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Sixth Session

SUMMARY RECORD OF THE HUNDRED AND SEVENTY-NINTH MEETING

Held at Lake Success, New York,
on Thursday, 4 May 1950, at 11 a.m.

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Protection of Minorities (E/CN.4/450)

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

Members: (continued)

Mr. CASSIN	France
Mr. KYROU	Greece
Mrs. MEHTA	India
Mr. AZKOUL	Lebanon
Mr. MENDEZ	Philippines
Miss BOWIE	United Kingdom
Mr. ORIBE	Uruguay
Mr. JEVREMOVIC	Yugoslavia

Also present: Mrs. GOLDMAN Commission on the Status of Women

Representatives of specialized agencies:

Mr. LEMOINE	International Labour Organisation (ILO)
Mr. KAUL	World Health Organization (WHO)

Representatives of non-governmental organizations:

<u>Category A:</u>	Miss SENDER	International Confederation of Free Trade Unions (ICFTU)
<u>Category B:</u>	Mr. LEWIN	Agudas Israel World Organization
	Mrs. ALETA	Catholic International Union for Social Service
	Mr. NOLDE	Commission of 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. BEER	International League for the Rights of Man
	Miss ZIZZAMIA	International Union of Catholic Women's Leagues
	Mr. PERLZWEIG	World Jewish Congress
	Mrs. ARNOLD)	World's Young Women's Christian Association
	Mrs. FOX)	
	Mrs. MUDGE)	
<u>Secretariat:</u>	Mr. SCHWEIB	Assistant Director, Division of Human Rights
	Mr. LIN MOUSHENG	Secretary of the Commission

REPORT OF THE AD HOC COMMITTEE ON THE YEARBOOK (E/CN.4/459)

1. The CHAIRMAN requested the Commission to consider the report of the Ad Hoc Committee on the Yearbook, as the informal group drafting a compromise draft text for the measures of implementation of the draft covenant on human rights had not yet completed its work. That group, comprising the representatives of the United Kingdom, United States, France and India, had found a surprising area of agreement between the proposals originally submitted and had agreed that alternative texts would be submitted covering matters on which no agreement had been reached. There remained, however, a very considerable amount of difficulty in drafting the wording of the new text. She therefore thought that it would be advisable for the new text to be distributed on the following morning, but that debate on it should be deferred until Monday, 8 May 1950, in order to enable delegations to study it and submit amendments. She requested the representative of Australia, chairman of the Ad Hoc Committee on the Yearbook, to present the report (E/CN.4/459).

2. Mr. WHITLAM (Australia) said that the Ad Hoc Committee on the Yearbook had decided unanimously at the two meetings which it had held that the existing system should be continued, but that additional space should be given to the specific treatment of one of the rights or of a group of closely related rights, so that the Yearbook might thus assist general thinking on the subject of human rights. The Committee had also taken the precaution of suggesting the retention of the same proportions and budgetary limits as had previously prevailed.

The report of the Ad Hoc Committee on the Yearbook (E/CN.4/459) was adopted unanimously.

3. Mr. CASSIN (France) observed that the French delegation in the Ad Hoc Committee had urged that every effort should be made to see that very full and accurate reference to sources should be given whenever texts or summaries were included, since the Yearbook was intended to be used as an authoritative and permanent reference source by all experts on human rights.

REPORT OF THE AD HOC COMMITTEE ON COMMUNICATIONS (E/CN.4/460/Rev.1)

4. Miss BOWIE (United Kingdom), speaking as Chairman of the Ad Hoc Committee on Communications, explained that that Committee had decided to recommend no action on the items before it, resolution 240 C(IX) of the Economic and Social Council dealing with a resolution of the Sub-Commission on Freedom of Information and of the Press, and draft resolution VI of the second and third sessions of the Sub-Commission on Prevention of Discrimination and Protection of Minorities (E/CN.4/358, page 40). The Ad Hoc Committee had felt that the sanctioning of any procedure for dealing with complaints or petitions other than that in force concerning communications on human rights would be premature at a time when the Commission on Human Rights was still discussing the measures of implementation of the draft covenant on human rights. It must be noted, moreover, that Member States to which complaints against them were transmitted were not, under the procedure adopted by the Economic and Social Council, in any way bound to acknowledge such complaints or to reply to them. The Committee had taken note of the list of communications concerning human rights submitted by the Secretary-General, but had recommended no action, as no procedure for dealing with them had yet been adopted.

The report of the Ad Hoc Committee on Communications was adopted unanimously.

REPORT ON THE AD HOC COMMITTEE ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES (E/CN.4/450)

5. Mr. SORENSON (Denmark), speaking as Chairman of the Ad Hoc Committee on Prevention of Discrimination and Protection of Minorities, said that the Ad Hoc Committee had concentrated on the work done by the Sub-Commission on Prevention of Discrimination and Protection of Minorities at its third session. The reports of the Sub-Commission had been very comprehensive; the Ad Hoc Committee had felt that its task had been principally to summarize those conclusions and base its recommendations upon them.

6. The Committee had considered that the Secretariat's study of the legal validity of the undertakings concerning minorities (E/CN.4/367) required a great deal of examination. The study concluded that a number of such undertakings had clearly lapsed on particular grounds and others had become extinguished when the League of Nations' system for the protection of minorities had been broken up. Some of those conclusions might, however, be found to have been too broad, and the Committee had therefore recommended that the consideration of that document should be postponed (draft resolution A, E/CN.4/450).

7. Draft resolution C combined draft resolutions I and IV of the Sub-Commission. Although their subject matter differed, the Committee had found them to be closely related in substance. The Secretary-General was requested to invite Governments to submit information concerning the prevention of discrimination and the protection of minorities.

8. Mr. Sorenson explained that the words "if available" in sub-paragraph (b) of the operative part of draft resolution C were intended to ensure that no government was bound to submit commentaries or other data relevant to the Sub-Commission's terms of reference. There had been some divergence of opinion in the Ad Hoc Committee about the wisdom of adopting the procedure recommended in draft resolution C. Some members had felt that such a procedure was an aspect of the general problem of implementation and should therefore not be singled out for attention. The Committee had, however, thought that it would be useful for the Commission on Human Rights to consider the question, but agreement had not been unanimous.

9. In draft resolution D, the Committee had followed draft resolution III of the Sub-Commission very closely.

10. Mr. Sorenson explained that the Committee, in draft resolution E, had decided that only tentative approval should be given to the Sub-Commission's draft resolutions on the definition of minorities for the purpose of protection by the United Nations and on interim measures to be taken for the protection of minorities (E/CN.4/450, appendices I and II). The Ad Hoc Committee had believed that those questions had not yet received sufficient consideration; the Sub-Commission itself had decided to re-examine them at its following session. After an exchange of views, the Ad Hoc Committee had concluded that

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it might not be advisable to transmit those resolutions to the Economic and Social Council without further study, but that the Commission on Human Rights tentative approval would serve as a basis for further work by the Sub-Commission in connexion with the protection of minorities. Such tentative approval would enable the Sub-Commission to make the requisite studies and to prepare measures for drawing up a register of existing minorities in all countries.

11. Although the Committee had felt that it would be premature to take further action, it had exchanged views on the substance of the Sub-Commission's draft resolutions. The question of the loyalty of minorities to the State of which they were nationals had been discussed at length. The desirability of such loyalty had not been doubted; but one member had felt that undue emphasis on that aspect of the problem might become an impediment to the exercise of the right to national self-determination. The Sub-Commission would have the records of that debate for guidance.

12. The Committee had decided that certain changes should be made in the Sub-Commission's draft resolution on interim measures to be taken for the protection of minorities in order to bring the recommendation on the use of minority languages before the courts into accord with the text adopted (E/CN.4/L.4) for article 13, paragraph 2, sub-paragraph (d).

13. Furthermore, some members of the Committee had felt that the measures recommended by the Sub-Commission for safeguarding the right of teaching the minority language as one of the courses of study in State-supported schools did not go far enough; they had felt that teaching should be conducted in the minority language rather than that the teaching of that language should be merely one course in the curriculum. The Committee had not come to a definite conclusion and had therefore decided to refer that question back to the Sub-Commission.

14. Draft resolution E was tentative, therefore, in the sense that the Sub-Commission was requested to give further consideration to such questions and to bring forward further proposals.

15. The Committee had not recommended that any action should be taken on the other items before it (E/CN.4/450, paragraphs 13, 15, and 16). No immediate action was recommended on the questions set out in paragraphs 17 and 18 of the report (E/CN.4/450), since those matters were already before the Commission. The two additional articles for the draft covenant on human rights proposed by the Sub-Commission (E/CN.4/351, annex, E/CN.4/358, paragraph 47) would have to be considered in conjunction with similar proposals before the Commission.

Draft resolution A (E/CN.4/450, page 6)

16. Mr. KYROU (Greece) thought it would be most desirable to postpone consideration of document E/CN.4/367, as suggested in draft resolution A, since that would afford the Secretariat an opportunity further to consider the Study of the Legal Validity of the Undertakings Concerning Minorities.

17. In its present form the Study contained numerous errors and lacked a proper balance. Without wishing to enter into a full discussion of the substance of the Study, he would mention one or two examples. On page 7 the name of Greece had been omitted from the list of countries having fought on the side of the anti-fascist, anti-Hitlerite coalition although Greece had played a most valiant part during the war against the Fascists and Nazis.

18. The Study also contained the notion that minority rights of those participating on the side of the Axis had become extinct. In that connexion it was to be noted that the basis for the rights of minority was bilateral, so that if it had become extinct for the vanquished, it was also extinct for the victors. He would reiterate his suggestion that the Secretariat should study the matter further and with greater care to make it conform with the high standards so characteristic of Secretariat studies in general.

19. Mr. CASSIN (France) stated that the omission of Greece, to which the Greek representative had referred, occurred only in the English text of document E/CN.4/367, and that Greece was listed in the corresponding passage of the French text of the Study.

20. The CHAIRMAN took note of the Greek representative's request that the Secretariat should go through document E/CN.4/367 once more in order to make it an even more careful study.

The Commission unanimously adopted draft resolution A.

Draft resolution B (E/CN.4/450, pages 6-7)

21. Miss BOWIE (United Kingdom) stated that while her delegation was not opposed to the adoption of the draft resolution, she did wish to point out that paragraph (a) (1) began by assuming the existence of discrimination. So far as the United Kingdom was concerned such an assumption was unwarranted: no discrimination existed and all were equal before the law.

22. She noted that while the date mentioned by the Sub-Commission was 31 December, the draft resolution proposed by the Ad Hoc Committee mentioned 1 December and wondered whether that change in date was intentional.

23. Mrs. MEHTA (India) commenting on the United Kingdom representative's remarks, stated that the invitation referred to in paragraph (a) (1) applied not only to the metropolitan territory of the United Kingdom but also to non-self-governing territories.

24. Mr. SORENSON (Denmark) stated that the question of the date had been discussed in the Ad Hoc Committee and that it had been decided to recommend 1 December 1950.

25. Mr. CASSIN (France), supported by Mr. KYROU (Greece), thought that while 31 December 1950 might be an acceptable time limit for Governments to comply with the requests in paragraph (a) (1), it might not be so in the case of the requests set forth in paragraph (a) (11).

26. Mr. SORENSON (Denmark) drew the Commission's attention to paragraph 19 of the Ad Hoc Committee's report where it was stated that the Ad Hoc Committee had decided to recommend swift action on draft resolution B in order to expedite the dispatch of the necessary letters to Governments. He

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would also point out that the Ad Hoc Committee had not itself added the request to Governments contained in paragraph (a) (ii); it had merely decided to amalgamate the substance of the Sub-Commission's draft resolution IV(E/CN.4/358, page 38) with the Sub-Commission's draft resolution I for the convenience of Governments, and as a means of expediting matters. He thought, however, that the point made by the French representative could be met by changing paragraph (a) to read as follows:

"(a) to invite Governments, Members and non-Members of the United Nations,

"(i) to furnish him, as soon as practicable but in any case not later than 1 December 1950, examples..." etc.

"(ii) to furnish him, as soon as practicable, full information..." etc.

The Commission accepted the change proposed by the Danish representative without objection.

27. Mr. KYROU (Greece) invited the representative of the Secretary-General to state whether the Secretary-General legally had the right to extend invitations to Governments on the basis of a request from the Commission without the sanction of the Economic and Social Council.

28. Mr. SCHWELB (Assistant Director, Division of Human Rights) stated that the Secretary-General thought that he had that right. He had exercised it last year when he had circulated the draft covenant and proposals on implementation to Governments at the request of the Commission on Human Rights.

29. Mr. NISOT (Belgium) did not think that the legal question raised by the Greek representative had been settled decisively by the Assistant Secretary-General's reply. Mr. Schwelb had referred to past precedents, but had failed to prove their judicial justification.

30. Mr. SCHWELB (Assistant Director, Division of Human Rights) stated that the Secretariat had examined the matter last year, when the then draft Covenant and Measures of Implementation had been sent to Governments, and had come to the conclusion that the Secretary-General did have the right in question. The Secretary-General was also the Secretary-General of the Commission and in

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that capacity was entitled to make any arrangement which was necessary and proper for the Commission's work. If required the Secretariat would arrange for a considered statement on the issue raised by the Greek representative to be made at the next meeting.

31. Mr. KYROU (Greece) agreed with the Belgian representative. He thought that only the General Assembly and the Councils had the legal right to request the Secretary-General to approach Governments.

32. Mr. CASSIN (France) stated that the Economic and Social Council itself supported the views of the Secretariat. The Council had implied that the Commission had been too timid in the past and that it might request the Secretary-General to give and request information likely to assist the Commission in its work without prior recourse to the Council.

33. The CHAIRMAN confirmed the correctness of the French representative's recollection.

34. Mr. WHITLAM (Australia) agreed with the Belgian and Greek representatives. The request for information should be made under the authority of the Economic and Social Council. He could not share the view that the Secretary-General could act in the matter at the Commission's request alone.

35. The CHAIRMAN stated that the Commission could, if it so desired, transform draft resolution B into a recommendation to the Economic and Social Council that the latter -- rather than the Commission itself -- should request the Secretary-General to take the steps provided for in paragraphs (a) and (b). If the Commission decided to do that, it would be necessary to extend the time-limit beyond 1 December 1950 because of the delay which such a course would involve.

36. Mr. KYROU (Greece) and Mr. NISOT (Belgium) thought that the possibility mentioned by the Chairman represented a very good practical solution of the problem.

37. Mr. AZKUL (Lebanon) agreed that logically there would be no objection to the possibility mentioned by the Chairman. He would, however, point out that there had been no discussion of the legal principles involved, so that a vote of the Commission members at the present stage would simply reflect their personal opinions. The question was most important for all the Commissions. He would therefore suggest that the Commission should request the Economic and Social Council to settle the matter once and for all. If each Commission decided the question for itself it was to be feared that the result would not be uniform.

38. He was prepared to submit a formal resolution in the sense which he had indicated.

39. The CHAIRMAN stated that under rule 52 of the rules of procedure of the functional Commissions, a motion calling for a decision on the competence of the Commission to adopt a proposal should be put to the vote immediately before a vote was taken on the proposal in question.

40. Mrs. MEHTA (India) thought that since the Secretariat had stated that the Commission had the right to address requests to the Secretary-General, the Commission should not hesitate to use that right. It might subsequently invite the Economic and Social Council to clarify the matter definitively.

41. The CHAIRMAN noted that the right in question had been challenged by several members and added that the Commission must make a decision.

42. Mr. NISCI (Belgium) thought the Secretary-General did not have the competence to decide the matter, and that the Commission's responsibilities in the question remained.

43. Mr. KYROU (Greece) pointed out that the Secretariat had merely cited precedents but had not claimed that the Commission did have the right in question. He thought the problem would be settled, however, if the Chairman's suggestion were adopted.

44. Mr. VALENZUELA (Chile) said that as the powers of the Secretary-General derived from the Charter, before voting on the question he would like to hear an explanation of the legal basis for the Secretariat's position in the matter.

45. Mr. SEFWEB (Assistant Director of the Division on Human Rights) would, if the Commission wished, present a considered statement of the position at the next meeting. For the moment, he wished merely to say that under the Charter the Secretary-General was the chief administrative officer of the entire Organization and as such, was empowered to address requests for information to Governments on his own initiative. It seemed, therefore, that he could also do so at the request of any organ of the Organization.

46. Mr. TSAO (China) had no doubt that the Secretary-General could comply with any requests which the Commission put to him. The crux of the matter, however, was whether the Commission was competent to address such a request directly to the Secretary-General.

47. Mr. KYROU (Greece) did not feel that article 98 of the Charter supported the Secretariat's contention, as it provided that the Secretary-General should act in that capacity, i.e. as the chief administrative officer of the Organization, at all meetings of the General Assembly, the Security Council, the Economic and Social Council and the Trusteeship Council, and mentioned only functions entrusted to the Secretary-General by those organs.

48. Mr. VALENZUELA (Chile) stressed the complex nature of the question before the Commission. In taking its decision, the Commission should bear in mind the activities upon which the Secretary-General was at present engaged.

49. Mr. NISOT (Belgium) felt the Secretary-General could negotiate on behalf of a United Nations organ only if it had instructed him to do so and always provided that it was constitutionally competent to give such instructions.

50. The CHAIRMAN asked the Commission to decide whether it wished to forward draft resolution B to the Economic and Social Council.

That suggestion was adopted by 7 votes to 3, with 4 abstentions.

51. The CHAIRMAN pointed out that draft resolution B would have to be amended in the light of that decision.

52. Mr. SORENSEN (Denmark) said that as the Sub-Commission would probably meet the following January, information could not be transmitted later than 1 January 1951.

53. Mr. SCHWELB (Assistant Director of the Division of Human Rights) confirmed the fact that the Sub-Commission hoped to hold its next session in January 1951. The final date would be determined, however, at the next session of the Economic and Social Council.

54. Mr. JEVREMOVIC (Yugoslavia) pointed out that paragraph ii of draft resolution B referred to a definition of minorities, which was dealt with in draft resolution E. He proposed therefore that no further action should be taken on draft resolution B until draft resolution E had been discussed.

55. Mr. SORENSEN (Denmark) understood the Yugoslav representative's viewpoint, but he thought it would be difficult for the Sub-Commission to achieve any progress unless some definition of minorities were given tentative approval. Without that, it would have no basis for future work.

56. Mr. NISOT (Belgium) supported the representative of Yugoslavia. It was impossible to work on the basis of a definition which had not yet been approved. He thought it was premature to move and act upon the resolutions as long as their definition existed only in draft.

57. Mr. KYROU (Greece) also endorsed the Yugoslav representative's remarks.

58. The CHAIRMAN, speaking as the representative of the United States of America, did not see how the Sub-Commission could continue its work unless Governments forwarded the information requested in draft resolution B. She wondered whether Governments could not agree to furnish that information as a basis for further study, in spite of the fact that the definition was tentative.

59. Mr. NISOT (Belgium) doubted whether the Sub-Commission needed any further information to arrive at a definition of minorities. Moreover, what would be the attitude of Governments to a questionnaire based on a definition which had not been accepted and which was admittedly incomplete?

60. Mrs. MEHTA (India) wondered why the Greek representative had not raised the question of referring draft resolution B to the Economic and Social Council in the Ad Hoc Committee.

61. There was broad agreement on the general outlines of a definition of minorities. In addition the Secretariat had prepared documentation which had thrown further light on the question. For those reasons, it should be possible to accept the proposed definition for the time being. She felt, however, that it would be difficult for the Sub-Commission to proceed with its work without some sort of a definition, which, if the Commission preferred, need not be called tentative.

62. Mr. AZKOUL (Lebanon) thought the problem would be solved if the phrase "in the light of the provisional definition of minorities adopted by the Sub-Commission at its third session" were deleted from draft resolution B. The Sub-Commission would then receive ample information on which to continue its work and could adopt a final definition of minorities at a later stage.

63. The CHAIRMAN, speaking as the representative of the United States of America, pointed out that draft resolution E merely proposed that the Commission on Human Rights should give tentative approval to the draft resolutions relating to the definition of minorities and the interim measures to be taken for the protection of minorities.

64. The Commission could consider draft resolution E and then take up the Lebanese amendment in conjunction with draft resolution B.

65. Mr. CASSIN (France) agreed with the Chairman. He thought it would be advisable to include some reference to a definition of minorities in draft resolution B, even if it were only given tentative approval. Without some guidance, States might be discouraged from attempting to comply with the resolution's request for information, or might waste much time in compiling irrelevant material. Generally speaking, the work of the Commission should not be regarded as unimportant.

66. Mr. JEVREMOVIC (Yugoslavia) had not intended to discuss the substance of the problem as his comments had referred only to the question of procedure.

67. He supported the Lobanase representative's suggestion to delete the words "in the light of the provisional definition of minorities adopted by the Sub-Commission at its third session."

68. Miss BOWEN (United Kingdom) was in favour of adopting draft resolution B as it stood. It had the advantage of defining the scope of the work to be done. She explained that most^{of} the discussion which had arisen was due to the fact that the English and French texts did not correspond. The English text was from all points of view satisfactory, as it specifically mentioned the word "provisional" and was thus non-committal.

69. If no definition at all was sent, Governments might supply a mass of information. On the other hand, Governments sometimes tended not to draw attention to their minorities, and the definition would compel them to furnish information on specific groups which they might otherwise fail to mention. Some definition should be included to guide Governments in compiling the necessary information. She pointed out that the resolution was neither mandatory nor committing and could therefore be adopted without hesitation.

70. Mr. NISOT (Belgium) disagreed with the United Kingdom representative. He did not think Governments could be asked to undertake so complicated a task on the basis of a provisional definition, when they might be asked at a later stage to furnish further information in the light of a revised definition.

71. He suggested that paragraph ii of draft resolution B should be amended to read: "to furnish him as soon as practicable full information regarding legislative measures for the protection of any minority within their jurisdiction, and in particular such information as could serve as a basis for the establishment of a definition of minorities..." (l'enseignement est noté que le rapport servir de base pour l'établissement d'une définition des minorités.)

72. Mr. KYROU (Greece) endorsed the remarks of the representatives of Belgium and Yugoslavia. The Commission should consider draft resolution E before taking up draft resolution B.

/73. In reply

73. In reply to the representative of India, he said that in the Ad Hoc Committee his delegation had not raised the question whether the Commission should transmit its requests for information to the Secretary-General through the Economic and Social Council because it felt that matter fell properly within the competence of the Commission. Moreover, it found the report of the Ad Hoc Committee unsatisfactory on several points and felt it would serve no purpose to introduce corrections piecemeal.

74. Mr. AZKOU (Lebanon) saw no point in discussing a non-existent definition. On the other hand, a specific definition would compel Governments to spend much valuable time in determining whether a certain group could properly be considered a minority under its terms whereas States knew what a minority was.

75. Of course, if his amendment were adopted, the Sub-Commission might receive too much information, but he did not think that would be a disadvantage.

76. He asked the Commission therefore to vote first on his amendment and then on the Belgian amendment.

77. The CHAIRMAN asked the Commission to decide whether it wished to consider draft resolution E before it took up the substance of draft resolution B.

That suggestion was adopted by 11 votes to none, with 2 abstentions.

78. Mr. VALENZUELA (Chile) moved that the Commission should meet that afternoon to conclude the discussion of the Ad Hoc Committee's report (E/CN.4/450). The meeting could then be adjourned to enable the informal drafting group to get on with its work.

That motion was adopted by 9 votes to none, with 3 abstentions.

The meeting rose at 1.05 p.m.

16/5 p.m.