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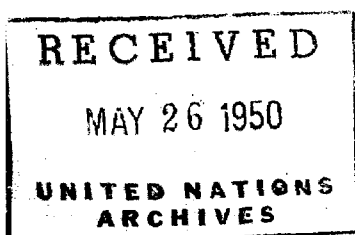
COMMISSION ON HUMAN RIGHTS
Sixth Session
SUMMARY RECORD OF THE HUNDRED AND NINETY-SECOND MEETING
Held at Lake Success, New York,
on Monday, 15 May 1950, at 11 a.m.

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<u>Chairman:</u>	Mrs. F.D. ROOSEVELT	United States of America
<u>Members:</u>	Mr. WHITLAM	Australia
	Mr. NISOT	Belgium
	Mr. VALENZUELA	Chile
	Mr. CHANG	China
	Mr. SORENSEN	Denmark
	Mr. RAMADAN	Egypt

(16 p.)



Members (continued):

Mr. CASSIN	France
Mr. KYROU	Greece
Mrs. MEHTA	India
Mr. MALIK	Lebanon
Mr. MENDEZ	Philippines
Miss BONIE	United Kingdom of Great Britain and Northern Ireland
Mr. ORIBE	Uruguay
Mr. JEVREMVIC	Yugoslavia

Representative of a specialized agency:

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

<u>Category A:</u>	Miss SENDER	International Confederation of Free Trade Unions (ICFTU)
<u>Category B:</u>	Mr. MOSKOWITZ	Consultative Council of Jewish Organizations
	Mr. HALFERIN	Co-ordinating Board of Jewish Organizations
	Mr. CRUICKSHAN	Inter-American Council of Commerce and Production
	Mr. BEER	International League for the Rights of Man
	Miss SCHAEFER	International Union of Catholic Women's Leagues

Secretariat:

Mr. SCHWELB	Assistant Director, Division of Human Rights
Mr. SCHACHTER	Deputy Director of the General Legal Division
Mr. DAS	Secretary of the Commission

DRAFT INTERNATIONAL COVENANT ON HUMAN RIGHTS: MEASURES OF IMPLEMENTATION
(E/1371, Annex III, E/CN.4/164/Add.1, E/CN.4/353/Add.10, E/CN.4/353/Add.11,
E/CN.4/358/chapter IX, E/CN.4/366, E/CN.4/419, E/CN.4/444, E/CN.4/452, E/CN.4/457,
E/CN.4/474, E/CN.4/474/Corr.1, E/CN.4/487, E/CN.4/489, E/CN.4/L.9,
E/CN.4/L.9/Add.1) (continued)

1. The CHAIRMAN requested the Commission to consider the United Kingdom proposal for an additional article to be inserted after article 23 of the measures of implementation (E/CN.4/487).
2. Miss BOWIE (United Kingdom) said that it would be important for the human rights committee in the course of its work to be able to obtain legal opinions on the cases before it. Inasmuch as the details of such cases should be kept secret until a decision had been rendered, she thought it would be wiser to transmit requests through the Secretary-General in his capacity as an organ of the United Nations rather than to act through the intermediary of the Economic and Social Council or the Commission on Human Rights. The last phrase of the United Kingdom proposal, beginning with the words "upon such questions" would ensure that the committee would retain the initiative in such matters and that the Secretary-General would merely forward the committee's requests for an advisory opinion to the Court.
3. Mr. KYROU (Greece) was in favour of the United Kingdom proposal. Before voting on the text, however, he wished the Secretariat to assure him that his interpretation of Article 96, paragraph 2 of the Charter was correct. He understood that text to mean that fresh authorizations to request advisory opinions would not be required in every case and that any authorization granted to an organ or specialized agency by the General Assembly would be permanent.
4. Mr. SCHACHTER (Deputy Director of the General Legal Division) said it was clear that an authorization from the General Assembly to request advisory opinions might be permanent and might extend to a whole class of cases. In that connexion he cited the general authorization granted by the General Assembly to the Economic and Social Council in 1946, to the Trusteeship Council in 1947 and to the Interim Committee in 1948. The only necessary limitation on the authorization was

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that such requests for advisory opinions of the Court might only be made in respect of legal questions arising within the scope of the activities of the organ or agency making the request.

5. Mr. NISOT (Belgium) observed that, according to the United Kingdom proposal, the right to request the opinion of the Court would belong not to the proposed committee but to the Secretary-General. The latter would thus decide with full authority when it was appropriate to consult the Court and would be the sole judge of the questions to be put to it. The committee's decisions in that respect would not be binding on him nor would he be able to justify himself by them. He would be as free to consult the Court on his own initiative as to abstain from complying with a request for an advisory opinion addressed to him by the committee. The system proposed by the United Kingdom would not only be unsuited to the committee's purpose but would even put the committee at the mercy of the Secretary-General, who would be competent to invite quasi-judicial decisions which the committee would be unable to disregard.

6. The CHAIRMAN, speaking as the representative of the United States of America, thought the United Kingdom proposal raised questions of grave concern. Article 96, paragraph 2 empowered other organs of the United Nations than the General Assembly and the Security Council, and the specialized agencies, to request advisory opinions if so authorized by the General Assembly, but only on legal questions arising within the scope of their activities. As the legal questions which would arise out of the committee's work would not come within the scope of the Secretary-General's tasks, the United Kingdom proposal would conflict with the provisions of the Charter.

7. The Secretariat was a principal organ, under the terms of Article 7 of the Charter, and could request advisory opinions on questions arising on matters which were within its competence, but the United States delegation felt that it could not ask for a legal opinion on questions arising out of matters which were within the scope of any other United Nations organ or agency, whether authorized to request such opinions or not. If that were not the case, there would be no need for the General Assembly to issue specific authorizations. The United States delegation thought that the Charter could not be amended in that fashion and was therefore opposed to the United Kingdom proposal.

8. The Commission had decided that the human rights committee should not be a legal body and that it should not discuss legal matters. Accordingly, there was no need for it to request advisory opinions from the International Court. Moreover, States signatories to the Charter and the Statute of the International Court of Justice were free to proceed in accordance with the provisions of those instruments and consult the Court when they wished. It seemed, therefore, that the additional article proposed by the United Kingdom was unnecessary.

9. Mr. VALENZUELA (Chile) observed that Article 65, paragraph 1 of the Statute provided that "the Court may give an advisory opinion on any legal question at the request of whatever body may be authorized by or in accordance with the Charter of the United Nations to make such a request". The human rights committee was clearly not authorized by any United Nations body to request such opinions. The question remained whether the Charter authorized the committee to do so. Article 96, paragraph 2 of the Charter referred to "other organs" which could be authorized to request advisory opinions. That paragraph was linked to Article 7 which cited the principal organs of the United Nations, mentioning "subsidiary organs" in its second paragraph. For the United Kingdom proposal to have a sound legal basis, therefore, the Commission would have to proclaim the committee's character as a subsidiary organ. Only when that decision had been approved by the Economic and Social Council and by the General Assembly would the committee be competent, from the legal point of view, to request advisory opinions from the International Court of Justice.

10. As it stood, however, the United Kingdom proposal was not wholly in harmony with the provisions of the Charter. He wondered whether the United Kingdom representative felt that the committee could request advisory opinions even if it were not considered a subsidiary organ of the United Nations.

11. Miss BOWIE (United Kingdom) considered that under the Charter the human rights committee would have no power to request advisory opinions, and that if it were to be called a subsidiary organ, the Charter might have to be amended. For that reason, she felt the United Kingdom proposal offered a solution which would enable the Commission to circumvent that constitutional difficulty.

12. Mr. CASSIN (France) thought the United Kingdom proposal most interesting. It was of particular importance in view of the membership of the committee.

13. The questions raised in that proposal were too complex, however, to permit of an immediate solution. For example, the proposal to request the necessary authorization to consult the International Court of Justice immediately posed the question of the nature of the Secretariat as an organ of the United Nations under the provisions of Articles 7 and 96 of the Charter, as well as the nature of the human rights committee. The further question whether the authorization granted under the provisions of Article 96 was permanent, as well as the nature of the right to request opinions and to formulate questions, would also have to be considered.

14. The United Kingdom proposal was directly connected with the question of the committee's relation to other United Nations organs, and the possible repercussions of any decision on that proposal should be taken into account. The French delegation would abstain from voting on the proposal, as it felt that it was inextricably linked to the other legal questions which had been discussed the previous week.

15. Mr. RAMADAN (Egypt) did not consider that the United Kingdom proposal would guarantee that infringements of human rights would be punished. Moreover, the human rights committee would not come under the provisions of Part A of General Assembly Resolution 171(III). For those reasons the Egyptian delegation would abstain from voting on the proposal.

16. Mr. SORENSEN (Denmark) did not fully support the French representative's contention that the United Kingdom proposal was closely linked to the decisions which had been taken by the Commission during the previous week. Furthermore, if it were possible to obtain an advisory opinion on the committee's work, it might not be necessary to limit the right of States Parties to submit their cases directly to the Court.

17. The United Kingdom proposal was intended to achieve the same purpose as the proposals which had been rejected at the 191st meeting. The United Kingdom text would make it possible for the committee to obtain an advisory opinion on the legal questions which were within its competence. For that reason he would support the United Kingdom proposal.

18. Turning to the legal questions arising out of that proposal, he referred to the Belgian representative's remarks. The Danish delegation did not feel that it would be a disadvantage if the Secretary-General were free to exercise some discretion in such matters. He was under no obligation to forward requests for opinions, but, on the other hand, he could have no interest in refusing to comply with the committee's wishes. Mr. Sorensen could not see how the Secretary-General's attitude towards the committee's work would be compromised if he were made the intermediary through whom requests for advisory opinions were to be transmitted to the Court.

19. The United States representative had raised a very serious obstacle in questioning whether it would be within the scope of the Secretary-General's activities to request advisory opinions on matters concerning the committee. It should be recalled, however, that the Secretary-General would fulfil very important duties in connexion with the organization and functioning of the committee and that its activities might properly be said to fall within the scope of his work. The question should be decided by the General Assembly. He suggested therefore that the best course might be to forward the United Kingdom proposal to the General Assembly and ask that body to decide whether it contravened the provisions of the Charter.

20. If that legal obstacle appeared insurmountable, another solution might be to forward the committee's requests for advisory opinions through another organ, which was competent to deal with questions of human rights, such as the Economic and Social Council. He had not fully considered the implications of that proposal, however, and it might prove inadvisable as some of the members of the Council might not ratify the covenant.

21. If the United Kingdom wished to maintain its proposal, therefore, he would support it.

22. Mr. KYROU (Greece) wondered whether the United Kingdom representative would be willing to defer her proposal in order to give members time to study it more thoroughly.

23. Miss BOWIE (United Kingdom) thought it would be better to act on her proposal at that time so that, if adopted, it could be forwarded to Governments for their consideration together with the other measures of implementation.

24. Mrs. MEHTA (India) said that the Commission had been informed that States could not bring cases involving violations of human rights before the International Court and it was for that reason that some implementation machinery would have to be devised for the Covenant. Accordingly, the Commission had proposed that a permanent human rights committee should be established to deal with such matters. The only two questions for the Commission to decide therefore were whether the committee would be a subsidiary organ of the United Nations, and, if so, whether it would have the power to approach the Court for a legal opinion.

25. Mr. SCHACHTER (Deputy Director of the General Legal Division) said that hitherto Article 7 of the Charter had been interpreted to mean that only organs established by the principal organs of the United Nations, with terms of reference laid down by those bodies, could be considered as subsidiary organs. According to that conception, the human rights committee would not be a subsidiary organ, as it would not be established by a principal organ, but rather by an international instrument separate and distinct from the Charter. He added that that conclusion was based only on the draft articles on implementation which had so far been drawn up, and did not of course take into account other measures that might possibly be taken by the General Assembly in regard to the proposed committee.

26. Mr. CRIBE (Uruguay) said that the United Kingdom proposal raised two distinct questions. On the one hand there was the question of principle — whether the Commission on Human Rights did or did not wish the proposed committee to be empowered to request advisory opinions of the International Court of Justice, either directly or indirectly, through some person or body. On the other hand, there was the question of the means by which the committee could request such advisory opinions.

27. The Uruguayan delegation supported the view that the proposed committee on human rights should have the power to request advisory opinions on legal matters.

28. The proposed committee could not be considered as an organ of the United Nations or a specialized agency. That fact had been emphasized by the representative of the Legal Department of the Secretariat. Some organ must therefore be found through which the proposed committee could transmit its requests for advisory opinions to the International Court. As it was open to controversy whether the protection of human rights came within the scope of the Secretary-General's activities, he felt there were only three organs through which the proposed committee could submit requests for advisory opinions, namely the General Assembly, the Economic and Social Council and the Commission on Human Rights.

29. Mr. MALIK (Lebanon) said that he would be inclined to consider the proposed committee as an organ of the United Nations. He emphasized, however, that the draft International Covenant on Human Rights would be promulgated by the General Assembly and that the proposed committee on human rights would come into being only after the requisite number of signatures had been deposited. The committee would therefore only be indirectly set up by the General Assembly, and it was that fact which caused difficulties.

30. The CHAIRMAN, speaking as the United States representative, said that it did not seem to her delegation that the question of human rights came within the scope of the activities of the Secretary-General. She reiterated her original statement that States parties to the Covenant would be free, if they so desired and so agreed, to submit to the International Court of Justice any questions that they wished. It therefore seemed that it would be simpler not to include in the measures on implementation a provision such as that suggested by the United Kingdom delegation.

31. Mr. MENDEZ (Philippines) felt that the proposed committee would be a subsidiary organ of the Economic and Social Council and therefore a subsidiary organ of the United Nations.

32. Referring to the question of the scope of the activities of the Secretary-General, he noted that the Secretary-General was mentioned at least seven times in the measures on implementation (E/CN.4/474) and that he would become part of the machinery of the committee on human rights. When legal questions of a serious

nature arose and the committee wished to ask the International Court of Justice for an advisory opinion, he considered that the committee should do so as a whole and not simply ask the Secretary-General to pass on such a request to the Court.

33. Mr. KYROU (Greece) felt that the question of the status of the committee on human rights was even more complicated than the representatives of Lebanon and the Philippines thought. If the measures of implementation were approved by the Economic and Social Council and by the General Assembly they would be included in a resolution of the latter body. The committee on human rights would, however, be set up only after a certain number of ratifications of the Covenant on Human Rights had been deposited, and would therefore be established by the States parties to the Covenant and not by the Economic and Social Council. He was inclined, therefore, to share the opinion of the representative of the Secretariat

34. Miss BOWIE (United Kingdom), referring to the statement of the French representative that the United Kingdom proposal was linked with the discussion on whether or not the Commission wished the proposed committee to be composed primarily of persons of high judicial experience, said that as the Commission had decided that it did not wish the committee to be a judicial body, it was all the more important that when a legal question arose the committee should be in a position to obtain a consultative opinion. Even in the investigation of facts, the committee might be confronted with the question of whether a human right had been violated. It was important, therefore, that it should obtain a legal opinion as to whether there had been such a violation.

35. She felt that the French representative's three questions had been largely answered by the statements of other representatives as well as by her first statement.

36. Referring to the question as to which body should formulate the request for an advisory opinion, she pointed out that the United Kingdom delegation had been careful to state in its proposal that the committee should do so. It was clear from Article 7 of the Charter that the Secretariat was an organ of the United Nations. The Secretary-General would, moreover, have

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certain duties in connexion with the committee, and the United Kingdom delegation thought that it should be possible to add a special definition of his powers when the General Assembly agreed to give him the right to transmit requests for an advisory opinion to the International Court of Justice.

37. Some representatives had suggested that requests for advisory opinions should be transmitted through the Economic and Social Council and the Commission on Human Rights, but there would be a danger of serious delay in the transmission of such requests, in view of the fact that those organs met very infrequently.

38. Referring to the statement by the representative of India that discussion in the Commission had shown that States parties to the Covenant would not have the right to request the International Court of Justice for an advisory opinion, she did not think that that statement was correct. States Members of the United Nations which were parties to the Covenant would still have the right to ask the International Court of Justice to settle any case they wished to submit to the Court. But they had not the right to ask for advisory opinions. The point brought out during the discussions in the Commission on Human Rights was that the Commission wished the questions brought before the committee to be settled in a friendly way, whereas the International Court of Justice could only deliver judgments if cases were referred to it by the parties.

39. As regards the statement by the Lebanese representative, she pointed out that the committee would be set up only when the Covenant on Human Rights had entered into force. She agreed that under Article 57 of the Charter it might be argued that the committee on human rights could be regarded as a specialized agency of the United Nations.

40. The United Kingdom delegation thought it would be wise for a vote to be taken on its proposal immediately. The report of the Commission might mention that there should be further consideration of the question of whether the committee's requests for advisory opinions should be transmitted to the International Court of Justice through the Secretary-General.

41. Mr. NISSE (Belgium) said in answer to the Philippine representative that in his opinion the right to consult the Court could not usefully be conferred on the Secretary-General.

42. Mr. VALENZUELA (Chile) said his delegation felt that the proposed committee on human rights could request an advisory opinion of the International Court of Justice only if it was considered as a subsidiary organ of the United Nations. Although the Chilean delegation agreed in principle with the United Kingdom proposal, it would prefer the question to be covered by a resolution rather than by an additional article in the draft International Covenant on Human Rights. When the Covenant had been ratified by a sufficient number of States Members the Commission on Human Rights could again consider the question of the character of the committee on human rights, and in a resolution could ask the Economic and Social Council to request the General Assembly to grant the committee the status of a subsidiary organ of the United Nations.

43. Mr. CASSIN (France) remarked that agreement might be reached on the principle involved in the United Kingdom proposal: opinion was divided, however, on the question whether the committee would be a subsidiary organ which might be authorized to ask the International Court for an advisory opinion. The representatives of Denmark and the United Kingdom appeared to have misunderstood his reference to the decision adopted during the preceding week regarding the membership of the committee; he had meant, and continued to believe, that that decision was structurally linked with the issue under discussion. If the membership of the committee was to be determined by the States Parties to the Covenant, the problem of establishing a relationship between such an organ and the International Court was obviously a very complex one. He did not wish to pre-judge his Government's position on the question and he would therefore be obliged to abstain.

44. Mrs. MEHTA (India) remarked, in reply to the United Kingdom representative, that she was fully aware that States were free to consult the International Court on all problems: it was true nevertheless that no machinery existed as yet for bringing disputes connected with the observance of human rights before the Court, and the point at issue was how such machinery should be devised.

45. The committee would be a permanent body; the article constituting it would eventually be adopted by the General Assembly within the framework of the Covenant. Since the Secretary-General was to participate in the selection of its members, it would not be an organ serving only the States

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parties to the Covenant but, rather, an organ of the United Nations within the meaning of Article 96 (1). She was therefore unable to vote for the United Kingdom proposal.

46. Mr. CHANG (China) thought that insertion of the United Kingdom text would be superfluous at that stage. The International Court usually took from several months to a year to issue an advisory opinion: such a lengthy procedure was hardly appropriate for resolving the points of law likely to come up in the course of the committee's work. If fundamental differences of opinion requiring international arbitration should arise, the States concerned would in any event be free to put them before the Court.

47. Mr. MENDEZ (Philippines), replying to the representative of Belgium, drew attention to Article 98 of the Charter, which provided that the Secretary-General, besides acting in that capacity in all meetings of the General Assembly, the Security Council, the Economic and Social Council, and the Trusteeship Council, should "perform such other functions as are entrusted to him by these organs". The function contemplated in the United Kingdom proposal would be entrusted to the Secretary-General by the General Assembly by virtue of the latter's adoption of the covenant as a whole. There was therefore no reason why the chief administrative officer of the United Nations should not ask the International Court for an advisory opinion on legal questions as formulated by the committee.

48. Miss BOWLE (United Kingdom) amended her delegation's proposal to read as follows:

"The committee may transmit through the appropriate organ duly authorized by the General Assembly a request for an advisory opinion of the International Court of Justice on legal questions, and that organ may ask the International Court of Justice for an advisory opinion upon such questions, as formulated by the committee."

49. That text would ensure that advisory opinions of the Court could, if necessary, be obtained from the International Court regarding matters dealt with by the committee, while leaving it to the General Assembly to decide upon the controversial issue which organ was competent to make the actual request to the International Court.

50. In the event of the United Kingdom proposal, as amended, being rejected by the Commission, she submitted the following draft resolution for its consideration:

"The Commission on Human Rights

"Considers that it is desirable that the human rights committee should be able to obtain from the International Court of Justice advisory opinions on questions of law arising in the course of its work, and

"Requests the Secretary-General of the United Nations to report to the Economic and Social Council upon the means by which this can be secured in conformity with the Charter of the United Nations."

51. The CHAIRMAN drew attention to article 23 (2) of the Covenant as adopted by the Commission at its preceding meeting.

52. Mr. NISGOT (Belgium) could not accept the new proposal of the United Kingdom delegation. First, the committee would be neither an organ of the United Nations nor a specialized agency. Article 96 of the Charter therefore precluded its being empowered to consult the Court, or, what came to the same thing, finally determining the questions on which it would be consulted. Secondly, whatever authority capable of approaching the Court was commissioned at the request of the committee to consult it, would be neither bound by such a request nor able to justify itself by it. Consequently, there again the system might prove as ineffective as he had shown it to be if action were taken through the Secretary-General. He then referred to the possibility that had been suggested of making the committee into a subsidiary organ. He was afraid that that method was not very practicable. As an organ of the United Nations, the subsidiary organ ought to have authority over all the Members of the United Nations. In principle, that would not be the case for the committee, which would be the creation of a particular treaty to which only those Members who wished to do so would accede.

53. Miss SENDER (International Confederation of Free Trade Unions) remarked that, after its entry into force, the Covenant would still be open for signature and ratification by Members of the United Nations. The committee should not, therefore, be regarded as a body controlled by a limited number of States parties to the Covenant, but as a proper organ of the United Nations.

54. Following a suggestion by Mr. SORENSSEN (Denmark), Miss BOWIE (United Kingdom) agreed to submit to the vote the draft resolution she had introduced in her preceding speech regardless of whether the original United Kingdom proposal (E/CN.4/487/Rev.1) was adopted by the Commission. Even if that proposal were adopted, a further study of the question would be of advantage.

55. Mr. ORIBE (Uruguay) welcomed that decision of the United Kingdom representative, and expressed appreciation of her initiative in raising the important issue of advisory opinions. It was highly desirable that the committee should be enabled to discharge its functions as freely and as adequately as possible.

56. Mr. KYROU (Greece) felt that the two United Kingdom proposals were mutually contradictory: adoption of the first one (E/CN.4/487) would render it impossible for the Economic and Social Council to take alternative action. He would therefore vote against the new draft resolution.

57. Mr. CHANG (China) remarked that the second United Kingdom proposal was still less acceptable than the first, since it tended even more to confuse the character of the committee's functions. In creating the committee, the Commission had not intended to set up a juridical organ but a body of statesmen whose court of appeal would be the public opinion of the world. Both the United Kingdom proposals allowed that original intention to become obscured.

58. Mr. NISOT (Belgium) wished to know whether the Secretary-General would be prepared to draw up the report suggested in the second United Kingdom proposal and what would be the nature of such a report.

59. Mr. SCHACHTER (Secretariat) replied that the report would deal with the organs which the General Assembly might authorize to request advisory opinions from the International Court in accordance with Article 96 (2) and also with the conditions which might be included in such authorization. The Secretary-General would be prepared to draw up such a report ^{which would endeavour} to answer the various questions raised during the discussions.

60. The CHAIRMAN, speaking as the representative of the United States of America, said that her delegation considered the second United Kingdom proposal superfluous on the grounds already stated in connexion with the first United Kingdom proposal.

61. Mr. ORIBE (Uruguay), referring to the remarks made by the representative of China, remarked that by requesting the Court for an advisory opinion the committee would not be appealing to a higher legal instance, but merely clarifying such legal points as might arise in the course of its work.

62. In reply to the statement made by the Chairman as representative of the United States of America, he pointed out that some members might vote against the first United Kingdom proposal only because they were doubtful about the means of obtaining the Court's advisory opinion: those members would particularly appreciate having the Secretary-General's views on the matter.

63. The CHAIRMAN put to the vote the United Kingdom proposal for an additional article, as amended, (E/CN.4/487/Rev.1).

The proposal was rejected by 6 votes to 5, with 4 abstentions.

64. Mr. NISOT (Belgium) said that he had voted against the proposal for the reasons he had already stated.

65. The CHAIRMAN put to the vote the further draft resolution submitted verbally by the United Kingdom delegation.

The draft resolution was adopted by 6 votes to 2, with 6 abstentions.

The meeting rose at 1 p.m.