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DEFINITION AND CLASSIFICATION OF MINORITIES

(Memorandum Submitted by the Secretary-General)

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CHAPTER I

INTRODUCTION

1. At its second session (13 to 27 June 1949), the Sub-Commission on Prevention of Discrimination and Protection of Minorities adopted a resolution (document E/CN.4/351, Chapter VI, Resolution H) by which it decided, inter alia, to place on the provisional agenda of its next session the item, "Definition and Classification of Minorities."
2. This memorandum is submitted to the Sub-Commission by the Secretary-General in order to facilitate discussion of this item of the provisional agenda. It attempts to present, in organized fashion, the principal elements which must be taken into consideration in any attempt to define or to classify minorities. Essentially it represents a compilation, a summary, and an organization of the findings of the social and political sciences with respect to minorities, and is therefore not to be considered in any way as an expression of the views of the Secretary-General on this subject.
3. The purely theoretical approach of this study automatically excludes from consideration all basic questions relating to the "protection" of minorities, which are dealt with elsewhere. Even the examples cited herein are not to be construed as reflecting a judgment on the part of the Secretary-General as to what specific groups do, or do not, constitute minorities, or as to what measures should, or should not, be taken for the protection of minorities.

CHAPTER II

THE CONCEPT OF "MINORITY"

A. Groups to be Studied

4. As a provisional orientation, it will be recalled that in modern times the term "minority" has been applied to more or less distinct groups, living within a State, which are dominated by other groups.
5. A fundamental distinction may be drawn between (a) minorities whose members desire equality with dominant groups in the sense of non-discrimination alone, and (b) those whose members desire equality with dominant groups in the sense of non-discrimination plus the recognition of certain special rights and the rendering of certain positive services.

6. The minorities in category (a) on the whole do not wish to preserve the particular characteristics which distinguish them from the dominant group, but prefer to be assimilated fully or in part by the dominant group. They are therefore primarily concerned that no discrimination of any kind shall be made between various groups, particularly in respect of any of the rights and freedoms set forth in the Universal Declaration of Human Rights. (See Article 2 of the Declaration).
7. The minorities in category (b) are equally concerned with the principle of non-discrimination. They feel, however, that even full realization of this principle would not place their group in a position of real equality - but only of formal equality - with respect to the dominant group.
8. The "positive services" and "special rights," which such minorities feel they must have if their equality within the State is to be real, vary greatly, but usually include one or more of the following:
- (1) provision of adequate primary and secondary education for the minority in its own language and its cultural traditions;
 - (2) provision for maintenance of the culture of the minority through the establishment and operation of schools, libraries, museums, media of information, and other cultural and educational institutions;
 - (3) provision of adequate facilities to the minority for the use of its language, either orally or in writing, in the legislature, before the courts, and in administration, and the granting of the right to use that language in private intercourse;
 - (4) provision for respect of the family law and personal status of the minority and their religious practices and interests; and
 - (5) provision of a certain degree of autonomy.
9. The rendering of "positive services" may take either of two forms:
- (1) provisions effected at the expense of the minority, or
 - (2) provisions effected out of public funds and facilities.
10. The task of protecting the minorities which fall into category (a), as outlined above, coincides largely with the prevention of discrimination (see the Memorandum on the Main Types and Causes of Discrimination, submitted to the Sub-Commission by the Secretary-General, document E/CN.4/Sub.2/40).
11. The task of protecting the minorities which fall into category (b), as outlined above, also coincides to a certain extent with the prevention of discrimination. But it has additional aspects, such as those enumerated in paragraph 8 above. The

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aspects may vary widely in the case of each minority.

12. This study is devoted largely to the minorities which fall into category (b), as it is not essential to define or to classify "minorities" before providing for the realization of the principle of non-discrimination.

B. "Community" and "Society"

13. It will be useful in studying the concept of minorities to consider the nature of the State as compared to the nation, and also the sociological concepts of community (Gemeinschaft) and society or organization (Gesellschaft).

14. Normally the term minority refers to a particular group which is subject to the jurisdiction of a State. However, there are also minorities within the nation, which are a differentiated part of the nation.

15. There are many possible arrangements between nation and State, as will be shown below. Sometimes a nation has its own State, sometimes it is divided among two or more States, and sometimes it is included under the jurisdiction of a multi-national State. Although nation and State are different concepts, many contemporary nations have resulted from the integrative action of the State.

16. In examining the concept of "nation", special attention must be given to the difference between "community" and "society" (or "organization") and to the influence of the State in building up a nation.

17. The distinction between community and society as made by Ferdinand Toennies in his book, Gemeinschaft und Gesellschaft in 1897, has in its essentials been generally accepted by most modern sociologists, either with the same or with different terminology (for example, many Anglo-Saxon sociologists differentiate between "community" and "organization," but the meaning they ascribe to the latter word corresponds essentially to Toennies' concept of "society").

18. "Communities" are groups based upon unifying and spontaneous (as opposed to artificial or planned) factors essentially beyond the control of the members of the group (such as blood, culture, proximity, etc.). Examples of communities are families, tribes, persons sharing the same culture, etc. The components of a community are united by affinity rather than by their voluntary decision to establish such a group. Communities thus are areas of common life, determined in a spontaneous way rather than by voluntary decision. They develop wherever individuals live together and acquire, to a greater or lesser degree, distinctive common characteristics such as manners, traditions, modes of speech, and feelings of solidarity. Yet communities, while they imply the existence of a unity of sentiments, do not equally imply the existence of biological unity; they do not

/constitute

constitute a collective mind but rather a web of likenesses and differences of what is common and what is diverse among their members.

19. Society (or organization), on the other hand, is established by the deliberate or voluntary action of its members, who associate themselves for the purpose of undertaking certain activities. A "society" is an organization of social beings for the pursuit of a common interest. Examples of societies are political parties, cultural institutions, groups formed by contract, sports clubs, economic corporations, States, etc.

20. The difference between community on the one hand, and society or organization on the other, is a vast one - the difference between the living-together of individuals that results in a family, a tribe, or a nation, and the coming-together of individuals that results in a university, a trade union, or a State. A community is wider and freer than even the greatest organization. It is a larger field of common life out of which associations arise, into which associations bring order, but which associations never completely cover. For while the community is integral, a society or organization must be partial.

21. One community may be part of another, wider community. A national community, for example, may include many different kinds of smaller communities, such as different religious or linguistic groups, social classes, and in some cases even different cultural groups. The strength of the tie which binds the community together varies with the degree and intensity of the common life. An individual is a member of a small, intense community, such as a family; furthermore, he belongs at one and the same time to a regional community, to a nation and to other possibly still larger communities such as cultural groups. In this way every individual finds himself involved in a chain of social contacts which stretches to the ends of the world.^{1/}

^{1/} See R. M. McIver, Community.

C. The Nation as a Community

22. The nation is one of the main types of community - a community which has reached a high degree of maturity, which is engaged in a large number of activities, and which encompasses not only a number of individuals but also a number of smaller communities. Yet the nation is a community not based on a purely natural foundation, (for example, blood), nor is it an extension of a natural community (for example, a tribe). It is, rather, the result of an historic integrative process. By virtue of this process many groups which once were different, and even relatively independent of one another, have been brought together to the point where they have become united by an intense and active solidarity. By living together these groups have acquired common habits, customs, traditions and ways of life.

23. But a nation, of course, is more than a group of individuals having common habits, customs, and traditions, and a common form of life. In order to comprise a nation, the individuals must behave in such a way as to express their will (conscious or unconscious) to live closely together in order to undertake, develop, and achieve common enterprises which are felt to reflect the historic destiny of the particular national group. Renan expressed this idea in his statement that a nation is "a tacit daily plebiscite". Other sociologists, carrying Renan's explanation a little further, have added that the existence of a common tradition is not sufficient to maintain a nation: although this usually includes common achievements and experience in the past, its real actuality consists principally of a feeling that there exists a goal to pursue in the present and in the future. Such "active solidarity" exists only when all individuals and communities which make up the nation are united together for the fulfillment of a common task, in which all are concerned.

24. Many nations possess a common language, a common origin, a common culture, a common religion, or common folk-ways and traditions. On the other hand, many other nations include substantial numbers of individuals and groups of diverse languages, origins, cultures, religions, or folk-ways and traditions. The fact that a nation belongs to the latter category does not alter its status, for it is what its constituent individuals and groups have in common, rather than what they have alike, that engenders the sense of belonging together, and sentiment of sharing a common destiny and the striving to fulfil a common task, that are the basic ingredients of the nation.

D. The State as a society (organization)

25. Strictly speaking, a State is basically a legal organization. While the nation frames all human activities, more or less, the activities of the State are confined to certain definite aspects of human behaviour.

26. Most sociologists and political scientists consider the State as a society organization because:

- (1) its social forms have not been spontaneously originated, but consciously and deliberately built up;
- (2) its controls do not extend to an undefined number of activities, but only to the juridical regulation of certain conduct; and
- (3) it is obligatory in the sense that all persons in a given territory are affected by its activities whether they desire this or not.

27. The State is an essential part, but never the whole, of the social structure included in the nation. It is an organization with special attributes, special instruments, and special powers. It is characterized primarily by its specific instrument, the law, which implies coercion. According to certain authorities it is simply a system of law in force - a coercive normative order. It has the monopoly of compulsion and it imposes itself on all individuals and social groups within its territory. From a broader viewpoint it is sometimes considered to include the whole of the social process engendering, supporting, and applying the law. From any viewpoint, however, the law defines the sphere of the State.

E. Relationship between Nation and State

28. Despite the basic differences between Nation and State, as indicated above, the State often has acted as an important factor in building up the nation. In this process the State has served both as an expression of, and as a promoting element in, the development of the active solidarity so necessary to the growth of the nation. Yet while it is an essential part of the whole social structure included in the nation, it is never the whole of that social structure. There are always social activities which will remain outside of the regulation of the State. This is inherent in the belief that the law should only rule certain human behaviours, not all of them.

29. There are "national States" in which the State frame is largely co-extensive with the nation. There are also States in which several nationalities have been integrated, and in which the State may act as a factor (a) for promoting common solidarity among all the individuals and groups within the nation, and (b) for developing an entirely new and more comprehensive nation.

30. In modern times, most nations have their own State, and most States represent the juridical organization of a single nation. This is true even in the case of States formed by groups having widely varying cultural traditions. But there are also other arrangements between nation and State which must be taken into account, as in the case of a State which includes two or more nations, a nation which is included in one State but reflects the culture of another, a nation divided between two or more States, etc.

F. The State as integrator of the Nation

31. As has been pointed out above, the State often acts as an important integrating factor in building up a nation. Many examples could be cited of States, initially composed of several different nations, which after a period of time have succeeded in creating a wider national community, in many cases without wiping out the varying cultural characteristics of the groups which have come under its jurisdiction. In some of these cases the States have succeeded in building up the individuals and groups under its jurisdiction into a new and more comprehensive nation.

32. A "national" State is one formed either by a previously-existing nation alone, or by successful merging of several previously-existing nations into a single one. A "multi-national" State, on the other hand, is formed by two or more nations, existing as different communities, each of which is aware of - and desires to retain - its own distinguishing characteristics.

33. "Multi-national" States may be divided into two principal categories: (a) those in which the State reflects the culture of the predominant nation, whilst the other nations are considered as minorities; and (b) those which do not reflect the culture of a predominant nation, but are neutral insofar as the various nations submitted to their jurisdiction are concerned. In the case of States in the latter category, it is impossible to speak of either a national majority or a national minority except from the purely numerical standpoint; one may only speak of different national groups. In the case of multi-national States in which the various nations integrated therein are loyal to the State, a more comprehensive national community often results and co-exists.

/34. It should

34. It should be borne in mind that the categories referred to in the paragraph above are not rigid, but in many cases are relatively fluid.

G. The "National" State

35. The "national" State is not a form of society which man finds ready-made. It must, on the contrary, be built up consciously by him. It is quite unlike the tribe or family, based on co-sanguinity, which is formed almost without thought or effort on the part of individuals. As Ortega y Gasset^{1/} points out:

"Before the birth of a national State, various smaller groups exist. But following this isolation there has developed an "external" common life among those groups. The individual in each group no longer lives in his own circle, but part of his life is linked up with individuals or other groups with whom he is in commercial or intellectual relation. In this situation, the state-principle is the movement which tends to annihilate the social forms of isolation and to substitute for them a social form adequate to the new life, already lived externally. The State is a plan of action and a programme of collaboration. The State is neither co-sanguinity, nor linguistic unity, nor territorial unity. It is rather a dynamic social enterprise."

In other words, the State frequently is the basis of undertakings greater than those possible to co-sanguinity. For example it was neither a previous community of blood nor a linguistic unity which produced the living in common of men under a sovereignty of public authority which we know today as England or France; the relative homogeneity which they enjoy today is the result of previous political unification of many national groups under the State.

1/ Revolt of the Masses.

Overlapping of Social Communities

It follows from what has been stated above that there are many kinds of communities, differing as to the number of individuals included, the number of activities comprised, and the intensity and breadth of the feelings of solidarity. The various communities do not exist one beside the other, separately. Indeed, in many cases communities overlap; an individual may feel that he belongs at one and the same time to a family community, a neighborhood community, an area community, a national community, a regional community, and even to such a larger, more loosely defined, community as the circle of Spanish-speaking people, English-speaking people, or Western culture. Likewise a nation is not constituted only by individuals and groups who think, feel, and act in exactly the same way, but normally includes within it many other communities of various sizes and kinds, such as families, neighbourhood groups, social classes, cultural groups, area groups, etc. These different communities are not only inter-mingled in the nation; they are also interlaced with one another. In addition, some of these communities may be partly inside the nation and partly outside of it, as in the case of many religious, cultural, and linguistic communities.

I. The Meaning of "Minority"

37. It follows from the analysis of the community, the nation and the State outlined above that the term "minority" cannot for practical purposes be defined simply by interpreting the word in its literal sense. If this were the case, nearly all the communities existing within a State would be styled minorities, including families, social classes, cultural groups, speakers of dialects, etc. Such a definition would be useless.

38. As a matter of fact, the term "minority" is frequently used at present in a more restricted sense; it has come to refer mainly to a particular kind of community, and especially to a national or similar community, which differs from the predominant group in the State. Such a minority may have originated in any of the following ways:

- (a) it may formerly have constituted an independent nation with its own State, (or a more or less independent tribal organization);
- (b) it may formerly have been part of a nation living under its own State, which was later segregated from this jurisdiction and annexed to another State; or
- (c) it may have been, or may still be, a regional or scattered group which

/although

although bound to the predominant group by certain feelings of solidarity, has not reached even a minimum degree of real assimilation with the predominant group.

39. Bearing in mind the difficulties of giving a clear-cut definition of the term minority from a scientific point of view, since the term includes so many elements which are changeable both in content and in degree of intensity, (it is safe to say that at least within the field of political science this term is most frequently used to apply to communities with certain characteristics (ethnic, linguistic, cultural or religious groups, etc.), and almost always to communities of a national type. The members of such a minority feel that they constitute a national group, or sub-group, which is different from the predominant one. Members of purely religious minorities may feel however that they belong to the predominant national group. The fact that the members of a minority normally feel that they differ from the predominant group does not necessarily imply that no larger nation exists, constituted both by the minority (or minorities) and by the predominant group, under the jurisdiction of the State. Indeed it is possible that, despite the difference between the minority and the predominant group, the two are held together by a sense of nationality which is larger, though thinner, in national consciousness, than that of either of the separate groups.

J. Basic Desires of Minorities

40. Some minorities feel that they form a real nation, different from the nation of the predominant group and different from that of other minorities which may exist within the State. Other minorities consider themselves to be only regional groups having particular distinguishing characteristics. Some minorities wish to obtain autonomy, while others only wish to keep alive the particular characteristics (language, culture, etc.) which distinguish them from the dominant group. The sense of solidarity of some minorities with their co-nationals is intensified when they are placed under another State's jurisdiction, and they are willing to accept the authority of the new State only on condition that they are permitted to retain their particular distinguishing characteristics and to carry on their own collective life by means of an autonomous regime.

Nationalism and Minorities

41. Modern nationalism has affected minorities in different - even opposite - ways. On the one hand, in certain countries it has aided the assimilation of minorities by the predominant group, resulting in a real homogeneity. On the other hand, in other countries it has aroused a consciousness of differences and in some cases has even stirred up the antagonism of the minority. Where the differences were relatively less marked, nationalism has had a unifying effect (e.g. France, Italy and Germany); where they were relatively great (e.g. Austria-Hungary), nationalism has caused the development of minority consciousness.

42. Nationalism owes much to the democratization of societies and to the growth of democratic thought. When the masses gained access to political life and to education they became conscious of their characteristics and national culture.

Again the democratic philosophy proclaimed the right of the "self-determination" of peoples. On the other hand, some forms of romanticism, especially German romanticism in its social philosophy, developed an extreme nationalism.

Nationality was considered a sacred thing, a living spiritual organism engendered by Providence throughout the course of history, and the importance of the "mother tongue" was strongly emphasized. This philosophy engendered an increase in the national consciousness of certain groups, and a renewal of their interest in the maintenance of their own language and folk-ways. They began to demand recognition of their languages in public administration, and fostered a revival of literature published in their native vernaculars. The total effect was that some groups became more conscious of the factors differentiating them from the predominant group. In certain cases nationalism resulted in irredentist movements. There have been cases, moreover, where the exaggerated and even oppressive nationalism of the predominant group has brought about violent reactions on the part of the minority.

L. The Categories of Minorities

43. The Secretary-General has already drawn the attention of the Sub-Commission (in document E/CN.4/Sub.2/6) to the fact that under the League of Nations Minorities System only "racial, religious and linguistic" minorities were protected, these minorities being considered of a more or less objective and stable nature. The formula "racial, religious and linguistic minorities" was considered to refer to all such groups, regardless of their numerical size.

In some instruments certain categories of minorities were referred to by name, especially when it was desired to guarantee specifically to such minorities certain traditional practices or privileges of particular interest to them; this however did not mean that such groups were not covered by the general formula, "racial, religious and linguistic minorities", or that they were not subject to the same system of protection. In this connexion it should be noted that in a very recent instrument relating to the protection of minorities, the Austro-Italian Agreement of 3 September 1946, the following terms are used: "German-speaking inhabitants", "German-speaking citizens," and "German-speaking elements".

44. In general the formula "racial, religious and linguistic minorities" was used because these characteristics were considered (with the possible exception of "religious") to constitute the principal outward manifestations of the national community. However, the concept of the term minority was neither then nor now confined to groups which constitute national communities; it was and still is extended to include also groups united either by a common religion, a common language, or a common ethnic origin, or by any two or all three of these characteristics, even when such groups do not form national communities. Such groups are not concerned so much with preserving their national existence apart from that of the predominant group, as with keeping alive their own language, culture, religion or traditions.

45. Thus in a general way, insofar as the rendering of positive services and the recognition of special rights is concerned - as distinguished from the realization of the principle of non-discrimination, - it may be said that the term minority should normally be applied to groups whose members share a common ethnic origin, language, culture, or religion, and are interested in preserving either their existence as a national community or their particular distinguishing characteristics. In this connexion it should be borne in mind that the terms of reference of the Sub-Commission provide that it shall undertake studies ... and make recommendations concerning "the protection of racial, national, religious and linguistic minorities".

M. The Question of Citizenship

46. According to Article 2 of the Universal Declaration of Human Rights, "everyone is entitled to all the rights and freedoms set forth in this Declaration without distinction of any kind ...". It will be noted however that Article 21 of the Declaration refers to the right of everyone to take part in the government /of his

of his country and the right of everyone of equal access to public service in his country - a recognition that certain political rights legitimately may be granted only to citizens.

47. In the case of minorities which desire equality only in the sense of non-discrimination, therefore, the question of citizenship is not a relevant one with the exception noted in the paragraph above. However, in the case of minorities desiring to obtain special positive services or the recognition of special rights in order to preserve their particular distinguishing characteristics, the question of citizenship is most important, for it is hardly conceivable that such special positive services or special rights would be granted by any State to groups of foreigners except when required by a rule of international law. At the same time it should be remembered that one of the rights for which minorities have most persistently struggled is the right to citizenship in the country of which they are inhabitants.

N. The Minority as a Social Reality

48. The definition of the term minority is particularly difficult because of the fact that minorities are social realities which are dynamic rather than static, and which change under the influence of varying circumstances. For example, many sociologists and political scientists have pointed out that a minority group which becomes satisfied with its relationship toward the predominant group tends to become more and more assimilated by the latter. On the other hand, they have also remarked that if the members of a minority group feel that the rule imposed by the predominant group prevents them from maintaining their particular distinctive characteristics or inhibits the development of their aspirations for the future, the group's relationship toward the predominant group tends to become more and more strained.

49. The degree of self-contentment of the minority may, but does not necessarily, depend on the amount of autonomy or protection granted by the State. Some States have succeeded in promoting the progressive voluntary assimilation of the minority by arousing in its members a sincere enthusiasm for, and feeling of solidarity with, the destiny and forms of life embodied in the State. Others have achieved precisely contrary results when they tried to assimilate the minority. Still others have, by granting the minority the protection it desired, so increased the solidarity of the minority with the predominant group that as a result a national State was engendered in spite of the existing differences in traditions, language, culture, etc. The fair treatment and the freedoms accorded to a minority may
/soften

soften its hostility towards the dominant group and further its assimilation by causing it to have closer relations with the latter. If the predominant group possesses ideals which are capable of winning the support of the minority an assimilation often results.

O. The Question of Size

50. From a purely theoretical point of view, even the smallest group which meets the various qualifications set forth above should be considered a minority. However, for practical purposes, only those groups which represent a considerable proportion of the population of a State are usually referred to as minorities. This does not preclude, however, the extension to every individual member of such a group of the principle of non-discrimination.

51. Also from a purely theoretical point of view, even those groups which are principally interested in assimilation with the predominant group should be considered as minorities. However, since the problems which they pose are entirely within the realm of the prevention of discrimination, they need not in practice be considered as falling within the meaning of the term "minorities".

P. The Question of the Conditions Under Which the Minority Was Incorporated Within the State

52. Enjoyment of human rights must be assured to all the inhabitants of a State's territory, irrespective of any condition. But it is widely accepted that whether or not a minority is entitled to special positive services or special rights depends in some degree on the conditions under which the minority was included within the State.

Q. Some Remaining Problems

53. Among other problems closely related to the definition of minorities, there are two which merit special consideration in this study.

54. The first is the question of individual membership in a minority. Should an individual who is not religious be considered as a member of a religious minority? What of the person who speaks several languages as mother-tongues? What of the individual who stems from a mixed ethnic origin? The answer given by most students of the subject is that the subjective decision of the individual in question is the governing factor; that each individual should be able to decide voluntarily whether or not he belongs to a specific minority. Indeed, this conclusion is reinforced by a provision appearing in an international instrument, the German-Polish Convention of Geneva of 15 May 1922, of which Article 74 reads:

"The question whether a person does or does not belong to a racial,

/linguistic,

linguistic, or religious minority may not be verified or disputed by the authorities."

The meaning of this article was interpreted by the Permanent Court of International Justice, in its judgment of 26 April 1928, in the following words:

"The Court holds that the prohibition as regards any verification or dispute does not cease to apply in cases where it appears that the declaration is not in accord with the facts.... if a declaration has been made, it must always be respected...."^{1/}

55. The second problem is the question whether the special measures of protection provided to a minority are individual or collective rights. The answer depends upon whether or not the State in question has recognized the minority as a juridical personality. If it has, two kinds of rights exist: the rights which the minority as a legal person -- represented by its legal organs -- may claim before the State; and the rights which individual members of the minority may claim by virtue of such membership. If, on the other hand, the State has not recognized the minority as a juridical personality, but has only granted facilities for the preservation of its particular distinctive characteristics, the related rights may be claimed only by individuals on the basis of their membership in the minority, and not by the minority as such.

56. A final problem is the question whether use of the special facilities provided for the maintenance of the particular distinctive characteristics of the minority is optional or compulsory. The consensus of opinion is that the use of such facilities is optional, involving no obligation. Thus if an individual member of a minority prefers to attend the school of the predominant group, he should be free to do so without discrimination of any kind. However, it will be recalled that there are certain exceptions to this general rule. To cite a single example: in the then Austrian and later Czechoslovak province of Moravia, a provincial statute was enacted in 1906 providing that a child of obligatory school age must go to a school of which the medium of education corresponded to his nationality. It was provided therefore that the children of the Czech ethnic group must attend Czech schools and must not attend German schools, and vice versa.

^{1/} Judgement No.2 12, Permanent Court of International Justice, series A, No. 15, 26 April 1928.

57. Opinions differ regarding the best solution of the problem created by the existence of minorities. This variety of opinion stems from the widely varying characteristics of different States and from varying conceptions of the goal to be aimed at: assimilation on the one hand, or the preservation of the distinguishing characteristics of particular groups on the other. The variety of attitudes and opinions is clearly evident in the summary records of the Commission on Human Rights (see especially documents E/CN.4/AC.2/SR.9 and E/CN.4/SR.73) and of the Third Committee of the General Assembly (documents A/C.SR.161, 162 and 163).

R. Summary

58. It would seem that minorities entitled to special positive services and special rights are restricted to groups of citizens held together by ties of common descent, language, culture, or religious faith, etc., who feel that they differ in these respects from the rest of the population, and who desire to preserve their special characteristics and to develop them further.

59. On the basis of this consciousness of difference, minorities will possibly make certain political claims. In every case they desire the enjoyment of all human rights without discrimination. In addition, they may desire positive support from the State in the preservation of their distinctive characteristics or partial or full autonomy, or even separation from the State. These desires are usually based upon the conditions and arrangements under which the minority was included in the State. The claim of any minority to application of the principle of non-discrimination cannot be questioned, since this principle is proclaimed unequivocally in the Charter of the United Nations and the Universal Declaration of Human Rights. The validity of the claim of specific minorities to additional protective measures is, however, a political question normally to be decided on the basis of the conditions and arrangements under which the minority was included in the State, and of all other relevant circumstances. Hence it would seem that each such claim must be examined and passed upon separately.

CHAPTER III

THE CLASSIFICATION OF MINORITIES

A. Preliminary Note

60. Minorities vary in so many ways (such as in their historical origin, numerical quantity, desires, etc.) that it is not possible to group them in one general classification only. They must be grouped under a variety of classifications, based on different criteria. Many of these classifications overlap or supplement one another. Hence, in order to obtain a true characterization of any particular minority, it is necessary to examine it under each of the various classifications before reaching any final conclusions.

B. The Criteria of Classification

1. Classification from a Quantitative Viewpoint

61. From a quantitative point of view, minorities can be classified according to the number of individuals included in the minority as compared to the size of the predominant group or to that of the remainder of the population. Normally the term minority has a certain numerical significance: "it usually" refers to a smaller number of individuals than the number included in the remainder of the population. However, there are instances in which the numerical majority of the population, whether homogeneous or composed of differentiated groups, is in the position of a minority, the State being dominated by a numerically smaller group which imposes its own language, culture, etc.

62. From an abstract sociological standpoint no specific number or percentage of individuals is necessary to the existence of a minority. Even the members of the smallest minority, as has been stated earlier, are entitled to non-discriminatory treatment, especially in respect of the rights and freedoms set forth in the Universal Declaration of Human Rights. However, a minority considered as a group entitled to special positive services or special rights should properly include a number of persons sufficient by themselves to develop their own particular traits. Although it is not possible to determine a definite figure, it seems that for administrative reasons a minority composed of a very small number of persons would probably not be considered as entitled to special positive services or special rights.

2. Classification

2. Classification from the Viewpoint of Contiguity

63. In some cases the population of a particular region consists almost entirely of persons, belonging to a minority. In other cases the minority shares a region or area, to a greater or lesser degree, with the predominant group. In still others the minority lives scattered through the entire territory, or a large part of it, together with the predominant group and in some cases with other minorities.

64. Measured by the criterion of contiguity, the following types of minorities may be distinguished:

- (a) a minority which constitutes actually or nearly the only population of a section of the country;
- (b) a minority which constitutes the largest part of the population of a section of the country;
- (c) a minority, settled in a section of the country which constitutes only a small part of the population of that section;
- (d) a minority the members of which live partly in a section of the country and partly scattered throughout the remainder of the territory;
- (e) a minority which is settled in several different sections of the country, but in different proportions in each section;
- (f) a minority which is scattered throughout the whole country;
- (g) a minority which is scattered through a large portion of the country, but not through all of it; and
- (h) a minority which lives partly within the country and partly outside that territory.

65. The members of each of these types of minorities are of course entitled to non-discriminatory treatment, especially in respect of the rights and freedoms set forth in the Universal Declaration of Human Rights.

66. However, any specific measures to be taken for the protection of particular minorities, with the exception of measures for the prevention of discrimination, must necessarily vary in each of the specific cases listed above in order to meet the varying problems presented by these different types of minorities.

3. Classification from the Viewpoint of Citizenship

57. From the sociological point of view minority elements in a given country may be represented either by individuals who have the nationality of the country or by foreigners. The first is the classical instance and the most important one. The second is more rare, but an example is offered by the Canton of Geneva where at the beginning of the twentieth century foreign elements (mainly French and Italian) constituted a numerous minority.

68. From the political and legal points of view, foreign elements are only exceptionally considered as a minority entitled to enjoy special treatment.

69. The case of the foreigners is very different from that of minority elements which possess the nationality of the country in which they live. The foreigners have come voluntarily to reside in the country and they possessed a foreign nationality on their arrival. They may be people who have come to settle in the country to look after their business affairs or other chosen ends, and who had not when they arrived any desire to change their nationality. They may be workers whose recruitment has been organized and who have come to work in a country where the national labour supply is insufficient. They may be migrants who have come with a view to a definite settlement in the country which will accord to them nationality after a greater or lesser period.

70. As long as the foreigner belongs to one of these categories and keeps his foreign status, he is entitled to all the rights accorded by customary international law to persons in countries other than their own. He possesses also such special rights as may have been assured to him by treaties (commerce treaties or treaties relating to settlement); thus, it may be provided that the children of foreigner workers are to be able to receive teaching in their national language in special schools.

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71. But from the moment when the foreigner who has come with the intention of settling in a country is naturalized there, and from the moment when his children receive the nationality of the country, whether on birth by operation of the law, or by the effect of naturalization, the former foreigner and his children who have become the nationals of the country will of course be treated like the other nationals of that country. There has been no question of granting them special rights so that they should be able to keep the national characteristics of their country of origin.

72. In certain special cases it has happened that persons representing a non-foreign element in a country have received a foreign nationality and have been accorded special rights as minority elements. This was the case of the Poles who resided in the territory of Dantzig. It was, however, a completely special situation.

4. Classification from the Viewpoint of the National Characteristic of the State

73. An important distinction may be drawn between the following two types of minorities:

- (a) minorities under the jurisdiction of a State which is principally the embodiment of the national characteristics of the predominant group; and
- (b) minorities under the jurisdiction of a State which is not identified with any one nation but which occupies a neutral position above national and cultural differences.

74. The members of each of these types of minorities are of course entitled to non-discriminatory treatment, especially in respect of the rights and freedoms set forth in the Universal Declaration of Human Rights. Normally the minorities included in category (a) seek special measures for the maintenance of their distinctive characteristics, while those included in category (b) are usually already protected by the very structure of the State. Indeed, those in the latter category, because they represent one of several nations within the jurisdiction of a State, may not even be considered minorities except in the numerical sense.

5. Classification from the Viewpoint of Origin and Situation in Relation to the State

75. Measured against the criterion of the origin and situation of the minority in relation to the State, the following types of minorities can be distinguished:

- (a) minorities descending from groups which existed before the establishment of the State;

/(b) minorities

(b) minorities descending from groups which formerly belonged to another State, but which afterwards were annexed to the State by virtue of an international act such as, for example, a treaty effecting territorial readjustments;

(c) minorities formed by persons having a common origin, language, religion, culture, etc., who have migrated or who have been imported into a country and have become citizens of the State; or by their descendants.

76. The members of each of these types of minorities are of course entitled to non-discriminatory treatment, especially in respect of the rights and freedoms set forth in the Universal Declaration of Human Rights.

77. In the case of minorities falling into category (a), as outlined in paragraph 75 above, any claim of the minority to special measures for the protection of its distinctive characteristics should be considered in relation to historic facts and in particular the manner in which the State was constituted. The State may have been formed, on the one hand, on the basis of equality between the varying groups which are included, with respect to language, religion, etc; or it may have been formed, on the other hand, on the basis of single language, religion, etc. In the first case the minority normally has a legal claim to special measures for the protection of its distinctive characteristics; whether minorities in the second category have any claim, legal or otherwise, to such special measures will depend on existing circumstances. A distinction should be borne in mind: that between law enforced (national and international) and considerations de lege ferenda.

78. In the case of minorities falling into category (b), the claim to special measures for the protection of the distinctive characteristics of the minority may have been met by the instrument by which the transfer of territory was effected. Irrespective of any instrument, however, there may exist a moral claim the validity of which would depend upon existing circumstances.

79. Usually minorities formed by immigrants or their descendants, as in category (c), are not considered as being entitled as a minority to special measures of protection. However, those who have entered the country under certain specified conditions (such as contract workers), or those who have been forcibly imported into the country (such as slaves), or elements brought by a State into its territory in pursuance of a plan of internal colonization, may have a valid moral claim to special measures of protection.

6. Classification According to the Circumstances under which Minorities were included within the State

80. Another criterion for classification takes into account the voluntary or involuntary nature of the inclusion of individuals within a State. This classification may overlap with the preceding one, yet since it is not entirely covered thereby, it is presented here separately. From this point of view it is possible to distinguish the following types of minorities:

(a) minorities which were compulsorily brought within the jurisdiction of the State usually in comparatively recent times; and

(b) minorities which came within the jurisdiction of the State voluntarily.

81. The members of each of these types of minorities are of course entitled to non-discriminatory treatment especially in respect of the rights and freedoms set forth in the Universal Declaration of Human Rights.

82. Minorities falling into category (a) may well base a claim to special measures for the protection of their distinctive characteristics upon the fundamental "wrongness" of their compulsory annexation. However, such a claim would normally be considered reasonable only if the annexation had taken place in comparatively recent times, and would normally be considered unreasonable if the annexation had taken place in the remote past (for example, during the Roman Conquest). Obviously a strict limitation of time cannot be applied in such cases, since the circumstances vary so widely. What is important is the question whether the feelings of the minority have altered in the course of time; the element of time is in itself not the criterion. In certain cases descendants of such minorities

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which may have been compulsorily brought within the jurisdiction of a State many years ago, may have a legitimate claim to special measures for the preservation of their distinctive characteristics. This would depend, in large measure, upon whether the later-generation members of the minority still preserve a consciousness of these characteristics, a desire to maintain them, and a keen sense of the "wrongness" of the annexation; or whether on the other hand they have become practically assimilated with the predominant group.

83. In the case of minorities falling into category (b), any claim of the minority to special measures for the protection of its distinctive characteristics must be based upon the conditions, formal or informal, under which the group came under the jurisdiction of the State. It may have been annexed either on the basis of agreements granting the minority inter alia special measures of protection, or on the basis of the minority's explicit or tacit acceptance of the laws of the annexing State, without any reservations or special conditions.

7. Classification from the Viewpoint of Total or Partial Inclusion Within the Territorial Jurisdiction of the State

84. Taking as another criterion the total or partial inclusion of the minority in the State, the following types of minorities can be distinguished:

- (a) minorities forming parts of a group which is divided between the jurisdictions of several States; and
- (b) a minority which is totally included within the territorial jurisdiction of a State.

85. In the case of minorities falling into category (a), the following sub-types may be distinguished:

1. minorities forming parts of a group divided between two or more contiguous States;
2. minorities forming parts of a group divided among two or more non-contiguous states;
3. minorities forming parts of a group distributed among several States, some contiguous and some non-contiguous.

86. The members of each of these types of minorities are of course entitled to non-discriminatory treatment, especially in respect of the rights and freedoms set forth in the Universal Declaration of Human Rights.

87. When a minority is divided among two or more contiguous States, or the

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minority has the same characteristics as the majority in another State, this fact may have serious international implications.

8. Classification according to Desires

88. Earlier in this memorandum it was pointed out that social groups in general, and those forming minorities in particular, are characterized not only by their inherited distinctive characteristics, but also by their desires for the future. Taking the desires of various minority groups as a criterion, the following types can be distinguished:

(a) a minority which wishes at most only to preserve certain of its distinguishing characteristics and has little or no interest, because of a feeling of active solidarity with the predominant group, in becoming autonomous;

(b) a minority which not only desires preservation and further development of its distinguishing characteristics but also desires to attain either political or administrative autonomy, or full independence or annexation to another State.

89. The members of each of these types of minorities are of course entitled to non-discriminatory treatment, especially in respect of the rights and freedoms set forth in the Universal Declaration of Human Rights.

90. Minorities falling under category (a) may pose the problem of the preservation of their distinguishing characteristics. The problem posed by minorities falling into category (b), however, is one which is related to the political organization of the State.

CHAPTER IV

FINAL OBSERVATIONS

91. A fundamental general principle which has been emphasized in this study of the definition and classification of minorities is that the members of all minorities, no matter how those minorities are defined or in what manner they may be classified, are entitled to non-discriminatory treatment, especially in respect of the rights and freedoms set forth in the Universal Declaration of Human Rights. Measures for the prevention of discrimination have already been outlined by the Secretary-General in the Memorandum on the Main Types and Causes of Discrimination (document E/CN.4/Sub.2/40).

92. Over and above the general principle of non-discrimination, there are certain "special rights" and "positive services" which minorities claim they must have in order to attain real equality, to preserve their distinctive characteristics, and to develop their own culture. Claims to such "special rights" and "positive services" must be examined, each on its own merits, in the light of past and present circumstances as well as the light of the general principles of the Charter of the United Nations. This of course does not preclude the possibility of the development of a general machinery for the protection of minorities.

93. Finally, it must be remembered that both the Commission on Human Rights and the General Assembly rejected proposals for the inclusion in the Universal Declaration of Human Rights of articles dealing with the preservation of the distinctive characteristics of minorities. At its second session the Commission, while it did not attempt to draft a text of its own on this subject, tentatively included in the draft which it prepared two alternative texts, one prepared by its Drafting Committee,^{1/} the other by the Sub-Commission on Prevention of

^{1/} The text proposed by the Drafting Committee reads (document E/600, Annex A, Article 31):

"In States inhabited by a substantial number of persons of a race, language or religion other than those of the majority of the population, persons belonging to such ethnic, linguistic or religious groups shall have the right, as far as compatible with public order, to establish and maintain schools and cultural or religious institutions, and to use their own language in the press, in public assembly and before the courts and other authorities of the State."

Discrimination and Protection of Minorities.^{1/} At its third session, however, the Commission definitively decided to include no article on the question in its recommended draft.

^{1/} The text proposed by the Sub-Commission reads (document E/600, Annex A, Article 31):

"In States inhabited by well-defined ethnic, linguistic or religious groups which are clearly distinguished from the rest of the population, and which want to be accorded differential treatment, persons belonging to such groups shall have the right, as far as is compatible with public order and security, to establish and maintain their schools and cultural or religious institutions, and to use their own language and script in the press, in public assembly, and before the courts and other authorities of the State, if they so choose."

The Third Session of the General Assembly had before it three proposals relating to the protection of minorities, submitted by the delegations of Denmark, Yugoslavia, and the Union of Soviet Socialist Republics.^{1/} The General Assembly rejected all of these proposals, but adopted the following resolution (Part C, resolution 217 (III)):

^{1/} The texts submitted to the Third Committee of the General Assembly in the course of its debate on the adoption of an article of the protection of minorities for inclusion in the Universal Declaration of Human Rights read, in the chronological order of their submission to the Committee (document A/C.3/307/Rev.2):

"Union of Soviet Socialist Republics

"Add to the text adopted a separate new paragraph in place of the corresponding article 31 of the Geneva text rejected by the Commission:

'All persons, irrespective of whether they belong to the racial, national or religious minority or majority of the population, have the right to their own ethnic or national culture, to establish their own schools and receive teaching in their native tongue, and to use that tongue in the press, at public meetings, in the courts and in other official premises.'

"Yugoslavia

Insert the following three articles:

A

'Any person has the right to the recognition and protection of his nationality and to the free development of the nation to which he belongs.

'National communities which are in a state community with other nations are equal in national, political and social rights.

B

'Any national minority, as an ethnical community, has the right to the full development of its ethnical culture and to the free use of its language. It is entitled to have these rights protected by the State.

C

'The rights proclaimed in this Declaration also apply to any person belonging to the population of Trust and Non-Self-Governing Territories.'

"Denmark

Add the following:

'All persons belonging to a racial, national, religious or linguistic minority have the right to establish their own schools and receive teaching in the language of their own choice.'

"FATE OF MINORITIES

"The General Assembly,

"Considering that the United Nations cannot remain indifferent to the fate of minorities,

"Considering that it is difficult to adopt a uniform solution of this complex and delicate question, which has special aspects in each State in which it arises,

"Considering the universal character of the Declaration of Human Rights,

"Decides not to deal in a specific provision with the question of minorities in the text of this Declaration;

"Refers to the Economic and Social Council the texts submitted by the delegations of the Union of Soviet Socialist Republics, Yugoslavia and Denmark on this subject contained in document A/C.3/307/Rev.2, and requests the Council to ask the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities to make a thorough study of the problem of minorities, in order that the United Nations may be able to take effective measures for the protection of racial, national, religious or linguistic minorities."
