

UNITED NATIONS
ECONOMIC
AND
SOCIAL COUNCIL



Distr.
GENERAL

E/CN.4/SR.460
22 April 1954

ORIGINAL: ENGLISH

COMMISSION ON HUMAN RIGHTS

Tenth Session

SUMMARY RECORD OF THE FOUR HUNDRED AND SIXTIETH MEETING

Held at Headquarters, New York
on Friday, 2 April 1954, at 2.50 p.m.

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of Discrimination and Protection of Minorities: draft resolution B -
study of the present position as regards minorities throughout the
world (E/CN.4/703, annex I)

PRESENT:

<u>Chairman:</u>	Mr. AZMI	(Egypt)
<u>Rapporteur:</u>	Mr. INGLES	Philippines
<u>Members:</u>	Mr. WHITLAM	Australia
	Mr. NISOT	Belgium
	Mr. ORTEGA	Chile
	Mr. CHENG PAONAN	China
	Mr. GHORBAL	Egypt
	Mr. JUVIGNY	France
	Mr. ROUSSOS	Greece
	Mr. DAYAL	India
	Mr. PIRACHA	Pakistan
	Mr. BIRECKI)	Poland
	Mr. FORYS)	
	Mr. ASTROGLU	Turkey
	Mr. SAPOZHNIKOV	Ukrainian Soviet Socialist Republic
	Mr. MOROZOV	Union of Soviet Socialist Republics
	Mr. HOARE	United Kingdom of Great Britain and Northern Ireland
	Mr. GREEN	United States of America
	Mr. MONTERO BUSTAMANTE)	Uruguay
	Mr. BRACCO)	

Also present: Miss MANAS Commission on the Status of
Women

Representatives of specialized agencies:

Mr. MANNING	International Labour Organisation
Mr. ARNALDO	United Nations Educational, Scientific and Cultural Organization

Representatives of non-governmental organizations:

<u>Category B:</u>	Mr. LEWIN	Agudas Israel World Organization
	Mrs. VERGARA	Catholic International Union for Social Service
	Mr. MOSKOWITZ	Consultative Council for Jewish Organizations
	Mr. MANUILA	International Association of Penal Law
	Mr. LONGARZO	International Conference of Catholic Charities
	Miss MCGILLICUDDY	International Federation of University Women
	Miss SMITH	International Federation of Women Lawyers
	Mr. BALDWIN	International League for the Rights of Man
	Mr. SCHAEFER	World Federation of Catholic Young Women and Girls
	Mr. JACOBY	World Jewish Congress

<u>Secretariat:</u>	Mr. HUMPHREY	Director of the Division of Human Rights
	Mr. SCHWELB	Deputy Director of the Division of Human Rights
	Mrs. BRUCE)	Secretaries of the Commission
	Mr. DAS)	

REPORT OF THE SIXTH SESSION OF THE SUB-COMMISSION ON PREVENTION OF DISCRIMINATION
AND PROTECTION OF MINORITIES: DRAFT RESOLUTION B - STUDY OF THE PRESENT POSITION
AS REGARDS MINORITIES THROUGHOUT THE WORLD (E/CN.4/703, ANNEX I)

Mr. NISOT (Belgium) asked why the Sub-Commission had stated in resolution F, paragraph 2 (E/CN.4/703, paragraph 200), that no further work on the problem of defining a minority could serve any useful purpose at present.

Mr. INGLES (Philippines) replied that the Sub-Commission could hardly be blamed for having deferred the problem of definition for the present. It had twice adopted a definition by a majority vote, but the Commission on Human Rights had rejected both attempts and in doing so had not even given the Sub-Commission any instructions about the changes it would like to see in the definition. Owing to the Commission's attitude, the Sub-Commission had decided to adopt a different approach and to attempt a definition for the purposes of a study of the present position of minorities rather than a definition for the purpose of recommendations for their protection. The definition for the purpose of protection would be made only when the study had been completed. The reasons for the change were stated in the third preambular paragraph of resolution F. The Sub-Commission was endeavouring to discover the actual position of minorities and to ascertain which minorities wished for special protection and of what kind.

Mr. CHENG PAONAN (China) said that resolution F seemed somewhat paradoxical; it stated in effect that the Sub-Commission did not know what a minority was but would ask an expert to study certain aspects of minorities. That position was not wholly untenable, but it could hardly lead to the compilation of an authoritative and comprehensive report. He entertained serious misgivings about the statement that no further work on the problem of definition could serve any useful purpose. Admittedly, it might be extremely difficult to arrive at a single general definition that was universally applicable, but the Sub-Commission should be able to reach a definition as universally applicable as possible when it

had examined the views of the Commission on Human Rights, the Economic and Social Council and the General Assembly. He could never accept the proposition that the United Nations should abandon all attempts to find a definition within the meaning of the Charter.

The Sub-Commission noted, in resolution F, that the Commission had on three occasions referred back to it the definitions it had drafted, but it then went on to give a very limited form of definition, observing that no useful purpose would be served by further work on the problem of definition. The assumption that the definition would serve no useful purpose because certain factors had been omitted was unwarrantable. The provisional definition could undoubtedly be completed in the light of the comments to be made by higher organs. The Sub-Commission should not restrict its study to the minorities covered by its very limited definition, especially if that study was to give an account of every minority in need of special protection measures. He would not vote against draft resolution B (E/CN.4/703, annex I), based on resolution F, for the sole reason that he hoped that the Sub-Commission might possibly come to realize that there were other aspects which might be included in the definition, but he could not possibly agree that no further work on the problem of definition could serve any useful purpose and he could not concur in the limited definition given in paragraph 2.

Mr. JUVIGNY (France) shared the Chinese representative's misgivings. He had been surprised that the Sub-Commission had failed to comply with the Commission's request that it should continue its efforts to draft a definition of minorities. The differing approach it had preferred contained elements of paradox: it was hard to see how the problem of minorities could be studied in the absence of any definition of the word "minority" or with such a limited definition as the Sub-Commission proposed. The Commission should ask the Sub-Commission to continue its study of the definition or at least to explain more fully what criteria it had had in mind when preparing draft resolution B. The stated intention to study the present position of minorities without any criterion to guide the selective character of the study was open to criticism. Draft resolution B anticipated the results of the study.

Mr. NISOT (Belgium) said that the problem of protecting minorities was a matter of concern to his delegation. Their protection was the more necessary in that many Member States administering territories which had not achieved a full measure of self-government still refused to report to the United Nations, thus violating Article 73 e of the Charter. It was most regrettable that the Sub-Commission still refrained from defining the term "minorities", since that was one of the main tasks for which it had been established. He could not support a draft resolution in which the Sub-Commission stated that it would not perform that task.

Mr. INGLES (Philippines) said that the Chinese representative had failed to give due weight to the words "at present" at the end of operative paragraph 2. The reason why the Sub-Commission had thought that no further work on the problem of definition would serve any useful purpose at present was because the definition could be formulated only after the study which was to be initiated had been completed.

The Sub-Commission's tentative definition had been adopted merely for the purposes of the study, in order to give guidance to the expert who would conduct it. The real problem was not to arrive at a definition for the sake of having a definition; the essential purpose was to make recommendations concerning the protection of minorities in need of it. A universally applicable definition might even be undesirable in view of the vast difference in the origin, composition and character of minorities. A preferable approach might well be to study the present position of minorities and on that basis to make recommendations, which might or might not be of universal application.

Mr. HOARE (United Kingdom) confessed himself baffled by the contradiction between operative paragraphs 2 and 4 of resolution F. If there was no intention of using the definition for determining which groups should receive special protection, it was hard to see how a selective study could be made of the position of every minority in need of special protection measures, in the absence of any criterion by which to judge why some minorities might need special protection.

Mr. INGLES (Philippines) replied that it was apparent from operative paragraph 4 that from his study of minorities throughout the world, the expert would be able to inform the Sub-Commission what minorities needed protection and what protection they were in fact getting. One criterion for determining what minorities needed protection would be the desire of the minorities concerned. Another criterion would be whether a minority was subjected to unjust treatment. There were of course other criteria which the expert might adopt, but decision rested with the Sub-Commission whether or not to accept them.

Mr. ORTEGA (Chile) agreed that the definition in resolution F, given in paragraph 2 and extended in paragraph 3 (v), was only provisional. The attempt to draft a provisional definition was commendable as a whole and the balance between sub-paragraphs (i) and (iii) of paragraph 3 was particularly good. The endeavour to obtain more data for a universally applicable definition was praiseworthy and his delegation would vote in favour of draft resolution B. There were, however, some details in resolution F about which he felt doubtful. If the definition in paragraph 2 covered groups of immigrants, it would set a delicate problem for countries of reception which were anxious to assimilate such groups. Furthermore, the word "sufficient" in paragraph 3 (v) seemed to be unduly broad and vague.

An important point which, in the opinion of his delegation, should be included in the provisional definition, was the fact that the minorities to which special protection should be given were those which were the victims of discrimination and unjust treatment. Resolution 502 B (XVI) of the Economic and Social Council gave evidence of the desirability of including that point in the definition, since in part I the Council recommended to all States that they should make every possible effort to abolish legal provisions and administrative or private practices which discriminated against certain sections of the population; the Council thus recognized that in many cases discrimination was directed against minorities. The internal resolution could not, of course, be amended, but that difficulty could be overcome by recommending that the special expert should mention in his interim report that that factor must be taken into account when a final definition was prepared.

Mr. INGLES (Philippines) said that a member of the Sub-Commission, Mr. Santa Cruz, had expressed the same concern as the Chilean representative and had proposed certain amendments to resolution F, which had been accepted. In particular, sub-paragraph 3 (iv) applied to voluntary immigration groups. Furthermore, the phrase "with no intention of determining which groups should receive special protection", in paragraph 2, indicated that, although minorities owing their existence to voluntary immigration would be included in the study, their inclusion did not necessarily mean that they would be regarded as in need of special protection. But the study in question would bring to light several criteria on the basis of which the Sub-Commission would later determine which minorities required special protection.

It had been said that sub-paragraph 3 (v) was vague; the Sub-Commission had, however, deliberately chosen a flexible formula that would cover as many specific instances as possible.

The Commission itself, in adopting article 25 of the draft international covenant on civil and political rights, had recognized that it was possible to recommend special measures for the protection of minorities without first agreeing upon an exact definition of that term. It sufficed for the Commission when it adopted article 25 to describe minorities as "ethnic, religious or linguistic minorities". Surely the Sub-Commission could proceed to a mere factual study under the same conditions, particularly since the study could aid the Sub-Commission in arriving at a legal definition which might be acceptable to the Commission.

Mr. JUVIGNY (France) said that the more he studied the text of resolution F, the more confused it appeared. In one place it indicated that a definition of the term "minorities" was desirable and in another that further work on such a definition could serve no useful purpose at present. The study would presumably be undertaken without a definition; yet in paragraph 2 a tentative and incomplete definition was given. It was stated in the same paragraph that there was no intention of determining which groups should receive special protection, but paragraph 4 called for "a concise account of the position of every minority in need of special protection measures".

He was well aware that the problem of the definition was very complex and that there was a divergence of views on it; nevertheless a contradictory resolution could hardly be accepted as a serious basis for the proposed study. The Sub-Commission should give the matter more thought and define its criteria more precisely before the study was undertaken.

The CHAIRMAN observed that, while it was difficult to arrive at a universally applicable legal definition of a minority, in practice the meaning of the term was generally understood. In paragraph 2 of resolution F, the Sub-Commission had included a rough working definition for the practical purposes of the study and on the basis of that study it hoped to be able to draft a legal definition. Its attitude was therefore perfectly consistent and logical.

Mr. DAYAL (India) agreed with the Chairman and the Philippine representative. To those who held that a study of minorities should not be made until the term "minorities" had been defined he replied that the Commission had on several occasions rejected the Sub-Commission's attempts at a definition, without offering it any guidance on the subject. Although no legal definition as yet existed, there was a general idea of what constituted a minority, and that formed a sufficient basis for the proposed study. Indeed, the Sub-Commission had, in its resolution F, come very close to an acceptable definition of the term, on the basis of which it proposed to study the problem. The United Nations was concerned with many important matters - such as aggression and peace - which it had not defined, and yet it was conducting various studies concerning those matters. The Commission should not reject the Sub-Commission's proposal for a useful study merely because it itself had been unable to agree on a definition. The study was an important part of the Sub-Commission's work and in the course of that study, an acceptable definition might well emerge.

Mr. ROUSSOS (Greece) asked whether the phrase "non-dominant groups" as used in paragraph 2, referred to numerical or to political dominance. The answer should have a direct bearing on colonial territories, in which the numerical majority was politically non-dominant.

Mr. INGLES (Philippines) replied that he had himself, together with other members, raised the question in the Sub-Commission (E/CN.4/703, paragraph 190). As a result of their intervention, all references to numerical ratios were deleted and the text of resolution F as finally adopted by the Sub-Commission at no point implied that under-privileged groups should be excluded from the study merely because they were numerically larger than other groups.

Mr. WHITLAM (Australia) said that he did not think it possible to embark on a study, the ultimate purpose of which was to provide special protection to minorities, without first determining who was to be protected. The Philippine representative had mentioned an article of the draft covenant which had been adopted in the absence of a definition, but, as the Commission's report showed (E/2447, paragraph 52), there had been a sharp division of opinion regarding what the term "minorities" should cover. The controversy could not be settled by the criteria set forth in resolution F. The Economic and Social Council, in its resolution 502 B II (XVI), stated that a definition of the term "minority" was needed before recommendations for the special protection of minorities could be adopted. The Sub-Commission seemed to have given up the drafting of a definition as a hopeless task, yet it intended to ask an expert to prepare, on the basis of a very tentative definition indeed, a concise account of the position of every minority in need of special protection - a procedure that could be best described as working in a circle.

The Chairman had referred to the distinction between a legal definition and a practical one: what the United Nations wanted was not so much a legal definition of minorities as one that had regard to realities. Furthermore, he agreed with the Chilean representative that the aim of immigration countries - of which Australia was one - was to assimilate the immigrants; yet resolution F called for a study which would apparently include immigrant groups, thus making them conscious of representing an alien element and creating the very difficulty the immigration countries sought to avoid. In his view, such groups should be expressly excluded. Until the Sub-Commission was able to decide which minorities required protection and to give its expert precise directions, it should certainly not embark on a serious study.

It was plain that the question of definition must be given further consideration before any other steps were taken. He was therefore unable to support draft resolution B.

Mr. INGLES (Philippines) remarked that the Australian representative's comments on immigrant groups coincided with the Sub-Commission's own views, expressed in sub-paragraphs 3 (iii) and (iv) of resolution F.

Mr. HOAKE (United Kingdom) observed that the Indian representative had overlooked the fact that a definition was given in operative paragraph 2 of internal resolution F. That definition was provisional and possibly incomplete but it was to be used only for the purposes of the proposed study. The United Kingdom delegation did not consider the use of that provisional definition to be satisfactory, since it was expressly stated that it was adopted with no intention of determining which groups should receive special protection. The effect of the provisions of paragraph 4, therefore, would be that the special expert, without the guidance of any definition of the groups concerned but with the limitations laid down in paragraph 3, would have to select the groups in need of special protection measures according to his own personal judgment. The fact that his terms of reference included consideration of the present measures in force meant that the study must inevitably, in those case where the expert concluded that special measures of protection were required, amount to criticism of the governments of the territories in which the minority groups were domiciled. The Commission should give serious thought to the implications of assenting to a proposal to entrust to one single person however talented the function of sifting information and making judgments concerning areas where minority questions might be burning problems liable to affect local and world peace and where conflicting reports and views might be rife and controversy still rage. The expert's activities might well give rise to consequences which the Sub-Commission had not anticipated. Indeed, the mere knowledge that such an enquiry was to be undertaken might have an inflammatory effect.

The Commission was not only in duty bound to guide the Sub-Commission and to see that the question of minorities was studied in such a way as to result in useful recommendations; it was also responsible before the world and the United Nations in respect of the actual steps to be taken. At the present stage, when the term "minority" had not yet been defined, the Commission should weigh the consequences very carefully before entrusting a single individual with such an extremely delicate study on a world-wide scale. The United Kingdom delegation considered that such an enquiry into local conditions, purporting as it did to pass judgment on governmental action, was contrary to Article 2, paragraph 7, of the Charter. Even if other representatives did not hold that view, they should agree that the general considerations to which he had referred required their earnest attention.

Mr. MOROZOV (Union of Soviet Socialist Republics) said that his delegation could not agree with the basic proposal in draft resolution B that a special expert should be appointed to carry out a task which the Sub-Commission itself should undertake. An attempt was being made to introduce a new procedure, contrary to the accepted United Nations practice of entrusting studies either to the Secretariat or to the members of the organ concerned. The USSR delegation did not believe that the special expert could achieve the results desired by the Commission and the Council and it would vote against the operative part of draft resolution B.

With regard to internal resolution F, the definition which the Sub-Commission gave in paragraph 2 for the purposes of the special expert's study differed but slightly from its former definitions. Some of the provisions of paragraph 2 might result in eliminating from the definition certain national groups which should be given special protection. For example, the inclusion of only such groups as might "wish to preserve ethnic, religious or linguistic traditions or characteristics" was subjective, since dominant groups which did not wish to extend equal rights to certain minorities would be able to justify their action by claiming that the groups concerned did not wish to maintain their individual character. Some of the limitations in paragraph 3 were also unsatisfactory: the provisions of sub-paragraph (ii) did not take into account the position of a minority which might claim the right to use its own language on an equal footing with the dominant group; if it was precluded from doing so, it was entitled to

special protection, notwithstanding the fact that its problems were covered by the provisions of the international instruments enumerated in the sub-paragraph. In view of the shortcomings in paragraphs 2 and 3 of internal resolution F, his delegation would abstain from voting on the preambular paragraph of draft resolution B. If the Commission decided to retain the operative paragraph of the draft resolution, he would vote against the text as a whole.

The meeting rose at 5.30 p.m.