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PROTECTION OF MINORITIES

Possible ways and means of facilitating the peaceful and constructive solution of problems involving minorities

Second progress report submitted by Mr. Asbjørn Eide

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Introduction

A. Problems

1. As requested by the Sub-Commission in its resolution 1989/44, the present study is intended to report on national experiences regarding peaceful and constructive solutions of problems involving minorities. Guidelines have been adopted to determine what solutions are to be considered peaceful and constructive.

2. During the preparation of the report it has become increasingly obvious that a successful search for peaceful and constructive solutions depends not only on legal and administrative arrangements. No constitutional device, however sophisticated its content; no territorial division, however appropriate from a technical point of view; no sharing of power, however liberal and well intended, can save societies from destructive conflicts if the parties do not want to behave responsibly and rationally towards each other. The sudden escalation of violence of the past months and years has brought this home to us.

3. Since the Sub-Commission discussed the first progress report (E/CN.4/Sub.2/1990/46), the world has seen a proliferation of conflicts causing tremendous human suffering and intensified hatred, involving many kinds of nationalities and minorities. Some members of the groups concerned do not see themselves as minorities but as peoples entitled to self-determination rather than minority protection. While this is not a study on self-determination, the line between "minority" and "people" has become increasingly blurred and has to be addressed.

4. Sadly, once such ethnic conflicts pass the first threshold from non-violence to violence, it is extremely difficult to reverse the process. The action-reaction process engulfs even those who were initially moderate and preferred dialogue and cooperation to confrontation. When those near to them are killed or maltreated or their houses burned and destroyed, their moderation often gives way to hatred.

5. It would be excessively legalistic and naive simply to compare national legislation with regard to minorities on the assumption that perfect models could be found which could prevent the eruption of violent conflicts. Yugoslavia is a case in point. The addendum to this report includes the full response by Yugoslavia to the questionnaire, submitted in August 1991. Leaving aside the issue of Kosovo, it might appear that the solutions found in Yugoslavia were very sophisticated, comprehensive and aimed at a degree of national and ethnic pluralism unparalleled anywhere in the world. And yet the federation which was Yugoslavia has not only disintegrated, but national and ethnic strife has taken on unimaginable proportions.

6. The case of Yugoslavia, among others, indicates that many factors are at work, only a few of which are included in legal and administrative arrangements. Disintegration of established power structures, competition for

political positions in a period of unpredictable change, economic uncertainty and decline during complicated processes of transition - factors of this kind can turn thoughtful legal arrangements into scrap paper.

7. While it would be difficult to find constructive arrangements strong enough to withstand the most extreme challenges, including those cases of convulsive transitions seen in some parts of the world today, most situations are likely to be more manageable through appropriate and reasonable arrangements, provided the parties involved are prepared to cooperate to find and maintain such arrangements.

8. The search for peaceful and constructive solutions has to be examined within the framework of the internationally recognized human rights system. The foundation of that system is anchored in and dependent on the values stated in the Universal Declaration of Human Rights, article 1 of which states:

> "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood."

Showing moral and human conscience when dealing with other fellow beings, including persons holding other religious convictions or belonging to other ethnic or linguistic groups, and seeking to resolve any conflict in a spirit of fellowship - these are the requirements for a humane legal order.

9. Witnessing the conflict behaviour during recent months in several parts of the world, whether in Guatemala, Somalia, Sri Lanka, in what was formerly Yugoslavia, including Croatia and Bosnia-Herzegovina, or in many parts of the former Soviet Union, including the Transcaucasian region of Armenia, Azerbaijan and Georgia, it might appear that many actors on all sides have lost sight of the basic principles contained in the universal human rights system. Some participants in these conflicts appear not to be much endowed with reason and conscience towards each other. They certainly do not act towards one another in a spirit of fellowship and respect. The ways in which some of these conflicts have been handled during the last months are, therefore, neither peaceful nor constructive.

10. The problems which form the subject of this study are very severe. They must be addressed realistically. We should not, however, draw conclusions from the worst cases only. There are many instances of conflicts which have been resolved peacefully and consequently, attracted less attention. Whenever conflicts have been resolved, it was not only because technical solutions were found, but especially thanks to the will of the participants to cooperate in the pursuit of their common welfare.

11. Difficult conceptual and methodological issues arise in this process. Policy controversies are added to semantic difficulties because basic concepts have different meanings to different people. This is a major problem when pursuing a dialogue on these matters. Behind the semantic confusion lie very

different experiences and different preferred outcomes. Words are means of communicating values and preferences and since these differ, the understanding of the same words may also differ considerably.

12. We should be humble at this stage and recognize that there are no clear answers, no universal recipes, to the issues to be discussed in this study. What is a good approach in one part of the world may be a disaster in another part; what is a good solution at one point in time may be a catastrophe at another, even for the same society.

13. There is, however, a common framework on which to build. This is found in the six guidelines for this study; the guidelines are derived from the universal human rights system and from fundamental principles of international law and order, found in the Charter of the United Nations and spelled out in the Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations.

14. International law and order is based on the existence of nations. This is the very first word that should attract our attention; it is crucial to the analysis which follows. Five interrelated words will frequently reappear in this study: nation, State, society, group and minority.

15. The most ambiguous word is "nation". In some contexts it is nearly synonymous with "State": in practice, international law means law between States. More commonly, it refers to the people who constitute the citizens of a State. "What is your nationality?" is usually understood to mean: "what is your citizenship?" Article 15 of the Universal Declaration of Human Rights ("Everyone has the right to a nationality.") means that everyone has the right to a citizenship. In many places, however, the "nation" is a concept applying to a specially qualified, normally quite large ethnic group. The Serbian nation is understood to include not only Serbian citizens but also Serbians living in Croatia and Bosnia-Herzegovina; the Azerbaijani nation includes persons living in Azerbaijan, Armenia, Georgia and other places. Groups of the "nation" in that sense who live outside the country dominated by that nation are sometimes referred to as "national minorities". It depends, however, on where they live; the notion is more likely to be applied to groups living in neighbouring countries than in remote countries of immigration. Hungarians in the United States are likely to be called a national minority than Hungarians in Romania.

Ethno-nationalism and citizen nationalism

16. The semantic difficulties arise in part from the complicated and controversial ideology of nationalism. The basic tenet of nationalism can, for now, be described as follows: firstly, nations should be defined in ethnic terms, referring to a common past history, tradition, preferably also common language; secondly, nations should as far as possible have their own States, so that the society composing a State should as far as possible be congruent with the nation as defined in ethnic terms; thirdly, the loyalty of members of nations to that nation should override all other loyalties.

17. This notion of nationalism will here be referred to as ethno-nationalism. It is different from citizen nationalism, which holds that everyone who lives within the State should become part of the nation. This is the typical meaning of the term "nation-building" whereby different ethnic groups, often with different languages and traditions, should be welded together into one nation. In these cases the policies pursued can best be described by terms like fusion or assimilation.

18. Nationalism can be malignant or benign. An ideology will here be described as malignant when it is likely to lead to substantial violations of human rights. The most malignant manifestation of ethno-nationalism in recent history was fascism, particularly nazism from 1933 to 1945. There are undoubtedly also maligant forms of nationalism at work right now. Ethno-nationalism is more likely to be malignant than citizen nationalism, but a closer inspection is required in order to assess its nature in each case.

19. The kind of nationalism at work in any country determines the fate of minorities. The dominant feature of ethno-nationalism is to exclude, segregate or sometimes even to exploit on a basis of hierarchy; not surprisingly, the party which ushered in apartheid in South Africa was called the Nationalist Party, and apartheid was the ultimate approach to exclusion ("homelands"), segregation (the "Group Areas Act") and exploitation. Restrictive citizenship legislation is one feature of ethno-nationalism. On the other hand, the dominant feature of citizen nationalism, with its drive towards nation-building, is fusion, assimilation, or integration. It is anti-discriminatory in its basic philosophy, but its built-in tendency against pluralism can lead to policies which are perceived as discriminatory by members of minorities.

20. Neither of the two versions of nationalism exists in pure form. Usually there are combinations: ethno-nationalists may be willing to absorb some minority groups while rejecting others; the nation-builders, while accepting most groups as partners in the process of fusion or assimilation, may still exclude or marginalize members of other groups, sometimes on the grounds of race or religion.

21. Attention should be paid not only to the policy of the dominant majorities or the State, but also to that of minority groups. Some of these are just as ethno-nationalist, if not more so, than the majority in the State in which they live. If their ideology is ethno-nationalistic, they are likely to pursue claims for self-determination and in doing so purge members of other ethnic groups living inside their region, in order to have a "pure" ethnic composition, or they may seek to revise borders in order to join with a neighbouring State whose majority belongs to the same ethnic group.

22. Searching for peaceful and constructive solutions to situations involving minorities is tantamount to searching for the difficult and still uncharted passage between Scylla and Charybdis. It implies rejecting both exclusivist ethno-nationalism and enforced assimilation; it is a quest for ethnic, religious and linguistic pluralism, while maintaining respect for the territorial integrity and stability of States.

B. Progress

23. The mandate for the study was originally established by the Sub-Commission in its resolution 1989/44 and endorsed by the Commission on Human Rights in its decision 1990/105. It was inspired by a working paper prepared in 1989 by Mrs. Claire Palley (E/CN.4/Sub.2/1989/43), which also contained suggested guidelines to be used in the study. A progress report was presented in 1990 (E/CN.4/Sub.2/1990/46), outlining the approach and the suggested scope of the study, including a questionnaire to be sent to Governments, United Nations specialized agencies and regional organizations, and to non-governmental organizations in consultative status with the Economic and Social Council (ECOSOC). The first questionnaire was transmitted in the autumn of 1990.

24. In 1991, a preliminary report was presented (E/CN.4/Sub.2/1991/43), containing an analysis of the purpose and the guidelines for the study and a first review of responses to the questionnaire. At that time, replies had been received from 12 Governments, 1 specialized agency and 5 non-governmental organizations.

25. An updated questionnaire for the present report has elicited answers from 23 countries (including one corrigendum and an additional reply); from 4 specialized agencies and from 3 non-governmental organizations. Thus, in total there have been replies from 33 Governments, 5 specialized agencies and 8 non-governmental organizations. The texts of the replies are found in the addenda to this document. While there were some brief replies, some Governments had made a considerable effort to reply to the questionnaire, providing very helpful information giving considerable insight into the issues involved. Another source of information is being collected: the periodic reports of States under the human rights conventions, in particular under the International Convention on the Elimination of All Forms of Racial Discrimination and the International Covenant on Civil and Political Rights, as well as the reports by the relevant convention committees. Use will also be made of special reports prepared for the Commission on Human Rights under the special procedures that deal mainly with minority and ethnic issues. To make use of this information, however, more secretariat assistance is required than has so far been available.

26. Partly in connection with the preparation of the present report, the Special Rapporteur, as Director of the Norwegian Institute of Human Rights, has also conducted several seminars relating to minority issues in Central and Eastern Europe, including the former Union of Soviet Socialist Republics. The focus has been the situation in the Baltic countries, in Romania and in the Transcaucasian region.

27. The Special Rapporteur has also had the opportunity, in the first part of 1992, to visit Armenia and Azerbaijan twice to discuss with the authorities concerned possible ways of solving the Nagorno-Karabakh conflict, the second time as a member of a mission from the Conference on Security and Cooperation in Europe (CSCE). He also visited Georgia in May 1992 to examine minority issues there as part of a mission sent by the CSCE.

28. Furthermore, the Special Rapporter, at the request of the European Bank for Reconstruction and Development, visited Estonia and Latvia in February 1992 to discuss issues related to minorities and nationalities in those two countries, with special emphasis on the emerging citizen legislation which has considerable impact on the human rights situation.

Structure of the present report

29. The present report is divided into two parts: chapter I explores the scope and focus of the study and chapter II provides a first survey of the range of options available for peaceful and constructive solutions. Addendum 1 contains a compilation of extracts from answers to the questionnaire while Addendum 2 contains the text of the reply of the Government of Yugoslavia to the questionnaire.

30. Chapter II, outlining the options available in the search for solutions to minority issues, will form the main basis for the final report to be presented in 1993. Before that can be done, however, substantial work is required. A systematic review will be made of the approaches taken by States and their effect on the minority situations. This will be based not only on available and forthcoming responses to the questionnaire, but also on an analysis of States' reports and other available material. This will require substantial assistance, since a large number of reports has been presented over the years. It is necessary to carry out a relatively full examination, in order to avoid biases in the presentation.

31. An expert meeting is also planned for the end of 1992 to obtain views from experts on constitutional law and other experts from different parts of the world on the various models that have been examined and to broaden the range of possibilities that can be proposed.

32. The final report will not only present a survey of alternative models for the handling of situations involving minorities, but also explore the possibilities for the establishment or better use of recourse procedures and international assistance in conflict resolution. It will end by presenting a number of conclusions and recommendations.

I. PURPOSE AND SCOPE OF THE STUDY

33. This report explores ways of developing peaceful coexistence and cooperation among groups of different religious, ethnic, linguistic and national background, within the existing territories of sovereign and independent States.

34. The search for better solutions in the future requires a combination of two approaches, clarifying minority rights and their applicability in different minority situations and harmonizing minority concerns with the application of other basic principles of the international and national legal order.

35. A certain degree of consensus on the content of minority rights has been obtained through the work of the Commission on Human Rights, culminating in the adoption of resolution 1992/16, entitled "Rights of persons belonging to national, ethnic, religious and linguistic minorities", in which the Commission approved the text of the draft declaration on the subject submitted by its open-ended working group. The draft declaration has now been submitted to the Economic and Social Council for its approval and transmission to the General Assembly in 1992. Further reference to the draft declaration will be made below.

36. The core rights of minorities, according to the present consensus, are reflected in articles 1 and 2 of the draft declaration. Firstly, minorities have a right to exist and to preserve their national, ethnic, cultural, religious and linguistic identity. Secondly, persons belonging to national, ethnic, religious and linguistic minorities have the right to enjoy their own culture, to profess and practise their own religion, and to use their own langugae, in private and in public, freely and without interference or any form of discrimination (draft declaration, art. 2, para. 1).

37. Clarification of the relationship between minority rights and other basic elements of the international legal order requires further work. A contribution to that task was made in the 1991 report, elaborating on the six guidelines adopted for this study. The search for peaceful and constructive solutions must be based on internationally recognized human rights and on fundamental principles of international law, taking into account the requirements inherent in the structure of the international legal order.

38. At least five categories of problems can be observed at the present time:

(a) Problems of ethnic discrimination, where some groups are subjected to social discrimination, exploitation, or intolerance and hatred. The situation of the Gypsies in some countries of Central and Eastern Europe illustrates this and will be examined at greater length in the final report. Similar problems exist for indigenous peoples, often with racist overtones; the problem of the indigenous people in Guatemala or the aboriginal peoples in Australia illustrates this point. The task, in these cases, is to find adequate ways of bringing the discrimination, exploitation or intolerance to an end. Protective mechanisms are required; additionally, affirmative action and possibly some system of power-sharing might also be needed;

(b) Denial of pluralism: restrictions on the preservation of religious, linguistic and cultural identity. These are the typical situations to which article 27 of the International Covenant on Civil and Political Rights apply and, it is hoped, also the (draft) declaration on the rights of persons belonging to national or ethnic, religious and linguistic minorities. A wide range of possibilities for constructive arrangements exists in different parts of the world; some will be surveyed in part II of this study and in greater detail in the final report;

(c) Acquisition by the numerical minority of a dominant position maintained through non-democratic means or through effective marginalization of the majority. When, as in the case of South Africa, democracy and effective political participation for all can no longer be blocked, members of the previously dominant minority may seek to use their alleged minority rights as a basis for claiming, and defending, accumulated privileges. In these cases, the task is to prevent the misuse of minority rights;

(d) Efforts by groups living compactly together to obtain some degree of autonomy, where there is resistance to these efforts by the central Government. These conflicts can become very severe when the ethnic group concerned tries to push out or chase away members of other ethnic groups in the same region. While there is no general basis in international law for a right to autonomy, there are numerous examples of such arrangements, some of which have been anchored in international agreements and have thereby found their way into international law. To be acceptable, such arrangements must also provide adequate security for the minorities within the autonomous area; those minorities sometimes belong to the country's overall ethnic majority. Illustrations of constructive autonomy arrangements, such as that of the Aland islands (under Finnish authority) will be given in the final report;

(e) Secessionist movements seeking to break a part of the territory away from the State to become an independent entity or to be incorporated into another State (the "mother country"). These are the most difficult cases. In some situations, the people concerned have a justified right to self-determination; in many other cases, however, claims to self-determination are very dubious under international law, to put it mildly.

The conflicts under (d) and (e) are the most dangerous ones, often leading to widespread violations. External encouragement and even support to drives for autonomy or secessionist activities, to the extent of open intervention, is deeply disturbing to the international legal order. With the exception of those cases where the inernational community through its competent bodies has determined that there is a justified right to self-determination, the task is to find ways of accommodating the existence and identity of the groups as a minority, while respecting the overriding principles of sovereign equality, territorial integrity and political independence of States. If the parties agree, there can of course be a peacefully negotiated agreement to redraw boundaries or even to allow for a gradual process of self-government leading to complete independence.

39. The international legal order is based on the existence of sovereign and independent States, of which there are at present over 180. There are between 5,000 and 6,000 ethnic groups spread around the world, sometimes straddling two or more sovereign States. Obviously not all of these groups can have their own State. The respect for the principle of territorial integrity is the basic feature of the contemporary international legal order, with the accompanying principles of non-aggression and non-intervention.

40. It must be underlined, however, that constructive solutions depend on all parties involved. It is a frequent mistake to assume that only the Government - or the majority - is to blame, and that adaptation has to come only from that side. A cursory look at the world today shows that there are several minorities which pursue extremely provocative and violent policies. Sometimes they gamble in the hope that, if the worst comes to the worst, an outside power, the "mother country" or some other external actor will come to their aid should their provocations result in large-scale military action by the majority side threatening their very existence. It is a dangerous gamble.

41. Unfortunately, in some cases of open and violent conflict, neither the minority nor the majority respects humanitarian law. Minorities sometimes generate a self-fulfilling prophecy of extensive violations of human rights by the other side. They hope that the outside community will overlook the initial provocations and the subsequent violations carried out by the members of the minority. Impartiality is essential, however, if the international community is to respond to these situations.

42. The international community has not developed in a systematic way mechanisms to prevent and to respond to these deadly and destructive processes. The Sub-Commission on Prevention of Discrimination and Protection of Minorities should be better placed than other United Nations bodies to do so. It is inherent in the very mandate of this Sub-Commission.

A. The problem of definition

43. How wide a field should be covered by this study? It has been argued by several Sub-Commission members that the concept of minorities should be narrowed in order to make it manageable. The views of the members are requested on what should and should not be included in the study in order to allow a decision on this matter to be made before the final report is prepared in 1993.

44. That question is closely related to the problem of the definition of minorities. It was argued in the 1991 report (E/CN.4/Sub.2/1991/43, paras. 12-15) that the study should not start with a definition; most members agreed, some expressed doubts or disagreement. In any case, the question of the scope of the study needs to be addressed.

45. While it was initially not intended to include religious minorities, it has since been agreed to include them (E/CN.4/Sub.2/1991/43, paras. 16-19). The main problem is deciding which groups to exclude from the study. In order to have the fullest possible discussion at the present session of the Sub-Commission, two steps will be taken here. First, a brief review of the main stumbling blocks in the past effort at defining will be given. This will be followed by a presentation of several types of groups which may or may not be considered "minorities" for the purpose of the present report.

46. The existence of different religious, linguistic or ethnic groups in a State does not always give rise to minority problems. Such problems arise

only when some degree of tension exists between the different groups. Tension may be caused not only by the majority or by the Government, but also by those who are numerically inferior, when they challenge prevailing laws or norms in the society. In some cases they may be justified, under international human rights law, to do so, but sometimes the challenge is totally unjustified and the Government may have a proper cause for resisting their claims.

47. A useful study on the definition of minorities was prepared in April 1989 by Oldrich Andrysek, contained in SIM (Studie en Informaticcentrum Mensenrechten) Special No. 8, by the Institute of Human Rights of the Netherlands. Those interested in the debate on the definition of minorities during the last 70 years are referred to that study.

48. Mr. Andrysek reminds us that the first effort by the Sub-Commission to define minorities was made at its third session in January 1950 (E/CN.4/358, annex, draft resolution 111): the Sub-Commission recommend that the Commission adopt a resolution in which it, inter alia,

> "[Resolved] from the standpoint of such measures of protection of minorities as the United Nations may wish to take, and in the light of the exceptions and complexities set out above:
>
> "(a) The term minority includes only those non-dominant groups in a population which possess and wish to preserve stable, ethnic, religious, or linguistic traditions or characteristics markedly different from those of the rest of the population;
>
> "(b) Such minorities should properly include a number of persons sufficient by themselves to develop such characteristics; and
>
> "(c) The members of such minorities must be loyal to the States of which they are nationals ..."

49. These formulations, constituting paragraph 4 of the draft resolution, were preceded by three paragraphs which contained a number of qualifications concerning the formulations in paragraph 4. In paragraph 1 of the draft resolution, non-citizens were excluded. Moreover, it was recognized that some groups, even when they were numerically inferior, did not need minority protection. This was formulated, in paragraph 2, as follows:

> "(a) When the group in question, though numerically inferior to the rest of the population, is the dominant group therein; and
>
> "(b) When the group in question seeks complete identity of treatment with the rest of the population, in which case its problems are covered by those articles of the Charter of the United Nations, [and] the Universal Declaration of Human Rights ... that are directed towards the prevention of discrimination,".

In paragraph 3, the Commission would recognize that "any definition of minorities that is made with a view to their protection by the United Nations must take into account complex situations as:

> "(a) The undesirability of imposing unwanted distinctions upon individuals belonging to a group who, while possessing the distinctive characteristics described above, do not wish to be treated differently from the rest of the population;
>
> "(b) The undesirability of interfering with the spontaneous developments which take place when impacts such as that of a new environment, or that of modern means of communication, produce a state of rapid racial, social, cultural or linguistic evolution;
>
> "(c) The risk of taking measures that might lend themselves to misuse amongst a minority whose members' spontaneous desire for a tranquil life as contented citizens of a State might be disturbed by parties interesting in fomenting amongst them a disloyalty to that State;
>
> "(d) The undesirability of affording protection to practices which are inconsistent with human rights as proclaimed in the Universal Declaration of Human Rights; and
>
> "(e) The difficulties raised by claims to the status of a minority by groups so small that special treatment would, for instance, place a disproportionate burden upon the resources of the State."

These considerations are worth keeping in mind at the present stage.

50. In his Study on Rights of Persons belonging to Ethnic, Religious and Linguistic Minorities, 1/ Francesco Capotorti, in paragraph 568, gives the following definition:

> "A group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members - being nationals of the State - possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language."

It should be noted that his definition refers only to groups in a non-dominant position, and that he includes only citizens.

51. The most recent effort at defining minorities was entrusted to Mr. Jules Deschênes and discussed by the Sub-Commission in 1985. The definition presented in his working paper (E/CN.4/Sub.2/1985/31, para. 181) reads:

> "A group of citizens of a State, constituting a numerical minority and in a non-dominant position in that State, endowed with ethnic, religious or linguistic characteristics which differ from those of the majority of the population, having a sense of solidarity with one another, motivated, if only implicitly, by a collective will to survive and whose aim it is to achieve equality with the majority in fact and in law."

52. In the ensuing debate within the Sub-Commission, different views were expressed. Disagreement existed on the inclusion or exclusion of non-citizens, and phrases like "the collective will to survive" and the "aim to achieve equality with the majority in fact and in law" made it impossible for the Sub-Commission to come to an agreement on the matter. The participants in the 1985 discussion expressed doubt that a general definition was possible.

53. Efforts at defining in other forums have also largely been unsuccessful. An unofficial draft convention has been prepared by the European Commission for Democracy through Law. The definition, contained in draft article 2, reads as follows:

> "1. For the purposes of this Convention, the term 'minority' shall mean a group which is smaller in number than the rest of the population of a State, whose members, who are nationals of that State, have ethnical, religious or linguistic features different from those of the rest of the population, and are guided by the will to safeguard their culture, traditions, religion or language.
>
> "2. Any group coming within the terms of this definition shall be treated as an ethnic, religious or linguistic minority.
>
> "3. To belong to a national minority shall be a matter of individual choice and no disadvantage may arise from the exercise of such choice."

54. The draft declaration on the rights of persons belonging to national or ethnic, religious and linguistic minorities, approved by the United Nations Commission on Human Rights in its resolution 1992/16 of 21 February 1992, does not contain any definition. It does not spell out whether the protection foreseen under the declaration is limited to citizens or not, nor does it contain any formulation about limitation to dominant or non-dominant groups. Many questions are left open - understandably so.

B. The problem of classification

55. It is useful to observe that efforts at defining are often related to policies pursued by groups, or by Governments in relation to groups. The most common concern of these groups is to preserve their existence or identity; however, the matter is much more complex.

56. Rather than seeking to determine at the present stage which groups to include under the concept of minorities for the purpose of this study, I shall now examine different categories of groups and ask for guidance on which groups should be excluded. In order to have a proper basis for making such decisions, however, it is necessary to examine the policies pursued, both by Governments/majorities and by minority groups.

57. It may appear self-evident that only those numerically inferior constitute minorities; however, at least two qualifications have to be made to that propositon: (i) there are cases where the majority is so dispersed and marginalized that it is unable to assert its rights through normal democratic

processes, even if such processes exist. Such groups may be in need of protection until they manage, through their numerical strength, to influence decisively the democratic decision-making in society; (ii) some groups may constitute a minority in the country as a whole but be a majority in certain parts of the country, and there engage in discriminatory and repressive policies. This is particularly serious in areas with a degree of autonomy inside the larger State.

58. Leaving the issue of numerical strength aside, three distinctions will be made: (i) between settled groups and recent immigrants; (ii) between groups living compactly together and dispersed groups; and (iii) between groups classified by features of differentiation and other groups in society.

1. Settled groups versus recent immigrants

59. The distinction between settled groups and recent immigrants is based mainly on the length of time that each has lived in the country and on the ways in which the groups concerned have established themselves in that territory.

60. Settled groups fall into two categories: (i) those who are accepted as citizens in the country where they reside and who, being citizens (or nationals) of the country, distinguish themselves from other members in society by some features which will subsequently be examined; (ii) groups of settled residents who, in spite of being residents of long standing, have been deprived or denied citizenship.

61. Special attention should be given to settled groups who have become inhabitants of the territory in good faith, being citizens of a larger entity which comprised that territory prior to the independence or the redrawing of borders of the country in which they now find themselves. These situations occur, for example, when federations are dissolved and where the constituent units of the dissolved federation adopt restrictive citizenship legislation, thus temporarily or permanently disenfranchising parts of the resident population who previously were lawful inhabitants with voting rights in that region. The same happens when borders are redrawn so that the residents, even without moving, become part of a country different from the one in which they previously found themselves.

62. Normally, such residents should be given the option of automatically becoming citizens of the country in which they find themselves; this would also conform best to article 15 of the Universal Declaration of Human Rights: "Everyone has the right to a nationality."

63. Practice, however, is not consistent in this regard, and positive international law is unfortunately not sufficiently developed to settle the issue of whether such residents are automatically entitled to be considered citizens of the country in which they are residents. It is my suggestion that this group of settled residents should be included in this study.

64. By "recent immigrants" must be understood those who enter another country in full awareness that it is not their own country of citizenship. They arrive as aliens, knowing that they are alien, and therefore recognize that, at least temporarily, they will not be citizens of the host country.

65. It is my suggestion that these groups should also be included. It must be assumed that they, like others, have a right to practise their own religion, use their own language among themselves, and maintain and preserve their identity, and that the State and its citizens must respect their freedom to do so. It is less certain that they have any claims on the host State in terms of special measures in order to enjoy these rights. The new draft declaration adopted by the Commission does not specify whether such groups fall under the declaration. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, in its article 31, requires States parties to ensure respect for the cultural identity of migrant workers and their families.

2. Groups living compactly together versus dispersed groups

66. This distinction is important, since the problems of groups living compactly together can sometimes be solved through some degree of local self-government. Some of these groups have in the past enjoyed a degree of autonomy; if this is taken away they sometimes react very strongly.

67. There are some groups which live dispersed. Solutions through local government are much less useful for them. They are mainly concerned with the maintenance of their culture, through the establishment of cultural associations, and the right to use their language and practise their religion, but arrangements for local self-government on a territorial basis is not applicable to such groups.

68. Many ethnic groups consist of different segments with different levels of integration in the State in which they live. Some of their members live compactly together and even form a majority in the region where they live, whereas other members of the same ethnic group are dispersed. This mixed pattern of settlement is often overlooked in discussions about the rights of minorities. Groups living compactly together in a given region try to present themselves as a "people", not taking into account that many members of the same ethnic group live in other parts of the country, already integrated and intermingling with members of other ethnic groups. In fact, the percentage of persons of the ethnic group who live dispersed may be considerably greater than the number of members of the same ethnic group who live compactly together.

69. In these cases there might well be a conflict of interest between the different segments of the same ethnic group. Those living compactly together may desire local self-government, control over land resources and similar measures, including control over their own schools, or they might even opt for self-determination. Those living dispersed, on the other hand, are primarily concerned with non-discrimination. They sometimes become much more vulnerable to discrimination if the groups living compactly together pursue a policy of

confrontation with the Government of the country concerned. Fighting within the group, sometimes even leading to assassinations (extra-legal executions), between the separatists and those in favour of integration can be part of the hard reality of minority and self-determination issues. The distinction between groups living compactly together with those who are dispersed is, therefore, not as simple as it might seem to be at first sight.

3. Features of differentiation

70. Groups relevant to the present study are those which are identified by one of the four following categories of differentiation: religion, language, ethnic or cultural identity, or national group.

71. The identification under any one of the four headings is, in itself, often very controversial and is related to the controversies over the policies to be pursued towards or by the groups concerned. A Government may define a minority as "religious", thereby indicating that its religious freedom will be protected, while most members of the group in question may consider it to be a "national" rather than a "religious" entity, indicating that it would like to pursue some nationalistic policies. The categorization of a group as a "minority" or as a "people" is sometimes even more controversial because of its wide-ranging consequences for the policies projected by the definition chosen.

72. These factors make definitions problematic. They have to be seen in the light of policies pursued by States (majorities) and by minority groups.

C. Policies pursued by States (majorities) and by minorities

73. Situations involving minorities cause tension when there is a discrepancy between the policies pursued by the State (or the majority) and those pursued by numerically or politically weaker groups. Consequently, a review is required of the nature of such policies. It bears repeating that it is not necessarily the Government which is most at fault; in some cases the policies of the minority are unacceptable from the perspective of international order and human rights.

On underlying policies in plural societies

74. Constitutional and legal devices relating to minorities can and should be examined from the perspective of their conformity with modern human rights. For purposes of analysis, the existing policies could be evaluated on the basis of their location on two dimensions:

Homogenization - Separation

Domination - Exclusion - Equalization

75. Neither homogenization nor separation is inherently bad or good from a human rights perspective, as will be seen below. The result depends essentially on whether the policy is undertaken for the purposes or with the effect of dominating, excluding, or equalizing and, more importantly, on whether or not it is based on informed consent by all parties concerned.

76 Homogenization (making everybody alike, i.e. conforming to one common culture, one language, one set of mores and behaviour) can be pursued in two different ways: by assimilation or by fusion.

77. "Assimilation" is understood as a process by which homogeneity is obtained based on a dominant culture, to which other groups are expected to conform by shedding their own cultural characteristics. While being a dominating technique, it has at least the redeeming feature that it accepts new members. An inclusive, assimilationist approach would be anti-racist. However, examples exist of a two-pronged approach where the main policy is one of assimilation, but where some groups are or have been excluded, often on racial grounds, from the assimilationist processes by discrimination depriving them of equal opportunities.

78. "Fusion" is, in theory, different from assimilation. It consists in combining two or more cultures, on an equal footing, producing a new and different culture. It corresponds to the more popular notion of "melting pot" and occurs mainly in immigrant settler societies, where the immigrants come from different nationalities and ethnic groups to a new future. The indigenous peoples who lived there before, however, rarely have an equal part in the fusion process.

79. "Integration" is understood as a process by which different elements combine to form a unit; while each group retains its identity, it does not threaten the overarching unity. Practical key indicators of the difference between assimilation and integration are found in language and in educational policies. Assimilationist policies will allow only one official language, while policies of integration will allow two or several official languages when diferent linguistic groups coexist, and will allow for public use of non-official languages. Assimilationist educational policies seek to socialize all members of society, through their education, into the dominant culture, transmitting its values, its conception of history and its preferred future visions, while integrationist policies will give space for presentation of the different cultures and traditions in that society and the different conceptions of history.

80. Integration can be based on one dominant culture. Integration is then a half-way road between assimilation and separation. It can also be based on a fusion process, where the fusion is not complete but allows for the preservation of separate group identity in some respects.

81. Ideally, the purpose of integration is to guarantee the same rights and opportunities to all citizens whatever their group membership, while allowing them to maintain differences which do not threaten the existence of an all-embracing national society. Integration is possible only when ethnic or cultural divisions are subordinated to common social values and loyalties.

82. At the opposite end we find the policies of separation, which can be territorial or non-territorial.

83. Territorial separation typically falls into two categories, one based on dominance, the other being egalitarian.

84. The extreme version of dominant separation is that of segregation, the prime example being apartheid, which aims at keeping the ethnic groups territorially separate, unmixed and ranked in a hierarchical position. This policy is used for purposes of extreme exploitation, by depriving the weaker groups of access to resources except on conditions set by the dominant group. Segregation is a flagrant violation of contemporary human rights.

85. Territorial separation can also be on an egalitarian basis. Different groups may voluntarily choose to live separately within the same sovereign State. The territorial separation helps to preserve their own particular lifestyles and cultures, while at the same time they may be equal partners in a larger entity.

86. Such an arrangement is egalitarian provided that: (i) it is indeed the voluntary choice of each group involved; (ii) there is no hierarchical ranking between the groups; (iii) they share common resources on a basis of equality; and (iv) whenever they interact, there are no privileges for members of one group to the detriment of members of other groups.

87. Problems arise when the privileged groups seek to have their own exclusive control over important assets to avoid sharing with less privileged groups. Maybe they wish to reserve for themselves some particularly rich natural resources or accumulated capital obtained through past exploitation, or sometimes they have better human resources due to their former privileged positions.

88. Policies of integration include some degree of separation of a non-territorial basis. Members of dispersed groups may want to be given separate treatment in some aspects of their life, while living with others on common territory. There are many examples of this throughout the world, particularly with regard to religion, language and education. After centuries of conflict, solutions have in modern times been found in most cases with regard to religion. The existence and separate management of religious buildings (churches, mosques, synagogues and temples) and religious organizations are broadly accepted today, although the situation still gives rise to considerable tension in some places.

89. Language and education are more controversial. A variety of approaches can be found, including separate schools, or separate classes for some parts of the instruction. The concern with equality, in particular equal opportunities in the larger society, poses problems in the implementation even of well-intentioned pluralist policies. Striking the right balance between separateness and equality is a task of considerable complexity.

90. Returning to the way in which minority groups are classified and the way in which different groups would prefer to be classified, the following observations could be made.

91. Religious groups in the strictest sense distinguish themselves from the majority on the basis of their religion which is different from that of the dominant religion in the country where they live. They are primarily

concerned with their freedom to profess and practise their religion. It is doubtful whether they want to define their "identity" solely on the basis of the religion they hold. As pointed out by Mr. Khalifa (E/CN.4/Sub.2/1991/SR.16, para. 76), it is hard to allow identity to be based solely on religious belief, since the persons holding these beliefs normally want to be part of the wider society in all other respects. In some situations, however, religion has a wider connotation (see below). To profess a religion often includes a desire to convince others of the "correctness" of that religion, which can give rise to tension. The human rights system is neutral to all claims of the validity of professed truth by revelation made by different religions. Freedom of religion means that any such claim, made in good faith, must be respected; however, no religion must be used to violate the rights of others, including the right to hold other religious views. Severe religious conflicts have been part of past history, but are less intense at present. Adherents of the major religions have learned to live with and to tolerate each other. Often the greatest difficulties arise when new versions of established religions are brought forward. Adherents of the traditional versions sometimes find such new versions very provocative in that they challenge basic aspects of what is considered to be revealed truth. The role of the State is difficult in such cases since it should protect all religions on an equal basis while also providing protection against violence which may arise in response to perceived provocations.

92. Issues of this kind fall under the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief and are covered in the reports by the Special Rapporteur on that subject. I would ask for comments on whether this study should also explore peaceful ways of handling such situations.

93. Another kind of religious minority clearly has to be included in the study. Some groups distinguishing themselves by religion also wish to distinguish themselves, or are distinguished by others, by their cultural traditions and their ethnicity. Some religions have historically constituted the basic criteria for ethnic or national identity. This applies, for instance, to several national Orthodox Churches, in particular, to the Armenian and Georgian Churches, and it applies to some extent to the Jewish religion. These religions or Churches are specific to a given national or ethnic group and their language - written as well as spoken - which having emerged or been developed primarily for religious use is therefore an essential part of their identity. These traditions also deeply affect those members of the groups who are otherwise secular in orientation. Some of these observations also apply to other religious groups, such as the Sikhs.

94. Other religions are not associated with one particular ethnic group or one particular nation. Nevertheless, at times of conflict, the religious affiliation of a particular group is seen by its opponents to be a constituent part of its ethnic identity, e.g. the Muslims of Bosnia. In the rage of ethno-nationalism, it is not clear whether these groups are persecuted for their religious belief of for their ethnic identity.

95. Linguistic groups are sometimes distinguished only by their use of a particular language. If so, their sole concern is the right to use and to develop their language as a means of communication.

96. However, most groups are composite in the sense that they combine a specific language and often a specific religion with a common cultural tradition and, taken together, this constitutes their ethnic identity. These groups may have more comprehensive claims for the preservation of their identity. Not only do they want to practise their religion, if it is different from that of the majority, and to use and develop their language, but they are also concerned with the maintenance of their traditions, the recognition of and education in their history, and they want to preserve their particular lifestyle. Sometimes this may be held to require exclusive control over the natural resources in the region in which they live. Hence, the claims of such ethnic groups will go beyond the needs of groups which only distinguish themselves either by religion or by language, as mentioned above.

97. The concept of national groups or national minorities constitutes a more difficult category. There is no common definition of the concept of "national minority", though frequently used and found also in the draft declaration of the Commission. The reference to "national" creates problems, because of the highly emotional associations of the use of the word, as discussed above in paragraphs 15 to 22.

98. In the sentence "being nationals of the State in which they live", which has been used in some tentative definitions of minorities, the "national" refers to citizenship; but in the phrase "national minority", "national" cannot refer to citizenship, unless it is intended to cover all minorities (religious, cultural and ethnic) who are nationals of the country in which they live. Since that is hardly the intention, the concept "national minority" must refer to ethnicity in the above-mentioned sense, but with a portent which is different and more destabilizing, closely linked to the ideology of nationalism.

99. That ideology has been outlined above (para. 16). Its basic tenet is that the State and the national unit should be congruent. In the extreme, it requires that the political duty of the members of the nation shall override all other public obligations.

100. If the notion of "national minority" is understood against this background, it is a dangerous notion becaue it implies that present territorial arrangements are wrong and should ideally be rectified. Its usage needs close inspection. It might imply a latent threat from the group concerned which would prefer to secede from the country in which its members live, in order to join up with the dominant group in another country.

101. The words "national minority" would be a less threatening concept if it referred simply to the fact that the group concerned has the same ethnic origin as the dominant population in some other State, without implying that the national group concerned living as a minority in another State wants to secede. Nevertheless, the possibility of destabilization by using the word "national" rather than "ethnic" should be given attention.

II. TOWARDS A FRAMEWORK OF ANALYSIS OF THE RANGE OF OPTIONS

A. The dual challenge to States

102. Sovereign States face two requirements of relevance to this study. One is to ensure respect for equal enjoyment of human rights for all its inhabitants as individuals, the second is to accept and to respect the diversity inherent in any plural society, to the extent that the manifestations of diversity are compatible with the enjoyment, by all inhabitants, of universal human rights - but not beyound that threshold. The pursuit of each of these tasks, taken separately, confronts many obstacles; achieiving both in a constructive way is particularly difficult. No universal recipe exists to guide States on this difficult road. A conscientious application of international norms combined with insights learned from the efforts made by other States may nevertheless help to choose the best options.

103. This part of the progress report presents a skeleton framework in which to examine national experiences; the final report (to be presented in 1993) will examine the experiences in greater detail, based on information drawn not only from responses to the questionnaire but also from the periodic reports submitted under the different human rights conventions, from reports submitted to the Commission on Human Rights by special rapporteurs and working groups, and from material presented by non-governmental organizations.

104. A major achievement of our time is the universal acceptance of the principle that all human beings are equal in dignity and rights (Universal Declaration of Human Rights, art.1). This, indeed, is the basis of modern humanist civilization and is generally accepted by all Governments as a guiding principle. The international quest for effective implementation is widely reflected in international human rights law, such as the Universal Declaration, article 2, the International Convention on the Elimination of All Forms of Racial Discrimination, the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, the Convention on the Elimination of All Forms of Discrimination against Women, and in numerous conventions and declarations of the International Labour Organisation and the United Nations Educational, Scientific and Cultural Organization. Respondents to the questionnaire also emphasize the principle of equality and non-discrimination.

105. This report examines the situations in plural societies in order to explore the implications in such societies of the principle of equal rights and non-discrimination. The concept of plural society is applied to a society which is (i) politically unitary by being under a single supreme political authority, i.e. a sovereign State (including federations); but (ii) made up of diverse racial, ethnic and/or religious groups, whose members (or some of them) maintain distinguishable separate modes of behaviour or ways of life, at least in some respects. Most States, probably more than 90 per cent, are plural to a greater or lesser extent, depending on how to measure the degree and manifestations of the separate modes of behaviour and ways of life.

106. While the principle of equality and non-discrimination is generally accepted and well developed both in international and domestic law, the approaches to pluralism is less developed. A cursory look at the behaviour of States makes it possible to identify at least three different approaches (a more comprehensive analysis is presented in part I of this report):

(a) The exclusivist approach based on ethno-nationalism, which seeks to discourage members of other ethnic, linguistic or national groups from living inside the State in question. One way of discouragement is to adopt restrictive citizenship legislation which effectively disenfranchises parts of the population. Another and much more serious approach is to tolerate acts of terror or intimidation against members of other ethnic groups in order to scare them away. At its worst, this can border on genocide. While such extreme cases are rare, milder but reprehensible forms are not unknown in our time;

(b) The homogenization approach, which accepts all persons residing in the State and is also liberal towards immigrants, but which allows only one official language and discourages the use of other languages; which accepts only one educational system transmitting only one set of cultural traditions. The only circumstance under which this approach can appear reasonable is in connection with a process of fusion of the different immigrant groups, but even then it should have its limits in tolerating the diversity brought by the different immigrant groups;

(c) The mature human rights approach, which is a combination: ensuring equality in common affairs (those matters of public life which are of common concern to all inhabitants) and acceptance of diversity in the separate domains (those matters which are of concern only to specific religious, linguistic, ethnic or national groups).

107. Two crucial issues have to be faced:

(a) What is and should be the common and what is and should be the separate domain? International human rights law can provide considerable guidance here. The "common domain" must be comprehensive enough to ensure cooperation by all inhabitants in creating the foundation for equal enjoyment of human rights for everyone. For the rest, the scope of the common domain has to be settled in the context of the particular needs of each plural society concerned;

(b) How is the unity/plurality relationship to be organized, legally and administratively?

1. Minority approaches to diversity

108. It is necessary briefly to recall the different attitudes to diversity demonstrated by minorities. Some of them claim nothing more than equal treatment with members of the majority (or dominant group). Those who have been subject to discrimination may only have this one demand: to be treated as equals, in all respects. These are the situations to which the International Convention on the Elimination of All Forms of Racial Discrimination is addressed.

109. In many cases, however, minorities have a dual demand: equality in the common domain (e.g. on the labour market, access to public service, access to higher education) and acceptance of their right to be different in the separate domain (use of language, possibly also separate educational requirements, separate cultural manifestations, different religious practices). There are cases, however, of a more dubious nature where minority demands in fact are not for equality but for preservation of established privileges. This is a misuse of the minority system. It can be expected that some segments of white South Africa will demand the inclusion, under the new constitution to be adopted, of minority rights whose effect will be to preserve some or all of the privileges they have accumulated during periods of past discrimination. Such use of minority rights would, of course, be in violation of the provisions of the International Convention.

110. Finally, there are cases where minorities reject pluralism altogether. Secessionist movements based on ethno-nationalism may seek to establish their own mini-State or to redraw borders in order to become incorporated into a neighbouring State populated by persons of their own ethnic or linguistic group. Needless to say, such efforts normally cause very serious tension and often violent conflicts.

111. The framework for examination of the range of solutions will, accordingly, consist of an anlysis of the following four issues:

(a) Ways in which equality and non-discrimination in the common domain may be ensured (section B below);

(b) Arrangements for "pluralism in togetherness" (section C below). Under this heading will be examined measures which seek to respect and protect the separate identities among groups living interspersed, not separated by territorial boundaries of political, legal and administrative significance;

(c) Arrangements for pluralism by territorial subdivision (section D below). It should be noted that in many, indeed most, situations of territorial subdivision, there are some parts of the national territory which remain freely accessible to members of all groups and where they intermingle. The arrangements discussed in section C below are therefore applicable to them, while their presence in the separate regions may be governed by the arrangements discussed in section D below;

(d) Consequences of pluralism denied: separation (section E below). These are cases where denial of pluralism by one or the other side leads to dissolution.

B. Equality and non-discrimination in the common domain

112. In all matters of common concern, the principle of equality and non-discrimination in the enjoyment of human rights must reign supreme. The scope of "common concern" needs, however, to be clarified. It can be misconstrued and given a very limited scope in order to preserve privileges, as has been done with the concept of "common affairs" in apartheid rhetoric.

The starting point for any discussion of the scope of the common domain is to recognized that every sovereign State is obliged to ensure that all its inhabitants enjoy, on an equal basis, the whole range of human rights as provided for in the Universal Declaration of Human Rights. This includes civil, political, economic, social and cultural rights. Whenever pluralism arrangements are contemplated, they must be kept within the confines required for the State to be able to ensure, without discrimination, the enjoyment of human rights by everyone under its jurisdiction.

113. These requirements shall now be briefly examined. What should be left to the separate concerns of the different groups is a difficult issue and will be touched upon below, in sections C and D.

114. The first level of obligation for the sovereign State is to respect the equality of all individuals before the law. Everyone must be treated on an equal basis before the courts and all other state agents must treat everyone equally. Everyone must have equal access to public service.

115. The next level of obligation for States is to provide equal protection by the law and by law enforcement agents. This means that the State must ensure protection for everyone against other members of society - protection of life, protection from maltreatment and harassment, protection of property and of dignity. This includes protection against incitement to racial or ethnic hatred, and against organizations and groups promoting racial and ethnic discrimination.

116. The lack of impartiality and equal protection is a common and very serious problem during ethnic conflicts. Law enforcement agents often fall prey to the perceptions and stereotypes of the dominant group in society. Law enforcement agents (police, armed forces) all too often display ethnic or racial bias. Their task, admittedly, is not easy. Where ethnic conflicts emerge, law enforcement agents may have the difficult dual task of restoring order by taking action against armed elements, whether among the majority or the minority, while protecting on an equal basis those other members of both or all groups who have committed no crime but who are victims of revenge and hostility from the other side. For law enforcement agents to cope impartially with such situations is difficult; if they fail, however, the conflict is bound to escalate, possibly beyond repair.

117. In some of these cases there are serious dangers of stereotyping. Systematic discrimination against a minority may cause some members of that group to violate the requirements of law and order. This is then sometimes perceived by members of the majority as a sign that the whole minority group has criminal inclinations; such stereotyped perceptions can lead to indiscriminate acts of revenge by members of the majority which themselves seriously undermine law and order. Failure by law enforcement officials to prevent and to punish such acts of revenge can lead to a spiral of increasing hostility between the groups concerned. Hence, it is necessary to examine ways to overcome the problem of impunity (non-prosecution), both for those members of the majority who carry out hostile acts against the minority and for those members of the security forces (police or armed forces) who condone or even participate in such actions.

118. Situations of this kind are experienced in several settings, particularly when different racial groups are involved, and in relation to migrant workers. Gypsies (Romas) are particularly affected by such behaviour in several countries of Europe. For the purpose of the final report, information is being collected on ways in which protection from discrimination of migrant workers and other vulnerable groups, such as the Gypsies, is organized. In their replies to the questionnaire, this issue has been addressed in some detail by Australia, Hungary and Sweden.

119. The third level of State obligations under human rights law is to assist its inhabitants in enjoying their human rights, and to fulfil their justified claims as spelled out in human rights instruments. This means that equal enjoyment of human rights must be achieved through active legal regulation and its administrative implementation.

120. Enjoyment of economic and social rights can redress past inequality by ensuring an adequate standard of living for all. Attention must, of course, first be given to those who are the most disadvantaged. In some circumstances, particularly with regard to indigenous peoples, restoration of land rights can be a useful tool in this effort, as indicated in the answers of Australia and Colombia.

121. In other cases, the use of affirmative action measures can help to redress past discrimination and/or inequality in the enjoyment of rights by recreating equal opportunity in fact. This requires a definition of the group which is to be the beneficiaries of such action. Some minority definitions, therefore, have the purpose of defining those who are entitled to transitional affirmative measures. They must be transitional because in accordance with article 2 (2) of the Discrimination Convention, such measures may not "lead to the maintenance of separate rights for different racial groups" and "shall not be continued after the objectives for which they were taken have been achieved". It should be noted that this kind of minority definition is different from those whose intention is to allow for a lasting manifestation of difference. In such cases, affirmative action is inappropriate.

2. On equality by political participation

122. Government by the people means that everyone shall be entitled to take part in political decision-making, directly or through their freely chosen representatives. Democracy should ideally be the best way of ensuring peaceful resolution of conflicts, in that everyone can make their interests felt in the common political arena. Hence, there is the minimum requirement that members of minorities are in fact able to participate on an equal basis with everybody else.

123. The dilemma is that majorities can easily overlook the interests of minorities, if society is divided along ethnic, national or religious lines. Being a disadvantaged minority means, in fact, that one's interests are neglected even within a democratic order.

3. Consociational democracy

124. Various devices, generically referred to as "consociational democracy", have been developed to compensate for this problem. This notion has been developed by recent political science in an effort to sum up the many variations in democratic experiences which seek to accommodate a degree of pluralism. Its main theoretical analyst is Arend Lijphart. 2/. It is a form of power-sharing through a multiple balance of power among the segments of a plural society which allow for decision-making by the "grand coalition method". The notion of consociational democracy, is seen as an alternative to the majoritarian type of democracy, and more suitable for good government in plural societies divided by ethnic, linguistic, religious or cultural differences, where the groups are clearly identifiable. Consociational democracy is built on the principle of executive power-sharing and a certain degree of self-administration for each group, whether they live together or separately.

125. States participating in the seminar on minority issues held in Geneva in July 1991 by the Conference on Security and Cooperation in Europe took account of the diversity and the variations in constituional systems and identified the following positive approaches pursued by European democracies:

(a) Advisory and decision-making bodies in which minorities are represented, in particular with regard to education, culture and religion;

(b) Elected bodies and assemblies of national minority affairs;

(c) Local and autonomous administration, as well as autonomy on a territorial basis, including the existence of consultative, legislative and executive bodies chosen through free and periodic elections;

(d) Self-administration by a national minority of aspects concerning its identity in situations where autonomy on a territorial basis does not apply;

(e) Decentralized or local forms of government;

(f) Encouragement of the establishment of permanent mixed commissions, either inter-State or regional, to facilitate continuing dialogue between the border regions concerned. (CSCE Report 1991).

126. It has been argued that there are nine conditions which favor the establishment of consociational democracy in a plural society and its successful operation: (i) the absence of a majority segment; (ii) the segments are roughly the same size; (iii) there are a relatively small number of segments, ideally between three and five; (iv) the segments are geographically concentrated; (v) the population is relatively small; (vi) the presence of a foreign threat that is perceived as a common danger; (vii) overarching loyalties counterbalance the centrifugal effects of segmental loyalties; (viii) the absence of large socio-economic inequalities; and (ix) a pre-existing tradition of political acommodation.

127. It will be seen that there are many situations which do not conform to the ideal requirements of the consociational democracy, nor does the concept provide any guidance as to what would happen if basic changes occur, e.g. when the external threat or dominance disappear.

C. Pluralism in togetherness

128. As pointed out above, States are plural when inhabited by groups of diverse racial, ethnic and/or religious groups whose members (or some of them) maintain at least some distinguishable separate modes of behaviour or ways of life. When members of such groups live interspersed with members of other groups (i.e. not separated by territorial divisions), what approaches are best suited to establish peaceful and constructive relations between the groups?

129. The origin of pluralism affects its evolution. Many States in Africa and parts of Asia inherited multi-ethnic and multi-religious societies deeply affected by the colonial experience, in many places with borders drawn by the colonial metropoles. The initial liberation efforts, whether armed or not, were normally carried out by multi-ethnic liberation movements; some time after independence, however, the ethnic and sometimes the religious divisions made themselves felt. Governments of these newly independent States sought either to assert their authority by strictly centralized and often authoritarian political control, or by efforts to create confidence among the different ethnic groups.

130. A wide range of different approaches were chosen. In some cases, the formation of political parties along ethnic lines was prohibited; the introduction of one-party systems was sometimes justified by the need to prevent ethnic divisiveness. In other cases, informal power-sharing was established between parties representing different ethnic groups.

131. Problems arose both for those who sought to prevent any manifestation of ethnic separateness and for those who engineered sophisticated methods to protect the plurality. Success did not and could not depend solely on the wisdom of government measures but also on the policies and behaviour of the different ethnic or religious groups and their leaders.

132. In the Americas, in Australia and in New Zealand the diversity arose in other ways, in North America leading to a threefold composition of the population consisting of indigenous peoples, voluntary immigrants and human beings coercively brought there as slaves, giving rise to several and very different kinds of minority issues.

133. In Europe, particularly in Central and Eastern Europe, a major factor in the formation of minorities has been centuries of intermittent warfare accompanied by the drawing and redrawing of borders. Minority situations there are caused less by migration of peoples than by repeated changes in the political units within which settled populations found themselves. This is now, once again, taking place in Central and Eastern Europe.

134. To what extent do States recognize the plurality of their society? Great variations can be found, from those who claim that there are no minorities in their society to those who have developed or are in the process of developing a comprehensive and detailed minority law.

135. The claim that no minorities exist in a given society can be interpreted in two different ways: one, that the society is completely homogenous, that everyone is of one and the same ethnic stock, that they have a common culture, religion and language. Such situations do occur; until recently Iceland must have been one of the best examples of complete homogeneity. The other understanding is that while there may be differences in ethnic or national origin within a State, the members of the respective groups do not seek to maintain any differences in modes of behaviour or way of life; there is, consequently, no group cohesion on the basis of ethnicity, religion or nationality which makes them stand out.

136. Most States recognize that there are minorities within their society, as can be seen from the replies to the questionnaire. Their classification of minorities differs, however, with the most elaborate being used in some countries of Central and Eastern Europe.

137. The comprehensive and very helpful reply by Hungary is the best example. Hungary is one of the countries now developing comprehensive minority legislation and therefore in need of legally precise categorizations. Hungary distinguishes between minorities historically coexisting with the Hungarian nation (settled minorities) on the one hand and immigrants, refugees and migrant workers (recent immigrants) on the other. The minority legislation now in the process of preparation in Hungary applies only to the settled minorities, but the linguistic and cultural rights of recent immigrants are also provided for, although in separate laws. Their rights are probably going to be less extensive than those of the settled minorities. Among the latter, a distinction is made in Hungary between national and ethnic minorities, but it is a matter of debate whether there will be any difference in the status of the two categories. Examples of ethnic groups are the Gysies and the Jews, while "national minorities" include the German, Romanian, Croatian, Serbian, Slovene and Slovak groups.

138. Other countries, while recognizing the existence of minorities, do not have legislation providing special status to minorities and therefore do not use legal categories of minorities. They do, however, give full freedom to groups who so desire to form ethnic associations. Their statistics on minorities are therefore non-existent or provide little guidance.

139. The reply to the questionnaire sent by Austrialia, which is very detailed and helpful, illustrates this approach. The census made it possible for Australian residents to state their perceived ethnic ancestry; however, selected membership in a statistical grouping (e.g. place of birth) does not necessarily imply that all persons see their membership of that group as significant. While minority groups are not formally recognized, "combinations of persons based on a common ethnicity, language or religion can form and freely take part in corporate activities similar to groupings on any other activities". This approach is probably common in many societies, particularly in the West, as evidenced also by the reply by Sweden.

140. As a minimum, States must respect the existence of minorities wherever they exist. Not to do so might amount to genocide. States must also respect the ethnic, cultural, religious and linguistic identity of the minorities. This follows from article 27 of the International Convenant on Civil and Political Rights, and as pointed out in the initial report of this study (E/CN.4/Sub.2/1990/46, paras 15-19); it is also implicit in articles 18, 19 and 27 of the Universal Declaration of Human Rights.

141. The obligations resulting from article 27 and ways in which these may be implemented by States were studied in great detail by the Special Rapporteur of the Sub-Commission, Mr. Capotorti (see para. 50 above). It is not the intention here to go over that study again. In the final report, however, some indications will be given of changes in approaches since the time when his revised report was completed (1977).

142. One point only will be added here. The issue of the content of education is essential, both for the preservation of minority identity and for socialization into the common values of the national society as such. It is an issue which causes much controversy. Guidance can now be taken from the Convention on the Rights of the Child, article 29 of which spells out the threefold requirement of education. States parties to the Convention agree that the education of the child shall be directed to

"..."

"(c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own";.

"(d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;"

"..."

143. The second level of obligations for States is to protect the existence and identity of minorities (art. 1 of the draft declaration adopted by the Commission in 1992). Such protection can be accomplished in two ways. One is through legislation and law enforcement which set stringent requirements on the law enforcement agencies; the other is through institutional participation by the minorities in the political and legal system. This brings us back to the questions of consociational democracy, power-sharing and constitutional devices discussed earlier. The final report will discuss in considerable detail the ways in which different societies deal with the question of protection.

144. Different models exist. Some hold that there is no need to provide, in the constitutional system of otherwise, for special arrangements: the normal functioning of democracy is held to be sufficient to provide appropriate protection for all. However, many experiments with other models have been made.

145. A useful survey has been presented by Claire Palley. 3/ She points out that electoral laws and composition of the legislature can accommodate minority concerns in the following ways:

(a) Separate electoral rolls and separate blocks of seats;

(b) Separate electoral rolls, separate blocks of seats and cross-voting;

(c) Communal seats in fixed proportions, but with common voting;

(d) Proportional representation systems;

(e) Alternative vote systems;

(f) Proportional representation with the single ballot system and communal representation in a single electoral college;

(g) Bicameral systems with communal representation;

(h) Regional representatives in federal bicameral systems;

(i) Special communal legislative bodies;

(j) Group veto powers.

She goes on to say that participation in executive government can include the following forms:

(a) Formal power-sharing;

(b) Informal power-sharing by coalition groups;

(c) Formal recognition of minority language interests in the Cabinet;

(d) Informal recognition of minority language interests in the Cabinet;

(e) Functional communalism in the Cabinet;

(f) Formal advisory bodies;

(g) Assistance to organizations.

146. Various other arrangements can be made in regard to the civil service, personal law protection, administrative protection for groups, protection for immigrant communities, land protection and linguistic protection.

D. Pluralism by territorial subdivision

1. The meaning of and issues involved in territorial subdivision

147. Territorial subdivision is used here as a generic term to refer to all forms of local self-government within a sovereign State. The extent of local self-government can range from a minimum (local councils with authority over

minor issues within the municipality), to a maximum which comes close to full sovereignty. It can include federalism, autonomy, regional and municipal local government.

148. Numerous issues arise in examining the possible arrangements for territorial subdivision. First, is it based on entrenched or delegated power? Is the scope of the local self-government established in the constitution, or even in an international agreement, so that it cannot be changed without constitutional change or a new international agreement, or is it delegated by legislation adopted by the national legislature, making it possible for the national legislature to reduce or rescind the local self-government? Second, what is the scope of authority or competence for the regional or local self-government bodies? Third, is there freedom of movement and residence for all inhabitants in the State throughout the whole of the national territory, in accordance with article 13 of the Universal Declaration, or is that freedom restricted for any ethnic, linguistic or religious group? Similarly, is there freedom of employment, a right to own property (including land and other fixed assets) and a right to participate in economic activity within the different regions of the sovereign entity as a whole for all inhabitants, or are there restrictions on ethnic, religious or linguistic grounds?

149. Attention should be paid to the dangerous and inhuman policies which require "demographic homogeneity", and sometimes demand population exchanges and forced removal of people belonging to other ethnic or religious groups. Such policies also deny the voluntary return to their native places of persons who have previously had to flee the territory. An example of this is the displacement carried out by Serbs in Bosnia-Herzegovina which has to be redressed; those who have occupied the houses or properties of Muslim or other groups who have been displaced should be required to vacate them; those who have taken part in burning and looting should be required to participate in the rebuilding. In the same vein, Armenians who have fled Azerbaijan and Azerbaijanis who have fled Armenia, Georgians who have fled South Ossetia and South Ossetians who have fled their homes, Muslims and Sinhalese who have been pushed out of regions controlled by the Tamil Tigers in the north and east of Sri Lanka all must be given the opportunity to return in safety to their home places should they so wish. It is essential to refuse to accept ethnic purification measures, which must be held to constitute gross and systematic violations of human rights.

150. Attention will also be paid in the final report to the equally dangerous policy of population transfer to alter the demographic structure in a given region. However, once people have settled in good faith (not contrary to international law as articulated by international organizations with reference to that particular territory), they should as individual human beings be given full rights in that territory when its political status changes.

2. Forms and purposes of territorial subdivision

151. The origins of a territorial subdivision affect the content and scope of the local self-government. In some cases, several units have joined together, voluntarily or sometimes as a result of the use of force, and have reserved

for themselves or been given some authority within the territorial region they cover. In other cases, a centralized system has been found to be too cumbersome or has caused too many conflicts; consequently, a territorial subdivision has been adopted either to avoid governmental/bureaucratic overload or to avoid unnecessary conflicts, or both. Intermediate cases are those where the incorporation of a particular region or enclave has been the subject of international dispute, resulting in a compromise arrangement of autonomy under some form of international guarantee.

152. Territorial subdivisions with pluralist intent include federal systems based on differences in national, ethnic and sometimes also religious identity. Examples are the Soviet Union and Yugoslavia (now dissolved) and China. A different approach, but one which also accommodates the concerns of different nationalities or ethnic/linguistic groups, can be found in the constitution of Spain, probably one of the most successful innovations in recent times. Switzerland provides us with another, also somewhat different, example. Belgium gives us another very interesting model which should be studied for the lessons it might give to other plural societies. India is of great interest because of the attention given to linguistic divisions as a basis for the federal system, and also for its efforts to avoid religious communalism as a basis for political mobilization.

153. A number of specific autonomy arrangements have been made for minorities or groups to enjoy self-government, or "home rule", and to extend the scope of self-government over time. Examples are Greenland, the Faroes and the Åland islands, models which will be more closely examined in the final report. Some of these are autonomies formed on the basis of international negotiations or disputes.

154. There are also territorial subdivisions which do not have a pluralist intent, but which under some circumstances can have a pluralist effect. This applies to systems of local government with a high degree of delegated power, where the general purpose is governmental and administrative decentralization. The effect can be that minorities living compactly together, in areas where they form the majority, are able to develop material and cultural aspects of their identity within the scope of the power delegated to each local entity.

155. It should be mentioned that there are numerous territorial subdivisions which have neither pluralist intention nor pluralist effect. This applies to federations which are not based on language, ethnicity or nationality, but which result from a historical process by which members of the same ethnic groups initially settled or organized separate political units. Federations, in these cases, are maintained partly due to tradition, partly to administrative and political convenience. Since minorities do not have a dominant position in any of the federal units, they do not as such constitute a framework for pluralism in ethnic, national or religious terms. Examples are Australia, the Federal Republic of Germany and the United States.

E. Pluralism denied: the issue of secession

1. Claims of self-determination and the spiral of conflicts

156. The greatest problem connected with minorities relates to the issue of secession. It can arise when pluralism is denied. Such denial can be caused by the sovereign State pursuing a policy of rigid homogenization, but it can also be caused by a minority which refuses to stay within a larger unit, even when the sovereign State opens up for wide-reaching pluralism.

157. What comes into play, in these cases, are the acrimonious issues connected with claims of a right to self-determination. The most serious human rights problems occur during ethnic conflicts where the political status of the territory is uncertain. The typical situation is one where a group, living compactly together in a geographical region or enclave within a State whose majority is of another ethnic group, claims that it is a people rather than a minority, and demands self-determination by secession or redrawing of borders. When neighbouring States and/or the international community react in ambiguous ways to such claims, or even endorse them, the future status of that territory is thrown into doubt. The State and the minority/people can then easily slip into an armed conflict, sometimes attracting external intervention, rather than seek a peaceful solution. It is therefore essential that outside States, and the international community, insist on the application of general principles of international law in order to make it clear to the parties what the outcome should be.

2. Relevant principles of international law

158. The most important principle is that of territorial integrity, the maintenance of the inherited State and of the population residing in that State. This can be modified only when there are justified claims of self-determination; hence, it remains ever more important for the international community to clarify for whom the principle of self-determination applies. Ideally, there should be available international procedures by which to settle such claims.

159. While there is no doubt, in general, that there exists a right of peoples to self-determination, the scope of the application of that right is unfortunately still controversial. It is therefore unavoidable that this study should make some comments on the scope of that right; this is done in awareness of the fact that different views exist.

160. The claim that self-determination is a right means that all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter of the United Nations. The crucial problem, however, is to decide who are the beneficiaries, i.e. the subjects, of the right to self-determination: Who is the "self"? Who is a "people" as regards this right?

161. Some aspects of the right to self-determination are uncontroversial in principle, although sometimes difficult to apply in practice. The people living in a colonial territory are entitled to self-determination. This

refers to territories beyond Europe which were brought under colonial or similar control by European States or by States subsequently populated by people of European stock. Efforts to utilize the concept of colonialism in other situations confuse the problem, and should not be included under the concept of decolonization.

162. Second, the people living in a territory which has been subjected, after the adoption of the Charter in 1945, to alien occupation or to annexation which has not been endorsed by a free and fair popular referendum, are entitled to self-determination.

163. The same rule cannot be applied to occupations which took place prior to 1945. Many of the territories of the world, in Europe and elsewhere, have been incorporated into the State in which they now find themselves through occupation and/or military conquest at some stage in their history; to rearrange all such historical outcomes now would cause havoc to the international order. The inherited States have not always obtained its present borders through free and friendly developments. Nevertheless, over the generations which have passed, the groups of people living in the different parts of such States have learned to live together, and it would be highly destabilizing at the present stage to claim that all the peoples of all territories which some time in history have been incorporated through occupation at present have a right to self-determination.

164. The third case, which is relatively simple, is that of federations which have been formed by voluntary accession by member republics, and where it has been explicitly stated in their respective constitutions that they have a right to withdraw from the federations. In such cases, the federation itself was a voluntary arrangement, lasting as long as the parties to the federation found it appropriate, and therefore the withdrawal is justified as a utilization of a right existing from the very time of the combination into a federation. The most prominent examples are the Soviet Union and the Yugoslav federation. The right of self-determination, based on the principle of voluntary accession, is in such situations applicable only to the union republics, not to the smaller entitites which may have various kinds of autonomies under the pre-existing order.

165. Beyond these cases, the question of a unilateral right to self-determination is extremely doubtful. It is overriden by the basic principle of territorial integrity, provided, however, that the State conducts itself in accordance with the principle of equal rights and self-determination of peoples and is possessed of a government representing the whole people of the territory without distinction as to race, creed or colour. It must be kept in mind that the most basic principle of self-determination is that of the right of popular participation in the government of the State as an entity. When the Government does not allow all segments and all peoples to participate, the question of the right to self-determination of the different components becomes more pertinent.

166. National or ethnic groups, living compactly together on a territory inside a sovereign State, will therefore have the onus of proving, in all cases other than those mentioned above, that they have a right under

international law to secede. If that cannot be convincingly proved to the international community, outside States cannot be entitled to encourage or support efforts at self-determination.

3. Constraints applicable to neighbouring and other States

167. International law prohibits external help to secessionists. The Declaration on Principles of International Law concernng Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations (General Assembly Resolution 2625 (XXV)) makes it clear that the right of peoples to self-determination cannot authorize and shall not be used to encourage any action which would dismember or impair, totally or in part, the territorial integrity or political unity of soverign and independent States possessed of a government representing the whole people belonging to that territory without distinction as to race, creed and colour. Also according to the Declaration, all States are obliged to refrain from any action aimed at the partial or total disruption of the national unity and territorial integrity of any other State or country.

168. The Declaration further stipulates that all States have the duty to refrain from organizing or encouraging the organization of irregular forces or armed bands for incursion into the territory of another State. This also applies to the so-called "mother country". Every State also has the duty to refrain from organizing, instigating, assisting or participating in acts of civil strife or terrorist acts in another State. Except for the cases mentioned above, all support to armed struggle for the purposes of secession constitutes a violation of international law.

4. Permissibility of peaceful divorce

169. It follows that the right to self-determination, understood as a unilateral right, certainly is not generally available to all groups even when they live compactly together on a territorially defined area within a larger State. This does not exclude the possibility of peaceful, bilateral arrangements, negotiated between the different groups living inside a State, to transform the political structure without the use of violence. Populations living in different territorial parts of a State are, of course, free to decide peacefully on an amicable divorce, as long as this is not brought about by violence or external pressure.

5. Role of the "mother country"

170. As stated above, violent secession, except the case mentioned above, is not only illegal but also destructive rather than beneficial for all parties involved. Thus, outside States cannot provide armed support to groups fighting for secession, even when these are of the same ethnic group as the majority in the prospective intervening State. To what extent can such "mother countries" otherwise - and through peaceful means - provide protection to groups of their own ethnicity living in other countries and who claim to be persecuted? This question was raised by Mr. Chernichenko (E/CN.4/Sub.2/1991/SR.17, para. 26). In general terms the answer must be that there is no legal basis for a special protective role by the "mother country" which has to refer to the normal international machineries for conflict resolution. The subject, however, should be given closer attention.

171. Negotiations for peaceful rearrangements of the constitutional and political framework involving minorities do not necessarily have to lead to separation. They can lead to various other kinds of formulas: in some cases partial functional autonomy, in other cases various kinds of guarantees for minorities in line with the principles contained in article 4 of the draft declaration. The essential point is to proceed on the basis of confidence-building between the different groups, between the majority and the minorities, within the overall concern with ensuring human rights for everyone living within the territory of the state concerned.

6. Illegal displacement of peoples

172. Special attention should be given to the problem of forced removals and related practices, a problem arising from exclusivist ethno-nationalism. Reference is made here to the inclination to push members of other ethnic groups out of a newly independent country, or of an entity seeking self-determination by use of open or more indirect means. Numerous serious incidents have occurred during the last few years, in some cases by deliberate violent action by military groups, in other cases more indirectly. The problem of large numbers of displaced persons resulting from such policies needs to be addressed in any study on peaceful and constructive solutions to situations involving minorities. It must be addressed both in terms of prevention and restoration of the pre-existing situation.

Notes

1/ Human Rights Study Series No. 5 (United Nations publication, Sales No. E.91.XIV.2).

2/ Arend Lijphart, "Majority rule versus democracy in deeply divided societies", Politikon 4 (2), December 1977.

3/ Claire Pally, "Constitutional Law and Minorities", Minority Rights Group Report No. 36, 1978.

Annex

DRAFT DECLARATION ON THE RIGHTS OF PERSONS BELONGING TO NATIONAL, ETHNIC, RELIGIOUS AND LINGUISTIC MINORITIES

Article 1

1. States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories, and shall encourage conditions for the promotion of that identity.

2. States shall adopt appropriate legislative and other measures to achieve those ends.

Article 2

1. Persons belonging to national or ethnic, religious and linguistic minorities (hereinafter referred to as persons belonging to minorities) have the right to enjoy their own culture, to profess and practise their own religion, and to use their own language, in private and in public, freely and without intereference or any form of discrimination.

2. Persons belonging to minorities have the right to participate effectively in cultural, relgious, social, economic and public life.

3. Persons belonging to minorities have the right to participate effectively in decisions on the national and, where appropriate, regional level concerning the minority to which they belong or the regions in which they live, in a manner not incompatible with national legislation.

4. Persons belonging to minorities have the right to establish and maintain their own associations.

5. Persons belonging to minorities have the right to establish and maintain, without any discrimination, free and peaceful contacts with other members of their group, with persons belonging to other minorities, as well as contacts across frontiers with citizens of other States to whom they are related by national or ethnic, religious or linguistic ties.

Article 3

1. Persons belonging to minorities may exercise their rights including those as set forth in this Declaration individually as well as in community with other members of their group, without any discrimination.

2. No disadvantage shall result for any person belonging to a minority as the consequence of the exercise or non-exercise of the rights as set forth in this Declaration.

Article 4

1. States shall take measures where required to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law.

2. States shall take measures to create favourable conditions to enable persons belonging to minorities to expreess their characteristics and to develop their culture, language, religion, traditions and customs, except where specific practices are in violation of national law and contrary to international standards.

3. States should take appropriate measures so that, wherever possible, persons belonging to minorities have adequate opportunities to learn their mother tongue or to have instruction in their mother tongue.

4. States should, where appropriate, take measures in the field of education, in order to encourage knowledge of the history, traditions, language and culture of the minorities existing within their territory. Persons belonging to minorities should have adequate opportunities to gain knowledge of the society as a whole.

5. States should consider appropriate measures so that persons belonging to minorities may participate fully in the economic progress and development in their country.

Article 5

1. National policies and programmes shall be planned and implemented with due regard for the legitimate interests of persons belonging to minorities.

2. Programmes of cooperation and assistance among States should be planned and implemented with due regard for the legitimate interests of persons belonging to minorities.

Article 6

States should cooperate on questions relating to persons belonging to minorities, including exchange of information and experiences, in order to promote mutual understanding and confidence.

Article 7

States should cooperate in order to promote respect for the rights as set forth in this Declaration.

Article 8

1. Nothing in this Declaration shall prevent the fulfilment of international obligations of States in relation to persons belonging to minorities. In particular, States shall fulfil in good faith the obligations and commitments they have assumed under international treaties and agreements to which they are parties.

2. The exercise of the rights as set forth in this Declaration shall not prejudice the enjoyment by all persons of universally recognized human rights and fundamental freedoms.

3. Measures taken by States in order to ensure the effective enjoyment of the rights as set forth in this Declaration shall not prima facie be considered contrary to the principle of equality contained in the Universal Declaration of Human Rights.

4. Nothing in this Declaration may be construed as permitting any activity, contrary to the purposes and principles of the United Nations, including sovereign equality, territorial integrity and political independence of States.

Article 9

The organs and specialized agencies of the United Nations system shall contribute to the full realization of the rights and principles as set forth in this Declaration, within their respective fields of competence.
