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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

Addendum

The comments received from the Governments of Afghanistan, Gabon, Ghana, India, Israel, Ivory Coast, Lebanon, Mexico, the Netherlands and Rwanda, are as follows:

AFGHANISTAN

The views of the Government of Afghanistan concerning the different forms of religious intolerance and discrimination were expressed by the representatives of that country during the discussions in the various committees and commissions.

The Government of Afghanistan as a matter of principle is opposed to, and condemns all forms of intolerance and discrimination, including religious intolerance and discrimination, and is ready to support any measures for their elimination.

The Afghan representatives will in due course give the views of the Royal Government of Afghanistan concerning the details of the two draft declarations.

GABON

My Government has no objection to the report of the Working Group.

As regards the definition of the terms "religion" and "belief", the Government of the Gabonese Republic considers, as some Members have done, that to define these terms serves no useful purpose, as they have a well-defined meaning in United Nations practice.

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GHANA

... the Government of Ghana has no comments to make on the Report of the Working Group and further wishes to state that there is no discrimination of any kind in Ghana.

INDIA

REPORT OF THE WORKING GROUP:

It appears from the report of the Working Group that no agreement was reached in the Working Group as regards the definition of the terms "religion or belief". We do not think that it is necessary to define these two terms in the draft declaration. The term "belief" is wide enough to cover all kinds of beliefs such as agnosticism, atheism, rationalism etc. However, if the majority of the members are in favour of including a definition of the two terms in the draft declaration, we think that the definition suggested by Austria appears to be more suitable for adoption. If it is intended to further clarify the term "belief" so as to leave no room for doubt it could be defined in the following words:

"For the purpose of this declaration, the term "belief" means all kinds of beliefs, religious, non-religious or irreligious, including agnosticism, free thought, atheism and rationalism."

TEXT OF THE ARTICLES AS PREPARED BY THE WORKING GROUP:

1. General

We generally agree with the principles embodied in the text of articles prepared by the Working Group. Part III of Indian Constitution guarantees to all persons the fundamental right to manage freedom of religion (Article 25) the freedom to manage religious affairs by every religious denomination or any section thereof (Article 26), freedom as to payment of taxes for promotion of any particular religion (Article 27) and freedom as to attendance at religious instruction or religious worship in certain educational institutions.

2. Observations on Draft Articles

Article I and II: No comments

Article II paragraph 2

Paragraph 2 of this article may be redrafted as follows:

"Everyone shall have, under the constitution or the laws of his state, the right to effective remedial relief by the competent national tribunals against any acts violating the rights set forth in this Declaration or any acts of discrimination he may suffer on the grounds of religion or belief."

Article IV:

We have no objection to the inclusion of this article in the draft Declaration. The words "access to" in paragraph 2 appears to be redundant and may be deleted.

Article V:

We have no objection to the inclusion of this article in the draft Declaration. It is suggested that in order to bring out the intention clearly, the words "by legal guardians" may be added at the end of the words "duly taken into account".

Article VI:

We have no objection to this article and to the proposal of the United States of America in the Appendix to add three new articles after this article.

PROPOSAL OF THE UKRAINIAN SOVIET SOCIALIST REPUBLIC FOR NEW ARTICLE

We have no objection to the proposed new article.

PROPOSAL OF THE USSR

1. We do not consider it necessary to add a new preambular paragraph regarding freedom of atheistic beliefs.
2. We have no objection to the proposal for a new article concerning the prohibition of the use of freedom of religious and non-religious belief for purposes of political or electoral campaigns or the kindling of hatred between peoples and different religions and national groups.
3. The third proposal for a new article is worded in general terms and is rather vague. It may be deleted.

COMMENTS ON THE PRELIMINARY DRAFT OF A UNITED NATIONS DECLARATION ON THE ELIMINATION OF ALL FORMS OF RELIGIOUS INTOLERANCE SUBMITTED BY THE SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES

Our comments on the text of Articles I to VI of the Sub-Commission's draft as revised by the Working Group, have been given above. We have no objection to the adoption of articles VII to XIV of the Sub-Commission's draft. As regards Article XIV(3), it may be stated that some provisions of the Indian Penal Code, 1860, have laid down punishments for (1) inducing or defiling places of worship with intent to insult the religion of any class (section 295); (2) deliberate and malicious acts intended to outrage religious feelings of any class of citizens of India by insulting its religion or religious beliefs (Section 295 A); (3) disturbing religious assembly (296); (4) trespassing on burial places etc. (Section 297); and (5) using expressions with the deliberate intent to hurt religious feelings. (Section 298).

ISRAEL

The Government of Israel wishes to stress, as it has in the past, its profound interest in this problem, and its great desire that a final report be produced, and a Draft Declaration accepted, that would do justice to all means of eliminating religious intolerance and fostering religious freedom.

The Government of Israel commends the efforts of the Working Group established by the Commission on Human Rights to prepare a Draft Declaration. The Working Group had insufficient time to devote itself to several major aspects of the problem, and it is assumed that its report is to be regarded as an interim and incomplete one, to be considered together with the Draft submitted by the Sub-Commission on Prevention of Discrimination and Protection of Minorities, which is also annexed to the Secretary-General's Note.

The Government of Israel believes that it is essential for a Draft Declaration to emphasize collective or group rights in religious matters, as well as individual rights. Frequently, it is precisely such communal rights that make it possible for the individual to enjoy his religious rights. In the preliminary comments of the Government of Israel on the Sub-Commission's Draft Declaration, in Document E/CN.4/Sub.2/235/Add.2 (12 February 1964), it was stated that:

"No person can enjoy religious rights and freedoms fully unless he is entitled to practice his faith in association with his coreligionists and to maintain religious communities and institutions, on both regional and State levels. These communities and institutions must needs be able to enjoy religious rights and freedoms on a collective basis, in addition to the rights of their individual members.

"Any attempt to curtail the collective religious rights and freedoms of such communities and institutions is a form of religious intolerance."

In this respect, therefore, the Government of Israel finds acceptable the formulations of the Preliminary Draft submitted by the Sub-Commission on Prevention of Discrimination and Protection of Minorities, many of which aim at securing the rights of both the individual and the religious collective or community.

The Government of Israel also notes with approval Articles V to IX inclusive of the Sub-Commission's Preliminary Draft, which detail a number of specific rights, and thus give definition and precision to broad principles which might otherwise be too abstract.

A strong, detailed Draft Declaration, if generally adopted, would have great moral force and an important effect on international and national legislation and practice.

The Government of Israel would reserve the right to make such additional comments on the sub-Commission's Draft declaration and the Report of the Working Group, as may be appropriate when these documents are subjected to further discussion.

IVORY COAST

I - General

By its very nature, an act of faith implies full and complete freedom. All human beings who follow their own conscience have a natural right to true religious freedom. No human being may be the victim of any intolerance whatsoever, because he who in all good faith obeys a supreme Being follows the dictates of his conscience.

Religious freedom would be but a hollow sounding phrase if men did not have the right, in following their conscience, to manifest their beliefs by outward acts, in public or in private. However, the right of each individual to do what his conscience bids him does not entitle him to infringe the rights and duties of others. Accordingly, it is the duty of the State to obviate insoluble conflicts, by subordinating this freedom to the common good, and guaranteeing freedom of conscience and worship to all, with no other limitation than the maintenance of public law and order.

A brief note on religious conflicts

With the passing of the centuries, religious intolerance has gradually given way to tolerance, due to:

- (1) a more highly developed religious conscience; and
- (2) historical events (political and social), such as revolutions, the acquisition of independence, emancipation, which little by little have engendered acuter awareness of human equality, dignity and rights. Unfortunately, this has not always been the case.

While religion constitutes an extremely strong social bond, whose mission it is to draw men together, it may, as a result of wrong interpretation or excessive fanaticism, become an instrument of division, to the extent of unleashing a holy war.

A few examples may be quoted:

- The Inquisition of the Middle Ages;
- The Crusades from the 11th to the end of the 14th century;
- The Wars of Religion of the 16th and 17th centuries.

Accordingly, the Provisional Commission deems that the United Nations' draft declaration on the elimination of all forms of religious intolerance comes at a timely moment, when many countries are still practising religious intolerance in the name of some quite unspecified religious ideas.

II - Observations

After considering the text of the articles drafted by the Working Group set up by the Commission on Human Rights, the Provisional Commission has made the following observations:

Article I

Since a belief may be religious or non-religious, the Commission considers that to retain the parenthesis would be tantamount to the possibility of deleting the words "religious or non-religious", which would deprive the word "belief" of all force and meaning. Accordingly, it would prefer to delete the phrase in brackets.

Article II

Since discrimination between human beings on the ground of religion or belief is an offence to human dignity, the Commission noted with satisfaction that it is condemned as being a denial of the principles of the Charter of the United Nations, as a violation of human rights and fundamental freedoms, and as an obstacle to friendly and peaceful relations among men and nations.

The Commission considers it necessary to add the word "men", for it believes that this obstacle to friendly relations concerns in the first place men, and in the second, nations.

Article III

As in the case of Article I, the Commission proposes the deletion of the bracketed portion so that the fundamental rights and freedoms as defined by the Constitution or by law appear as an essential complement to paragraph 2 of this article. To ensure constant harmony with the Constitution, the Commission made a point of stressing its concern for the maintenance of public law and order.

Article IV

This article was approved unanimously by the Commission because, although these principles are embodied in nearly all constitutions, there are still countries which give pre-eminence to a particular religion, and this may give rise to religious intolerance.

Article V

The first paragraph of this article occasioned some discussion, as some members of the Commission wished to qualify the word "child" by the word "young", or to state "a child who has not yet attained the age of discretion".

Since it emerged that the age of discretion is not the same in all countries, the Commission did not consider that such an addition would serve any useful purpose.

The Commission emphasized with satisfaction that paragraph 2 of this article will result in changes in the rites, practices and prohibitions of certain religions, when it is remembered that, in some religions, the followers of Christ of Montfavet (Jehovah's Witnesses) prefer, for instance, the laying on of hands when their children are ill, to sending them to a doctor.

To give another example, in some religions children are made to become monks at the early age of six or seven years.

Article VI

With a view to observing the spirit of Article V, the Commission noted a certain discrepancy between the fourth sub-paragraph of Article VI and Article V. They trust that freedom to observe the rites or customs of the religion or belief of each individual is not contrary to the spirit of the resolution and in particular to Article II and paragraph 2 of Article V.

Lastly, the Commission is of the opinion that, despite the excellent work accomplished, the task is not yet complete. Thus, to prevent one religion being favoured to the detriment of another, the Provisional Commission proposes the addition of a seventh Article concerning the separation of Church and State, believing it necessary that the State should be separated from religions and that protection by the State of freedom of belief and religion should not be used for political ends. Furthermore, religious instruction should not be compulsory in public schools.

The general framework of this article having thus been defined, the Commission proposes the following wording:

Article VII

1. "With a view to ensuring full freedom of conscience, the Church or religions shall be separated from the State, and such freedom shall not serve as material for propaganda."
2. "The State shall guarantee freedom of worship and accord protection to places of worship."

LEBANON

The texts of the three enclosures annexed to the aforementioned letter from the Secretary-General of the United Nations would appear to be perfectly acceptable to the Lebanese Government.

Any divergence of view which may have arisen within the Drafting Committee concerning certain details in the wording of the draft convention are not, in its view, of such importance as to constitute an obstacle to the adoption of a final text.

Considering the progress which the drafting of such a convention marks in the two fields of international law and internal public law, and the urgent need for such progress, any divergence of view should be considered of entirely secondary importance compared with the paramount need to translate into a form of positive law the fundamental principles on which the draft convention is based.

MEXICO

1. The Government of Mexico accepts the provisions concerning human rights contained in the United Nations Charter and is also in favour of those in the Universal Declaration of Human Rights, as it indicated at the third United Nations General Assembly.

2. Both documents, that prepared by the Sub-Commission and the one produced by the working group, represent a first attempt to deal with the matter: the document prepared by the Sub-Commission constitutes a preliminary draft and the latter, which the Commission on Human Rights was not yet able to consider, as is made clear in the first operative paragraph of its resolution 2 (XX), is only a report of the Working Party.

3. It follows, therefore, that since both documents are preliminary steps in the preparation of a draft declaration on the elimination of all forms of religious intolerance, the Government of Mexico will not refer in sequence and in detail to the proposed articles but will instead confine itself to general ideas on the question.

4. Freedom to profess any religion must be fully guaranteed, with the sole proviso that the acts of worship in question do not constitute a crime or offence punishable by the law in force in the country, a condition that is essential in view of the obligation of every Government to preserve public order.

5. As a general measure also it must be laid down that all religious groups must be permitted on a footing of equality, without discrimination against any one of them on the part of the Government or private persons.
6. Freedom of conscience can only be guaranteed, moreover, in a society which considers religion to be the private affair of each individual and in which the church - or any religious institution, whatever its denomination - is separate from the State and the teaching of churches or such institutions.
7. At the same time, in order to respect and safeguard that right of each individual, the members of a religious sect - or the State, as the case may be - must not be allowed to coerce private individuals to obtain either their adhesion to or their support of a religious movement.
8. Public education controlled by the State must remain separate and dissociated from any religious doctrine; only in this way would it be possible to ensure equality between religious groups and at the same time avoid any form of discrimination between them.
9. Lastly, as has been recognised in other international instruments, a United Nations declaration on the elimination of all forms of religious intolerance must lay down that if certain rights are conceded to individuals, the latter must also concomitantly have duties to the community so that all members of society may realize the free development of their personality which the Universal Declaration of Human Rights postulates. Therefore, a declaration on the elimination of all forms of religious intolerance must include an article similar to article 29 of the Universal Declaration of Human Rights, which states: "In the exercise of his rights and freedoms, 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".

THE NETHERLANDS

The Netherlands Government has an unrelenting interest in the preparation of a declaration and a convention on the elimination of religious intolerance. The Netherlands Government notes with satisfaction that the Sub-Commission on Prevention of Discrimination and Protection of Minorities and the Commission on Human Rights made praiseworthy efforts in elaborating a number of draft articles which form a useful basis for the final text of the declaration. The Netherlands Government made already some general observations as to the contents of the proposed declaration earlier this year (E/CN4/sub2/235/Add.1) and will confine itself this time to some questions in connection with the draft articles transmitted to the Member Governments for comment.

1. As can be concluded from the report of the working group established by the Commission on Human Rights one of the fundamental issues is the meaning of the term "belief" (in French "conviction"). In the opinion of some members of the working group this term did not seem sufficiently wide as to cover non-religious beliefs. It should be noted however, that the travaux préparatoires of article 18 of the Universal Declaration of Human Rights give ample evidence that the word "belief" was inserted to protect among others those who do not adhere to a religious belief. A convincing example in support of this contention is the substitution of the word "croyance" which has a religious connotation by the neutral term "conviction" in the French text of the just mentioned article during the final stage of its drafting (Official Records of the Third Session of the General Assembly, Part I, Third Committee, p.p. 397 and 405). The Netherlands Government is of the opinion that the expression "religion or belief" or in French "religion ou conviction" is so comprehensive as to protect equally the rights of persons who profess a religion and of those who maintain a non-religious belief. This expression is used in article 18 of the Universal Declaration and in article 18 of the draft Covenant on Civil and Political Rights which was unanimously adopted by the Third Committee of the General Assembly at its fifteenth session. For the sake of consistency with already accepted terminology the expression "religion or belief" should also be used in the declaration on the elimination of religious intolerance.

2. The elimination of religious intolerance is to be achieved in two respects. First of all the right to freedom of religion or belief shall be fully protected and secondly discrimination on the ground of religion or belief shall be eradicated.

Both elements viz., the freedom of religion or belief and the principle of non-discrimination should be covered by the proposed declaration. The Netherlands Government notes with approval that in the preliminary draft submitted by the Sub-Commission on the Prevention of Discrimination and Protection of Minorities as well as in the draft articles prepared by the working group both these elements are duly taken into account. As far as the structure of the declaration is concerned it is advisable to state at the very outset of the proposed declaration the right to freedom of thought, conscience and religion, since this right, as defined in article 18 of the Universal Declaration, is the source of the draft declaration on the elimination of religious intolerance. For this reason the Netherlands Government supports the decision of the working group to place the article concerning the right of thought, conscience and belief at the head of the substantive part.

3. The declaration on the elimination of religious intolerance should be, in the opinion of the Netherlands Government, a statement of important principles, which is to serve as a constructive international standard for the protection of freedom of religion or belief as well as for the eradication of discrimination based on religion or belief. In drafting such an international standard too much detail should be avoided, since a detailed enumeration of the various aspects of freedom of religion or belief may jeopardize the acceptance or even the completion of the declaration and may create the false impression that the declaration is a complete elaboration of this freedom. Comparing the extensive text of article VI of the preliminary draft submitted by the Sub-Commission and the short but comprehensive text of article VI prepared by the working group, the Netherlands Government, though ready to accept in principle the former text, prefers the latter one for the reason just mentioned. The Netherlands Government favours likewise a concise text of article V concerning the question of the upbringing of children. It seems adequate to state as a basic principle that parents or legal guardians have the right to decide upon the religion or belief in which a child should be brought up. A further elaboration of this principle may result in the use of phrases which are open to various interpretations of a subjective character.

4. Special attention should be paid to the growing international contacts between religious communities and the international character of some of these communities. The Netherlands Government favours the inclusion of a provision which recognizes this fact and serves to promote the international functioning of these communities.

RWANDA

The Republic of Rwanda proposed the following amendments in the preliminary draft declaration:

1. The fifth preambular paragraph should be amended to read as follows:

"Noting that the disregard of human rights and fundamental freedom through discrimination because of belief or religion and the denial of the right to freedom of thought, conscience and religion has brought untold sorrow to mankind by inflicting grievous suffering on those who were its victims and in injuring those responsible for them,"

i.e. by adding the words "belief or" and deleting the words "in the past".

2. In article VI, paragraph 2(ii) should provide for the rights of religious communities to belong to wider religious communities than national ones. Religious persuasion, through the very fact of its transcendental nature, cannot be subject to territorial control or restrictions which would place it at the mercy of temporal territorial authorities.

The text could therefore be amended to read: "(ii) Every religious community and institution has the right, in association with similar religious communities and institutions, to form wider federations or communities on a local, regional, national or international basis."

i.e. by deleting the word "territorial" and adding the words "to form wider or communities" and the word "international".

3. Between article XI and article XII an article concerning the separation of the State from religious and ideological movements could be inserted, to read as follows:

"In order to safeguard the freedom of religious persuasion and non-religious beliefs there shall not be within a political society, any hierarchical link instituting a fusion of authority or any guardianship whatsoever, in law or in fact, between a religious community or an ideological movement on the one hand and the State on the other."

Since it is the modern tendency of States to integrate into their policy of social evolution the greatest possible number of elements of human life likely to contribute to that evolution, States in so doing must guarantee to respect the fundamental freedoms and rights of the human person just as he is, in his life in their own political society. In particular States must respect the religious persuasion of persons, since it represents the very meaning of their existence and

their condition as human beings. This religious persuasion must be respected in all its fundamental requirements: such as the right of parents to bring up their children and give them an education in conformity with their own religious persuasion, the right to a code of behaviour inspired by religion, not only in private but in public, the right to propagate a religious ideal".