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

Chairman-Rapporteur: Mr. Robert H. Robertson (Australia)

INTRODUCTION

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

2. The Commission, by resolution 1988/71 of 10 March 1988, decided to continue at its forty-fifth session its work on the elaboration of the draft declaration on the right and responsibility of individuals, groups and organs of society to promote and protect universally recognized human rights and fundamental freedoms, using as a basis the views expressed and proposals made in the Working Group at its previous sessions. The Economic and Social Council, by resolution 1988/38 of 27 May 1988, authorized an open-ended working group to meet for a period of one week prior to the forty-fifth session of the Commission on Human Rights with a view to continuing the work on the draft declaration.

3. The Working Group held 10 meetings from 23 to 30 January 1989 and on 27 February 1989. The session was opened by Mr. Jan Martenson, Under-Secretary-General for Human Rights, who made an introductory statement.

Election of Officers

4. At its 1st meeting on 23 January 1989, the Working Group elected by acclamation, Mr. Robert H. Robertson (Australia) as Chairman-Rapporteur.

Participation

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

6. The following States, non-members of the Commission, were represented by observers: Australia, Austria, Byelorussian Soviet Socialist Republic, Czechoslovakia, Egypt, Finland, Hungary, Iran, Ireland, Netherlands, Norway, Poland, Romania, Sudan, Syrian Arab Republic and Turkey.

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

Documents

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

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| E/CN.4/Sub.2/1985/30 and Add.1 | Draft Body of Principles and Guidelines on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Human Rights and Fundamental Freedoms and an accompanying explanatory report by the Special Rapporteur |
| E/CN.4/1989/WG.6/L.1 | Agenda of the Working Group |
| E/CN.4/1988/26 | Report of the Working Group on its third session |
| E/CN.4/1987/38 | Report of the Working Group on its second session |
| E/CN.4/1989/WG.6/WP.1 | Proposal by the Ukrainian Soviet Socialist Republic |
| E/CN.4/1989/WG.6/WP.2 | Submission by the People's Republic of China - Chapter III |
| E/CN.4/1989/WG.6/WP.3 | Revised compromise proposal submitted by the Ukrainian Soviet Socialist Republic - Chapter III |
| E/CN.4/1989/WG.6/WP.4 | Addition to the draft Chapter III, proposed by the Ukrainian Soviet Socialist Republic |
| E/CN.4/1989/WG.6/WP.5 | Proposal by Senegal |
| E/CN.4/1989/WG.6/WP.6 | Amendments proposed by Cuba to Chapter IV |
| E/CN.4/1989/WG.6/WP.7 | Article 1 of Chapter IV as provisionally adopted by the working group at the first reading |
| E/CN.4/1989/WG.6/WP.8 | Draft consolidated text of Chapter III prepared by the Ukrainian Soviet Socialist Republic on the basis of various proposals made by delegations |
| E/CN.4/1989/WG.6/CRP.1 | Title suggested by Cuba for Chapter III |
| E/CN.4/1989/WG.6/CRP.2 | Amendment from the United Kingdom to the proposal of the Union of Soviet Socialist Republic and the title suggested by Cuba for Chapter III (E/CN.4/1988/26, Annex IV) |

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| E/CN.4/1989/WG.6/CRP.3 | Draft element of Chapter III prepared by Czechoslovakia |
| E/CN.4/1989/WG.6/CRP.4 | Proposals submitted by Cuba - Chapter III |
| E/CN.4/1989/WG.6/CRP.5 | Element of Chapter III, proposed by the Union of Soviet Socialist Republics |
| E/CN.4/1989/WG.6/CRP.6 | United Kingdom amendments to Canadian/Norwegian text |
| E/CN.4/1989/WG.6/CRP.7 | Amendment by the Ukrainian Soviet Socialist Republic to Chapter IV, paragraph 1, as submitted by Canada and Norway |
| E/CN.4/1989/WG.6/CRP.8 | Amendments by Argentina to Chapter IV, as submitted by Canada and Norway |
| E/CN.4/1989/WG.6/CRP.9 | Draft text prepared by the Chairman - Chapter III |
| E/CN.4/1989/WG.6/CRP.10 | Amendment to E/CN.4/1989/WG.6/WP.3, Chapter III, proposed by the Union of Soviet Socialist Republics |
| E/CN.4/1989/WG.6/CRP.11/
Revs.1 and 2 | Informal Drafting Group - Texts for Chapter III |
| E/CN.4/1989/WG.6/CRP.12 | Amendments to Chapter IV as proposed by the German Democratic Republic |
| E/CN.4/1989/WG.6/CRP.13 | Proposal by Senegal |
| E/CN.4/1989/WG.6/CRP.14 | Amendment by the Ukrainian Soviet Socialist Republic of Chapter IV |
| E/CN.4/1989/WG.6/CRP.15 | Amendments by China to the Canadian/Norwegian text |
| E/CN.4/1989/WG.6/CRP.16 | Amendments by China to the Canadian/Norwegian text |
| E/CN.4/1989/WG.6/CRP.17 | Amendment by Sudan to Chapter IV, paragraph 2 (a) |
| E/CN.4/1989/WG.6/CRP.18 | Amendment by the Ukrainian Soviet Socialist Republic to Chapter IV, paragraph 2 (a) |
| E/CN.4/1989/WG.6/CRP.19 | Amendment by Bulgaria to Chapter IV, paragraph 2 |

E/CN.4/1989/WG.6/CRP.20

Proposal by Senegal to Chapter IV,
paragraph 2 (a)

E/CN.4/1989/WG.6/CRP.21

Amendment by the Netherlands and Sudan
to the Canadian/Norwegian text
(E/CN.4/1987/38, Annex I)Organization of Work

9. At its 1st meeting, on 23 January 1989, the Working Group adopted its agenda, contained in document E/CN.4/1989/WG.6/L.1. It conducted a debate on the organization of work. The Chairman-Rapporteur, referring to his letter of 11 October 1988 to the members of the Commission on Human Rights and other delegations that had actively participated at the Working Group's third session in 1988, recalled that he had suggested upon his own authority that advance preparation should focus on Chapters III and IV of his Schematic Outline (E/CN.4/1986/WG.6/WP.6) with provisional Chapter headings as follows:

III. The right to associate with others in the promotion and the dissemination of knowledge about these rights.

IV. The right to be protected in the exercise, assertion and promotion of one's rights and those of others, and to have recourse to effective remedies in the event of violations of those rights.

10. The Chairman-Rapporteur also drew the attention of the Working Group to the text of a draft declaration submitted by Norway and Canada, reproduced in E/CN.4/1987/38, Annex I, and the proposal submitted by the Union of Soviet Socialist Republics on Chapter III of the declaration reproduced in E/CN.4/1988/26, Annex IV. (The latter proposal was formally introduced by the sponsoring delegation during the first meeting).

11. The Chairman-Rapporteur also recalled the decision by the Commission on Human Rights, in its resolution 1988/71 that appropriate meeting time for the Working Group, preferably during the first two weeks of the session, should be made available. As other obligations would prevent him from staying in Geneva beyond 1 February 1989, and bearing in mind also the difficulty all delegations had in servicing meetings of the Group once the Commission itself was in session, he very much hoped that the Group would agree that additional meeting time should be sought either during the week beginning 23 January, or on 30 or 31 January. It was the general feeling of the Group that efforts should be made to get additional meeting time in the period suggested by the Chairman-Rapporteur.

12. During a brief general debate during the first and second meetings, several delegations expressed the opinion that in the drafting to date there was an imbalance between the rights of individuals, on the one hand, and their duties and responsibilities, on the other. They requested that the concept of responsibility and duty of individuals and groups should find more appropriate attention in the text of the draft declaration. In this regard, two delegations referred to the African Charter on Human and People's Rights and underlined the importance of introducing a similar concept within a future declaration, stating that there had been a unity between rights and duties in the African societies. The delegation of Senegal subsequently submitted E/CN.4/1989/WG.6/WP.5 (see Annex III) elaborating the views of his delegation

and others following similar legal systems on the essential relationship and balance between "right" and "responsibility". Other delegations pointed out, however, that the mandate of the Group was to prepare a draft declaration on the promotion and protection of the rights of the individual. They stated that the responsibility of the State to take necessary measures for the promotion and protection of human rights should be emphasized, but not the responsibilities and duties of the individual towards the State, though it was recognized that certain responsibilities towards other members of society might need to be stressed. Referring to the discussion on that and related subjects at previous sessions, some delegations recalled their position that limitations should be stated under Chapter V of the declaration rather than inserting limitation clauses into each of the preceding Chapters. Some delegations, however, noted that no decision was taken regarding the place of the limitation elements in the text of the future declaration.

13. Some delegations also thought it necessary to take into account, in the various sections of the declaration to be produced, the importance of acknowledging the role that municipal law and the obligations emanating from international judicial instruments consented to by the respective States play in the promotion, realization and protection of human rights and fundamental freedoms.

14. At its second meeting, on 23 January 1989, the Working Group agreed that the discussion should first focus on the actual drafting of Chapter III and then on Chapter IV of a future declaration.

Consideration and Drafting of Articles

Chapter III

15. With regard to Chapter III, the Working Group had before it the following proposals:

- (i) A text submitted by Canada and Norway (E/CN.4/1987/38/Annex I)

Chapter III. The Right to Associate with Others in the Promotion and the Dissemination of Knowledge about Human Rights

1. Everyone has the right to associate with others, and to meet or assemble, in order to promote and protect universally recognized human rights and fundamental freedoms. This right shall include the rights to form, join and participate effectively in non-governmental organizations, including trade unions and human rights monitoring groups.
2. This right to associate includes the right to solicit, receive and utilize voluntary financial and other contributions from individuals and any other national and international sources.
3. This right of association encompasses the right to participate in peaceful organized refusal to contribute to violations of human rights.
4. Members of such organizations and other individuals may engage in exchange, contacts and co-operation with other such organizations on a

bilateral or multilateral basis, by means of travel, including full enjoyment of the right to leave any country and to return to one's own, or other forms of communication.

5. Everyone has the right to communicate by any means with representatives of such organizations, including international organizations and organizations in other countries.

(ii) A proposal submitted by the USSR (E/CN.4/1988/26, Annex IV)

Chapter III. The right of everyone to contribute to the promotion and protection of universally recognized rights and fundamental freedoms

1. Everyone has the right to contribute to the promotion and protection of human rights and fundamental freedoms.

2. Everyone has the right to submit to State bodies and public organizations proposals for improving their activity and to criticize shortcomings in their work.

3. Everyone has the right to protection by the courts against encroachments on their life, health, honour, reputation, personal freedom or property.

4. Everyone has the right to lodge complaints against the actions of officials, State bodies or public organizations.

5. The State shall create conditions for steadily wider participation by citizens in the management of State and public affairs.

The State shall ensure the proposals and complaints relating to the work of State bodies, officials or public organizations are examined in accordance with the established procedure and time-limits. This shall include timely responses to such proposals and complaints and the taking of appropriate measures.

(iii) A proposal by the Ukrainian Soviet Socialist Republic
(E/CN.4/1989/WG.6/WP.1)

Chapter III: The right to contribute to the promotion and protection of universally recognized human rights and fundamental freedoms

1. Everyone has the right, individually as well as together with others, to contribute to the promotion and protection of human rights and fundamental freedoms at the national and international levels.

2. Everyone has the right, individually as well as together with others, to submit to State bodies and public organizations proposals for improving their activity and to draw attention to shortcomings in their work that impede the promotion and protection of universally recognized human rights and fundamental freedoms.

3. Everyone has the right, individually as well as together with others, to protection by the courts against encroachments on their right to contribute to the promotion and protection of universally recognized human rights and fundamental freedoms.

4. Everyone has the right, individually as well as together with others, to lodge complaints against the actions of officials, State bodies or public organizations if such actions in any way encroach on the right to contribute to the promotion and protection of universally recognized human rights and fundamental freedoms.

5. The State shall create conditions for steadily wider participation by citizens in the management of State and public affairs and the exercise of the right of citizens and their associations to contribute to the promotion and protection of human rights and fundamental freedoms.

The State shall ensure that proposals and complaints relating to the work of State bodies, officials or public organizations connected with the promotion and protection of human rights and fundamental freedoms are examined in accordance with the established procedure and time limits. This shall include timely responses to such proposals and complaints and the taking of appropriate measures.

16. At the outset of the debate, several delegations expressed the view that the Canadian-Norwegian draft might better serve as a basis for the consideration of the Chapter, because it underlined the right to associate and to group in the promotion and protection of human rights. This was very important and should be retained. They said that the proposals of the Union of Soviet Socialist Republics and the Ukrainian Soviet Socialist Republic contained valuable elements, which could be incorporated into the Canadian-Norwegian text. It was also mentioned, however, that some other elements of the Soviet and Ukrainian proposals essentially related to remedies and therefore might better be included in Chapter IV.

17. Other delegations, however, supported the proposals of the Union of Soviet Socialist Republics and the Ukrainian Soviet Socialist Republic, stating that it was the basic purpose of the present declaration to ensure the right to promote and to protect human rights and fundamental freedoms. It was said that the right to associate was one of the rights, the realization of which would assist in achieving that purpose, but there also existed other important rights in that context and it was not the aim of the declaration to single out one of them. The two above-mentioned proposals reflected this concept better than the Canadian-Norwegian draft, and should be taken as a basis for further consideration. In the course of the debate, the following suggested amendments were put forward to the three texts of Chapter III before the Working Group:

(a) Concerning the title of Chapter III, the delegation of Cuba submitted a proposal reading as follows:

Title suggested by Cuba for Chapter III

The right of everyone to contribute, either individually or in association with others, to the promotion, protection and realization of all human rights and fundamental freedoms.

- (b) The delegation of the United Kingdom proposed the following amendments to the Union of Soviet Socialist Republics proposal

E/CN.4/1989/WG.6/CRP.2

Paragraph 3: Replace "protection by the courts" with "effective and prompt protection of the law" or expand "courts" to read "courts, administrative appeal bodies, ombudsmen or human rights commissions";

Paragraph 4: Replace "right to lodge complaints" with "right of effective complaint";

Paragraph 5: Replace with the language of Article 25 of the ICCPR, e.g., "Every citizen shall have the right and the opportunity without unreasonable restrictions ... to take part in the conduct of public affairs, directly or through freely chosen representatives".

- (c) The delegation of China submitted the following proposal:

E/CN.4/1989/WG.6/WP.2

Working Paper submitted by the People's Republic of China

Chapter III

The Right to contribute to the promotion and protection of internationally recognized human rights and fundamental freedoms

1. Every individual has the right to criticize and make suggestions to any State organ or functionary;
2. Every individual has the right to lodge with the State organs concerned, complaints or charges against or exposure of any State organ or functionary for violation of the law or dereliction of duty;
3. The State organs concerned must deal with citizen's complaints, charges or exposure in a responsible manner after ascertaining the fact; no one shall victimize or retaliate against the citizens making them;
4. All States organs and functionaries must listen to the opinions and suggestions of the people and subject themselves to the people's supervision.

- (d) The delegation of the United States of America suggested that the title of Chapter III might be compressed to read "The right to communicate and work with others".

18. At the suggestion of the observer for the Netherlands, the Group asked the Chairman-Rapporteur to prepare a consolidated text of Chapter III taking into account all proposals and suggestions that had been submitted.

19. At its third meeting, on 24 January, the Chairman-Rapporteur introduced his paper, which read as follows:

E/CN.4/1989/WG.6/CRP.9

Draft Text Prepared by the Chairman-Rapporteur

Chapter III. The right of every person, individually and in association with others, to promote, to protect and to help in the realization of universally recognized human rights and fundamental freedoms

1. Everyone has the right, individually and in association with others, to promote and protect universally recognized human rights and fundamental freedoms at the national and international levels and to meet or assemble for these purposes.

2. This right shall encompass:

(a) the right to form, join and participate effectively in non-governmental organizations, including trade unions and human rights monitoring groups.

(b) the right to solicit, receive, and utilize voluntary financial and other contributions from individuals and any other national and international sources.

(c) the right to participate in peaceful organized refusal to contribute to violations of human rights.

3. Everyone, individually as well as in association with other individuals, has the right to submit to State bodies and public organizations proposals for improving their activity and to point to the shortcomings in their work, which create obstacles for the promotion of human rights and fundamental freedoms.

4. Members of such organizations and other individuals may engage in exchanges, contacts and co-operation with other such organizations on a bilateral or multilateral basis, by means of travel, including full enjoyment of the right to leave any country and to return to one's own, or other forms of communication.

5. Everyone has the right to communicate by any means with representatives of such organizations, including international organizations and organizations in other countries.

6. The State shall create conditions for steadily wider participation by citizens in the management of State and public affairs and the realization of the rights of citizens and their associations to contribute to the promotion and protection of human rights and fundamental freedoms.

20. Having had a debate on all the proposals submitted, the Working Group decided that an informal drafting group should be established to work on a revised and consolidated text for Chapter III, taking into account all comments made and the Chairman's draft text and all other proposals tabled.

21. At its fourth meeting, on 25 January 1989, the Chairman of the Informal Drafting Group reported that the group had not yet been able to work out a generally agreed text for this Chapter. He noted that the delegation of the Ukrainian Soviet Socialist Republic had submitted a revised compromise proposal (E/CN.4/1989/WG.6/WP.3) which is reproduced below. He suggested that the drafting group should continue its work and that, meanwhile, the Working Group should take up Chapter IV. This could facilitate the drafting group's work, since the allocation of certain paragraphs as between the two Chapters was a matter of some disagreement.

22. The text of WP.3 reads as follows:

E/CN.4/1989/WG.6/WP.3

Revised compromise proposal submitted by the
Ukrainian Soviet Socialist Republic

Chapter III. The right of every person, individually and
in association with others to assist in
promoting, protection and realization of (all)
universally recognized human rights and
fundamental freedoms

1. Everyone has the right, individually and in association with others, to promote and protect universally recognized human rights and fundamental freedoms at the national and international levels.
2. Everyone, individually and in association with others, has the right to submit to State bodies and public organizations proposals for improving their activity and to point to the shortcomings in their work, which create obstacles for the promotion and the protection of human rights and fundamental freedoms.
3. (a) Everyone has the right, individually and in association with others, to appeal to lay information, to effectively complain to State bodies against the actions of officials, State bodies or public organizations if such actions in any way violate the right to promote and protect universally recognized human rights and fundamental freedoms.

(b) Relevant State bodies shall make thorough investigation of appeals, complaints or information received from individuals and their associations and shall refrain from any kind of unlawful pressure, suppression or retaliation.
4. With the purpose to promote and protect universally recognized human rights and fundamental freedoms everyone has the right to meet or assemble, to form, join and participate effectively in non-governmental organizations and groups and communicate with them.

5. (a) Everyone as well as associations and groups, including international non-governmental organizations, in their activities with a view to assist in promoting, protecting and realization of universally-recognized human rights and fundamental freedoms have the responsibility to strictly comply with national legislation and respect the principles of international law.

(b) The State shall create conditions for steadily wider participation by citizens in the management of State and public affairs and the realization of the rights of citizens and their associations to contribute to the promotion and protection of human rights and fundamental freedoms.

(c) With this purpose the State shall guarantee the right of every citizen without unreasonable restrictions to take part in the conduct of public affairs, directly or through freely chosen representatives.

23. The Working Group held a further debate on the contents of Chapter III, in which more suggestions were submitted. The observer delegation for Czechoslovakia submitted a draft element for paragraph 5 of Chapter III which reads as follows:

E/CN.4/1989/WG.6/CRP.3

Draft element of Chapter III proposed by Czechoslovakia

5. Everyone, as well as in associations and groups, including international non-governmental organizations, in their activities with a view to promote and protect universally-recognized human rights and fundamental freedoms, have the responsibility to strictly comply with national legislation and respect the principles of international law.

24. The delegation of Cuba submitted the following proposal for the title and paragraph 1 of Chapter III:

E/CN.4/1989/WG.6/CRP.4

Proposals submitted by Cuba

Chapter III

Title: The right of every person individually and in association with others to help in the promotion, protection and realization of [universally recognized] all human rights and fundamental freedoms.

Paragraph 1

States have primary responsibility for the promotion, protection and materialization of all fundamental human rights and fundamental freedoms. Every person has the right individually and in association with others to help in the promotion, protection and materialization of said rights and freedoms at the national and international levels [and to meet or assemble for these purposes].

25. The delegation of the Union of Soviet Socialist Republics proposed the following element to be included in this Chapter:

E/CN.4/1989/WG.6/CRP.5

Draft element of Chapter III, proposed by the
Union of Soviet Socialist Republics

The State will improve their laws, administrative regulations and policies with a view to guarantee effective realization of civil, political, economic, social, cultural and other human rights and to facilitate activities of individuals and associations created by them aimed at the helping in promotion, protection and realization of these rights.

26. The delegation of the Union of Soviet Socialist Republics stressed that this element contained in E/CN.4/1989/WG.6/CRP.5, which was amended later in collaboration with the representative of the International League for Human Rights (E/CN.4/1989/WG.6/CRP.10), reproduced below, has to be discussed together with the proposal made by Czechoslovakia (E/CN.4/1989/WG.6/CRP.3) because these two elements reflect the basic concept of inseparability of rights and responsibilities.

E/CN.4/1989/WG.6/CRP.10

Amendment to E/CN.4/1989/WG.6/WP.3, chapter III proposed by
the Union of Soviet Socialist Republics

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

27. Subsequently, the Working Group decided that the Informal Drafting Group should continue its work with a view to producing a draft text of Chapter III which would reflect the agreement of all participants in the group.

28. At its ninth meeting, on 30 January 1989, the Chairman of the Informal Drafting Group reported that the group had met four times in the course of the session. It had taken as a basis of its work the draft text for Chapter III prepared by the Chairman of the Working Group (E/CN.4/1989/WG.6/CRP.9). The group had been able to discuss that text, but had not had enough time to discuss and agree upon all other proposals. The group had of course, been unable to take up discussion of Chapter IV.

29. The Chairman of the Informal Drafting Group presented document E/CN.4/1989/WG.6/CRP.11/Rev.2 of 30 January 1989, as reflecting the work of the group. This is reproduced in Annex IV of the report.

30. At the same meeting the delegation of the Ukrainian Soviet Socialist Republic submitted a draft consolidated text of Chapter III prepared on the basis of the various proposals submitted to the Working Group. It follows

that the Chapter III material referred for further consideration at the next session is not the subject of full consensus and will comprise not only E/CN.4/1989/WG.6/CRP.11/Rev.2, but also the Ukrainian consolidated text (E/CN.4/1989/WG.6/WP.8) reproduced in Annex IV to the present report and all the other individual proposals referred to in preceding paragraphs of this report. This idea was supported by a number of other delegations.

Chapter IV

31. The Working Group considered Chapter IV at its 4th to 8th meetings held from 25 to 27 January 1989.

32. There was a general understanding that the Canadian-Norwegian text for Chapter IV (E/CN.4/1987/38, Annex I, see also Annex II of the present report) could be utilized as a working basis, on the understanding that other proposals should be duly taken into account.

33. The Working Group held a lengthy debate on the contents of Chapter IV. The view was expressed that this Chapter was one of the most important in the declaration because it referred to remedies in the event of violations of human rights. Others argued, however, that such an impression would be erroneous, and remedies were not the most important aspect. It was also argued that the draft of Canada and Norway was too detailed and future drafting might better reflect the language of the relevant articles of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and other instruments.

34. There was a general feeling that clear attention to remedies was necessary, and it was stressed that a careful drafting of this Chapter, and in particular of its paragraphs 2 and 4, was essential. The following proposals and amendments were submitted:

- (a) With regard to paragraphs 2 (b) and 7, the delegation of the United Kingdom proposed the following amendments:

E/CN.4/1989/WG.6/CRP.6

United Kingdom amendments to Canadian/Norwegian text

Chapter IV. Paragraph 2 (b)

Delete

"before independent and competent judicial tribunals".

Insert

"so that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State".

Paragraph 7

Last line: delete "and"
insert "or"

(b) As to paragraph 1, the Ukrainian Soviet Socialist Republic proposed:

E/CN.4/1989/WG.6/CRP.7

Amendment by the Ukrainian Soviet Socialist Republic to Chapter IV,
paragraph 1, as submitted by Canada and Norway

Amendment to paragraph 1

After the words:

"... rights and fundamental freedoms" include the following:

"including the right to promote and to protect the universally recognized human rights and fundamental freedoms".

(c) The delegation of Argentina submitted the following amendments to paragraphs 1, 3, 4, 5 and 7:

E/CN.4/1989/WG.6/CRP.8

Amendments by Argentina to Chapter IV,
as submitted by Canada and Norway

Paragraph 1: Amendment to the document E/CN.4/1989/WG.6/CRP.7.
After the word "protect" insert "individually or in association with others".

Paragraph 3: Replace the word "document " by "Declaration".

Paragraph 4: After the word "freedoms" insert "... individually or in association with others".

Paragraph 5: After "police" insert "security".

Paragraph 7: Insert at the end of paragraph 7 "or the organizations mentioned in Chapter III".

(d) With regard to paragraph 4, the delegation of Senegal submitted a proposal, which reads as follows:

"In the exercise of the right covered by this Chapter, no one shall suffer whatsoever or undergo any prejudices nor be an object of discrimination of himself or members of his family."

(e) The delegation of the German Democratic Republic tabled the following amendments:

E/CN.4/1989/WG.6/CRP.12

Amendments to Chapter IV as proposed by the German Democratic Republic

Amendments to Chapter IV

Para. 4

1. Insert (a) before "Persons availing ..."

2. In the 7th line, after "a State" insert "... or be discriminated and defamed as radicals, mischief-makers, chaotics and terrorists ..."

3. Add a new paragraph 4 (b).

"In the exercise of law and order, law enforcement officials shall avoid the use of force, or, where that is not practicable, restrict such force to the minimum necessary, in particular, they shall not use firearms against those persons, intentional lethal force, tear-gas or other measures which may endanger the life or health of those persons. Situations as described under (a) shall not be used as a pretext for taking such restrictive measures or the use of force. States shall also avoid undermining or provoking these groups by methods of insinuation or using of 'agents provocateurs'".

(f) The delegation of Cuba also submitted a set of amendments to the Canadian and Norwegian text for Chapter IV:

E/CN.4/1989/WG.6/WP.6

Amendments proposed by Cuba to chapter IV of the Draft Declaration
submitted by Canada and Norway

(a) Title: "Protection in the national context and at the international level of activities intended to achieve effective promotion, realization and protection of all human rights and fundamental freedoms, including the right to effective remedies in the event of violations of those rights and freedoms".

(2) Paragraph 1: The text should read as follows:

"Everyone has the right, both in the national context, and where appropriate, at the international level, to effective remedies in the event of violation of any of his human rights and fundamental freedoms."

(3) Paragraph 2: The text should read as follows:

"2. To this end, everyone may:

(a) Appeal, by established remedies or petitions, to the competent judicial administrative or legislative authorities and, where appropriate, to international bodies with recognized powers, for the purposes of restoration of the exercise of such rights and freedoms;

(b) Exercise his right to a fair and public hearing before competent judicial tribunals or any other administrative or legislative authority established in the legal system or system operative in the country concerned, in order to obtain due redress of grievances;

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

(d) Seek the assistance of others in defending his rights and freedoms and offering and providing assistance to any victim or violations of those rights and freedoms recognized in the law in force in the country concerned or in the international instruments adopted by that State;

(e) Lay an effective complaint with national and international bodies with due powers and jurisdiction about arbitrary acts that prejudice their rights and freedoms;

(f) (The original text of the present paragraph 2 (h) submitted by Canada and Norway would be reproduced here).

(4) Paragraph 3: Insert the words "by the competent authorities" between the words "security of person" and "shall be guaranteed and respected".

Replace the words "set forth in this document", at the end of the paragraph, by the words "referred to in paragraph 2 of this Chapter".

(5) Paragraph 4: Replace the words "judicial or administrative measures", in the third line, by "judicial, administrative or any other kind of measures".

At the end of the present text of the paragraph, replace the full stop by a comma and add the following words: "recognized by national legislation and in the international legal commitments of the State concerned".

(6) Paragraph 5: After the words "including the military", in the first line, add the words "the personnel of intelligence agencies".

Add the following at the end of the present text: "The government authorities shall take any preventive and remedial measures necessary to prevent and punish the activities of so-called paramilitary groups, in particular those known as 'death squads', against persons or entities advocating the realization of human rights in their countries".

(7) Paragraph 7: The last part of the present text should read as follows: "... ombudsmen or national human rights associations and commissions".

(g) As to paragraph 1 of Chapter IV, the delegation of Senegal submitted the following proposal:

E/CN.4/1989/WG.6/CRP.13

Proposal by Senegal

In the exercise of the rights referred to in the present declaration, everyone has the right to protection and to recourse of effective means of legal remedies in cases of violations of those rights.

- (h) The delegation of the Ukrainian Soviet Socialist Republic submitted a proposal for paragraph 1:

E/CN.4/1989/WG.6/CRP.14

Amendment by the Ukrainian Soviet Socialist Republic
of Chapter IV

Paragraph 1 should read:

Exercising the right to promote and to assist in the protection and realization of universally recognized human rights and fundamental freedoms everyone has the right to effective means of legal remedies in cases of violations of this right.

35. As to the title of the Chapter contained in the Canadian and Norwegian draft text, the delegation of Norway clarified that the words in brackets "(Preventive and Remedial Measures)" were simply a reminder of the Chapter's contents and did not form a substantive part. In an ensuing discussion, the Group was unable to reach agreement on an exact formulation of the title and decided to defer the issue until consideration of the content of the Chapter had been completed.

Paragraph 1 of Chapter IV

36. The Working Group conducted a detailed discussion on paragraph 1 at its 6th and 7th meetings on 26 January 1989. In its concluding stages, the discussion was based upon the Senegalese text as reproduced under sub-paragraph (g) above.

37. The opinion was expressed by some delegations that reference should be made to effective remedies at the international, as well as the national levels, whilst other delegations had reservations about the extent to which effective international remedies might accrue.

38. The delegation of the United States of America proposed the following amendment to the Senegalese proposal:

"In the exercise of their internationally/universally recognized human rights and fundamental freedoms, everyone has the right to protection and recourse to effective remedies in the event of violations of those rights."

39. The delegation of Norway submitted a further amendment to insert the words "national and international" after the word "effective".

40. The delegation of the German Democratic Republic suggested a further amendment, reading: "effective national and, as far as accepted by States, international remedies".

41. The delegation of Sweden then stated that several international recourse procedures existed besides the procedures established by international treaties, and proposed a new reformulation, which read as follows:

"In the exercise of their universally recognized human rights and fundamental freedoms, everyone has the right to protection and recourse to effective remedies, at the national and international levels, in the event of violations of those rights."

42. The delegation of Australia suggested replacement of the words "at the national and international levels" in this Swedish proposal by "whether national or international".

43. At the end of the 6th meeting, the Chairman-Rapporteur suggested that the delegations principally concerned meet informally before the 7th meeting to come up with a single agreed text for paragraph 1. At the beginning of the 7th meeting, the delegation of Norway, upon the basis of informal discussion suggested the following text:

"In the exercise of their internationally recognized human rights and fundamental freedoms, everyone has the right to protection and recourse to effective remedies in the event of violations of these rights."

44. Concern was, however, expressed over the word "recourse" by the delegation of Senegal. The delegation of the United States of America felt that the word "their" was not appropriate. Many delegations also thought that the word "universally" would be more appropriate than "internationally", as there existed internationally customary human rights law, as well as international treaty law. The word "universally" was finally agreed upon.

45. The delegation of the Ukrainian Soviet Socialist Republic proposed the insertion of "including the right to promote and protect human rights" after the words "fundamental freedoms". Following an exchange of views on this proposal, the Chairman-Rapporteur suggested adoption of the paragraph with the words "including the right to promote and protect human rights" in square brackets.

46. The delegation of Norway suggested that the words proposed by the Ukrainian delegation be replaced by "including the rights referred in the declaration".

47. The delegation of the Union of Soviet Socialist Republics suggested "including the right to promote and to assist in the protection and realization of universally recognized human rights".

48. After a long debate, the delegation of Senegal proposed a reformulated first clause of paragraph 1 reading as follows:

"In the exercise of the rights referred to in the present declaration (universally recognized rights), everyone has the right to ..."

49. Informal negotiations thereafter produced the following agreed text, which was presented by the delegation of Norway:

"In the exercise of the right to promote and protect the human rights referred to in the present declaration, as well as in the exercise of other universally recognized human rights and fundamental freedoms,

everyone has the right to protection and recourse to effective remedies in the event of violations of those rights" (E/CN.4/1989/WG.6/WP.7).

50. At the end of the 7th meeting on 26 January 1989, this text was provisionally adopted at first reading as paragraph 1 of Chapter IV.

Paragraph 2 of chapter IV

51. At its 8th meeting, on 27 January 1989, the Working Group moved on to discussion of paragraph 2 of Chapter IV, taking the Canadian-Norwegian text as a starting point.

52. The Chairman-Rapporteur drew the attention of the Group to the following proposals and amendments to that paragraph:

(a) The text proposed by Cuba:

E/CN.4/1989/WG.6/WP.6

Amendments proposed by Cuba to chapter IV of the Draft Declaration
submitted by Canada and Norway

(3) Paragraph 2: The text should read as follows:

"2. To this end, everyone may:

(a) Appeal, by established remedies or petitions, to the competent judicial, administrative or legislative authorities and, where appropriate, to international bodies with recognized powers, for the purposes of restoration of the exercise of such rights and freedoms;

(b) Exercise his right to a fair and public hearing before competent judicial tribunals or any other administrative or legislative authority established in the legal system or system operative in the country concerned, in order to obtain due redress of grievances;

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

(d) Seek the assistance of others in defending his rights and freedoms and offering and providing assistance to any victim or violations of those rights and freedoms recognized in the law in force in the country concerned or in the international instruments adopted by that State;

(e) Lay an effective complaint with national and international bodies with due powers and jurisdiction about arbitrary acts that prejudice their rights and freedoms;

(f) (The original text of the present paragraph 2 (h) submitted by Canada and Norway would be reproduced here).

- (b) The text of the chapeau, submitted by Bulgaria:

Amendment by Bulgaria to Chapter IV, paragraph 2

Paragraph 2 - Introductory wording

Replace "This includes" by "Any person claiming such a remedy shall have:"

- (c) The amendment of Sudan to paragraph 2 (a):

E/CN.4/1989/WG.6/CRP.17

Amendment by Sudan to Chapter IV, paragraph 2 (a)

1. After "appeals to" insert "domestic".
2. After "organizations" and "where appropriate".

- (d) The Amendments by China to paragraph 2 (a) (h) and 2 (e) (f)

Amendments by China to the Canadian/Norwegian text

Chapter IV, paragraph 2 (a) (h)

Change the last word of (a) "organizations" for "bodies".

Take the last part of the last sentence of paragraph 2 (h) after "bodies", in accordance with applicable international instruments.

Delete (h).

Chapter IV, paragraph 2 (e) (f)

Combine (a) and (f). New one reads:

The right to seek and offer assistance in defending human rights and fundamental freedoms.

- (e) The amendment by the Ukrainian Soviet Socialist Republic of paragraph 2 (a):

E/CN.4/1989/WG.6/CRP.18

Amendment by the Ukrainian Soviet Socialist Republic
Chapter IV, paragraph 2 (a)

Reformulate paragraph 2 (a) in the following way:

2. The rights mentioned in paragraph 1, includes:

(a) the right to appeal to the judicial bodies in case of violation of universally recognized human rights and fundamental freedoms.

(f) The proposal by Senegal to paragraph 2 (a):

E/CN.4/1989/WG.6/CRP.20

Proposal by Senegal to Chapter IV paragraph 2 (a)

2. (a) The right to draw attention to violations of human rights or to appeal, by established remedies or petitions, to the competent national judicial, administrative or legislative authorities and any competent international organizations.

(g) The amendment by the Netherlands and Sudan to paragraph 2 (b):

E/CN.4/1989/WG.6/CRP.21

Amendment by the Netherlands and Sudan to the Canadian/
Norwegian text (E/CN.4/1987/38. Annex I)

Chapter IV, paragraph 2 (b)

Add at the end of the sub-paragraph (b) the words:

"and the right to due and timely enforcement of any redress awarded".

(h) The amendment by China to paragraph 2 (a):

E/CN.4/1989/WG.6/CRP.16

Amendments by China to the Canadian/Norwegian text

Chapter IV, paragraph 2 (c)

Delete "such"

Insert "public" instead

Chapter IV, paragraphs 3 and 4

1. Insert "and no one shall suffer from discrimination of any form" after the first sentence of paragraph 3.

2. Delete from second sentence of paragraph 3 "prevent ... violence by" and "against those".

3. Insert "protect" between "measures to" and "individuals".

4. Delete paragraph 4.

- (i) The amendments and sub-amendments by the United Kingdom to paragraph 2 (b):

E/CN.4/1989/WG.6/CRP.6
25 January 1989

United Kingdom amendments to Canadian/Norwegian text

Chapter IV. Paragraph 2 (b)

Delete

"before independent and competent judicial tribunals".

Insert

"so that any person claiming such a remedy shall have his right thereto determined by independent and competent judicial, administrative or legislative authorities, or by any other independent and competent authority provided for by the legal system of the State".

53. A wide range of delegations contributed to the ensuing debate, at the outset of which the delegation of Cuba stressed that its proposals in E/CN.4/1989/WG.6/WP.6 had an internal logic in the relationship they outlined between established national remedies on the one hand and, on the other, recourse to duly empowered international organs.

54. The debate thereafter essentially focused on subparagraphs (a) and (h). Points that will need particularly to be borne in mind when the Working Group at its next session resumes consideration of paragraph 2 include the following:

- (i) The delegation of China clarified that its first amendment in E/CN.4/1989/WG.6/CRP.15 would have the effect of a combined subparagraph reading:
- (a) ... relevant international bodies, in accordance with applicable international instruments";
- (ii) The delegation of the Ukrainian Soviet Socialist Republic suggested that subparagraph (a) really belonged in Chapter III, a point to which the delegation of Norway replied to the effect that the treatment of the concepts of drawing attention to violations and to shortcomings in the work of governmental bodies on the one hand and remedies on the other were indeed close. The question was in which Chapter the matter was more logically placed. In its turn, the delegation of the Ukrainian Soviet Socialist Republic said that its concern was to minimize repetitions: the right to draw attention to shortcomings in governmental organs might pre-empt a situation in which remedies (recourse to judicial tribunals, for example) were required;
- (iii) Expressing a preference for the Chinese version in E/CN.4/1989/WG.6/CRP.15, the delegation of the German Democratic Republic said that the notion that all international organizations would be able to accept petitions or appeals presented difficulties;

- (iv) The delegation of Bulgaria suggested that, with the adoption of paragraph 1 of the Chapter, the chapeau of paragraph 2 would better read "2. Any person claiming such a remedy shall have;"
- (v) The delegation of Senegal suggesting that debate on subparagraph (h) should for the time being be set aside, contended that subparagraphs (a) and (h) should be retained separately. The amalgamation proposed in E/CN.4/1989/WG.6/CRP.15 and the approach reflected in E/CN.4/1989/WG.6/WP.6 could be exploited by States wishing to prevent or restrict appeals to international bodies. This contention drew support from several delegations.
- (vi) The delegation of Sudan, agreeing that the two subparagraphs should be kept separate, suggested the Canadian/Norwegian and the Cuban version of subparagraph (a) were actually complementary.

55. It was in the light of the foregoing exchange that the delegation of Senegal submitted the proposal contained in E/CN.4/1989/WG.6/CRP.20 (see above). After further discussion, the delegation of Senegal submitted the following reformulation:

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

56. Though the Working Group felt that it could in principle go along with this revised text, time did not allow for further discussion and formal approval of this subparagraph at first reading.

Future Work

57. At its ninth meeting, on 30 January 1989, the Working Group held a discussion on its future work. The major issues discussed were: (a) how the report of the Working Group should be presented to the Commission on Human Rights, and (b) how to proceed in its work at the next session.

58. As to the first point, many delegations thought that the report of the Group should be short and concise, and include all necessary information, including proposals and amendments submitted, as well as a brief description of the proceedings of the Group. It was confirmed that the contents of the working papers and conference papers submitted during the session would be reflected with equal emphasis in the description of proceedings. It was also confirmed that the format of the report would be similar to that of the last session.

59. The Working Group decided that after Mr. Robertson's departure, Mr. Barker of the Australian delegation would stand in for the Chairman-Rapporteur during the adoption of the final report of the Group, which he would also present to the Commission on Human Rights. As to the question of chairmanship of the Working Group at the next session, a number of delegations expressed the hope that Mr. Robertson would be able to continue. They also expressed the view that, with a sustained and carefully structured effort balancing formal sessions with meetings of small and informal ad hoc drafting

groups, the Working Group had the prospect of going a long way towards completing, under his chairmanship, at least a first reading of the draft declaration.

60. As to the future work, it was emphasized that more time should be allotted to the work of the Working Group in 1990 in order to keep the momentum gained at this session and make substantive progress. Several delegations expressed the view that the Group should ask the Commission and the Economic and Social Council to provide for a pre-session meeting of two weeks' duration before the forty-sixth session of the Commission in order to ensure the completion of the first reading of Chapters III and IV, as well as the commencement of additional material. One delegation observed that if, as had been proposed formally, fully serviced meetings of the Working Group would alternate with small, informal and unserviced drafting groups, there would in fact be only a marginal additional cost. Although several delegations stressed that even informal drafting solely in English, and without interpretation could present problems, and that they therefore had to reserve their position on the question of servicing, there was no dissent from the general concept. Some delegations did, however, foresee practical difficulties in thus extending the session of the Commission to a total duration of eight weeks and urged that the second week of meetings should be sought, as under the existing framework, during the first week of the Commission's session. Other delegations suggested that it would be difficult to combine the meetings of the Working Group with those of the plenary of the Commission, especially for delegations with only a few members.

61. Concerning the topics to be dealt with by the Working Group at the next session, the opinion was expressed that the provisions of Chapters III and IV should be tackled first by informal ad hoc drafting groups and later finalized in plenary, as it was generally easier to reach agreement in an informal group. Against this, however, it was pointed out that the full Working Group would in practice have first to meet in order to give a clear mandate for the informal discussions. Some delegations thought that the Working Group should commence with a general discussion on Chapter V, whilst others thought that the Group should return to the preamble and Chapter I, as the Working Group would find it easier to deal with Chapter V on limitations after working out what sort of rights would be included in a future declaration. It was said that some of the paragraphs provisionally placed in Chapters I and II might even come under Chapters III or IV.

Adoption of report

62. At its 10th meeting on 27 February 1989, the Working Group adopted the present report.

Annex I

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

Chapter II

Title

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

Paragraph I

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

Paragraph II

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

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

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

Paragraph V

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

Paragraph VI

1. The State has the responsibility to take legislative, judicial, administrative or other appropriate measures to promote the understanding by all persons under its jurisdiction of their civil, political, economic, social and cultural rights.

2. Such measures shall include:

(a) the publication and widespread distribution of national laws and regulations and of basic international human rights instruments;

(b) full and equal access to international documents in the field of human rights, including the State's periodic reports to the bodies established by the international human rights treaties to which it is a party, as well as the official report of these bodies.

3. The State has the responsibility to promote and improve the teaching of human rights and fundamental freedoms at all levels of education, and to encourage all those responsible for training lawyers, law enforcement officers, the personnel of the armed forces and public officials to include appropriate elements of human rights teaching in their training programmes.

Chapter IV

Paragraph I

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

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

Chapter II

Paragraph III

Everyone has the right to study, discuss and form opinions as to whether these rights and freedoms are observed, both in law and in practice, regardless of frontiers, and to solicit public attention on these matters by such means as public discussion, the use of the media, peaceful demonstrations and other [legitimate] forms of free and peaceful expression [in a spirit of objectivity, tolerance and fraternity].

Paragraph IV

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

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

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

Preamble, Chapters I and V */

Preamble

A

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

B

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

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

C

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

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

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

D

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

E

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

F

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

Chapter I

A

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

B

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

Chapter V

A

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

B

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

Annex II

[E/CN.4/1987/38, Annex I] */.

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

Text (operative part) of Draft Declaration proposed by the
delegations of Norway and Canada

The General Assembly,

Proclaims this Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms:

Chapter I: The Right to Know and to Impart to Others Knowledge about
Universally Recognized Human Rights and Fundamental Freedoms

1. Everyone has the right to know their human rights and fundamental freedoms.
2. Everyone has the right, individually or together with others, to obtain and to impart freely to others views and information on their rights and freedoms. This includes the right to promote and protect, both at the national and international levels, these rights and freedoms, by inter alia, seeking, receiving, holding, imparting, publishing monitoring and disseminating information and views concerning any aspect of them, including the monitoring of their actual observance or non-observance.
3. Everyone has the right to access to information about these rights and freedoms, and on the means by which these rights and freedoms are given full effect in domestic judicial and administrative systems. This shall include the publication and widespread distribution by States of the texts of relevant laws and regulations, and of their periodic reports to the bodies responsible for implementation of international human rights treaties to which they are parties, as well as the records of deliberations by such bodies on these reports. States shall also seek to ensure that information on these rights and freedoms is widely available in the educational system, including professional training.

*/ Re-issued for convenience of delegations.

Everyone has the right to study and to discuss the actual observance or non-observance of these rights and freedoms, either in one's own country or in other countries, and to solicit the attention of the public at large on these matters by such means as the encouragement of public discussion, the use of the media, peaceful demonstrations, and other forms of free expression.

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

Chapter III: The Right to Associate with Others in the Promotion and the Dissemination of Knowledge about Human Rights

1. Everyone has the right to associate with others, and to meet or assemble, in order to promote and protect universally recognized human rights and fundamental freedoms. This right shall include the rights to form, join and participate effectively in non-governmental organizations, including trade unions and human rights monitoring groups.

2. This right to associate includes the right to solicit, receive, and utilize voluntary financial and other contributions from individuals and any other national and international sources.

3. This right of association encompasses the right to participate in peaceful organized refusal to contribute to violations of human rights.

4. Members of such organizations and other individuals may engage in exchanges, contacts and co-operation with other such organizations on a bilateral or multilateral basis, by means of travel, including full enjoyment of the right to leave any country and to return to one's own, or other forms of communication.

5. Everyone has the right to communicate by any means with representatives of such organizations, including international organizations and organizations in other countries.

Chapter IV: The Right to be Protected in the Exercise, Assertion and Promotion of One's Rights and Those of Others, and to Have Recourse to Effective Remedies in the Event of Violations of Those Rights (Preventive and Remedial Measures)

1. Everyone has the right to effective remedies in the event of violations of their internationally recognized human rights and fundamental freedoms.

2. This includes:

(a) the right to draw attention to violations by means of petition or other appeals to executive, legislative, judicial and administrative organs and relevant international organizations;

(b) the right to a fair and public hearing before independent and competent judicial tribunals in order to obtain prompt, adequate and effective redress of grievances, including monetary or other compensations where appropriate;

- (c) the right to attend such trials of proceedings to monitor their fairness;
- (d) the right of lawyers to offer and provide legal assistance;
- (e) the right to seek the assistance of others in defending one's own human rights;
- (f) the right to offer and provide assistance to victims of human rights abuses;
- (g) the right to effective complaint against the policies and actions of individual officials and governmental bodies;
- (h) the right to unhindered access to and communication with international bodies with general or special competence to receive and consider communications on matters of human rights in accordance with applicable international instruments.

3. In the exercise of these rights and freedoms, security of person shall be guaranteed and respected. States shall take effective measures to prevent the use of threat of violence by individuals or groups against those exercising the rights and freedoms set forth in this document.

4. Persons availing themselves of the right to promote and protect human rights and fundamental freedoms shall not suffer any de jure or de facto prejudice, whether through judicial or administrative measures, such as the withholding of practical advantages, or through defamation, intimidation or threats against self, family, friends or associates. In particular, no one shall be accused of undermining or subverting the political or social system of a State because they advocate the actual observance of human rights in that State.

5. Professional individuals and groups (including the military, doctors, lawyers and the judiciary, scientists, teachers, police and correctional officers) have the right and responsibility to maintain in their activities the highest standards of professional conduct and ethics, paying the utmost attention to respect of the dignity and rights of every individual.

6. Everyone has the right to the effective and prompt protection of the law against arbitrary or unlawful interference with the exercise of these rights and freedoms.

7. States shall encourage and support the development of effective institutions for the promotion and protection of these rights and freedoms including administrative appeal bodies, ombudsmen and human rights commissions.

Chapter V: Conditions and Limitations on the Exercise of the Right
(General Provisions)

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

2. The rights and freedoms set forth in the present Declaration shall be accorded in national legislation in such a manner that everyone shall be able to avail themselves effectively of such rights and freedoms.

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

Annex III

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

Proposal by Senegal relating to Rights and responsibilities
of individuals and groups
Chapter V (new)

Introductory note

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

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

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

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

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

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

Chapter V (new)

- (1) "It is the duty of everyone, individually and together with others, to encourage the promotion of human rights and to act, together with others, in a spirit of tolerance and brotherhood".

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

Annex IV

E/CN.4/1989/WG.6/CRP.11

26 January 1989

Informal Drafting Group

Texts for Chapter III as they emerge from the work of the Drafting Group on the basis of the draft text prepared by the Chairman of the Working Group and proposals of individual delegations.

Chapter III. The right of every person, individually and in association with others, to promote, to protect and to help in the realization of universally recognized human rights and fundamental freedoms

1. Everyone has the right, individually and in association with others, to promote and protect universally recognized human rights and fundamental freedoms at the national and international levels.
2. With the purpose to promote and protect universally recognized human rights and fundamental freedoms everyone has the right:
 - (a) to meet or assemble with others;
 - (b) to form, join and participate in non-governmental organizations, groups or organs and communicate with them;

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

(d) to solicit, receive and utilize voluntary financial and other contributions;

[on as favourable a basis as other domestic individuals and organizations]

[on the same basis as other associations in the country]

[on a non-discriminatory basis]

3. Everyone has the right, individually and in association with others, to submit to Governmental bodies and agencies and other public organizations proposals for improving their official functioning and to draw attention to any shortcomings in their work which create obstacles to the promotion, protection and realization of human rights and fundamental freedoms.

4. Everyone has the right, individually and in association with others to participate in peaceful organized refusal to contribute to violations of human rights and fundamental freedoms.

E/CN.4/1989/WG.6/CRP.11/Rev.1
27 January 1989

Informal Drafting Group

Texts for Chapter III as they emerge from the work of the Drafting Group on the basis of the draft text prepared by the Chairman of the Working Group and proposals of individual delegations.

Chapter III. The right of every person, individually and in association with others, to promote, to protect and to help in the realization of universally recognized human rights and fundamental freedoms

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

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

(a) to meet or assemble with others;

(b) to form, join and participate in non-governmental organizations, groups or associations and communicate with them;

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

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

3. (Text of paragraph 3 as it appeared in E/CN.4/1989/WG.6/CRP.11 has been incorporated in paragraph 5 (c))

4. Everyone has the right, individually and in association with others to participate in peaceful organized refusal to contribute to violations of human rights and fundamental freedoms.

5. (a) States shall create favourable conditions for and ensure the effective realization of the rights of individuals and their associations to promote and to assist in the protection of the universally recognized human rights and fundamental freedoms.

(b) Everyone has the right, individually and in association with others, to participate in the management of the State and in the conduct of public affairs.

(c) To this end everyone has the right, individually and in association with others, to submit to governmental bodies and agencies and other public organizations criticism and proposals for improving their official functioning and to draw attention to any shortcomings in their work which create obstacles to the promotion, protection and realization of human rights and fundamental freedoms.

E/CN.4/1989/WG.6/CRP.11/Rev.2
30 January 1989

Informal Drafting Group

Texts for Chapter III as they emerge from the work of the Drafting Group on the basis of a draft text prepared by the Chairman of the Working Group and proposals of individual delegations.

Chapter III. The right of every person, individually and in association with others, to promote, to protect and to help in the realization of universally recognized human rights and fundamental freedoms

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

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

(a) to meet or assemble [peacefully] with others;

(b) to form, join and participate in non-governmental organizations, groups or associations and communicate with them;

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

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

3. (Text of paragraph 3 as it appeared in E/CN.4/1989/WG.6/CRP.11 has been incorporated in paragraph 5 (c))

4. Everyone has the right, individually and in association with others to participate in peaceful organized refusal to contribute to violations of human rights and fundamental freedoms.

5. (a) States shall create favourable conditions for and ensure the effective realization of the rights of individuals and their associations to promote and to assist in the protection of the universally recognized human rights and fundamental freedoms.

(b) Everyone has the right, individually and in association with others, to participate in the management of the State and in the conduct of public affairs.

(c) To this end everyone has the right, individually and in association with others, to submit to governmental bodies and agencies and other public organizations criticism and proposals for improving their official functioning and to draw attention to any shortcomings in their work which create obstacles to the promotion, protection and realization of human rights and fundamental freedoms.

E/CN.4/1989/WG.6/WP.8
30 January 1989

Draft consolidated text of Chapter III prepared by the
Ukrainian Soviet Socialist Republic on the basis of
various proposals made by delegations */

Chapter III. The right of every person, individually and in association with others to assist in promoting, protecting and realization of (all) universally recognized human rights and fundamental freedoms

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

*/ Draft of Chapter III, proposed by Norway and Canada in E/CN.4/1987/38, Draft of Chapter III, presented by the Union of Soviet Socialist Republics in E/CN.4/1988/26, proposals made by the People's Republic of China in E/CN.4/1989/WG.6/WP.2, by the Ukrainian Soviet Socialist Republic in E/CN.4/1989/WG.6/WP.1, E/CN.4/1989/WG.6/WP.3 and E/CN.4/1989/WG.6/CRP.7 by Senegal in E/CN.4/1989/WG.6/WP.5. Draft element of Chapter III proposed by Czechoslovakia in E/CN.4/1989/WG.6/CRP.3. Proposals submitted by Cuba on 24 January 1989. Amendments presented by the United Kingdom on 24 January 1989. Addendum presented by the Union of Soviet Socialist Republics on 25 January 1989 in E/CN.4/1989/WG.6/CRP.10. Draft text of Chapter III prepared by the Chairman. Draft text of the Informal Drafting Group in E/CN.4/WG.6/CRP.11/Rev.1.

2. Everyone has the right, individually and in association with others, to participate in the management of the State and in the conduct of public affairs. To this end everyone has the right, individually and in association with others, to submit to governmental bodies and agencies and other public organizations criticism and proposals for improving their official functioning and to draw attention to any shortcomings in their work which create obstacles to the promotion, protection and realization of human rights and fundamental freedoms.

3. Everyone has the right, individually and in association with others to participate in peaceful organized refusal to contribute to violations of human rights and fundamental freedoms.

4. (a) Everyone has the right, individually and in association with others to appeal, to lay information, to effectively complain to State bodies against the actions of officials, State bodies or public organizations if such actions in any way violate the right to promote and protect universally recognized human rights and fundamental freedoms.

(b) Relevant State bodies shall make thorough investigations of appeals, complaints or information received from individuals and their associations and shall refrain from any kind of unlawful pressure, suppression or retaliation.

5. (a) For the purpose of promoting and protecting universally recognized human rights and fundamental freedoms everyone has the right:

- to meet or assemble with others;
- to form, join and participate in non-governmental organizations, groups or associations and communicate with them;
- individually and in association with others, to communicate with national and international non-governmental or intergovernmental organizations;
- individually and in association with others, to communicate with national and international non-governmental or intergovernmental organizations;
- individually and in association with others, to solicit, receive and utilize voluntary financial and other contributions on the same non-discriminatory basis as other individuals and associations in the country.

(b) Everyone as well as associations and groups, including international non-governmental organizations, in their activities with a view to assist in promoting, protecting and realization of universally recognized human rights and fundamental freedoms have the responsibility to comply strictly with national legislation and respect the principles of international law.

(c) Each State will apply and improve its laws, administrative regulations and policies with a view to guaranteeing effective realization of universally recognized civil, political, economic, social, cultural and other human rights and assuring that the activities of each person, individually and

in association with others, to promote and to help in the promotion and realization of these rights are not unreasonably impeded by its laws, administrative regulations and policies.

6. Each State shall create favourable conditions for and ensure the effective realization of the rights of individuals and their associations to promote and to assist in the protection of the universally recognized human rights and fundamental freedoms. With this purpose the State shall guarantee the right of every citizen without unreasonable restrictions to take part in the conduct of public affairs, directly or through freely chosen representatives.

4. Amendments by the United Kingdom to paragraph 2 (c) of CRP.11/Rev.1

- (i) delete "to exchange, to get in touch and meet" and insert "to communicate, meet and engage in exchanges with";
- (ii) add (at the end) "by means of travel including full enjoyment of the right to leave any country and to return to one's own, or other forms of communication".
