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SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES

Third Session

SUMMARY RECORD OF THE FIFTY-FOURTH MEETING

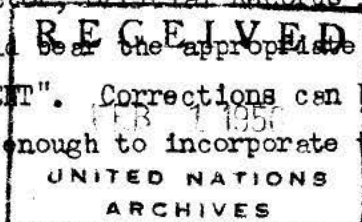
Held at Lake Success, New York,  
on Friday, 20 January 1950, at 11 a.m.

CONTENTS:

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.2/101, E/CN.4/Sub.2/102, E/CN.4/Sub.2/106, E/CN.4/Sub.2/106/Rev.1, E/CN.4/Sub.2/111)(continued).

<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. SPANIEN	(France)

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Consultants from non-governmental organizations:

<u>Category B:</u>	Mr. MOSKOWITZ	Consultative Council of Jewish Organizations
	Mr. BERNSTEIN	Co-ordinating Board of Jewish Organizations
	Miss GARTLAN	International Union of Catholic Women's Leagues
	Mr. PERLZWEIG	World Jewish Congress
<u>Secretariat:</u>		
	Mr. LAWSON	Secretary of the Commission
	Mr. LIN MOUSHENG	Human Rights Division

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.2/101, E/CN.4/Sub.2/102,  
E/CN.4/Sub.2/106, E/CN.4/Sub.2/106/Rev.1, E/CN.4/Sub.2/111)(continued)

1. The CHAIRMAN recalled that at its last meeting the Sub-Commission had decided to set up a committee of three, with instructions to continue, in the interval before the next session of the Sub-Commission, the study of the question of the classification of minorities, working by correspondence, which would not involve any additional expense for the United Nations. He also recalled that Miss Monroe had been proposed as a member of the committee; consequently, there were another two members to be appointed.

After a short exchange of views, Mr. Shafaq (Iran) and Mr. Ekstrand (Sweden) were appointed members of the Committee, of which Miss Monroe was to be Rapporteur.

2. It was agreed that the other members of the Sub-Commission should be at the disposal of the Committee to give it every possible assistance should the need arise.

3. The CHAIRMAN called upon the Sub-Commission to study the Ekstrand-Black draft resolution as re-drafted after the last meeting (E/CN.4/Sub.2/106/Rev.1), unless it thought that it would be better to consider first the proposal which Mr. Shafaq had submitted on 6 January (E/CN.4/Sub.2/92).

4. Mr. SHAFQAQ (Iran) urged that his proposal, which concerned the study of the status of all minorities newly created by geographical and political changes resulting from the Second World War, should be studied first.  
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Most of those minorities were clearly defined; they considered themselves to be minorities and no one disputed their right to that title. He asked whether the Sub-Commission could not draw the attention of the higher organs to the advisability of examining the case of those minorities and the problems raised by their existence before the Sub-Commission continued its general study of the problem of minorities.

5. He was aware, however, that the Sub-Commission would probably find some difficulty in putting that suggestion into practice; he himself did not know quite how to word it, but the case of those newly created minorities must certainly not be forgotten and the problems they raised should be examined before the study of the definition and classification of minorities was continued. If the Sub-Commission felt that it could not formulate that suggestion in an appropriate way, it might merely note the importance of the problems raised by new racial, religious and ethnic minorities.

6. Mr. BLACK (United States of America) felt that Mr. Shafaq's proposal chiefly concerned the classification of minorities; a new category entitled "newly created minorities" should therefore be included in the classification of minorities. Since Mr. Shafaq was a member of the Committee which had just been set up, he could perhaps have that item included on the Committee's programme of work.

7. Mr. SHAFQAQ (Iran) did not think that a special category should be established for newly created minorities, since they would not remain eternally new. They should be allocated from the start to the various permanent categories which were to be retained.

8. Mr. SPANIEN (France) admitted that if Mr. Shafaq's suggestion were adopted, it would draw the attention of higher bodies and of public opinion to the most urgent or pressing questions; he doubted, however, whether it was necessary for the Sub-Commission to obtain authorization to study a question which automatically came within its terms of reference. It would be sufficient to ask the Committee which had just been established to study it.

9. Upon Mr. SHAFaq (Iran) urging that the Sub-Commission should note his suggestion, Mr. EKSTRAND (Sweden) proposed that it might meet his wishes if the Sub-Commission were to state that it asked the Committee to give particular attention to newly created minorities.

It was so agreed.

10. The CHAIRMAN requested the Sub-Commission to examine the revised draft resolution submitted by Mr. Ekstrand and Mr. Black (E/CN.4/Sub.2/106/Rev.1). He asked the members whether they wished to continue the general discussion of the draft resolution or to proceed forthwith to its consideration paragraph by paragraph. He himself was in favour of the latter procedure.

11. Following remarks by Mr. CHANG (China) and Mr. SHAFaq (Iran), he decided that the Sub-Commission would continue the general debate on the draft resolution. He reminded the Sub-Commission, however, that it would be advisable to keep within the agreed time-limit.

12. Mr. SHAFaq (Iran) acknowledged that the right to have their language protected should be given to the minorities which claimed it. In that respect he approved of the draft resolution.

13. Nevertheless, he must remind the Sub-Commission that the question of language was by its very nature a complex one and that, if misunderstandings were to be avoided, that fact must be taken into consideration in any proposal dealing with the question. Great care must be taken, however, not to encourage abuses. There were certain languages which it would be to no advantage to protect, since they made no cultural contribution whatever to humanity. That was the case, in particular, with many primitive languages; certain languages were only spoken, not written. The United Nations must take care not to contribute to the revival of languages which were in course of vanishing, for that would only increase the possibilities for misunderstanding and dispute.

14. The draft resolution under discussion did not take into account the complexity of the language question and the danger of an improper interpretation of the idea of the protection of language. If that omission were not remedied, he would abstain from voting.

15. Mr. CHANG (China) admitted that the revised draft resolution was better than it had been in its original form. He could not, however, rid himself of certain apprehensions. In speaking of the protection of the rights of minorities, stress should be laid, in his opinion, on minority groups as such, rather than on individuals. The draft resolution, however, seemed to acknowledge that the rights of the individuals who comprised minority groups were protected by the Universal Declaration of Human Rights and by the draft Covenant, and that the rights of minority groups would thus be protected except in so far as the right of using their language before the courts and of teaching it in State-supported schools was concerned. What the United Nations must protect, however, were the traditional ethnical and cultural characteristics of minorities.

16. Furthermore, even supposing that nothing more was to be claimed for a minority than the right to use its language before the courts and in the schools, there were far too many paragraphs in the preamble of the proposal submitted by Mr. Ekstrand and Mr. Black. It would gain by being considerably shortened.

17. Moreover, the fourth and fifth paragraphs of the draft resolution contained several references to the equality of rights sought by minorities and gave the impression that those rights were already protected by the Universal Declaration of Human Rights and the draft Covenant, so that the Sub-Commission would not have to provide any special protection in that respect. Miss Monroe's draft resolution, however, which the Sub-Commission had adopted, stated that the Sub-Commission was not concerned with minorities which were endeavouring to gain identity with the nationals of the States in which they resided. It would appear to be advisable, therefore, to specify whether the word "equality" was intended to mean "identity".

18. Mr. MENESES PALLARES (Ecuador) agreed that the existing text of the draft resolution was an improvement on the original text; it still contained too many defects, however, to be acceptable.

19. It was completely incorrect, for one thing, to suppose that certain rights would be automatically protected by the simple fact that they were proclaimed in the Universal Declaration of Human Rights. That Declaration, although an important instrument, lent itself to controversy; furthermore, it stated a number of abstract rights, but lacked any binding force. Moreover, it would be premature to count upon the draft Covenant on Human Rights for the protection of such rights.

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20. Moreover, even if the Universal Declaration had force of law as an instrument of universal application, it would be incorrect to assert that the right of a minority to use its own language was the only right that was not covered by its provisions. There were many other rights of an economic and social character which were not protected by the Declaration.

21. Furthermore, the use of a minority language was a highly controversial question. It was, in fact, a problem within the domestic jurisdiction of States. He reminded the Sub-Commission that it had already, at its second session, made a number of reservations in connexion with that question, as its report showed. The fact that minorities might be able to use their own language before the courts and in the schools was not sufficient to render their position enviable in other respects.

22. The CHAIRMAN wished to make some considerable reservations concerning the new text of the joint draft resolution, in spite of the improvements that had been made by the authors. In his opinion, the operative part was not properly related to the introductory paragraphs, and the text should be redrafted in order to obtain a better balance. The operative part was somewhat disappointing, when compared with the length and importance of the opening paragraphs, and the people of the world who expected the Sub-Commission to provide practical measures for the protection of minorities would be disappointed.

23. He suggested that the text should be altered to make the draft resolution appear in the name of the Sub-Commission, instead of in that of the Economic and Social Council or of the Commission on Human Rights. The Sub-Commission should not commit either of those two organs by putting their name to a resolution so restricted in scope.

24. It should not be taken for granted that the Covenant on Human Rights would be a complete and effective instrument. Several objections had been made in that respect, and it would be rash to maintain that everything necessary had already been done concerning the protection of minorities, except for the protection of their right to use their own language. In adopting the resolution in its own name, the Sub-Commission should state very clearly that it was only at the beginning of its study of the question, that it was difficult for the time being to know what rights would be protected by the Covenant on Human Rights, and that, consequently, while it was able to state with certainty

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that the right of minorities to use their own language should be safeguarded, it could not yet give its final decision on the subject. In his opinion, that was the type of conclusion that the Commission on Human Rights and the Economic and Social Council expected from the Sub-Commission.

25. Miss MONROE (United Kingdom) said that the Chairman's remarks were very interesting, but she could not agree with him that it would be better not to submit the resolution as one to be adopted by the Economic and Social Council. The resolution was, indeed, a reply to a question that had been asked by the General Assembly. If the Sub-Commission were to adopt the draft resolution in its own name, and submit it in that form to the Commission on Human Rights, it would in fact be asking the Commission to prepare a proposal covering the substance of the resolution for submission to the Economic and Social Council, a task which was really the responsibility of the Sub-Commission. She therefore felt that the Sub-Commission should strive to prepare a text which would satisfy the Economic and Social Council.

26. She admitted that the operative part of the draft resolution did not really justify the preamble. Moreover, in her opinion, an important idea was missing from the text. It should be recalled in the text that the Sub-Commission had just established a definition of minorities and that it did not yet know to what extent the rights of minorities would be protected by the Covenant on Human Rights, and that it therefore wished to reserve its position regarding any future decisions covering any other rights apart from the right of a minority to use its own language. It should also be made clear that, while it was not yet possible to take a final decision, the question of the protection of minorities was not being shelved.

27. In order to cover those points, she proposed the insertion of the following paragraph before the operative part of the draft resolution:

"Recommends that, as an interim means of displaying the concern for minorities that is expressed in General Assembly resolution 217 (III) C, the General Assembly adopt, and so place the full weight of its authority behind the resolution referred to in the preceding paragraph and annexed hereto."

28. Mr. SPANIEN (France) pointed out that the Chairman's remarks had disclosed two divergent principles. It would be a very difficult and thankless task to try to amend a text in such a way as to make it say in the end exactly the opposite of what it had originally said. Such a situation showed the necessity of deciding on the basic principle. In his opinion, the Sub-Commission must decide at that stage whether it wished to work on the basis of the documents before it, paying particular attention to the Covenant on Human Rights, or whether it wished, on the other hand, to embark on new work of its own and to draft a charter for minorities.

29. It did not seem possible, on the basis of the draft resolution under discussion, to ask the Secretary-General to prepare the way for the drafting of a special instrument for the protection of minorities. The draft resolution mentioned the Universal Declaration of Human Rights, and the Covenant on Human Rights, and stated that if the Covenant were to safeguard all the rights set forth in the Declaration, the only remaining task would be to safeguard the right of minorities to use their own language. Mr. Meneses Pallares had, however, pointed out that the Declaration had no binding force and that it was, moreover, dangerous to count on a covenant which was not yet in force. Furthermore, Mr. Shafaq had pointed out that the protection of the right to use the minority language was a complex question which could not be solved without detailed study. It was for those reasons that Mr. Spanien felt that the Sub-Commission must follow his suggestion and decide to assume its own responsibilities, in view of the uncertainty concerning the effectiveness of the Covenant.

30. Mr. NISOT (Belgium) thought that the discussion itself was unwarranted, since the draft resolution was superfluous. It would add nothing to the decisions which the Sub-Commission had already been able to reach and he proposed that the authors should withdraw their draft.

31. Mr. SPANIEN (France) thought it would be difficult to support Mr. Nisot's opinion, in view of the fact that the draft resolution, whatever its merits might be, was based on a definition which had just been established by the Sub-Commission.



32. Mr. NISOT (Belgium) pointed out that it was in the light of that recent definition that the Commission on Human Rights would examine and take a decision on resolutions IV and V adopted by the Sub-Commission during its second session (annex of document E/CN.4/351).

33. Mr. SPANIEN (France) said that, in those circumstances, it only remained for the Sub-Commission to say that, in accordance with the definition of minorities it had established, it confirmed the resolutions it had adopted at its previous session.

34. Mr. NISOT (Belgium) thought it would suffice to include a statement to that effect in the report.

35. Miss MONROE (United Kingdom) admitted that the new definition was important enough to justify the recall of earlier resolutions, which it would be wise to consider from a new angle. The draft resolution under consideration was conceived on a slightly different basis, because it took the new definition into account. In any case, that aspect of the problem should, in her opinion, be dealt with in a draft resolution rather than in the report.

36. Mr. EKSTRAND (Sweden) realized that the preamble of the draft resolution he was presenting in conjunction with Mr. Black was slightly disproportionate in relation to the operative part. The paragraphs of the preamble were intended to explain the proposal set forth in the operative part. He himself would be prepared to accept the suggestions made by Mr. Spanien and Miss Monroe if Mr. Black had no objection.

37. Mr. BLACK (United States of America) wished to reply to the comments of various members of the Sub-Commission on the draft resolution he had presented jointly with Mr. Ekstrand.

38. In reply to Mr. Shafaq, he admitted that it was impossible to ignore the difficulties involved in protecting the right of a minority to use its own language. When it was a question of using a language in court, for example, the language could of course be elementary and not very highly developed.

On the other hand, when it was a matter of using a language for teaching purposes, the problem was rather different, for only a sufficiently developed language could be used for that purpose, particularly in view of the difficulties which the translation of foreign publications might entail. He was, however, prepared to consider any amendments which might be proposed.

39. In reply to Mr. Chang, he thought there was a misunderstanding. Most of the rights mentioned in the third paragraph of the preamble of the draft resolution were rights that were recognized for most individuals. Furthermore, a certain number of the rights guaranteed by the Universal Declaration of Human Rights, such as freedom of assembly and association, for example, were rights which concerned groups of individuals. In most cases the minority enjoyed the civil rights granted to the rest of the population and it was only in regard to its own culture that special protection might prove necessary. That was why the right to use a minority language was stressed in the draft resolution.

40. He would be prepared, if necessary, to use the phrase "minority group" in that part of his text which referred to the rights of minorities.

41. He explained that the paragraphs of the lengthy preamble preceding the operative part were intended for the information of the United Nations organs which would have to study the draft resolution, to enable them to understand why the Sub-Commission had reached the conclusion it was proposing. Regarding the reference to the Universal Declaration of Human Rights, the draft resolution merely noted that the Declaration proclaimed certain rights, but it did not say that those rights were effectively protected.

42. In reply to the comments of Mr. Meneses Pallares, Mr. Black admitted that the rights proclaimed in the Universal Declaration of Human Rights were not effectively guaranteed. That was why he thought it necessary to rely to a certain extent upon the Commission on Human Rights, which could consider the sanctioning and protecting of additional rights. It would be better, therefore, to wait until the Covenant on Human Rights was ready, so that the Sub-Commission would know exactly what its terms would be.

43. Mr. Black also pointed out that the reservations contained in the resolution adopted by the Sub-Commission during its previous session, to which Mr. Meneses Pallares had referred, were included in the definition the Commission had just established. If those precautions were not considered adequate, a new formula should be proposed.

44. Moreover, he could not agree with the Chairman's view that the operative part of the draft resolution was disappointing. He pointed out that, at the current stage of its work, the Sub-Commission could hardly be expected to take radical, far-reaching measures. For the moment, the Sub-Commission would have to be content to state the position and to point out the various ways in which the Commission could act.

45. Regarding Mr. Nisot's comments, Mr. Black made it clear that his draft resolution was a reply to the General Assembly. Its purpose was to inform the Commission on Human Rights and the Economic and Social Council of the situation and of the relationship between the definition of minorities which the Sub-Commission had just established and the rights proclaimed in the Universal Declaration of Human Rights. The information in the draft resolution could be very useful to various United Nations organs. Moreover, the reason the draft resolution was drafted in the name of the Economic and Social Council was for authorization to be obtained for requests for information to be addressed to Member States, so that the Sub-Commission could continue to study the problem effectively.

46. Mr. NISOT (Belgium) said that it was not necessary to adopt a resolution in order to inform the Commission on Human Rights and the Economic and Social Council how the work on the problem of minorities was progressing; the report was quite sufficient for that purpose.

47. The CHAIRMAN pointed out that the Sub-Commission could not decide whether a draft resolution was appropriate before having examined it paragraph by paragraph.

48. Mr. CHANG (China) proposed the deletion of the six paragraphs of the preamble and the first paragraph of the operative part of the draft resolution.

49. The CHAIRMAN said that when the draft resolution was examined members would have the opportunity to indicate by vote whether they approved of the various paragraphs. He explained that such approval

would be of a provisional nature only; the Sub-Commission would be free to review its decision on each paragraph at a later stage.

50. Mr. EKSTRAND (Sweden) endorsed that procedure.

First paragraph of the preamble

51. The CHAIRMAN proposed that the words "of the fate" should be inserted after the word "problem", so that the text might correspond to the title of General Assembly resolution 217(III)C.

It was so decided.

The first paragraph of the preamble, thus amended, was adopted provisionally.

Second paragraph of the preamble

52. The CHAIRMAN proposed the substitution of the words "a definition" for "the definition", and the addition of the following text: "and that the Sub-Commission is now engaged on a further study of the problem of minorities in order that the United Nations may be able to take effective measures for the protection of minorities."

53. Mr. BLACK (United States of America) and Mr. EKSTRAND (Sweden) accepted the amendment and the addition proposed by the Chairman.

The second paragraph of the preamble, thus amended, was adopted provisionally.

Third paragraph of the preamble

It was decided that the third paragraph of the preamble should be considered after the fourth and fifth paragraphs of the preamble.

Fourth and fifth paragraphs of the preamble

54. The CHAIRMAN reminded the Sub-Commission that the Universal Declaration of Human Rights was only a statement of abstract rights and did not guarantee the protection of any right.

55. Miss MONROE (United Kingdom) pointed out that the Declaration put the Members of the United Nations under a moral obligation to respect the rights set forth in it; that in itself was a form of protection.

56. Mr. MENESES PALLARES (Ecuador) pointed out that the fourth and fifth paragraphs of the preamble seemed to contradict each other: the fourth paragraph was based entirely on the Universal Declaration of Human Rights, while the fifth referred to international instruments. That was a clear indication that the authors of the draft resolution were not quite sure of their arguments.

57. Mr. BLACK (United States of America) remarked that the fourth paragraph of the preamble confined itself to stating that the rights in question had been "set forth" in the Declaration of Human Rights; it did not speak of protection.

58. The CHAIRMAN proposed that the fifth and sixth paragraphs of the preamble should be replaced by the following:

"Considering that, pending the adoption of an International Covenant on Human Rights, it is not feasible to determine what further measures of protection will become necessary for the protection of minorities."

59. Mr. NISOT (Belgium) proposed the substitution of the words "entry into force" for the word "adoption".

60. Mr. BLACK (United States of America), speaking on behalf of Mr. Ekstrand and himself, accepted the Chairman's proposal, as amended by Mr. Nisot.

61. Mr. SPANLIEN (France) said that the tendency in the Sub-Commission was towards a resolution which would acknowledge that the Universal Declaration of Human Rights was worthless, that the contents and the effectiveness

of the Covenant on Human Rights were questionable and that, in such circumstances, the Sub-Commission was hardly in a position to proceed with its work. Such a resolution would represent a real admission of failure, and he was strongly opposed to it.

62. Miss MONROE (United Kingdom) accepted the Chairman's proposal, but thought that the absence of any reference to the Universal Declaration of Human Rights would create the impression that the Sub-Commission considered it unimportant.

63. The CHAIRMAN said that he was prepared to amend his proposal as follows:

"Considering that many of the rights traditionally desired by minorities are proclaimed in the Universal Declaration of Human Rights but that pending the coming into force of an International Covenant on Human Rights..."  
The Chairman's proposal, as amended, was adopted provisionally.

Third paragraph of the preamble

64. Mr. BLACK (United States of America) agreed, on his own behalf and on that of Mr. Ekstrand, to withdraw the third paragraph of the preamble.

65. Miss MONROE (United Kingdom) thought that some reference should be made to the treaties and declarations on minorities which had come into force after the First World War, since they were not universally known.

65. Mr. BLACK (United States of America) accordingly proposed the following abridged version:

"Considering that the rights traditionally desired by minorities were granted in the minority treaties and declarations which came into force after the First World War".

The third paragraph of the preamble, as amended, was adopted provisionally.

Sixth paragraph of the preamble.

67. The CHAIRMAN reminded the Commission that the Covenant on Human Rights was to include a provision guaranteeing persons belonging to a minority group the right to the services of an interpreter when defending themselves before the courts. The words "the right of using the minority language before the courts" would therefore seem to go beyond the essential rights that should be granted to minorities.

68. Mr. SPANLEN (France) agreed that it would be sufficient to respect the right to defence; it would be impossible to force a court to conduct its business and produce its records in all the minority languages of the country.

69. Miss MONROE (United Kingdom) suggested using the words "in judicial procedure" which appeared in resolution V adopted by the Sub-Commission during its second session.

70. Mr. EKSTRAND (Sweden) said that he would prefer to retain the words "before the courts".

71. The CHAIRMAN put to the vote the question of the retention of the words "before the courts".

The Commission decided, by 8 votes to none, with 2 abstentions, to retain those words.

72. Mr. BLACK (United States of America) explained that the sixth paragraph of the preamble was a summary of the conclusions stated in the resolutions adopted by the Sub-Commission during its second session. He therefore asked whether the two earlier resolutions would be null and void should the new draft resolution be adopted.

73. The CHAIRMAN replied that it would be stated in the report that the two earlier resolutions had been replaced by the new draft resolution.

74. Mr. LIN MOUSHENG (Secretariat) pointed out that the reference to the Sub-Commission's resolution V (E/CN.4/351, Annex) in the sixth paragraph of the preamble was not altogether accurate, since resolution V listed a number of definite recommendations which would enable minorities to maintain their own culture by the use of their own language.

75. Mr. ROY (Haiti) thought that since the draft resolution as a whole reiterated the provisions of the Sub-Commission's two earlier resolutions it would be better to use the following, or a similar, text for the sixth paragraph of the preamble:

"Considering that as all the rights which constitute the protection of minorities... are not covered by the Universal Declaration of Human Rights or the draft International Covenant on Human Rights, the Sub-Commission reaffirms its resolution V adopted at its second session."

76. The CHAIRMAN pointed out that as the draft resolution under discussion was drawn up in the name of the Economic and Social Council it should emanate from the Council. He therefore proposed that the sixth paragraph of the preamble should be amended to read:

"Considering that neither the Universal Declaration of Human Rights nor the draft International Covenant on Human Rights fully covers the right of using the minority language before the courts and of teaching a minority language as one of the courses of study in State supported schools".

77. Mr. BLACK (United States of America) accepted, on his own behalf and on that of Mr. Ekstrand, the Chairman's new text.

The new text proposed by the Chairman for the sixth paragraph of the preamble was adopted provisionally.

The meeting rose at 1.10 p.m.