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REPORT OF THE WORKING GROUP ON A DRAFT DECLARATION ON THE RIGHT  
AND RESPONSIBILITY OF INDIVIDUALS, GROUPS AND ORGANS OF SOCIETY  
TO PROMOTE AND PROTECT UNIVERSALLY RECOGNIZED HUMAN RIGHTS AND  
FUNDAMENTAL FREEDOMS

Chairman-Rapporteur: Mr. Ronald A. Walker (Australia)

## INTRODUCTION

1. The Commission on Human Rights, by decision 1985/112 of 14 March 1985, established an open-ended working group to draft a declaration on the right and responsibility of individuals, groups and organs of society to promote and protect universally recognized human rights and fundamental freedoms. This was approved by the Economic and Social Council, in decision 1985/152 of 30 May 1985. The Working Group held its first session prior to the forty-second session of the Commission, its second session prior to the forty-third session, its third session prior to the forty-fourth session and its fourth session prior to the forty-fifth session, its reports to the Commission being contained in documents E/CN.4/1986/40, E/CN.4/1987/38, E/CN.4/1988/26 and E/CN.4/1989/45, respectively.

2. The Commission, by resolution 1989/60 of 8 March 1989, decided to continue at its forty-sixth session its work on the elaboration of the draft declaration on the right and responsibility of individuals, groups and organs of society to promote and protect universally recognized human rights and fundamental freedoms, using as a basis the views expressed and proposals made in the Working Group at its previous sessions. The Economic and Social Council, by resolution 1989/80 of 24 May 1989, authorized an open-ended working group to meet for a period of eight days prior to the forty-sixth session of the Commission on Human Rights with a view to continuing the work on the draft declaration.

3. The Working Group held nine meetings altogether from 17 to 26 January 1990 and on 1 March 1990. The session was opened by Mr. Jan Martenson, Under-Secretary-General for Human Rights, who made an introductory statement, briefly mentioning the importance and complexity of the task assigned to the group. Tribute was paid to the contribution and efforts of the former Chairman of the Working Group, Mr. Robert Robertson and to the memory of the late Secretary of the Working Group, Mr. Yo Kubota.

### Election of Officers

4. At its 1st meeting on 17 January 1990, the Working Group elected by acclamation, Mr. Ronald A. Walker (Australia) as Chairman-Rapporteur.

### Participation

5. The meetings of the Working Group were open to all members of the Commission on Human Rights and were attended by representatives of the following States: Argentina; Brazil; Bulgaria; Canada; China; Colombia; Cuba; Ethiopia; France; Germany, Federal Republic of; Hungary; India; Japan; Morocco; Mexico; Peru; Portugal; Senegal; Spain; Sri Lanka; Sweden; Ukrainian Soviet Socialist Republic; Union of Soviet Socialist Republics; United Kingdom of Great Britain and Northern Ireland; United States of America; and Venezuela.

6. The following States, non-members of the Commission, were represented by observers: Australia, Austria, Egypt, Finland, German Democratic Republic, Ireland, Norway, Poland and Sudan.

7. The following non-governmental organizations in consultative status with the Economic and Social Council also sent observers to the meetings: Amnesty International, Baha'i International Community, International Federation of

Human Rights, Human Rights Advocates, International Commission of Jurists, International Federation of Social Workers, International League for Human Rights and International Movement for Fraternal Union among Races and Peoples.

Documents

8. The Working Group had before it the following documents:

- |                                 |  |
|---------------------------------|--|
| E/CN.4/1990/WG.6/L.1            | Provisional Agenda of the pre-sessional open-ended working group   |
| E/CN.4/1989/45                  | Report of the Working Group on its fourth session, including:  |
| - E/CN.4/1987/38, Annex I       | Text (operative part) of Draft Declaration proposed by the delegations of Canada and Norway  |
| - E/CN.4/1989/WG.6/CRP.11/Rev.2 | Working Paper containing a text for Chapter III prepared by the Informal Drafting Group  |
| - E/CN.4/1989/WG.6/WP.8         | Draft consolidated text of Chapter III prepared by the Ukrainian Soviet Socialist Republic on the basis of various proposals made by delegations |
| E/CN.4/1990/WG.6/CRP.1          | Text proposed by the Informal Drafting Group (Chapter I, B)  |
| E/CN.4/1990/WG.6/CRP.2          | Text proposed by the Informal Drafting Group (Chapter III, 2 and 4)  |
| E/CN.4/1990/WG.6/CRP.3          | Text proposed by the Informal Drafting Group (Chapter III, A, (c))   |
| E/CN.4/1990/WG.6/CRP.4          | Text proposed by the Informal Drafting Group (Chapter III, (c))  |
| E/CN.4/1990/WG.6/CRP.5          | Chairman's Paper (Chapter IV)  |
| E/CN.4/1990/WG.6/CRP.6          | Text proposed by the Informal Drafting Group (Chapter III, A)  |
| E/CN.4/1990/WG.6/CRP.7          | Chairman's Paper (Chapter IV, para. 3)   |
| E/CN.4/1990/WG.6/CRP.8          | Chapter III, para. A (d)   |
| E/CN.4/1990/WG.6/CRP.9          | Chapter I (B)  |
| E/CN.4/1990/WG.6/CRP.10         | Chapter III  |
| E/CN.4/1990/WG.6/CRP.11         | Text provisionally adopted by the Working Group at first reading (Chapter I)   |

E/CN.4/1990/WG.6/CRP.12	Text proposed by the Informal Drafting Group (Chapter IV)
E/CN.4/1990/WG.6/CRP.13	Proposal submitted by the German Democratic Republic (Chapter IV, para. 4)
E/CN.4/1990/WG.6/CRP.14	Text proposed by the Informal Drafting Group (Chapter IV)
E/CN.4/1990/WG.6/CRP.15	Text proposed by the Informal Drafting Group (Chapter IV)

#### Organization of Work

9. The Chairman-Rapporteur, Mr. Walker, before addressing the matter of organization of work, thanked the Working Group for his election and for the kind references to the work achieved by his predecessor, Mr. Robert Robertson, in addition to echoing the expressions of regret and condolence at the death of Mr. Yo Kubota, a Secretariat member who had serviced the Working Group.

10. Moving on to discuss the organization of work, the Chairman-Rapporteur spoke of the importance of taking a business-like approach to the task in hand and of continuing the work on the first reading of the draft text as expeditiously as possible. He proposed, therefore, that work could begin on the text of Chapter III, thereafter consideration could move on to the first reading of the elements of Chapter IV and only later would a decision be taken on what matters to consider next. This proposal was accepted by the Working Group.

11. The Chairman-Rapporteur further suggested that an open-ended informal drafting group should be established, mandated for the purpose of offering prepared texts to be discussed by the Working Group. This proposal was agreed upon, and Mr. Helgesen of Norway was appointed to chair the Informal Drafting Group.

12. The Informal Drafting Group met on a regular daily basis after the 1st, 2nd, 3rd, 4th, 5th, 6th and 7th meetings and before the 8th meeting of the Working Group.

13. In the course of its meetings, the Working Group provisionally adopted, at first reading, texts including elements of Chapters I, III and IV (see Annex I of the present report).

14. At the 1st meeting of the Working Group, on 17 January 1990, it was decided that in offering proposals for inclusion within Chapter III, the draft texts of Chapter III's provisions as they appeared in E/CN.4/1989/WG.6/CRP.11/Rev.2 (Texts for Chapter III prepared by the Informal Drafting Group), and E/CN.4/1989/WG.6/WP.8 (Draft consolidated text of Chapter III prepared by the Ukrainian Soviet Socialist Republic on the basis of various proposals made by delegates) of last year's report of the Working Group, E/CN.4/1989/45, Annex IV, should be used as a basis for discussion, on the understanding that other proposals would be duly taken into account.

Consideration and the Drafting of Articles

Chapter I

15. Provisional texts for Chapter I were discussed at the 1st, 2nd, 3rd, 4th and 6th meetings of the Working Group.

16. Initially, proposals for texts of Chapter I emerged from suggestions that particular draft elements originally proposed for Chapter III should be moved to Chapter I.

17. Discussion in this regard emanated from consideration of paragraph 1 of E/CN.4/1989/WG.6/CRP.11/Rev.2 and E/CN.4/1989/WG.6/WP.8, both of which read as follows:

"1. Everyone has the right, individually and in association with others, to promote and protect universally recognized human rights and fundamental freedoms at the national and international levels."

18. The delegation of China questioned the words "to protect". In its view that "to protect" in legal sense had two meanings: (a) to prevent everyone's rights from being violated through such measures as legislations; and (b) to provide effective remedies for the persons whose rights were violated. Such actions fell within the responsibility of the State and obviously could not be taken by individuals.

19. The delegation of China proposed therefore that the words "to promote and protect" be deleted and replaced by "to contribute to the promotion and protection of". The paragraph would then read:

"Everyone has the right, individually and in association with others, to contribute to the promotion and protection of universally recognized human rights and fundamental freedoms at the national and international levels."

20. Two proposals concerning this paragraph were offered by the Chairman of the Informal Drafting Group for further consideration. Firstly, that the paragraph should read:

"Everyone has the right, individually and in association with others, to promote and to strive/work for the protection of universally recognized human rights and fundamental freedoms at the national and international levels."

and secondly, the proposal by the delegation of Cuba that the paragraph should read:

"Everyone has the right, individually and in association with others, to participate in the promotion, protection and realization of all human rights and fundamental freedoms at the national and international levels."

21. Concerning the position of this paragraph, there had been no consensus as to whether it should appear within Chapter I or Chapter III of the draft declaration as it stands at present.

22. It was suggested by the Chairman, therefore, that the Working Group should try to see if agreement on the position and wording of this paragraph could be reached at the following meetings of the Working Group, with the benefit of recommendations from the Informal Drafting Group.

23. In the debate that followed, some delegations expressed the view that the role of national legislation should be taken into greater account and that a better balance between the rights and responsibilities of the State and of individuals and organizations to promote and protect human rights was required.

24. Referring to that subject, several delegations stated that if national legislation was to be conformed to by individuals and groups, then it should also be stated that national legislation should be in conformity with international human rights law.

25. It was further stated by various delegations that in order to avoid introducing such a repetitive clause within different Chapters' provisions, it would be most appropriate to follow the established guidelines of addressing and stating limitations, modalities/duties, which would have relevance and application to the whole declaration, within Chapter V.

26. It was agreed that, since important principles of other Chapters are reflected in Chapter I, some language should be added to it reflecting the role of national and international law.

27. At the 3rd meeting of the Working Group, within the text of Chapter I as presented in E/CN.4/1990/WG.6/CRP.1, the third element of Article B reflected the discussion on this point and read:

[Language to be added reflecting the role of national and international law as well as other modalities to be formulated when discussing issues assigned to Chapter V.] (See Annex I).

28. Several delegations also expressed the opinion that the term "universally recognized human rights and fundamental freedoms" was too vague and that it would be more appropriate to refer to all human rights and fundamental freedoms or just to human rights and fundamental freedoms. By removing the phrase "universally recognized", it was argued that it may be possible to avoid the exclusion of certain human rights which had not yet been fully articulated or developed.

29. The question was posed by the delegation of Argentina as to the appropriateness of removing the phrase "universally recognized" before the words "human rights and fundamental freedoms", considering that the Commission on Human Rights by consensus had adopted the title of the "Working Group on a Draft Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to promote and protect universally recognized human rights and fundamental freedoms." The inclusion of the words "universally recognized" within the draft declaration's title would presumably require for purposes of consistency the retaining of this phrase within various paragraphs of the draft declaration now under discussion. The Chairman-Rapporteur stated that the Working Group would return to this question at a later date.

30. At the 3rd meeting of the Working Group, the Chairman of the Informal Drafting Group introduced a text worked out by the Informal Drafting Group relating to Chapter I (E/CN.4/1990/WG.6/CRP.1), which read as follows:

"Chapter I

B

Each State has a prime responsibility and duty to promote and protect [universally recognized] human rights and fundamental freedoms, inter alia, by adopting such legislative, administrative and other steps as may be necessary to create the social and political conditions and legal guarantees required to ensure that all persons are able to avail themselves of these rights and freedoms in practice.

Everyone has the right, individually and in association with others, to promote and to strive for the protection of [universally recognized] human rights and fundamental freedoms at the national and international levels.

[Language to be added reflecting the role of national and international law as well as other modalities, to be formulated when discussing issues assigned to Chapter V.]"

31. The Chairman of the Informal Drafting Group drew attention to the following points: (a) that article 1 of Chapter III of E/CN.4/1989/WG.6/CRP.11/Rev.2 had been further elaborated and that it now formed part of Chapter I, section B; (b) that square brackets had been introduced to surround the words "universally recognized" within each paragraph of Chapter I; (c) that the first paragraph of Article B, Chapter I of E/CN.4/1990/CRP.1 had simply been lifted from page 29, Annex I of E/CN.4/1989/45; (d) that the third element of Article B was enclosed by square brackets indicating the need to further discuss this section of the text in relation to the consideration of the future elements of Chapter V; (e) that to ensure consistency between part 4 of Chapter III and Article A of Chapter I, the Informal Drafting Group proposed an amendment to part A of Chapter I to be found on page 29 of E/CN.4/1989/45, and (f) that it may be necessary to change the titles and structures of Chapters following the changes proposed in Chapter I, part B since Chapter I's character was now rather general and no longer corresponded faithfully to the titles as produced in the schematic outline of the Chairman-Rapporteur (E/CN.4/1986/WG.6/WP.6).

32. The Working Group considered that the elements of Chapter I would be addressed provided that discussion on this Chapter would be limited to the adoption of articles. Consequently, Chapter I, part B of E/CN.4/1990/WG.6/CRP.1 was discussed with amendments proposed.

33. The delegation of Cuba proposed that line six of the first paragraph of part B should read: "all persons are able to enjoy these rights and". This amendment entailed the insertion of the word "enjoy" having deleted the words: "avail themselves of". This proposal was adopted.

34. The first paragraph of part B then read: "Each State has a prime responsibility and duty to promote and protect [universally recognized] human rights and fundamental freedoms, inter alia, by adopting such legislative, administrative and other steps as may be necessary to create the social and political conditions and legal guarantees required to ensure that all persons are able to enjoy these rights and freedoms in practice." (See Annex I).

35. The delegation of Cuba further proposed an amendment to the second paragraph of part B, line 2, as it appeared in E/CN.4/1990/WG.6/CRP.1, by the insertion of the words: "and realization" between the words "protection" and "of". This proposal was adopted.

36. The second paragraph of part B now reads: "Everyone has the right, individually and in association with others to promote and to strive for the protection and realization of [universally recognized] human rights and fundamental freedoms at the national and international levels."

37. It was further decided to adopt part A of Chapter I, the text of which was to be found on page 29, Annex I of E/CN.4/1989/45 with the amendment that between the words "refusing" and "to" in the fourth line of this paragraph the words "[individually or in association with others]" surrounded by square brackets would be inserted. Chapter I, part A adopted at first reading read as follows:

"No one shall participate in violating the [universally recognized] human rights and fundamental freedoms of others, and no one shall be subject to punishment or adverse action of any kind for refusing [individually or in association with others] to violate or otherwise be associated with violations of [universally recognized] human rights and fundamental freedoms."

38. Following the adoption of these provisions, the delegation of the USSR emphasized that an order of placement for these provisions had not been agreed upon and that this question should be returned to at a later date.

39. The Working Group resumed consideration of part B of Chapter I at its sixth session. It was stated by the Chairman of the Informal Drafting Group that amendments were made to part B in an attempt to find language to cover the ideas of articles 5a of E/CN.4/1989/WG.6/CRP.11/Rev.2 and 5c and 6 of E/CN.4/1989/WG.6/WP.8. It was the understanding of the Informal Drafting Group that this had been achieved with the amendments to part B now being proposed to the Working Group.

40. The first amendment to part B was within the first paragraph, line 6 whereby the square brackets had been removed from the words "individually and in association with others".

41. Paragraph 2 of part B had also been amended with the addition of the sentence: "Each State shall adopt such legislative, administrative and other steps as may be necessary to give effect to this right."



42. The text of part B of Chapter I adopted at the 6th meeting read as follows:

B

"Each State has a prime responsibility and duty to promote and protect [universally recognized] human rights and fundamental freedoms, inter alia, by adopting such legislative, administrative and other steps as may be necessary to create the social and political conditions and legal guarantees required to ensure that all persons, individually and in association with others, are able to enjoy these rights and freedoms in practice.

Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of [universally recognized] human rights and fundamental freedoms at the national and international levels. Each State shall adopt such legislative, administrative and other steps as may be necessary to give effect to this right.

[Language to be added reflecting the role of national and international law as well as other modalities, to be formulated when discussing issues assigned to Chapter V.]"

43. Several delegations on various occasions pointed to the logical linkage of elements of Chapters I and III and agreed therefore to the possibility of re-positioning elements of these texts at a future session of the Working Group. The delegation of Senegal in this connection stated the following: "The delegation of Senegal reserved its position on the general structure of this part and, in particular, on the position of the last sentence of paragraph 2 which seemed to be an undue repetition of the obligation of the State. It reserved the right to revert to the question of the general balance of the text at a later stage."

Chapter III

44. The Working Group considered provisional texts for Chapter III from its 1st to 8th meeting. To initiate further proposals for inclusion within Chapter III, the Chairman-Rapporteur had indicated that agreement could possibly be most easily reached where a concordance existed between elements of E/CN.4/1989/WG.6/CRP.11/Rev.2 and E/CN.4/1989/WG.6/WP.8. The second paragraph of part B, Chapter I had been adopted by following this method, therefore it was suggested that this practice should continue.

45. At the 3rd meeting of the Working Group, the text proposed by the Informal Drafting Group within E/CN.4/1990/WG.6/CRP.2 was offered in this regard. It read as follows:

"Chapter III

2. For the purpose of promoting and protecting [universally recognized] human rights and fundamental freedoms everyone has the right:

- (a) to meet or assemble peacefully with others;

4. Everyone has the right, individually and in association with others, to participate in peaceful activities directed against violations of human rights and fundamental freedoms."

46. In introducing the text (E/CN.4/1990/WG.6/CRP.2), the Chairman of the Informal Drafting Group indicated that the wording of these proposed elements of Chapter III had closely followed paragraph 5's first sentence, part (a), and article 3 of E/CN.4/1989/WG.6/WP.8, and part 2 and article 4 of E/CN.4/1989/WG.6/CRP.11/Rev.2.

47. Following the introduction to the texts proposed by the Informal Drafting Group, the Chairman-Rapporteur suggested that the Working Group consider adopting the text of E/CN.4/1990/WG.6/CRP.2, part 2, which would represent the chapeau of Chapter III, with the implication that a list of rights would follow, and that the words "universally recognized" would remain in square brackets indicating that the inclusion of these words does not have the general assent of the Working Group.

48. After a period of discussion on this point the Working Group indicated its wish to record the reasoning for surrounding the words "universally recognized" in square brackets. It was also agreed that it should be determined at a later date whether these words should be deleted or replaced.

49. Following clarification of this point that the words "universally recognized" were not generally accepted and that a wide range of possibilities existed for change, Chapter III, part 2, its section (a) and part 4 were adopted. It was also decided to change the identification signs of the different parts from 2 and 4 to A and B respectively without prejudice to their future order. Chapter III as adopted then read:

### "Chapter III

A. For the purpose of promoting and protecting [universally recognized] human rights and fundamental freedoms everyone has the right:

(a) to meet or assemble peacefully with others;

B. Everyone has the right, individually and in association with others, to participate in peaceful activities directed against violations of human rights and fundamental freedoms."

50. At this point it was emphasized by the delegation of the USSR that with the adoption of these provisions an order of placement of these provisions had not been agreed upon and that this question should be returned to at a later date.

51. Having adopted provisions of Chapter I and Chapter III, it was suggested that the Working Group should attempt to continue with the adoption of proposals by returning to possible provisions of Chapter III. The delegation of Norway suggested that from discussions at the Informal Drafting Group it may be most appropriate for the Working Group to turn its attention to addressing part 2 (b) of E/CN.4/1989/CRP.11/Rev.2 suggesting that the words "and communicate with them" be deleted from the end of the sentence, so that the sentence would read as follows:

"(b) to form, join and participate in non-governmental organizations, groups or associations."

52. This proposal was adopted after a brief discussion which centred upon basic linguistic problems emanating from the translation of the terms "join and participate" within the Chinese text. It was established that the Chinese delegation should take up the matter with the Secretariat of appropriate translation so that the different nuance between these words would be correctly reflected in the Chinese text.

53. The Working Group proceeded to address a concern which had been raised by the delegation of Colombia in relation to the listing of rights within Chapter III. It was ascertained that in order to avoid the problem of unintentionally limiting certain rights through the announcement or reaffirmation of some rights, a general escape clause as had been envisaged in E/CN.4/1989/45, Annex II containing the Norwegian/Canadian proposal, should be considered in the future.

54. Following the clarification of these points it was suggested by the Chairman-Rapporteur that the Working Group should consider other paragraphs within Chapter III. Accordingly, the Working Group turned its attention to part (c), paragraph 2, of E/CN.4/1989/WG.6/CRP.11/Rev.2, and part (c) of paragraph 5 of E/CN.4/1989/WG.6/WP.8. They read as follows:

"2 (c) individually and in association with others, to exchange, to get in touch and meet with other non-governmental organizations or intergovernmental organizations at the national and international levels;"

"5 (c) Each State will apply and improve its laws, administrative regulations and policies with a view to guaranteeing effective realization of universally recognized civil, political, economic, social, cultural and other human rights and assuring that the activities of each person, individually and in association with others, to promote and to help in the promotion and realization of these rights are not unreasonably impeded by its laws, administrative regulations and policies."

55. The Working Group held a lengthy debate on the possible contents of subparagraph (c). This subparagraph's contents were described by certain delegations as relating to the rights not only of individuals but also of organizations.

56. The Working Group concluded that the wording of the subparagraph within E/CN.4/1989/WG.6/WP.8 was more elegant. However, there were differences of opinion expressed over whether to include the "right to meet" within the subparagraph, as was suggested by the United Kingdom's delegation in its amendment to paragraph 2(c) as found in E/CN.4/1989/45, Annex IV.

57. Additionally, there was no consensus over the possible inclusion of "the right to leave and return to one's country" within this subparagraph.

58. It was decided that the Informal Drafting Group should develop a text on the form that this paragraph should take and also attempt to offer other proposals for adoption taking suitable paragraphs from the sources E/CN.4/1989/WG.6/CRP.11/Rev.2 and E/CN.4/1989/WG.6/WP.8 which appeared to be close to acceptance.

59. At the 4th meeting on 22 January 1990, the Chairman of the Informal Drafting Group reported that a lengthy discussion had been held on provision (c) and that concern had once again been expressed over the precise definition of the term "communicate". Various delegations had offered the view that the term "communicate" did not cover the right to meet with others, the right to leave and return to one's own country and the right of a non-governmental organization at the national level to be affiliated with a non-governmental organization at the international level. In order to achieve further progress it had been decided that part A(c) of Chapter III as contained within E/CN.4/1990/WG.6/CRP.3 and E/CN.4/1989/WG.6/WP.8 para. 5, part (iii) had been agreed upon as a text to be proposed for adoption by the Working Group on the understanding that other subparagraphs of Chapter III would follow and address the specific concerns of participation and affiliation as raised by the delegation of France and the representative of the International Federation of Human Rights.

60. The Chairman of the Working Group proposed that the Working Group adopt this subparagraph as it stood and that the other concerns raised be accommodated later. This proposal was accepted and paragraph A(c) as adopted read as follows:

"A. (c) individually and in association with others, to communicate with national and international non-governmental or intergovernmental organizations."

61. Taking up the question of the inclusion of the words "meet" and "affiliate" the Chairman-Rapporteur suggested that two approaches could be taken to solving this issue. Firstly that these two words be added in square brackets after the word "communicate" and secondly that the way should be prepared for their presentation in new subparagraphs. Following this suggestion, the Chinese delegation reiterated its view that the idea "communicate" did include the terms "meet and affiliate" but having listened to the opinions expressed by other delegations on this point the Chinese delegation offered a proposal to the Working Group. The proposal was to amend paragraph A of Chapter III of E/CN.4/1990/WG.6/CRP.2 by inserting the words "at national and international levels" and "individually and in association with others" so that the paragraph would read as follows:

"For the purpose of promoting and protecting [universally recognized] human rights and fundamental freedoms at the national and international levels everyone has the right individually and in association with others."

62. In the discussion that followed this amendment the representative of the International League for Human Rights proposed to place the insertions offered by the Chinese delegation at the end of paragraph A of E/CN.4/1990/WG.6/CRP.2. This proposal was supported by various delegations although no general consensus emerged on accepting the whole of the Chinese proposal nor the amendments offered to the Chinese proposal by the International League for Human Rights due to concern over the precise positioning of the words "at the national and international levels". However, as there was consensus over part of the Chinese proposal and the International League for Human Rights'

amendment, namely that the words "individually and in association with others" could be placed at the end of paragraph A, Chapter III of E/CN.4/1990/WG.6/CRP.2. The text as amended was adopted. It read as follows:

"For the purpose of promoting and protecting [universally recognized] human rights and fundamental freedoms everyone has the right individually and in association with others;"

63. It was noted that this amendment would entail various editorial changes within following subparagraphs as this particular paragraph acted as a "chapeau" for the subparagraphs which follow it.

64. The Chairman-Rapporteur concluded therefore that despite the willingness of different delegations to solve the problem of the position or further content of this paragraph there was no global agreement on the way to move forward and so the Informal Drafting Group should again consider this paragraph to determine the form of a further text to be offered to the Working Group.

65. At its 7th meeting, on 24 January 1990, the Working Group had before it a text for article A and subparagraphs (a), (b) and (c) of Chapter III worked out by the Informal Drafting Group (E/CN.4/1990/WG.6/CRP.6).

66. As to this article, several delegations indicated their concern with the wording of the text stating that they would not be fully satisfied with the idea of "national and international" and of "individually" in this article, although they would be willing to join a consensus.

67. Other delegations, while recognizing that the text could still be improved, held the view that this should be done with care as the present text was the result of a long and intensive discussion.

68. The Chairman stated that it was the general view of the Working Group that the language of the article covered the intention of various delegations to describe the right "to meet and to affiliate" with international organizations.

69. At the same meeting, the Working Group adopted provisionally at first reading article A and its subparagraphs (a), (b) and (c) which read as follows:

"A. For the purpose of promoting and protecting [universally recognized] human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels:

- (a) to meet or assemble peacefully;
- (b) to form, join, and participate in non-governmental organizations, associations, or where relevant, groups;
- (c) to communicate with non-governmental or intergovernmental organizations."

70. The Working Group continued its consideration of Chapter III by focusing on a possible subparagraph (d) of Article A. This subparagraph had formed part of E/CN.4/1989/WG.6/CRP.11/Rev.2 and E/CN.4/1989/WG.6/WP.8, the texts of which were identical and read as follows:

"Individually and in association with others, to solicit, receive and utilize voluntary financial and other contributions on the same non-discriminatory basis as other individuals and associations in the country."

71. The debate on this item at the 4th and 5th meeting, held on 22 and 23 January 1990, focused on two conceptual aspects of this subparagraph:

- (a) the concept of "non-discriminatory basis" and
- (b) the validity of the right proposed to be described in this subparagraph.

72. It was explained first of all that the phrase "non-discriminatory basis" had been introduced into the subparagraph in an attempt to meet concerns expressed in last year's Working Group concerning foreign exchange regulations and other such controls applied in various countries. The phrase aimed at ensuring that advocates of human rights would not be discriminated against. They should have the same rights as other individuals or organizations in the country to solicit, receive and utilize financial contributions from abroad.

73. The delegation of Cuba expressed its view that while there was no objection to organizations concerned with human rights raising funds domestically, the possibility of their receiving funds from external sources did raise serious conceptual problems.

74. External funding for organizations promoting human rights could be distorted in that it would selectively favour the promotion of those human rights supported by the external forces.

75. The delegation of China suggested that this paragraph should be deleted, expressing its view that the issue of soliciting financial and other contributions not only touched upon the foreign currency control systems of various countries, but could also lead to some other complicated problems. The Working Group should, therefore, be very prudent about the content of this paragraph.

76. Other delegations emphasized the right of organizations not to be banned from fund-raising activities and the potentially vital role of international funding for organizations defending human rights.

77. The view was expressed in this connection that the concerns raised by Cuba and China would be met by a close linkage of this paragraph with a limitation clause in a future Chapter V or by referring to the principles of international law.

78. In response to these concerns, the suggestion was offered by the representative of the International League for Human Rights supported by the delegation of Sudan, that the words "to be used for activities protected by

this declaration" could be inserted between the words "contributions" and "on" of paragraph 2 part (d) of E/CN.4/1989/WG.6/CRP.11/Rev.2 so that the paragraph would read:

"individually and in association with others, to solicit, to receive and utilize voluntary financial and other contributions to be used for activities protected by this declaration on the same non-discriminatory basis as other individuals and associations in the country."

This amendment found the support of a number of delegations.

79. The Working Group, taking this proposal into consideration, decided to place the paragraph as a whole in square brackets and to parenthesize the words "from national sources" and "to be used for activities protected by this declaration" as well. This subparagraph would then read:

"[individually and in association with others to solicit, to receive and utilize voluntary financial contributions [from national sources] [to be used for activities protected by this declaration] on the same non-discriminatory basis as other individuals and associations in the country]".

80. At the 7th meeting, on 24 January 1990, the Chairman-Rapporteur offered a text for future subparagraph (d) incorporating the conceptual issues raised during the discussion on this subparagraph, in order to reflect the various positions and opinions expressed to the contents of that paragraph. The text read as follows:

"(d) [to solicit, receive and utilize voluntary financial and other contributions [to be used for activities protected by this declaration] on the same non-discriminatory basis as other individuals and associations in the country/language to limit funding to national sources/delete concept entirely/language in Chapter V to the effect that nothing in this declaration would legitimate infringement of the right of individuals and organizations promoting human rights to seek and obtain financial resources.]"

81. The delegation of India stressed that the acceptance of the inclusion of the term "non discriminatory basis", even with the amendment proposed by the International League for Human Rights, in respect of organizations covered by this declaration for receiving, soliciting and utilizing funds from external sources raised difficulties as no single uniform applicable basis exists in any country for individuals and associations to receive aid, nor did criteria exist for the donor associations to offer assistance.

82. It was pointed out that the phrase relating to the "non-discriminatory basis" had been introduced in an attempt to meet the concerns of delegations which had reservations about the possibility of external funding for individuals and organizations defending human rights. Accordingly, if it did not succeed in meeting the concerns of those delegations, that phrase need not be retained in the proposed subparagraph. The phrase should accordingly appear between square brackets or slashes.

83. The delegation of the Soviet Union asked that a paper be prepared putting together all the work done to date on Chapter III so that the order of the various items could be addressed. The Chairman asked the Secretariat, in response to this request, to prepare a conference paper consisting of the three paragraphs already adopted by the Group and the text on subparagraph (d) (CRP.8 as amended). He emphasized that this would be entirely without prejudice to the position of delegations which opposed the inclusion of subparagraph (d).

84. The delegation of China raised an objection to the inclusion of the text of CRP.8, arguing that it believed that at present, the Working Group was only at the stage of discussing the concept of this paragraph and had not entered the drafting process. Moreover, in view of lack of consensus, it was inappropriate to put such a large part in brackets into the text. This paragraph, in accordance with past practice of the Working Group, should be put in the "Text considered by the Working Group but not yet approved at first reading".

85. After extensive debate the Chairman ruled that the paper would be produced with the position of subparagraph (d) indicated by the use of the letter "(d)" but without the text from CRP.8. This was a compromise solution to meet the concerns of the Chinese delegation. The delegation of Canada while indicating its willingness to abide by the Chairman's decision for the sake of allowing the work of the Working Group to continue, pointed out that for his delegation and others the proposed new CRP would have been more useful had it been incorporated in the text of CRP.8. The Chinese delegation reserved its position, stating that it regarded it as meaningless to put the letter "d" into the text since there was no word following that letter. The non-appearance of that letter in the text, however, did not in any way exclude the possibility that the Working Group may discuss new concepts wherever it deemed necessary.

86. Certain other delegations expressed the view that when paragraph A (d) was included within a section of this year's report prepared for texts extensively discussed but not adopted, the square brackets surrounding this part (d) should be removed.

87. Finally, the Working Group agreed that subparagraph (d) as amended would be incorporated within any section of the present report dealing with texts extensively discussed but not adopted (see Annex II to the present report).

88. The delegation of Canada expressed its readiness to accept this decision, and noted that its delegation would expect to raise the issue at a future stage in the Working Group's deliberations.

89. The delegation of the USSR submitted a proposal in connection with the concerns raised during the discussion of the right to solicit funds. The proposal read as follows:

"To include at the end of Chapter III a new article which is based on Article 20 of the International Covenant on Civil and Political Rights."



"The enjoyment of the rights mentioned in this chapter excludes propaganda for war and any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence."

90. The delegation of Cuba reserved its right to come back to a number of points linked with this subparagraph at a later stage.

91. During consideration of Chapter III, the Working Group at its 4th meeting had before it a text for article C (E/CN.4/1990/WG.6/CRP.4) submitted by the Informal Drafting Group. The text read as follows:

"C Everyone has the right, individually and in association with others, to have effective access, on a non-discriminatory basis, to participation in the government of his country and in the conduct of public affairs. This includes, inter alia, the right, individually and in association with others, to submit to governmental bodies and agencies and other public organizations criticism and proposals for improving their official functioning and to draw attention to any shortcomings in their work which create obstacles to the promotion, protection and realization of human rights and fundamental freedoms."

92. Following the discussion of this article, the Cuban delegation pointed out that it had difficulties with the term "and other public organizations" which could cause misinterpretations in other languages. It was suggested to delete this phrase.

93. Due to this concern, the suggestion was made by the International League for Human Rights that the term "other public organizations" be substituted by the words "organizations concerned with public affairs".

94. The delegation of the Ukrainian Soviet Socialist Republic expressed its preference for the substitution of the word "concerned" with the word "dealing" between "organizations" and "with public affairs" or the proposal of the delegation of the United States which was to replace the phrase "organizations concerned with public affairs" with the phrase "other relevant organizations". The Working Group felt that such refinements of re-wording would be better addressed at the second reading.

95. It was also suggested by the delegation of Cuba that the word "official" be deleted, the words "shortcomings in" be substituted by "aspect of" and that the words "create obstacles to" be substituted with the words: "may hinder or impede".

96. At its 5th meeting, on 23 January 1990, the Working Group accepted these amendments and adopted the text of article C of Chapter III, which read:

"C. Everyone has the right, individually and in association with others, to have effective access, on a non-discriminatory basis, to participation in the government of his country and in the conduct of public affairs. This includes, inter alia, the right, individually and in association with others, to submit to governmental bodies and agencies and organizations concerned with public affairs criticism and proposals for improving their functioning and to draw attention to any aspect of their work which may hinder or impede the promotion, protection and realization of human rights and fundamental freedoms."

97. At the 8th meeting on 26 January 1990, in reference to CRP.10, the delegation of the USSR proposed that paragraphs A, B and C of Chapter III be re-titled and re-ordered so that paragraph A would now read Article 1, paragraph C Article 2 and paragraph B Article 3 of Chapter III.

98. This proposal was accepted by the Group. However, the delegation of Canada stated that the Working Group might at some stage in its future deliberations conclude that some elements, particularly paragraph C, now Article 2 might be more appropriately placed within another Chapter of the declaration, and that this matter be considered at a second reading or before.

99. With regard to the contents of Article 1 Chapter III, the delegation of China asked that the report include the following statement: "The Chinese delegation deemed the present wording in Article 1 of Chapter III as incomplete and inaccurate. In view of the different legal systems in the world, it was the understanding of the Chinese delegation that the exercise of the right referred to in this Article should be subject to regulations of national legislations."

#### Chapter IV

100. The Working Group considered the possible contents of Chapter IV at its 6th to 8th meetings held from 24 to 26 January 1990.

101. The Chairman-Rapporteur proposed that the Working Group take as a basic text for the consideration of Chapter IV - E/CN.4/1990/WG.6/CRP.5 - which read as follows:

##### "Paragraph 1 (provisionally adopted 26/1/89)

In the exercise of the right to promote and protect the human rights referred to in the present declaration as well as in the exercise of other [universally recognized] human rights and fundamental freedoms, everyone has the right to protection and to recourse to effective remedies in the event of violation of those rights.

##### Paragraph 2

To this end, everyone has the right to:

- (a) draw attention to violations of human rights and to appeal by petition or other established remedies to competent national judicial, administrative and legislative authorities and international bodies.
- (b) fair and public hearing by independent and competent judicial or other appropriate authority to determine, award and enforce promptly any due redress and compensation
- (c) attend such trials or proceedings to monitor their fairness
- (d) seek, offer and provide assistance, including professionally qualified legal assistance, in defending [universally recognized] human rights and fundamental freedoms.

Paragraph 3

[Role of the State]"

102. Concerning the above text, the delegation of the United Kingdom proposed to insert in paragraph 2 the words "inter alia" between "right" and "to" so that the chapeau of this paragraph would read:

"To this end, everyone has the right, inter alia, to".

This proposal was accepted.

103. In connection with the chapeau of Chapter IV, paragraph 2, it was stated by several delegations that the word "everyone" included national and international observers at proceedings, hearings or trials, and that this point could be further elaborated within other subparagraphs of paragraph 2 or within the texts of a future Chapter V.

104. A general discussion on the possible contents of Chapter IV continued at the 6th meeting of the Working Group. Various delegations offered their positions of the possible text of paragraphs 1 and 2, in particular. It was decided that a variety of proposal sources be drawn upon in order to try and reach consensus.

105. As a basis for discussion of subparagraph (a) of article 2, the Group agreed to use the text submitted by Senegal, at the Working Group's session in 1989 (E/CN.4/1989/45, para. 55). The proposal read as follows:

"The right to draw attention to violations of human rights and to appeal, by petitions or established remedies, to the competent national judicial, administrative or legislative authorities and any competent international bodies."

106. Following the discussion of this text within the Informal Drafting Group a text for subparagraph (a) was submitted within E/CN.4/1990/WG.6/CRP.14. The Chairman of the Informal Drafting Group on introducing the text, indicated that: its contents tried to accommodate the various proposals forwarded by different delegations; the subparagraphs' contents acted as a reference point to the general means of seeking remedies; and in order to meet the various requests, the wording of this subparagraph was not altogether elegant, but it was suggested that this problem could be reconciled at a second reading.

107. In connection with the term "draw public attention" in this subparagraph, the delegation of Cuba stated that these words should be interpreted within the context that everyone had the right individually and in association with others to participate in peaceful activities directed against violations of human rights.

108. At its 8th meeting, on 26 January 1990, the Working Group adopted the text of subparagraph (a) of E/CN.4/1990/WG.6/CRP.14 without amendment. The text read as follows:

"(a) draw public attention to violations of human rights and to complain about the policies and actions of individual officials and governmental bodies by petitions or other means to competent

national judicial, administrative, legislative authorities or any other competent authority provided for by the legal system of the State, as well as to any relevant competent international bodies;"

109. At the 7th meeting on the 25 January 1990, the Working Group considered the Informal Drafting Group's proposals for parts (b) and (c), paragraph 2, of a future Chapter IV as contained within E/CN.4/1990/WG.6/CRP.12.

110. It was proposed that the title "Paragraph 2" be replaced with the term "Article 2" and that the two subparagraphs of Article 2 be adopted with a slight amendment to subparagraph (c), namely the word "undue" should be inserted between the words "without" and "delay". These proposals were accepted. The text then read as follows:

"Article 2

- (b) complain to and have that complaint promptly reviewed in a public hearing and decided by an independent, impartial and competent judicial or other authority established by law;
- (c) obtain a just decision and award providing redress, including any compensation due as well as enforcement of the decision and award, all without undue delay;"

111. Having adopted subparagraphs (b) and (c) of Article 2, various concerns were raised. It was stated that the contents of (b) and (c) may overlap and so it may be necessary to re-consider this point at the second reading of these subparagraphs. Furthermore, it was indicated that these rights favour the victim of human rights violations. Thirdly, the Working Group was informed that in respect of subparagraph (b) the Informal Drafting Group had been unable to propose a text which all participants agreed with. Several delegations felt the need to make explicit within the text that a right to a public hearing by a court was not an automatic right and that human rights violations may be remedied in different ways. The United Kingdom's delegation stated its understanding that in the event of an effective remedy being available through a competent legislative or other authority provided for by the legal system of the State, there should be no general duty to provide a further right such as that referred to in Article 2 (b) and that the text of Article 2 when considered at second reading would be re-drafted to reflect this point more adequately.

112. The delegation of the Federal Republic of Germany asked that the following statement be included in the report of the Working Group:

"Human Rights directly protect the individual: therefore, in accordance with the relevant instruments for the protection of human rights, the Government of the Federal Republic of Germany is of the opinion that the decision as to whether, after a violation of such rights, recourse is to be sought to courts of law, is reserved for the individual who considers his or her rights to have been violated."

113. The delegation of Senegal, wishing to draft as precise a text of subparagraph (c) as possible, requested that the French translation of this subparagraph should take into consideration the following terms "(c) ... reparation, which might take the form of compensation, ..."

114. The Working Group took up for consideration at its 7th meeting on 25 January 1990, subparagraph (c) (E/CN.4/1990/WG.6/CRP.5) which read:

"(c) attend such trials or proceedings to monitor their fairness".

115. The delegation of the USSR expressed its concern with the word "monitor", preferring its deletion. To accommodate this concern, the delegation of the United States of America with the support of the United Kingdom delegation, proposed to replace the word "monitor" with "assess". This amendment was accepted.

116. The delegation of Norway concerned that the word "monitor" contained two elements that of observation and assessing, and, that an explicit reference to international standards should be included at the end of the sentence of subparagraph (c) offered the following proposal: "to observe and assess their fairness and compliance with international standards". The delegation of the Ukrainian Soviet Socialist Republic proposed the deletion of the word "observe" from this subparagraph as the term "assess their fairness" was considered less confusing.

117. In relation to the context of this article, the delegation of China expressed its wish to replace the word "proceedings" by "hearings".

118. The delegation of Cuba expressed its preference for the retention of the word "proceedings" because of the recognition accorded to written evidence and communications within certain domestic legislative systems. This view was supported by several delegations.

119. It was suggested, therefore, that both the words "hearings" and "proceedings" should be included within the text of this paragraph but divided by a stroke and surrounded by square brackets to indicate that no final formula had been reached.

120. The proposal by Amnesty International to replace paragraph (c) of E/CN.4/1990/WG.6/CRP.5 with the following text:

"hearings or proceedings that are open to attendance by national or international observers seeking to assess their compliance with international standards".

was not accepted, although the discussion which followed this proposal confirmed the general view of the Working Group that the terms of the declaration provided for international observation at trials, hearings or proceedings. The delegation of China subsequently advised that it did not share this view.

121. During the discussion several delegations expressed their concern at ensuring that any exceptions to open trials with public attendance should be clearly spelt out in order to make certain that such exceptions were indeed limited. It was accepted that this concern should be addressed when considering a future Chapter V.

122. Sub-paragraph (c) as adopted read as follows:

"attend such trials or [hearings/proceedings] to assess their fairness and compliance with national and international standards."

This subparagraph then formed subparagraph (d) of Article 2 of Chapter IV (see Annex I).

123. The delegation of Norway expressed its concern that the language of the new subparagraph (d) should not be interpreted restrictively, so that the right encompassed within this subparagraph should apply not only to court proceedings but also to any type of domestic or international remedy.

124. Due to the various concerns raised at the meeting of the Working Group from its consideration of subparagraph (d) of Article 2 of Chapter IV, the Informal Drafting Group had continued discussing this subparagraph and offered the following text for consideration within E/CN.4/1990/WG.6/CRP.14:

"attend such relevant hearings or proceedings or, as the case may be, trials to assess their fairness and compliance with international standards."

125. This subparagraph was adopted at the 8th meeting of the Working Group, with the reservation of several delegations that the term "everyone" within the chapeau of Article 2, Chapter IV, included independent national and international attendance and observation at any trials, proceedings or hearings. It was suggested that this point should be made more explicit when the Working Group considers the future provisions either of Chapter IV or Chapter V, to ensure that the notion of international observation is adequately reflected in the text either paragraph by paragraph or within one express concept.

126. The delegation of China stated that it understood that the word "proceedings" in paragraph (d) of article 2, Chapter IV, solely meant "hearings".

127. The delegation of Canada wished to bring to the notice of the Working Group that the purpose and desirability of employing the word "relevant" within the text of this subparagraph may need to be considered further at a second reading. It was also suggested that the Working Group could address this matter within the provisions of Chapter V.

128. Following this discussion, the delegation of France submitted the following amendment to this subparagraph requesting that it be recorded in the report. The amendment read as follows:

"attend such trials or, as the case may be, hearings and proceedings to make sure of their fairness and compliance with national and international standards".

This amendment did not find agreement and the text of subparagraph (d) was adopted as it stood.

129. At its 7th meeting on 25 January 1990, the Working Group took up for consideration subparagraph (d) of E/CN.4/1990/WG.6/CRP.5 which would form a future subparagraph (e) of Article 2 of Chapter IV, the text of which read as follows:

"seek, offer and provide assistance, including professionally qualified legal assistance, in defending [universally recognized] human rights and fundamental freedoms."

130. During the consideration of this subparagraph it was noted that the rights incorporated within this text and the previous subparagraph referred to the rights of those offering to assist others. It was proposed therefore that the word "seek" be deleted from subparagraph (d) of E/CN.4/1990/WG.6/CRP.5 and that this concept be addressed in a new subparagraph.

131. This amendment and the proposal to re-name the subparagraph - (e) of Article 2, Chapter IV, were adopted. Sub-paragraph (e) of Article 2, Chapter IV read as follows:

"offer and provide assistance, including professionally qualified legal assistance, in defending [universally recognized] human rights and fundamental freedoms."

132. With the deletion of the word "seek" from subparagraph (d) of E/CN.4/1990/WG.6/CRP.5 it was suggested by the Chairman-Rapporteur, supported by several delegations, that the question of national or international observers, be addressed within a new subparagraph. The contents of a future subparagraph (f) could, therefore, relate to the rights of a victim or complainant to seek assistance and observation.

133. It was stated by the delegation of Cuba with regard to the contents of a future subparagraph (f) that the concept of the free choice of an individual should be included within any proposed text.

134. As a reference point, the attention of the Working Group was drawn to the proposal offered by the delegation of Cuba at last year's Working Group, which read as follows:

"seek and obtain legal assistance of his own free choice and be present or not at such trials or proceedings in accordance with the law in force. Every lawyer duly accredited as such may offer and provide such legal assistance."

135. The text submitted by the Informal Drafting Group for subparagraph (f) included the concept of free choice and its contents followed from the previous subparagraph (e). The text contained in E/CN.4/1990/WG.6/CRP.14 read as follows:

"(f) seek and accept such assistance of his own free choice in order to enjoy effectively the measures of protection set forth in this Chapter."

136. The delegation of Cuba proposed to replace the words "set forth" with the words "referred to". This amendment was accepted and the text for subparagraph as adopted read:

- (f) "seek and accept such assistance of his own free choice in order to enjoy effectively the measures of protection referred to in this Chapter;"

137. At its 8th meeting, on 26 January 1990, the Working Group considered the Informal Drafting Group's proposal for a subparagraph (g) which emerged from extensive discussions and constituted a carefully balanced text. The text read as follows:

- "(g) unhindered access to and communication with international bodies with general or special competence to receive and consider communications on matters of human rights in accordance with applicable international instruments and procedures."

This text was adopted by the Working Group.

138. It was the concern of several delegations that the Working Group should at a second reading reconsider the inclusion of the concept national/international within the text of particular subparagraphs of article 2, Chapter IV, and the exact positioning of each subparagraph. This position was accepted.

139. At its 8th meeting, the Working Group had before it a text of article 3 of Chapter IV as proposed by the Informal Drafting Group (E/CN.4/1990/WG.6/CRP.15). The text read as follows:

"Article 3

To the same end, each State shall, inter alia:

- (a) ensure the protection by the competent authorities of everyone, individually or in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of their legitimate exercise of the rights referred to in the declaration."

140. The Chairman of the Informal Drafting Group on introducing the text stated that the Working Group may have to return to the consideration of this text at its next session. The text may not be in a final form due to the lack of time available for its consideration and that its labelling as (a) of Article 3, Chapter IV was for the sake of convenience and did not preclude the possibility of repositioning the text in the future.

141. In the short discussion on this text, the delegation of the United States explained that the chapeau of Article 3 had to be read in conjunction with Articles 1 and 2 of that Chapter.



142. The chapeau of Article 3 and its subparagraph (a) were provisionally adopted following the replacement of the word "the" on the last line with the word "this". The text of this Article read:

"Article 3

To the same end, each State shall, inter alia:

- (a) ensure the protection by the competent authorities of everyone, individually or in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of their legitimate exercise of the rights referred to in this declaration."

Future Work

143. At the 8th meeting, on 26 January 1990, a discussion was held on the future work of the Group.

144. It was suggested that the report of this year's session of the Working Group, in line with previous practice, should provide a comprehensive, objective and balanced yet condensed account of the discussions held.

145. Concerning the future work, the Group accepted a proposal of its Chairman that the Group would consider any remaining paragraphs of Chapters IV and III and begin consideration of provisions for a Chapter V at next year's session taking into account any previously prepared text. It was also agreed that the Group may take up for consideration additional elements for the Preamble and Chapter I.

146. Considering the progress made at the fifth session, it was the general view of the Working Group that a similar procedure should be established at the next session with an informal drafting group meeting in between the meetings of the group as a whole. In this context, a number of delegations held the view that the Working Group should meet for 10 working days next year in order to complete the first reading of the declaration, while others preferred fewer than 10 meeting days. After an extensive debate on the merits and drawbacks of extending the session of the Working Group, the Group decided to recommend to the Commission on Human Rights that it be authorized to meet for eight working days prior to the forty-seventh session of the Commission.

Adoption of the report

147. At its 9th meeting, on 1 March 1990 the Working Group adopted the present report.

ANNEX I

I. Texts provisionally adopted by the Working Group at first reading

Chapter I

A

No one shall participate in violating the [universally recognized] human rights and fundamental freedoms of others, and no one shall be subject to punishment or adverse action of any kind for refusing, [individually or in association with others], to violate or otherwise be associated with violations of [universally recognized] human rights and fundamental freedoms.

B

Each State has a prime responsibility and duty to promote and protect [universally recognized] human rights and fundamental freedoms, inter alia, by adopting such legislative, administrative and other steps as may be necessary to create the social and political conditions and legal guarantees required to ensure that all persons, individually and in association with others, are able to enjoy these rights and freedoms in practice.

Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of [universally recognized] human rights and fundamental freedoms at the national and international levels. Each State shall adopt such legislative, administrative and other steps as may be necessary to give effect to this right.

[Language to be added reflecting the role of national and international law as well as other modalities, to be formulated when discussing issues assigned to Chapter V.]

Chapter II

Title

The rights to know, to be informed about, and to impart to others knowledge of universally recognized human rights and fundamental freedoms.

Paragraph I

All persons have the right to know, and, individually as well as together with others, to be informed about, and to make known [their] universally recognized human rights and fundamental freedoms.

Paragraph II

Everyone has the right, individually as well as together with others

- (a) to seek, obtain, receive and hold information about these rights and freedoms, [including access to information on the means by which these rights and freedoms are given effect in domestic legislative, judicial or administrative systems];

- (b) to publish, impart or disseminate freely to others views, information and knowledge of universally recognized human rights and fundamental freedoms.

#### Paragraph V

Everyone has the right to develop and discuss new human rights ideas and principles, and to advocate their universal acceptance.

#### Paragraph VI

1. The State has the responsibility to take legislative, judicial, administrative or other appropriate measures to promote the understanding by all persons under its jurisdiction of their civil, political, economic, social and cultural rights.
2. Such measures shall include:
  - (a) the publication and widespread distribution of national laws and regulations and of basic international human rights instruments;
  - (b) full and equal access to international documents in the field of human rights, including the State's periodic reports to the bodies established by the international human rights treaties to which it is a party, as well as the official report of these bodies.
3. The State has the responsibility to promote and improve the teaching of human rights and fundamental freedoms at all levels of education, and to encourage all those responsible for training lawyers, law enforcement officers, the personnel of the armed forces and public officials to include appropriate elements of human rights teaching in their training programmes.

### Chapter III

#### Article 1

For the purpose of promoting and protecting [universally recognized] human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels:

- (a) to meet or assemble peacefully;
- (b) to form, join, and participate in non-governmental organizations, associations, or where relevant groups;
- (c) to communicate with non-governmental or intergovernmental organizations.

#### Article 2

Everyone has the right, individually and in association with others, to have effective access, on a non-discriminatory basis, to participation in the government of his country and in the conduct of public affairs. This includes, inter alia, the right, individually and in association with others, to submit to governmental bodies and agencies and organizations concerned with

public affairs criticism and proposals for improving their functioning and to draw attention to any aspect of their work which may hinder or impede the promotion, protection and realization of human rights and fundamental freedoms.

### Article 3

Everyone has the right, individually and in association with others, to participate in peaceful activities directed against violations of human rights and fundamental freedoms.

## Chapter IV

### Article 1

In the exercise of the right to promote and protect the human rights referred to in the present declaration, as well as in the exercise of other [universally recognized] human rights and fundamental freedoms, everyone has the right to protection and recourse to effective remedies in the event of violations of those rights.

### Article 2

To this end, everyone has the right, inter alia, to:

- (a) draw public attention to violations of human rights and to complain about the policies and actions of individual officials and governmental bodies by petitions or other means to competent national judicial, administrative, legislative authorities or any other competent authority provided for by the legal system of the State, as well as to any relevant competent international bodies;
- (b) complain to and have that complaint promptly reviewed in a public hearing and decided by an independent, impartial and competent judicial or other authority established by law;
- (c) obtain a just decision and award providing redress, including any compensation due as well as enforcement of the decision and award, all without undue delay;
- (d) attend such relevant hearings or proceedings or, as the case may be, trials to assess their fairness and compliance with national and international standards;
- (e) offer and provide assistance, including professionally qualified legal assistance, in defending [universally recognized] human rights and fundamental freedoms;
- (f) seek and accept such assistance of his own free choice in order to enjoy effectively the measures of protection referred to in this Chapter;
- (g) unhindered access to and communication with international bodies with general or special competence to receive and consider communications on matters of human rights in accordance with applicable international instruments and procedures.

Article 3

To the same end, each State shall, inter alia:

- (a) ensure the protection by the competent authorities of everyone, individually or in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of their legitimate exercise of the rights referred to in this declaration.

ANNEX II

II. Text considered by the Working Group, but not yet finally approved at first reading

Preamble \*/

A

Mindful that the international community shall fulfil its solemn obligation to promote and encourage respect for human rights and fundamental freedoms for all without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

B

Reaffirming the importance of the International Covenants on Human Rights as major parts of international efforts to promote universal respect for the observance of human rights and fundamental freedoms;

Appealing strongly to all States that have not yet become parties to the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights to do so, as well as to consider acceding to the Optional Protocol to the International Covenant on Civil and Political Rights, so that these instruments acquire genuine universality.

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\*/ On several occasions during the discussion at the 5th, 9th and 12th meetings of E/CN.4/1988/WG.6/WP.7 and WP.7/Rev.1, the suggestion was made that some of the agreed paragraphs presented no difficulties for any participants and could be adopted as they were, a step that would have considerable symbolic significance. A number of other delegations felt, however, that it would be premature to "adopt" even those paragraphs. The delegation of the German Democratic Republic specifically stated at the 12th meeting that it would maintain its proposal in E/CN.4/1988/26, Annex III and insist upon return to discussion on this matter at a more appropriate time. The delegation of Norway, for its part, reserved the right to return to consideration of other elements to be inserted into the paper at a later stage. Several other delegations expressed reservations about the proposal of the German Democratic Republic. It was further suggested to replace, in the preambular paragraph A of WP.7/Rev.1 the words "States" by the words "international community".

Bearing these exchanges in mind, the Working Group concluded that, although WP.7/Rev.1 had found in principle agreement, it would be held open for consideration at a later stage, when other paragraphs might be added or the ones already amended (E/CN.4/1988/26, paras. 128 and 129).

C

Stressing that each State has a prime responsibility and duty to promote and protect universally recognized human rights and fundamental freedoms.

D

In the international co-operation in the field of human rights, special attention should be given to the elimination of the massive and gross violations of the human rights of peoples and individuals which result from apartheid, all forms of racial discrimination, colonialist, foreign domination or occupation, aggression or threats to national sovereignty, national unity or territorial integrity, and from refusal to recognize the right of peoples to self-determination and the right of every people to exercise full sovereignty over its wealth and natural resources.

E

All human rights and fundamental freedoms are indivisible and [interdependent/interrelated], without prejudice to the implementation of each of these rights and fundamental freedoms.

F

Recognizing that the maintenance of international peace and security contributes to the realization of the entire range of human rights, mindful that the absence of international peace should not be made an excuse for not realizing human rights.

Chapter II \*/

Paragraph III

Everyone has the right to study, discuss and form opinions as to whether these rights and freedoms are observed, both in law and in practice,

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\*/ The delegations of Bulgaria, the German Democratic Republic and the Union of Soviet Socialist Republics stated that they were not yet in a position to adopt paragraphs III and IV as they stood now, while the delegation of Norway and the observer for Canada supported the view of the delegation of the United States that they had already been adopted by the Working Group at previous meetings. The delegation of the USSR expressed the opinion that paragraph IV should be included in a new Chapter III (see para. 131 below), and recalled that the question of the adoption of paragraphs III and IV was not finalized at previous meetings.

After a debate on these matters the Chairman declared that the Working Group had discussed draft Chapter II and had provisionally adopted its title and some of the provisions (paras. I, II and V and VI which had been numbered I, II/III, IV and VII in the Chairman-Rapporteur's consolidated text) at the first reading. This understanding found agreement with the Working Group (E/CN.4/1988/26, paras. 118 and 119).

regardless of frontiers, and to solicit public attention on these matters by such means as public discussion, the use of the media, peaceful demonstrations and other [legitimate] forms of free and peaceful expression [in the spirit of objectivity, tolerance and fraternity].

Paragraph IV

Everyone has the right to contribute to the promotion and protection of human rights and fundamental freedoms [through measures] at the national [and international] level[s].

Chapter III

Article 1

- (d) to solicit, receive and utilize voluntary financial and other contributions to be used for activities protected by this declaration/on the same non-discriminatory basis as other individuals and associations in the country/language to limit funding to national sources/delete concept entirely/language in Chapter V to the effect that nothing in this declaration would legitimate infringement of the right of individuals and organizations promoting human rights to seek and obtain financial resources.

Chapter V

A

In the exercise of the rights and freedoms which are set forth in this declaration, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

B

Nothing in the present declaration shall be construed as restricting or derogating from any right defined in the Universal Declaration of Human Rights and the International Covenants on Human Rights.



ANNEX III

Article III

Proposal of the Union of the Soviet Socialist Republics

Insert the following at the end of Chapter III:

"The enjoyment of the rights mentioned in this chapter excludes propaganda for war and any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence."

Chapter IV

Proposal submitted by the German Democratic Republic  
(E/CN.4/1990/WG.6/CRP.13)

Paragraph 4

In the exercise of law and order, law enforcement officials shall avoid the use of force, or, where that is not practicable, restrict such force to the minimum necessary, in particular, they shall not use firearms against persons or shall not take other measures which may endanger the life or health or human dignity of persons.

Chapter V

[E/CN.4/1989/WG.6/WP.5]  
[Original: French]

Proposal by Senegal relating to Rights and responsibilities  
of individuals and groups

Introductory note

The delegation of Senegal would like to reiterate the concern it has expressed since the beginning of the Working Group's activities in 1986, in particular about the need to find a universally acceptable basis for the draft declaration.

The draft declaration, whose essential objective is to encourage the effective participation of the individual or groups in the promotion and protection of human rights, must, in order to be effective, aim at restoring a balance. As the terms of reference for the draft indicate, the Working Group must do everything possible to identify precisely the content of the concepts of "right" and "responsibility", so as to make them more operational.

Contrary to Senegal's expectations, the four Chapters of the draft seem to give preference to the right of individuals as opposed to their duties.

The protection of rights is incumbent on every individual, group and organ of society; these have an obligation and, when this obligation is not translated into positive law, a duty and responsibility to defend them and to encourage their promotion.

The safeguarding of human rights depends not only on the commitment of the State, with which prime responsibility for their promotion and protection lies, but also on belief in their purpose by individuals, who are their beneficiaries and are accordingly required to defend them, but also to avoid infringing them.

For this reason, Senegal has expressed a wish for and emphasizes the inclusion of concepts of the "duty" and "responsibility" of individuals and groups to promote human rights.

Chapter V (new)

- (1) "It is the duty of everyone, individually and together with others, to encourage the promotion of human rights and to act, together with others, in a spirit of tolerance and brotherhood".
- (2) The State has the prime responsibility and duty to encourage the promotion, protection and effective realization of human rights by taking specific legislative, administrative or other measures, at the national level or in co-operation with other States, in order to develop a peaceful social climate.
- (3) It is the duty of the individual to respect the rights, beliefs and cultural identity of others, by recognizing that the enjoyment of rights and freedoms implies that everyone must discharge his duties within the community in which he lives.
- (4) It is the duty of every individual within the community to promote, develop and safeguard respect and tolerance.
- (5) It is the responsibility and duty of every organ of society to discourage racial hatred and to promote mutual understanding.
- (6) Then add article 6 (paras. 1, 2, 3) of document E/CN.4/1987/WG.6/NGO/2 (Baha'i).
- (7) It is the duty of individuals, groups or organs of society, exercising the rights provided for in this declaration, to conform to national legislation of States and to the purposes and principles of the Charter of the United Nations.

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