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RIGHTS OF PERSONS BELONGING TO NATIONAL, ETHNIC,  
RELIGIOUS AND LINGUISTIC MINORITIES

Report of the open-ended working group set up by the Commission  
on Human Rights to consider the drafting of a declaration on the  
rights of persons belonging to national, ethnic, religious and  
linguistic minorities

Chairman-Rapporteur: Mrs. Zagorka Ilić (Yugoslavia)

I. INTRODUCTION

A. Establishment of the working group

1. By its resolution 1986/60 of 13 March 1986, the Commission on Human Rights decided to establish at its forty-third session an open-ended working group to continue consideration of the revised draft declaration proposed by Yugoslavia (E/CN.4/Sub.2/L.734), taking into account all relevant documents.

2. The working group held seven meetings on 16-20 and 24 February and 6 March 1987.

3. At its first meeting on 16 February, the group unanimously elected Mrs. Ilić (Yugoslavia) as its Chairman-Rapporteur.

B. Documentation

4. The working group had before it the following documents:

- (a) Provisional agenda (E/CN.4/1987/WG.5/L.1);
- (b) Report of the open-ended working group set up by the Commission on Human Rights at its forty-second session to consider the drafting of a declaration on the rights of persons belonging to national, ethnic, religious and linguistic minorities (E/CN.4/1986/43);
- (c) Compilation of proposals by Governments and non-governmental organizations for the articles of the revised draft declaration, prepared by the Secretariat (E/CN.4/1986/WG.5/WP.1);
- (d) Working paper submitted by China (E/CN.4/1987/WG.5/WP.2);
- (e) Working paper submitted by the Four Directions Council (E/CN.4/1986/WG.5/WP.2); and
- (f) Compilation of proposals concerning the definition of the term "minority", prepared by the Secretariat (E/CN.4/1987/WG.5/WP.1).

#### C. Background information

5. At its thirty-fourth session in 1978, the Commission established an open-ended working group, pursuant to resolution 5 (XXX) adopted by the Sub-Commission on Prevention of Discrimination and Protection of Minorities. In that resolution, the Sub-Commission recommended that the Commission consider drafting a declaration on the rights of members of minorities, within the framework of the principles set forth in article 27 of the International Covenant on Civil and Political Rights. A draft declaration on the rights of persons belonging to national, ethnic, religious and linguistic minorities proposed by Yugoslavia (E/CN.4/L.1367/Rev.1) was submitted to the working group to serve as a basis for discussion.
6. At each subsequent session of the Commission an open-ended working group has been established to continue work on the drafting of a declaration.
7. Following Commission resolution 37 (XXXVI) of 12 March 1980, a revised and consolidated text of the draft declaration (E/CN.4/Sub.2/L.734) was prepared by Mr. Tosevski, Chairman-Rapporteur of the working group established at the Commission's thirty-sixth session, and was placed before the Commission at its thirty-seventh session in 1981. This revised draft declaration formed the basis of the discussions of the working groups set up by the Commission at its thirty-seventh and subsequent sessions. At each of these sessions, the working group agreed that it would undertake a first reading of the draft and that such agreement as could be reached during this first reading would be of a preliminary character. Several amendments and alternate texts have been proposed by States and non-governmental organizations in the course of the working group's deliberations. At its prior sessions, the working group has provisionally adopted the title, the preamble and article 1 of the draft declaration (see annex I).
8. By resolution 1984/62 of 15 March 1984, the Commission requested the Sub-Commission to prepare a text defining the term "minority", taking into account studies already carried out in this field, comments and views provided by Governments, as well as discussions held during the sessions of the working group and other relevant documents. At its thirty-eighth session, the

Sub-Commission considered a report prepared by Mr. J. Deschênes on the question of the definition of the term "minority" (E/CN.4/Sub.2/1985/31 and Corr.1) and adopted resolution 1985/6 of 28 August 1985, by which it decided to transmit to the Commission Mr. Deschênes' study and proposal concerning a definition of the term "minority", together with the summary records of the discussions thereon by the Sub-Commission (E/CN.4/Sub.2/1985/SR.13 to 16). At its 1986 session, the working group "agreed to postpone the consideration of the question of definition until a later stage and to continue with the first reading of the operative articles of the draft declaration" (E/CN.4/1986/43, para. 12).

## II. DRAFT ARTICLES DISCUSSED

### A. First reading of draft article 2

9. At the outset of its deliberations on draft article 2, the working group had before it the text of the draft declaration proposed by Yugoslavia (E/CN.4/Sub.2/L.734), a series of suggested amendments to that text (E/CN.4/1986/WG.5/WP.1), and a composite text considered by the working group at its latest session (E/CN.4/1986/43, para. 28). In the course of this year's session, additional proposals relating to draft article 2, informally submitted by, inter alia, Austria, Bulgaria, Canada, Iraq, Senegal and the United States of America, as well as the Four Directions Council, were considered by the working group at length.

10. Based on the many proposals and views expressed and drawing on a general agreement which emerged during the debate, the working group adopted at its 6th meeting on 24 February 1987, provisionally in first reading, a text produced by an informal drafting group. Draft article 2, as it now stands, appears in annex I to this document.

11. In the course of the debate on draft article 2, objections were raised to the use of the word "propaganda" in paragraph 1. It was observed that this term was not clearly and not easily defined, that it was as such not likely to threaten, for example, anybody's existence, and that it could conflict with the freedom of expression. The focus should therefore be on words like "acts", "activities" or "conduct" which were more likely to produce damaging consequences and which could for that matter implicitly include propaganda. The remark was also made, although not insisted upon, that the word "propaganda" should be placed in square brackets as long as the reference to "freedom of expression" stayed in square brackets. On the other side, attention was drawn to the use of the same word in a similar context, in article 9 of the United Nations Declaration on the Elimination of All Forms of Racial Discrimination 1/ and in article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination.

12. The concepts of "existence" and "identity" drew a number of comments. The view was expressed that paragraph 1 came close to the Convention on the Prevention and Punishment of the Crime of Genocide which need not be repeated in the draft declaration. The question was also raised how and even whether identity as such could be threatened. In this connection, a proposal was made to include in paragraph 1 the protection of "the equal status of persons belonging to minorities". But there was also the view that the "existence"

and "identity" were fully justified because the groups in question needed protection, not only against physical destruction, but also against cultural destruction, or ethnocide.

13. With regard to the mentioning of constitutional processes and treaties at the beginning of paragraph 2, it was observed that these references were really not needed in a declaration while there would be good reason to include them if the working group were drafting a convention. The opinion was also expressed that the reference to constitutional processes could hamper the ultimate goal of the declaration by opening a way for States not to take the required measures. Furthermore, it was pointed out that in some countries the two phrases could be mutually inconsistent. As a result of these reservations, the same delegates felt that paragraph 2 should begin with the words "All States ...".

14. The question of individual and collective rights continued to attract many interventions by representatives. On the one hand, it was stated that the collective dimension of the rights to be established would have to be recognized throughout the draft because of the very nature of the issues under discussion, such as those relating to existence and identity. In this connection, reference was made to the group element in article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination. On the other hand a strong preference was expressed for the individual approach which was said to be based upon the general orientation of existing human rights instruments. The third possibility, namely the recognition or balancing of both dimensions, also received support by some delegations with express reference to the wording of article 27 of the International Covenant on Civil and Political Rights. One possible combination mentioned was the granting of certain group rights while the prevention of discrimination would be seen in the individual context. For these reasons, in the text of draft article 2, as provisionally adopted, the words "persons belonging to" were placed in square brackets in the same way as they now stand in the draft preambular paragraphs and draft article 1.

15. The need for consistency between the draft declaration and other international human rights instruments was underlined. It was also stressed that the working group in its drafting work should pay close attention to General Assembly resolution 41/120 of 4 December 1986, entitled "Setting international standards in the field of human rights", especially with regard to the existing body of human rights law which need not be rewritten, paraphrased or repeated for the purposes of the draft declaration. In this connection, it was pointed out that draft article 2, as provisionally adopted, contained essentially three new elements which the group should focus upon for its second reading of the article. These new elements were said to relate to the phrases "directed against minorities" which provided a possible way out of the dilemma concerning individual and collective rights; "threat to identity"; and "development of their own characteristics". Some other elements of draft article 2, such as the reference to "freedom of expression or association", were therefore said to be superfluous or should at least be preceded by the words "inter alia".

B. First reading of draft article 3

16. The working group had before it the text of article 3 as it appeared in the revised draft declaration proposed by Yugoslavia (E/CN.4/Sub.2/L.734), a series of suggested amendments to that text (E/CN.4/1986/WG.5/WP.1), and a proposal submitted by China before the current session (E/CN.4/1987/WG.5/WP.2). In addition, during the session, Argentina presented a new text to the working group. All of these texts are reproduced in annex II of this report.

17. In a brief debate on draft article 3, it was emphasized that the wording and contents of the article would have to be brought into line with the articles already adopted provisionally. "Members of" minorities should thus read "persons belonging to" and, since the title of the declaration referred to national, ethnic, religious and linguistic minorities, paragraph 1 should end with the words "without any discrimination".

III. SCHEDULE OF WORK

18. It was suggested that the working group could make more progress at the Commission's forty-fourth session if additional meetings could be scheduled, preferably during the first two weeks of the session. In this regard it was asked whether the working group might be able to take advantage of one or two of the otherwise unused afternoon meetings scheduled for the first week of the plenary. The view was expressed that such full meetings would be more efficient, from the perspectives of productivity as well as cost, than a similar number of hours scattered over two or three weeks of the Commission's session. The observation was also made that a two-day pre-session working group might be taken as a possible goal for the Commission's forty-fifth or later sessions.

19. With regard to the format of the working group's report to the forty-third session of the Commission, it was agreed that all of the remaining proposals made by Governments as well as non-governmental organizations, for draft article 3 and subsequent articles, be included as annex II to the report, in order to facilitate their advance consideration by members of the working group and to encourage the substantive and constructive use of the working group's time during the Commission's forty-fourth session.

IV. ADOPTION OF REPORT

20. At its seventh meeting, on 6 March 1987, the working group adopted this report.

Note

1/ General Assembly resolution 1904 (XVIII) of 20 November 1963.

Annex I

TEXT OF THAT PART OF THE DRAFT DECLARATION ON WHICH  
PRELIMINARY AGREEMENT HAS BEEN REACHED SO FAR

Draft declaration on the rights of persons belonging to  
national or ethnic, religious or linguistic minorities

The General Assembly,

Reaffirming that one of the basic aims of the United Nations, as proclaimed in its Charter, is to promote and encourage respect for human rights and for fundamental freedoms for all, without distinction as to race, sex, language or religion,

[Reaffirming] [Reiterating] [Declaring] faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small,

Desiring to promote the realization of the principles [concerning the rights of] [persons belong to] [minorities] which form the basis of the Charter of the United Nations, the Universal Declaration of Human Rights, the Convention on the Prevention and Punishment of the Crime of Genocide and the International Convention on the Elimination of All Forms of Racial Discrimination as well as other relevant international instruments [that have been adopted at the universal or regional level and those concluded between individual States Members of the United Nations],

Inspired by [Based on] the provisions of article 27 of the International Covenant on Civil and Political Rights concerning the rights of persons belonging to ethnic, religious or linguistic minorities,

Considering that the promotion and protection of the rights of persons belonging to [national or] ethnic, religious or linguistic minorities contribute to the political and social stability of States in which they live,

Confirming that friendly relations and co-operation among States, which take place in the spirit of the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, contribute to international peace and security and to the creation of more favourable conditions for the realization and promotion of human rights, including the rights of [persons belong to] [national or], ethnic, linguistic and religious minorities,

Emphasizing that the constant promotion and realization of the rights of persons belonging to minorities, as an integral part of the development of society as a whole and within the constitutional framework, would in turn contribute to the strengthening of friendship and co-operation among peoples and States,

Bearing in mind the work done so far within the United Nations system, in particular the Commission on Human Rights, the Sub-Commission on Prevention of Discrimination and Protection of Minorities as well as the bodies established pursuant to the International Covenants on Human Rights and other relevant

international human rights instruments on promoting and protecting the rights of persons belonging to [national or] ethnic, religious or linguistic minorities,

Recognizing the need to ensure even more effective implementation of international human rights instruments relating to the rights of persons belonging to [national or] ethnic, religious or linguistic minorities,

Proclaim this Declaration on the Rights of Persons Belonging to [National or] Ethnic, Religious or Linguistic Minorities:

Article 1

1. [Persons belonging to] [national or] ethnic, linguistic and religious minorities (hereinafter referred to as minorities) have the right to respect for, and the promotion of, their ethnic, cultural, linguistic and religious identity without any discrimination.

2. [Persons belonging to] minorities have the right to life, liberty and security of person and all other human rights and freedoms without discrimination.

Article 2

1. In accordance with the Charter of the United Nations and other relevant international instruments, [persons belonging to] minorities have the right to be protected against any activity, including propaganda, [directed against minorities] which:

(i) may threaten their existence [or identity];

(ii) [interferes with their freedom of expression or association] [or the development of their own characteristics]; or

(iii) otherwise prevents their full enjoyment and exercise of universally recognized human rights and fundamental freedoms.

2. In accordance with their respective constitutional processes [and in accordance with the relevant international treaties to which they are parties], all States shall undertake to adopt legislative or other appropriate measures to prevent and combat such activities, with due regard to the principles embodied in this Declaration and in the Universal Declaration of Human Rights.

Annex II

PROPOSALS RELATING TO THE REMAINING ARTICLES OF THE DRAFT  
DECLARATION FOR CONSIDERATION BY THE WORKING GROUP

Draft article 3

- (1) Article 3, as it appears in the revised draft declaration proposed by Yugoslavia (E/CN.4/Sub.2/L.734):

"1. Members of minorities shall enjoy all human rights and fundamental freedoms without any discrimination as to national or ethnic origins, language, religion or sex.

2. For the purpose of realizing conditions of equality and comprehensive development of minorities, it is essential to create favourable conditions and to take measures which will enable them to freely express their characteristics and to develop their education, culture, language, traditions and customs and to participate on an equitable basis in the cultural, social, economic and political life of the country in which they live.

3. Members of minorities should have the right to express and develop cultural and other social links with the people of their origin."

- (2) Bulgaria (E/CN.4/1983/66, para. 24 (b)):

To add, in the second line of paragraph 2, the words "persons belonging to" before the word "minorities"; to add, in the third line, the words "when the circumstances so warrant", after the word "measures"; to add, in the fifth line, the words "in conformity with the law" after the word "customs".

- (3) China (E/CN.4/1983/66, para. 24 (b)):

To add the following sentence at the end of paragraph 3: "These contacts and activities shall be within the limits of the laws of the countries in which they live."

- (4) Cyprus (E/CN.4/1984/42, page 2):

"1. For the purpose of realizing conditions of equality and comprehensive development of persons belonging to minorities, it is essential to create favourable conditions and to take measures where the circumstances so warrant which will enable them to express freely their characteristics and to develop their education, culture, language, traditions and customs and to participate on an equitable basis in the cultural, social, economic and political life of the country in which they live.

2. Members of minorities should have the right to express and develop cultural and other social links with the people of their origin."



(5) Mexico (E/CN.4/1984/42, page 4) amending paragraph 2 as follows:

2. Members of minorities should have the right to express and develop cultural, social and political links with the people of their origin and with other minorities, always provided that the laws of nation States are respected."

(6) China (E/CN.4/1987/WG.5/WP.1):

"1. Members of minorities shall enjoy equally all the human rights and fundamental freedoms as the other citizens of the country in which they live without any discrimination as to national or ethnic origins, language, religion or sex."

(7) Argentina (text submitted at the forty-third session of the Commission):

"1. Persons belonging to minorities shall enjoy all human rights and fundamental freedoms without any discrimination as to national or ethnic origin, language, religion or sex.

2. All States shall undertake, whenever necessary, to create conditions permitting the full development of minorities, and their culture, traditions, customs, language and education, which would enable them to participate in the economic, social, cultural and political life of the country where they live."

Draft article 4

(1) Article 4, as it appears in the revised draft declaration (E/CN.4/Sub.2/L.734):

"1. The development of contacts and co-operation among States and the exchange of information and experience on the achievements and the realization of the rights of minorities in educational, cultural and other fields create favourable conditions for the promotion of the rights of minorities and for their general progress.

2. States Members of the United Nations are invited to take the needs of minorities into account in developing their mutual co-operation, especially in the fields of education, culture and related areas of particular importance for minorities."

Draft article 5

(1) Article 5, as it appears in the revised draft declaration (E/CN.4/Sub.2/L.734):

1. In ensuring and promoting the rights of minorities, strict respect for the sovereignty, territorial integrity, political independence and non-interference in the internal affairs of those countries in which minorities live should be observed.

2. Respect for the aforementioned principles shall not prevent the fulfilment of the international commitments of States Members of the United Nations in relation to minorities. Member States shall fulfil in good faith the commitments they have assumed under international treaties and agreements in which they are parties and under other international instruments.

3. The present Declaration shall not have the effect of diminishing the rights which minorities may enjoy by virtue of treaties or agreements concluded between two or more States, where such rights are not contrary to the letter and spirit of this Declaration."

(2) United Kingdom (E/CN.4/1984/42, page 7) amending paragraph 3 as follows:

3. "This Declaration shall not prejudice the enjoyment of rights accorded by conventional and customary international law to all individuals even where the present Declaration does not recognize such rights or recognizes them to a lesser extent."

(3) United States of America (E/CN.4/1983/66, para. 27):

In the second line of paragraph 1, replace "non-interference" by "non-intervention".

Draft article 6

(1) Article 6, as it appears in the revised draft declaration (E/CN.4/Sub.2/L.734):

"Member States of the United Nations shall endeavour, depending on their specific conditions, to create favourable political, educational, cultural and other conditions and to adopt adequate measures for the protection and promotion of the rights of minorities proclaimed in this Declaration."

(2) Cyprus (E/CN.4/1984/42, page 3):

In the second line, replace "conditions" by "resources".

(3) India (E/CN.4/1983/66, para. 30):

In the second line, replace "conditions" by "resources".

(4) Venezuela (E/CN.4/1985/24, page 3):

The following should be added at the end of the article "for which purpose they shall promote the acquisition of the material resources required for the implementation of policies designed to achieve the realization and practical verification of the principles proclaimed in this Declaration".

Draft article 7

(1) Four Directions Council (E/CN.4/1986/WG.5/WP.2):

1. In States where there are ethnically, linguistically or religiously distinct geographic regions, measures should be taken to ensure that each region enjoys

(a) the right to influence the character and direction of regional development, and

(b) a meaningful opportunity to participate in and influence the decisions affecting it, through national institutions and, wherever possible, the development of regional social, economic and political institutions.

2. National programmes to equalize regional economic disparities should not encourage or require changes in the ethnic, linguistic or religious character of regions.

3. Programmes of international economic co-operation and financial assistance should respect these principles and the freely expressed wishes of the people in the regions affected.