote on the joint draft resolution and should then proceed to a discussion of the Greek amendment on which representatives had differing viewpoints to express.

56. The CHAIRMAN indicated that in her opinion rule 58 of the rules of procedure applied to the moment when the voting was actually taking place. But when the Greek delegation had presented its amendment, voting on the joint draft resolution had not yet begun.

57. Mr. MALIK (Lebanon) stressed that, in the normal course of events, any amendment to a text should be discussed before the latter was put to the vote. He did not agree however with the Chairman when she said that the Commission had not yet begun to vote on the basic text. Voting on that text had begun as soon as the United States amendment, which was an amendment to that text since it was intended to alter its third paragraph, had been put to the vote. If the United States amendment had been adopted, the joint draft resolution would, by that very fact, have been amended; it could not therefore be maintained that the voting had not been on the basic text.

58. Mr. ORIBE (Uruguay) thought, like Mr. Malik, that voting on an amendment should precede voting on the basic text; all the more so since, in the case under discussion, the Greek delegation was proposing an addition which was incompatible with the basic draft resolution. A decision should be taken therefore first on the Greek amendment and then on the joint draft resolution.

59. Mr. NISOT (Belgium) appealed to the Lebanese representative not to oppose, for formal considerations, an amendment which was limited to indicating that the Commission did not prejudge the Assembly's decision.

60. The CHAIRMAN again stated that the Greek amendment was quite admissible since it had been submitted before voting on the joint draft resolution had actually begun.
61. Mr. MALIK (Lebanon), without wishing to contest the Chairman's ruling, still maintained that it was irregular.
62. Mr. CASSIN (France) declared that from a strictly legal point of view the Lebanese representative was right.
63. Mr. VALENZUELA (Chile) proposed the adjournment of the meeting.

The meeting rose at 1.20 p.m.