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Third Session
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<u>Chairman:</u>	Mr. MASANI	(India)
<u>Rapporteur:</u>	Mr. MENESES PALLARES	(Ecuador)
<u>Members:</u>	Mr. BLACK	(United States of America)
	Mr. CHANG	(China)
	Mr. EKSTRAND	(Sweden)
	Miss MONROE	(United Kingdom of Great Britain and Northern Ireland)
	Mr. NISOT	(Belgium)
	Mr. ROY	(Haiti)
	Mr. SHAFaq	(Iran)
	Mr. SPANIEU	(France)

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Consultants from non-governmental organizations (Category B)

Mrs. AIETA	Catholic International Union for Social Service
Mr. MOSKOWITZ	Consultative Council of Jewish Organizations
Mr. BERNSTEIN	Co-ordinating Board of Jewish Organizations
Miss GARTLAN	International Union of Catholic Women's Leagues
<u>Secretariat:</u>	
Mr. LAWSON	Secretary of the Sub-Commission
Mr. LIN MOUSHENG	Human Rights Division

DEFINITION AND CLASSIFICATION OF MINORITIES (E/CN.4/Sub.2/85, E/CN.4/Sub.2/103)
(continued)

1. The CHAIRMAN invited members of the Sub-Commission to present their observations on the text of Miss Monroe's draft resolution on the definition and classification of minorities, as amended the previous day (E/CN.4/Sub.2/107).
2. Mr. MENESES PALLARES (Ecuador) had serious doubts concerning the advisability of the introductory phrase of the third paragraph of the preamble. In his opinion, it upset the balance of the draft resolution by emphasizing the negative aspects of the question, which was scarcely a good way of solving the problem of the protection of minorities. Even from the point of view of method alone, it was by no means necessary to begin by emphasizing the risks attendant on the granting of protection to minorities. Risk was not a factor that should ever enter into the definition of minorities, but it could arise from the type of measures taken for their protection. Moreover, the introduction of the idea of risk in a definition of minorities was not desirable, firstly because doubts would thus be cast on the advisability of organizing their protection and States would be encouraged not to accept the Sub-Commission's recommendations because of the dangers they might encounter; secondly, because, from a sociological and legislative point of view, the inevitable risks or dangers entailed by the rights and guarantees granted to individuals or groups did not constitute an adequate reason for limiting those rights or guarantees.

/3. To illustrate

3. To illustrate that point, Mr. Meneses Pallares read the preamble of the Constitution of Ecuador, in which it was expressly stated that in spite of the risks incurred by the giving of certain rights and guarantees, the said rights and guarantees were granted to the people. In view of the foregoing considerations, he thought it would be preferable to delete the introductory phrase of the third paragraph of the preamble, for in his opinion the mention of risk in subparagraph (c) of that paragraph was quite sufficient to meet the concern felt by the members of the Sub-Commission.

4. Mr. SPANIEN (France) recalled that the introductory phrase of the third paragraph of the preamble was only a re-drafting of the fifth paragraph of the preamble of Miss Monroe's original draft resolution (E/CN.4/Sub.2/103). The Sub-Commission had thought the previous day that stress should be laid on the fact that, in spite of the risk entailed, it was essential to arrange for the protection of minorities. Contrary to Mr. Meneses Pallares' view, therefore, that paragraph of the preamble in no way weakened the scope of the resolution, but rather emphasized the necessity of organizing protection in full knowledge of the dangers it entailed. If, however, the Sub-Commission did not wish to retain the paragraph in question, he, for his part, had no objection to its deletion.

5. The CHAIRMAN thought Mr. Meneses Pallares had raised a very valid objection and that a resolution on the definition of minorities should not include a provision of that nature. In the circumstances there were two possible solutions; either to change the title of the draft resolution, which was in reality a resolution on the limitations and complexities of the problem of minorities rather than on the definition of minorities, or else to delete the third paragraph of the preamble and either make it the subject of a separate resolution or mention in the report that the Sub-Commission was fully conscious of the difficulties entailed by the definition of minorities but that it was nevertheless proposing a definition. The proposed definition would follow the statement of the difficulties.

6. Mr. SHAFAG (Iran) said there could be no definition without limitations. A definition of minorities which did not include the limitations and exceptions to the concept of minorities would not fail to give rise to serious misunderstandings and mistaken interpretations.

7. He therefore pressed for the retention of the third paragraph of the preamble, even if it meant changing the title of the draft resolution.

8. Mr. SPANIEN (France) said that any definition necessarily entailed a statement of principles and a statement of exceptions. To define was to limit. It was therefore essential that the idea expressed in the introductory clause of the third paragraph of the preamble should be retained. To avoid the use of the word "risks", to which Mr. Meneses Pallares had objected, the paragraph might be worded as follows: "A definition of minorities must also take into account complex situations such as:".

9. Mr. NISOT (Belgium) could not understand why the word "risks" should be avoided, in view of the fact that such risks did actually exist.

10. Mr. SPANIEN (France) felt that, whether expressed or not, the idea of risk was inherent in the problem under consideration. It was merely with a view to achieving agreement in the Sub-Commission that he had submitted his proposal.

11. Mr. BLACK (United States of America) supported the retention of the third paragraph of the preamble. Its deletion might upset the balance of the draft resolution, since any definition of minorities would have to take account of the difficulties and complexities listed in the draft. It would be better to alter the heading of the draft resolution to read: "Definition of the problem of minorities". He also proposed that the word "problems" should be substituted for the word "risks".

12. Mr. MENESES PALLARES (Ecuador) submitted the following compromise wording:

"Recognizing that, whenever the need for satisfaction of a legitimate claim for protection arises, it is necessary to take account of complex situations such as:".

13. Mr. CHANG (China) supported those speakers who felt that it would be unwise to split the draft resolution in two, as that would upset the balance. He thought, furthermore, that the words "whenever the need for satisfaction of a legitimate claim for protection arises" were somewhat redundant, since the sub-paragraphs which followed covered any case which might arise.

14. Mr. EKSTRAND (Sweden) expressed himself in favour of the wording suggested by Mr. Meneses Pallares.

15. Mr. SHAFAG (Iran) said he would support the wording proposed by Mr. Meneses Pallares or any other wording, provided that the exceptions which should be mentioned in the definition of minorities were retained in the text of the draft resolution.

16. Mr. NISOT (Belgium) maintained that it was precisely the idea of risk which lent balance, originality and realism to the draft resolution.

17. The CHAIRMAN admitted that no definition of minorities would be complete without a list of the limitations entailed. Those limitations and exceptions were sufficiently listed in the second paragraph of the preamble and at the end of the draft resolution to make the third paragraph practically unnecessary.

18. He felt, however, that it would be advisable to change the title of the draft resolution to the following: "Definition of minorities for purposes of protection by the United Nations."

19. Miss MONROE (United Kingdom) was fully aware of the concern felt by those members of the Sub-Commission who did not think it advisable to emphasize the risks entailed in the organization of protection of minorities. However logical it might be to divide the draft resolution into two parts, as had been suggested by the Chairman, she was opposed to the idea, for she felt that it was incumbent upon the Sub-Commission to draw the attention of the Commission on Human Rights to the difficulties and complexities of the problem of minorities which had come to light as a result of two and a half years of debate. She recalled that the first definition of minorities arrived at by the Sub-Commission had not been considered very satisfactory precisely because it had failed to take sufficient account of the difficulties and complexities concerned. In view of those considerations, should the third paragraph of the preamble be deleted, she would no longer consider herself to be the author of the draft resolution.

20. While she agreed with Mr. Nisot that it would be better to retain the word "risks", she thought that there would be no harm in deleting the word, since the only real risk was the one mentioned in sub-paragraph (c). She shared Mr. Chang's views with regard to the words "whenever the need for satisfaction of a legitimate claim for protection arises".

21. In order to take into account the various remarks that had been made, she proposed the following text in place of the third paragraph of the preamble:

"Recognizing at the same time that any definition of minorities that is made with a view to their protection by the United Nations must take into account complex situations, such as:".

22. Finally, she was willing to accept the change of title proposed by the Chairman.

23. Mr. SPANIER (France) and Mr. MENESES PALLARES (Ecuador) withdrew their proposals in favour of the text suggested by Miss Monroe.

24. The CHAIRMAN proposed that the words "and in the light of the exceptions and complexities set out above" should be added after the words "as the United Nations may wish to take" in the first paragraph of the operative part of the resolution. That phrase could then be deleted from sub-paragraph (a) of the operative part.

25. Mr. NISOT (Belgium) said that he would vote in favour of the various amendments, provided that an explanation of his vote could be included in the report.

26. The CHAIRMAN put to the vote the various amendments to the draft resolution, namely, the amendments to the title, the third paragraph of the preamble and the operative part.

The amendments were adopted unanimously.

27. The CHAIRMAN pointed out that there was a gap between the first and second paragraphs of the preamble which might be filled by adding the following text at the end of the first paragraph: "and that among these are groups that need to be protected by special measures, national or international, so that they can preserve and develop the traditions or characteristics in question".

28. Miss MONROE (United Kingdom) agreed to the addition, which she felt to be entirely consistent with the General Assembly resolution on the fate of minorities (217 (III) C). As a consequent amendment to the following paragraph, she proposed that the words "such traditions or characteristics" should be replaced by "the traditions and characteristics in question", and the word "the" by "this" in the first line of the second paragraph of the preamble.

29. The CHAIRMAN put to the vote the phrase proposed for addition to the first paragraph of the preamble.

The addition was adopted unanimously.

30. The CHAIRMAN put to the vote the draft resolution as a whole, as amended.

The draft resolution as a whole, as amended, was adopted unanimously.

31. The CHAIRMAN recalled that some members of the Sub-Commission did not think that the resolution just adopted altogether exhausted the consideration of item 7 of the agenda (E/CN.4/Sub.2/79/Rev.1). He asked whether the question of the classification of minorities should be discussed forthwith or whether the Sub-Commission should proceed to item 8, which would also allow of consideration of the classification question.

32. Mr. NISOT (Belgium) wished to know precisely what was meant by the classification of minorities.

33. The CHAIRMAN recalled, as an example, that reference had been made at a previous meeting to the formulation of a list of minorities; that might be one means of drawing up a classification.

34. Mr. SHAFAG (Iran) thought that the Chairman's explanation was inadequate. The preparation of a list could not be regarded as a classification, which necessitated a study and hence a thorough knowledge of the subject. He himself was by no means in a position to attempt to draw up such a classification at the moment. He therefore thought that the Sub-Commission should proceed with the consideration of item 8 of the agenda, leaving the question of a classification of minorities until later.

35. Mr. MENESES PALLARES (Ecuador) drew the attention of the Sub-Commission to the Secretary-General's memorandum (E/CN.4/Sub.2/85), chapter III of which gave an outline of the classification

/of minorities

of minorities under the following headings: classification from a quantitative viewpoint, classification from a viewpoint of contiguity, citizenship, the national characteristic of the State, origin and situation in relation to the State, classification according to the circumstances under which minorities were included within the State, classification from the viewpoint of total or partial inclusion within the territorial jurisdiction of the State and, finally, classification according to desires. Those headings could provide an excellent basis for the establishment of a classification of minorities by the Sub-Commission.

36. Mr. NISOT (Belgium) wondered whether such a classification was of any value from the point of view of the real protection of minorities. He himself considered the latter to be the purpose for which a classification must be drawn up.

37. Miss MONROE (United Kingdom) agreed that the Sub-Commission should consider the question of the classification of minorities at the time that it considered item 8 of the agenda. She thought that in that way certain questions would be settled and Mr. Nisot would find the answer to his question.

38. She drew attention to the joint draft resolution of Mr. Ekstrand and Mr. Black (E/CN.4/Sub.2/106), which raised the question of minority languages and contemplated the possibility of asking the Governments of Member States of the United Nations to submit information concerning the situation in their respective countries. In that connexion, she thought that in order to obtain the most satisfactory replies from those Governments it would be well to make a distinction between the various categories of minorities, which could, for example, be divided thus: minorities constituted as a result of the implementation of certain treaties, religious minorities and, finally, ethnic or linguistic minorities, the last category applying chiefly to the indigenous populations of certain territories.

39. Mr. LAWSON (Secretariat) pointed out that the Sub-Commission itself had decided to place the question of the classification of minorities upon its agenda. He explained that when preparing the memorandum he had submitted, the Secretariat had thought that in addition to a general description of minorities, it was necessary to give some concrete examples and to indicate to what degree certain minorities wished to have special protection, or to what extent they already enjoyed protection.

40. In order to draw up a description, several series of characteristics had to be used. Once the definitions were established there arose the question of which groups or minorities came under which description. Some kind of gauge was therefore necessary, the criteria being the numerical strength of the group, its situation in relation to the State, the nationality of its members, the character of the State, and so forth. When a group asked for recognition as a minority, those criteria had to be applied in order to ascertain whether its claims were justified.

41. Mr. SHAFAG (Iran) gathered from Mr. Lawson's remarks that there were two separate problems: the classification of minorities by category, and the necessity of ascertaining whether a minority which, by petition or by any other means, sought to be recognized as such possessed the necessary characteristics to be included in one or another of those categories. Thus the Sub-Commission wanted first to divide the minorities into categories and then to decide whether any particular group constituted a minority. There was a danger that such a method might have the result of arousing the consciousness of certain groups and of provoking dissension in some instances, whereas the duty of the Sub-Commission was to look after the protection of minorities.

/42. He thought

42. He thought that when item 8 of the agenda had been considered, the Sub-Commission might perhaps be in a better position to attempt to complete its definition or classification of minorities, which it would be able to illustrate by concrete examples.

PART C OF GENERAL ASSEMBLY RESOLUTION 217 (III) ON THE FATE OF MINORITIES
(E/CN.4/Sub.2/89, E/CN.4/Sub.2/91, E/CN.4/Sub.2/92, E/CN.4/Sub.2/101,
E/CN.4/Sub.2/102, E/CN.4/Sub.2/106) (continued)

43. The CHAIRMAN invited the Sub-Commission to resume consideration of item 8 of the agenda. He recalled that several suggestions had been made by various members.

44. Mr. Shafaq had proposed that the question of the claims of certain groups should be considered, and Mr. Spanien had contemplated the possibility of setting up a committee to prepare a list of minorities.

45. Miss MONROE (United Kingdom) pointed out that the consideration of the joint draft resolution of Mr. Ekstrand and Mr. Black (E/CN.4/Sub.2/106) might influence the opinion of members of the Sub-Commission concerning certain aspects of the questions which had been raised, particularly regarding the extent to which it could be considered that the problems before the Sub-Commission were already dealt with in the Universal Declaration of Human Rights and by the draft Covenant.

46. The CHAIRMAN observed that, on the other hand, the consideration of the general questions which had been raised might influence the consideration of the draft resolution.

47. Mr. SPANIEN (France) thought that at the present stage, there were two factors in the task before the Sub-Commission: in the first place, it must draw up a list of groups or minorities which could claim minority status, and then it must determine, as far as possible, the extent of the

rights of those minorities. It was in connexion with the latter point that the draft resolution of Mr. Ekstrand and Mr. Black would be useful.

48. The Sub-Commission must bear in mind its twofold limitation: in the first place, its members were not omniscient, and secondly, it could not pass its own responsibilities on to other organs. He recalled that at the previous session, he and Miss Monroe had jointly submitted a working paper, the annex of which indicated two classifications of minorities. That document was intended to facilitate the formulation of a definition of minorities. It was now out of date, however, as a definition had been drafted and voted upon by the Sub-Commission. That definition should facilitate the preparation of a list of minorities, but before that was done, it was necessary to make a classification. At the previous meeting, however, certain members of the Sub-Commission had said that the Sub-Commission was not in a position to prepare a list of minorities forthwith; a survey would have to be made and the various Governments concerned would have to be asked to supply information. If the Secretary-General were asked merely to invite the Governments to submit information, the Governments which were not well-disposed would reply that there were no minorities in their territories, while well-meaning Governments would state that they did not understand exactly what was required of them. Mr. Spanien therefore considered it essential to draft, or to have drafted, a questionnaire in the light of the work already accomplished by the Sub-Commission. Briefly, it was necessary to ask Governments unequivocally whether, taking particular note of the definition of minorities given by the Sub-Commission, there were any groups under their jurisdiction which belonged to the categories covered by that definition. He could not urge too strongly that that was the first task that the Sub-Commission must accomplish.

49. Mr. SHAFAG (Iran) recalled that he had already submitted a proposal similar to that of Mr. Spanien at the second session of the Sub-Commission. He could not see why there should be any objection to the Secretary-General being asked to prepare a questionnaire. Furthermore, he suggested that the Sub-Commission should continue its endeavours to find ways and means of collecting the necessary elements for the preparation of a list of minorities. In that connexion, he recalled that he had submitted a recommendation that on-the-spot surveys should be initiated (E/CN.4/Sub.2/91).

50. Mr. BLACK (United States of America) did not think that those considerations were of particular importance for the examination of any given proposal. He pointed out furthermore, that in establishing a useful classification it was not so much a question of considering minorities as such, but rather of considering them from the point of view of their rights, with a view to the protection they could be granted by the United Nations.

51. Mr. EKSTRAND (Sweden), referring to the memorandum submitted by the Secretary-General (E/CN.4/Sub.2/89), said that the register of minorities mentioned in paragraph 9 of the document might prove extremely useful. In order to establish such a register, it would obviously be necessary to ask Governments for information.

52. He also agreed with Mr. Spanien regarding the preparation of a questionnaire to be sent to Governments. In drafting the questionnaire, however, it would be necessary to bear in mind that some of the treaties in force between the two world wars had already defined the term "minority" and the rights of those minorities. Those treaties were probably no longer in force but most of the rights they had set forth were now incorporated in the Universal Declaration of Human Rights and would also be incorporated in the draft Covenant. That fact reduced the number of minorities whose protection the Sub-Commission was to ensure, since the rights of some were already safeguarded. He emphasized that the Sub-Commission should bear those facts in mind so as to determine its field of action.

/53. Requests for

53. Requests for information should, in his opinion, be drafted by the Sub-Commission in co-operation with the Secretariat. It was stated in the Secretary-General's memorandum that the Sub-Commission might enlist the help of some learned societies; care should be taken, however, not to entrust them with any concrete responsibilities. The Sub-Commission might not be fully carrying out the task allotted to it if it entrusted its work to some other body.

54. The Secretary-General's memorandum also let it be understood that some Governments might find it difficult to supply the information requested. In that connexion, Mr. Ekstrand wished to relate a personal experience. After consultation with the Secretariat, it had been deemed useful to have some examples of recognized minorities in full enjoyment of all their rights. It so happened that the population of the Aaland Islands and the German minority in Denmark could serve as such examples. He had therefore approached the Danish and Finnish authorities, who had given him every encouragement to undertake the study.

55. Those two countries did not appear to have experienced any difficulty in supplying information, since he had received a great deal of material on the two cases he had wished to study. It related not only to legislative measures concerning those minorities but also to administrative measures and judicial decisions.

56. Concrete examples were most useful, but it should be made clear that such examples were not restrictive in character.

57. Regarding the rights of minorities and methods of protecting them referred to in paragraph 15 of the memorandum submitted by the Secretary-General, he emphasized that an analysis of the rights and of the methods of protecting them could not, of course, be undertaken until the Sub-Commission had all the necessary information at its disposal.

58. The CHAIRMAN pointed out that the two documents mentioned by Mr. Ekstrand had just been distributed, namely a memorandum on the population of the Aaland Islands (E/CN.4/Sub.2/101) and a memorandum on the German minority in

/Denmark (E/CN.4/Sub.2/102)

Denmark (E/CN.4/Sub.2/102). The Chairman extended his warm congratulations to Mr. Ekstrand for his efforts in preparing those two documents and said that the Sub-Commission should be glad to note that there were encouraging factors in the field of minorities.

59. Mr. MOSKOWITZ (Consultative Council of Jewish Organizations) hoped that the Sub-Commission would take into consideration the memorandum entitled "International Protection of the Human Rights of Minorities" in which his organization proposed solutions to the main questions which had been or might be raised in the Sub-Commission.

60. Having adopted a resolution defining the minorities whose rights were to be protected by the United Nations, the Sub-Commission was preparing to determine what rights should be so protected. If in so doing the Sub-Commission went beyond the Universal Declaration and the draft Covenant on Human Rights, it would be defeating its own purpose. One of the traditional rights of minorities was the right to use minority languages before tribunals, for instance. The question was extremely complex; that had been seen after the First World War, when treaties relating to minorities had been interpreted in different ways after they had come into force. It would seem useless, therefore, to hope for a general, clear and binding international agreement on that point at the existing juncture. If, on the other hand, the Sub-Commission merely claimed for all individuals the right to speak any language they chose and to teach that language to their children, it would be confining itself to a field where agreement seemed to be practicable; that should be the main concern of the Sub-Commission.

61. The Sub-Commission's work did not duplicate the Universal Declaration of Human Rights and the draft International Covenant on Human Rights; those documents dealt with the rights of the individual, which were not enough to protect the rights of minority groups. The list of human rights thus included certain rights the protection of which was of the greatest importance for religious, linguistic and racial minorities which, by their definition, came within the province of the Sub-Commission, namely freedom of religion, of communication and of association. Mr. Moskowitz explained how they should be interpreted in the case of minority groups.

The Sub-Commission should lay down an international definition which would guarantee those groups adequate protection against every type of discrimination and oppression.

62. As the Sub-Commission was a subsidiary organ of the Commission on Human Rights, its task was similar to that of the Commission. It was part of the general work of protecting the human rights of the individual. The more limited task had been assigned to a special body because the attacks on minority rights gave rise to questions of special urgency, the study of which would make it possible to perfect measures for the protection of minority rights which would not otherwise apply to the protection of human rights.

63. Although its first and foremost duty was to protect minorities in the exercise of human rights defined by the Universal Declaration and the draft Covenant, the Sub-Commission should not hesitate to recommend, if need be, separate supplementary or multilateral agreements to protect rights and privileges not covered by the Declaration or the Covenant.

64. Mr. SPANLEN (France) felt that it was logical and legitimate to establish in the first place the nature of minority rights, as Mr. Black had pointed out, before proceeding to classify such minorities. He wondered why the Commission did not take up that aspect of the question first, the more so since the type of questionnaire to be sent to Governments would depend on the decision reached in that connexion. It was for that reason that he thought it would be better to proceed at once to the consideration of the draft resolution submitted by Mr. Ekstrand and Mr. Black (E/CN.4/Sub.2/106).

65. The CHAIRMAN pointed out that there were still several problems to be solved, and that a study of the joint draft resolution might not yield any important results. In order to enable the Commission to solve the definite problems with which it was faced, he thought that it might be advisable during the session to set up a committee which would be instructed to prepare a list of minorities. With regard to the joint draft resolution, he did not see how the Sub-Commission could state that the only right which concerned it was that relating to language, when it had not yet reached a

/definite decision

definite decision regarding minority rights. It was possible, on the other hand, that the rights proclaimed in the Universal Declaration of Human Rights were inadequate in so far as groups were concerned; that meant that it was necessary to decide whether minorities should have additional protection as such. He felt, therefore, that if the Sub-Commission did not first solve those problems it could give the draft resolution only a superficial study.

66. Mr. SPANIEN (France) recognized the logic of the Chairman's arguments, but pointed out that the Sub-Commission had before it two problems on which it was essential to reach a decision. Did it think that it should draw up a list of minorities and, if so, was it able to do so without any special preparation? It was in connexion with the latter point that the additional problem of the questionnaire arose. Mr. Black had already made it clear that in order to draw up such a questionnaire it would be necessary to know the basic facts concerning minority rights. Mr. Spanien agreed that the discussion of the joint draft resolution submitted by Mr. Ekstrand and Mr. Black would not be of any great value from the point of view of the resolution itself, but it would have the advantage of helping to clarify the situation. He pointed out, in that connexion, that experience had shown that the Sub-Commission did more real and more profitable work when it based its discussions on a definite text.

67. The CHAIRMAN said that in the circumstances it would be better for the Sub-Commission to proceed immediately to the examination of the joint draft resolution submitted by Mr. Ekstrand and Mr. Black (E/CN.4/Sub.2/106) and Mr. Shafaq's two proposals (E/CN.4/Sub.2/91, E/CN.4/Sub.2/92).

The meeting rose at 1.5 p.m.