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REPORT OF THE COMMISSION ON HUMAN RIGHTS

Draft Declaration on the Elimination of all Forms  
of Religious Intolerance

Note by the Secretary-General

1. At its twentieth session the Commission on Human Rights had before it the preliminary draft of a United Nations declaration on the elimination of all forms of religious intolerance.<sup>1/</sup> A working group was set up to prepare a draft declaration on the elimination of all forms of religious intolerance.<sup>2/</sup> The working group submitted its report,<sup>3/</sup> which was considered by the Commission at its 810th meeting.

2. In resolution 2 (XX), the Commission requested the Secretary-General to transmit (a) to Member Governments for comment not later than 15 June 1964 the report of the working group and the preliminary draft of a declaration on the elimination of all forms of religious intolerance submitted by the Sub-Commission, and (b) to the Council at its thirty-seventh session the comments of Governments and the documents mentioned in (a). The Commission recommended to the Council to give such further consideration as it may deem practicable to the drafting of a declaration on the elimination of all forms of religious intolerance, in the light of the comments of Governments, and that it transmit the appropriate documents to the General Assembly for consideration at its nineteenth session.

<sup>1/</sup> See Official Records of the Economic and Social Council, Thirty-Seventh Session, Supplement No. 8 (E/3873), para. 294.

<sup>2/</sup> Ibid., paras. 10 and 295.

<sup>3/</sup> Ibid., para. 296.

3. Accordingly, the Secretary-General transmits to the Council the report of the working group and the preliminary draft declaration submitted to the Commission by the Sub-Commission, which will be found in the report of the twentieth session of the Commission,<sup>4/</sup> and the comments of the Governments of Canada, China, Ireland, Kenya and the United States of America thereon, which are annexed hereto.

4. Any further comments received from Governments will be circulated to the Council in an addendum to the present note.

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<sup>4/</sup> See foot-notes 1 and 3 above.

ANNEX

CANADA

The Canadian Government attaches great importance to the preparation by the United Nations of a Declaration on the Elimination of all Forms of Religious Intolerance. This is a reflection of Canada's active interest in the whole field of human rights and more particularly of Canada's desire to assist in the prevention and the elimination of religious intolerance in all parts of the world. In accordance with this objective, the Canadian representative on the United Nations Human Rights Commission participated actively in the deliberations of the Working Group established by the Commission at its twentieth session to prepare a Draft Declaration on the Elimination of all Forms of Religious Intolerance.

The Canadian Government submits the following tentative views on the Working Group's draft articles without prejudice to the final position it may take with regard to the draft declaration and it reserves the right to make further comments when the draft Declaration on the Elimination of all Forms of Religious Intolerance is discussed in the appropriate bodies of the United Nations.

The Canadian Government supports the use in the draft declaration of the words "religion or belief" as proposed by the Sub-Commission on Prevention of Discrimination and Protection of Minorities, along with the suggested definition of "belief" as proposed by the United Kingdom representative on the Working Group. The declaration would then be worded so as to protect equally the right to adhere to any religion and the right to maintain any non-religious belief.

In the Canadian Government's view the texts of draft articles I, II, III and VI, as prepared by the Working Group, are acceptable. It would not appear necessary to include in those articles the phrases appearing in square brackets, particularly if the definition of "belief" as proposed by the United Kingdom is accepted.

Similarly, the Canadian Government agrees with the text of paragraph 1 of draft article IV, but it considers that the addition of the proposed paragraph 2 of draft article IV is superfluous and indeed could be misleading. The provisions of draft articles I, II, III and paragraph 1 of article IV make it clear that

freedom from discrimination and intolerance based on religion or belief should be guaranteed as to the totality of human rights. To state, as suggested in paragraph 2 of article IV that particular efforts shall be made to prevent discrimination based on religion or belief especially with regard to certain human rights, suggests that with respect to the other fields of human rights the same effort does not have to be applied to prevent discrimination based on religion or belief.

The Canadian Government has no objection to paragraph 1 of article V as proposed by the Working Group, with the retention of the phrase "or presumed" and without the inclusion of the last sentence. Some difficulty may arise in determining when a child has reached "a sufficient degree of understanding", which is a vague subjective, rather than objective, criterion by which to be guided.

There are objections to the inclusion in the draft declaration to the proposed paragraph 2 of article V. The text of the paragraph is not suitable for inclusion in the draft declaration because it tends to cast unjustified aspersions on the role of parents or legal guardians in deciding upon the religion or belief in which a child should be brought up. Therefore, in the Canadian Government's view the proposed paragraph is inappropriate for inclusion in an international declaration on this subject.

The Canadian Government reserves its comments on the proposals submitted by the Ukrainian SSR, the Union of Soviet Socialist Republics, and the United States of America as outlined in the appendix to Annex II of the Secretary-General's note SO 239(6-2) until an opportunity has been afforded to discuss the proposals in detail in the appropriate body of the United Nations.

#### CHINA

The Government of China is in favour of preparing a declaration and a convention on the elimination of all forms of religious intolerance. It is of the opinion that the draft submitted by the Commission on Human Rights will serve as a good working basis for a declaration.

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The first question that presents itself is the title of the proposed declaration. It may be asked whether it is possible to eliminate "all forms of religious intolerance" by an international declaration or convention. Intolerance being a mental attitude or a psychological state, no legislation, national or international, can directly control or regulate it. Perhaps the title might be changed to a "declaration on the elimination of all forms of religious discrimination". This view is strengthened by the fact that the word "discrimination" is used in articles II, III, IV and VI of the working draft, while the word "intolerance" does not appear in the draft at all.

Possibly a better title would be a "declaration on religious tolerance". Such a declaration would emphasize the positive value of tolerance and understanding. It could be a document of historic significance, if it were to embody, in a simple and inspiring language, the great principles of religious liberty and of the absolute freedom of thought and conscience.

As regards article I, it is hardly necessary to define the term "religion or belief" so as to include "agnosticism" or "atheism", since the article, as drafted, states clearly that every one has "freedom to adhere or not to adhere to any religion or belief or to change his religion or belief". It is obvious that under this article a person may adhere to monotheism, polytheism, atheism or agnosticism.

The Government of China will submit such further comments as may be necessary on the draft declaration when it comes before the General Assembly at its next session.

#### IRELAND

The Government of Ireland recognize the praiseworthy motives which inspired the Sub-Commission on Prevention of Discrimination and Protection of Minorities in connexion with freedom and non-discrimination in the matter of religious rights and practices and wish to pay tribute to the work done by the Sub-Commission in producing a series of draft principles on the subject.

The Government, none the less, feel that in the carrying out of this grave and very delicate task, the Sub-Commission has not paid sufficient attention to the true concept of religion as representing something more than a mere opinion. It is noted, for example, that it is proposed to include provision ensuring freedom not to adhere to a religion. Freedom not to adhere to a religion is, however, basically a matter of conscience and it is doubtful whether it should be covered in a Declaration of Draft Principles on Freedom and Non-discrimination in the Matter of Religious Rights and Practices. It is to be observed in this regard that under the Irish Constitution (Article 44.1.1<sup>o</sup>) "The State acknowledges that the homage of public worship is due to Almighty God. It shall hold His Name in reverence, and shall respect and honour religion." If, however, freedom not to adhere to a religion is included in the Declaration, it should be subject to the restrictions set out in Part III, Paragraph 2 (a). The Irish Constitution lays down (Article 44.2.1<sup>o</sup>) that "Freedom of conscience and the free profession and practice of religion are, subject to public order and morality, guaranteed to every citizen.". Similarly it seems undesirable that "beliefs" in so far as this expression may mean beliefs unconnected with religion should be equated with religion and it is open to question whether "beliefs" should be included at all in such a document. These are points which have already been referred to in the observations of the Governments of France (E/CN.4/809/Add.9) and the Argentine (E/CN.4/809/Add.7) and the Government of Ireland respectfully associate themselves with the observations of those Governments in relation to the foregoing matters.

KENYA

The Kenya Government agrees that there should be support of the Declaration and Convention on the Elimination of all forms of religious intolerance; and in this respect accepts the Austrian definition which appears on the first page of Annex II. This definition reads: "For the purpose of this Declaration the term 'belief' is understood as expression for the various theistic creeds or such other beliefs as agnosticism, free thought, atheism and rationalism."

The Kenya Government's comments in respect of the Articles are:

Article I: The draft principle appears to conform generally with the principles applied in this country in the administration of our criminal law, and is accordingly acceptable. Section 22(1) of our Constitution offers protection of freedom of conscience as defined therein. The following is the extract thereof: "Except with his own consent, no person shall be hindered in the enjoyment of his freedom of conscience and for the purpose of this section the said freedom includes freedom of thought and of religion, freedom to change his religion or belief, and freedom, either alone or in community with others, and both in public and in private, to manifest and propagate his religion or belief in worship, teaching, practice and observance." While accepting religious freedom and the right to exercise it, certain countries permit under the general framework of their respective constitutions the freedom of religion and conscience whereby no differentiation can be made between State, politics and social institutions. According to the basic philosophy of such States, by history, traditions and unshakeable beliefs, the entity of State incorporating State, religion and social institutions is inseparable.

Article II: It is considered desirable to provide exceptions to the general principle. There are occasions when it is necessary to do an act, which in itself is discriminatory, under a law to the extent that the law in question makes provision which is reasonably required in the interests of defence, public safety, public order, public morality or public health, or even for the purposes of protecting the rights and freedoms of other persons, including the right to observe and practise any religion without the unsolicited intention of persons of another religion. To this extent the Article should be modified.

Article III: As in Article II above, there should be a provision for cases where it may be necessary for security reasons, to authorize by legislation, the imposition of restrictions upon the enjoyment of human rights and fundamental freedoms.

Article IV: While remaining neutral in all matters concerning religion, or belief excepting where the right to such religion or belief is infringed, all States should be separated from the Church.

Article VIII: The prescriptions of the religion of a deceased person shall be followed in all matters affecting burial customs, subject to the wishes, if any, expressed by the deceased during his lifetime; or failing that those of his family, or close friend. (Would add words "close friend" at the end of this Article.)

General Comment in respect of the Appendix:

The general line of the Articles and reactions by other States largely reflects the practice in our country.

UNITED STATES OF AMERICA

The United States considers that the adoption of a declaration against all forms of religious intolerance will be of great value in advancing understanding and respect for human rights, and hopes a draft text can be completed for presentation to the General Assembly at its nineteenth session in the fall of 1964. We regard the preliminary draft submitted by the Sub-Commission on Discrimination and Minorities, in January 1964, as a sound working basis for development of an appropriate declaration, and welcome the proposals of the Human Rights Commission Working Group as clarifying and improving those sections of the Sub-Commission draft it was able to consider.

With regard to the draft Articles prepared by the Working Group, the United States favours their adoption with the addition or deletion of bracketed portions as indicated below:

Article I. We consider the phrase "religion or belief" adequate to define the substance which the declaration is intended to cover, consistent with the text of Article 18 of the Universal Declaration of Human Rights. "Religion and belief" was adopted in the Universal Declaration in 1948 as including all relevant concepts, and the United States is not aware of any new concepts which do not fall within this formulation. We would have no objection to incorporating the phrase "any religious or non-religious belief", if a majority considers this useful. We do not favour inclusion in the declaration, in Article I or elsewhere, of any definition which refers to any particular religion, philosophy, doctrine or mode of



thought; we believe any such enumeration, even as a suggestion, may omit categories of thought with which the drafters are not familiar or which have not yet been envisioned, with the result that the declaration would fail of universal application. For this reason we are opposed to the suggestion that belief be "understood as expression for the various theistic creeds and such other beliefs as agnosticism, free thought, atheism and rationalism" and also to the suggestion that "religion or belief" be recognized as meaning "both religious beliefs and atheistic convictions".

Article II. This is acceptable in its present form.

Article III. We favour inclusion of the phrase "with respect to his fundamental rights and freedoms". We are opposed to including the phrase "as defined by the Constitution or by law" because we believe this unduly restricts the scope of this provision.

Article IV. We believe the first paragraph of this Article is sufficient. If the second paragraph is retained, we favour inclusion of "access to" before "citizenship" to make it quite clear that this provision applies to the granting of citizenship as well as the exercise of citizenship rights. We also suggest that if the second paragraph is to remain in the declaration, it might mention discrimination in certain economic and social fields, such as education, housing and employment.

Article V. The United States believes that no child should be denied the right to grow up in a religious atmosphere and to receive a religious education in accordance with the wishes of his parents. We favour the first paragraph of this Article, but believe the bracketed sentence at the end is unduly vague; if this is retained, "degree of understanding" might be replaced by some more definite wording, such as "age of responsible judgement".

We find the second paragraph ambiguous and confusing in this context, and believe it should be omitted. The appropriate place to state such limitations would appear to be in a general article along the lines of Article XIII of the Sub-Commission draft.

Article VI. We favour inclusion of the phrase "at home and abroad" in sub-paragraph (b) to make it clear that the provision extends to freedom of religion and belief regardless of frontiers.

Additional Articles. With a view to incorporating further provisions from the Sub-Commission draft, the United States submitted four additional articles to the Working Group. These appear in the Annex to E/CN.4/713/Rev.1. We believe the declaration should include these articles.

We believe the declaration might also include various other provisions in the Sub-Commission draft which were not elaborated in the Working Group, such as the right to publish religious books and to train religious personnel, the right of religious communities to solicit and receive funds and assurance that no one shall be compelled to contribute to the support of a religion, to take an oath of a religious nature, or to undergo a religious marriage or other ceremony contrary to his convictions. The United States is prepared to support provisions in the draft declaration on these and other matters.

If an article is adopted setting forth limitations, along the lines of Article XIII of the Sub-Commission draft, we suggest that the exceptions enumerated in paragraph 1 of this article be replaced by a substantive statement recognizing that freedom of thought, conscience and religion are inherent and inalienable rights of man on which no limitations should be imposed.

The United States looks forward to further work on the declaration as an opportunity to consider the problems of religious intolerance in the light of the varying experience and insights of all Members of the United Nations, and expects to make such further comments and suggestions as may be pertinent at that time.

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