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DRAFTING OF 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

Report of the Working Group on its eighth session

Chairman-Rapporteur: Mr. Jan Helgesen (Norway)

GE.93-11650 (E)

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 decision was approved by the Economic and Social Council in its decision 1985/152 of 30 May 1985. The Working Group held its first to seventh sessions prior to the forty-second to forty-eighth sessions, respectively, of the Commission on Human Rights, its reports to the Commission being contained in documents E/CN.4/1986/40, E/CN.4/1987/38, E/CN.4/1988/26, E/CN.4/1989/45, E/CN.4/1990/47, E/CN.4/1991/57 and E/CN.4/1992/53 and Corr.1.

2. The Commission, in its resolution 1992/82 of 6 March 1992, decided to continue at its forty-ninth session its work on the elaboration of the draft declaration. The Economic and Social Council, in its resolution 1992/9 of 20 July 1992, authorized an open-ended working group to meet for a period of two weeks prior to the forty-ninth session of the Commission on Human Rights with a view to continuing the work on the draft declaration.

3. During its eighth session, the Working Group held 13 meetings from 18 to 29 January, and on 1 March 1993. The session was opened by the representative of the Under-Secretary-General for Human Rights, who made a statement.

Election of the Chairman-Rapporteur

4. At its 1st meeting, on 18 January, the Working Group elected Mr. Jan Helgesen (Norway) Chairman-Rapporteur.

Participation

5. The representatives of the following States members of the Commission attended the meetings of the Working Group, which were open to all members of the Commission: Australia, Austria, Bulgaria, Canada, Chile, China, Colombia, Cuba, Czech Republic, Finland, France, Germany, India, Indonesia, Iran (Islamic Republic of), Japan, Libyan Arab Jamahiriya, Malaysia, Mexico, Poland, Portugal, Republic of Korea, Romania, Russian Federation, Syrian Arab Republic, Tunisia, United Kingdom of Great Britain and Northern Ireland, United States of America.

6. The following States, non-members of the Commission, were represented by observers: Cameroon, Egypt, Ethiopia, Greece, Morocco, Norway, Philippines, Senegal, Slovak Republic, Sweden, Turkey.

7. The League of Arab States was represented by an observer.

8. The following non-governmental organizations in consultative status with the Economic and Social Council were represented by observers at the meetings: Amnesty International, Baha'i International Community, International Association of Penal Law, International Commission of Jurists, International Federation for Human Rights.

Documentation

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

E/CN.4/1993/WG.6/L.1	Provisional agenda
E/CN.4/1993/WG.6/1	Report of the Secretary-General: Technical review of the first reading text.
E/CN.4/1993/WG.6/2	Report of the Secretary-General prepared pursuant to paragraph 5 of Commission resolution 1992/82: Comments on the first reading text
E/CN.4/1992/53 and Corr.1	Report of the Working Group on its seventh session

Organization of work

10. At the 1st and 2nd meetings, on 18 January 1993, at the invitation of the Chairman-Rapporteur, the delegations expressed their views on the issues the Working Group should consider first. There was general agreement that the first reading of the text should be continued and finalized.

11. The delegations of Austria and the Syrian Arab Republic and the observer delegations of Cameroon and Sweden and the International Commission of Jurists suggested the establishment, as in previous years, of an informal drafting group. The delegations of Australia and Canada felt that it would be preferable to work mainly in the plenary session.

12. The Working Group subsequently agreed to convene an informal drafting group in order to speed up the drafting process. The informal drafting group, headed by the Chairman, met on 22 January; in the morning of 25 January after the 8th meeting of the Working Group and during the afternoon of the same day; in the morning of 26 January and in the afternoon of the same day (after the 9th meeting); in the morning of 27 January and in the afternoon of the same day (after the 10th meeting); on 28 January and in the morning of 29 January.

13. On the proposal of the delegation of Tunisia, the report and the final declaration of the Regional Preparatory Meeting for Africa of the World Conference on Human Rights (A/CONF.157/AFRM/14-A/CONF.157/PC/57), which was held at Tunis from 2 to 6 November 1992, was made available to the Working Group.

14. At the 5th meeting, on 20 January, the Chairman-Rapporteur proposed that after reaching consensus on certain parts of the first reading text, the Working Group should move to the second reading, starting with the operative part of the declaration.

15. The delegations of Australia, the United Kingdom of Great Britain and Northern Ireland and the United States of America and the observer delegation of Sweden stated that they considered the main body of the text to be the substantial part of the declaration and that they would therefore prefer to begin the second reading with the operative part, not with the preamble.

16. The delegations of the Syrian Arab Republic, China and Cuba expressed their concern about leaving unresolved some of the most controversial issues and proceeding immediately to the second reading.

17. The Chairman-Rapporteur stated that although the Commission on Human Rights had requested the Working Group to complete the second reading (resolution 1992/83), the draft declaration could not be finalized during the 1993 session. He also felt that an excessive delay could negatively affect the final achievement of the declaration. Furthermore, the Chairman-Rapporteur thought that the controversial issues remaining from the first reading could be resolved next year.

18. In the course of its eighth session, the Working Group completed the first reading of the text of articles 3 and 4 of chapter III and of article 5 of chapter V, and began the second reading with the preamble to the draft declaration. Some general issues were also discussed, as well as the organization of work of the Working Group at its current and future session.

A. Chapter III, article 3

19. At the 4th meeting, on 19 January, the delegation of Turkey presented a proposal for article 3 of chapter III, which had already been introduced at the 1992 session of the Working Group (see E/CN.4/1992/53, para. 101). The proposed text read as follows:

"Everyone has the right, individually and in association with others, to oppose through peaceful means activities and acts perpetrated by any State, group or person and aimed at the destruction of human rights and fundamental freedoms."

20. The observer for Amnesty International stated that the proposal by the delegation of Turkey differed significantly from the old article 3 since it replaced the notion of "violations of human rights" by "destruction of human rights". He also recalled that this notion was already contained in article 4 of chapter V and expressed the view that chapter III was not the proper place for such a text.

21. At the 5th meeting, on 20 January, the delegation of Sweden stated that the proposal by Turkey would be better placed in article 4 of chapter IV. The delegation of Cuba felt, conversely, that the proposal by Turkey was consistent with other articles in chapter III.

22. The delegation of Turkey stated that the expression "destruction of human rights" was used in the Universal Declaration as a synonym for "violation of human rights", and asked the delegation of Amnesty International to explain the difference between the two concepts. The delegation of Turkey also pointed out that the purpose of its proposal was to underline the rights of individuals and groups and was therefore consistent with chapter III.

23. At the 7th meeting, on 21 January, the delegation of Turkey introduced a new text (CRP.5) consisting of an amended version of the old article 3 and a new paragraph. The text read as follows:

"Chapter III

"Article 3

1. Everyone has the right, individually and in association with others, to participate in peaceful activities against violations of human rights and fundamental freedoms, regardless of the perpetrators.

2. Everyone, in his peaceful efforts (actions), individually and in association with others, to oppose acts perpetrated by a State, group or persons and aimed at the destruction of human rights and fundamental freedoms, has the right to receive necessary protection."

24. The delegations of the Syrian Arab Republic and Tunisia asked for clarification with regard to the expression "necessary protection" at the end of the second paragraph and whether the "protection" was intended to be national and/or international. The delegations of Canada, Sweden and the United States of America expressed their concern about the expression "regardless of the perpetrators" which, in their opinion, could give rise to judicial problems.

25. The observer delegation of Turkey explained that by "necessary protection" it meant the protection accorded to human rights defenders in a national legal framework. Reference was also made to the opinion expressed last year by some experts of the Sub-Commission on Prevention of Discrimination and Protection of Minorities according to which States should not be held solely responsible for human rights violations, which could also stem from sources other than the State.

26. The delegations of the United States of America and Sweden noted that the opinions of experts of the Sub-Commission, who act in their individual capacity, did not bind their Governments. Several other delegations expressed their views on the legal and political implications of the wording of CRP.5. The Chairman-Rapporteur decided to convene an informal drafting group in order to consider this matter.

27. At the 8th meeting, on 25 January, the Working Group considered the text contained in CRP.7 which was proposed by the Chairman-Rapporteur. The text read as follows:

"Chapter III

"Article 3

"Everyone has the right, individually and in association with others, to participate in peaceful activities against violations of [their] human rights and fundamental freedoms.

"In this connection, persons and groups are entitled to be protected under national law in reacting against or opposing, through peaceful means, activities and acts carried out by the State, groups or persons aimed at the destruction of [their] human rights and fundamental freedoms."

28. The representative of the United Kingdom stated that his delegation had certain difficulties with the second paragraph of the Chairman-Rapporteur's proposal and suggested putting in square brackets the expressions "and groups" and "reacting against" and replacing "aimed at" by "leading to" or "which result in". The observer for Greece expressed her agreement with the proposals made by the delegation of the United Kingdom.

29. The delegation of China proposed the addition, in the second paragraph of CRP.7, of the article "the" before the words "national law". As regards the proposal by the United Kingdom concerning the expression "aimed at", the delegation of China noted that it would prefer to keep this expression since it had been used in article 30 of the Universal Declaration of Human Rights. The representative of China also stated that the formulation "persons, groups or the State" would be more consistent with other international instruments than the one used in CRP.7. The delegation of Canada agreed with the proposal by the United Kingdom regarding the words "and groups" and further proposed replacing the words "the State, groups or persons" by "any State, group or person".

30. The representatives of Austria, Cuba and Tunisia and the observers for Sweden, Turkey and Amnesty International proposed to adopt the Chairman's text in CRP.7 without amendments, and to leave open the possibility of coming back to it at the second reading.

31. On the understanding that any part of the text in CRP.7 could be discussed again at the second reading, the Working Group adopted, in the first reading, article 3 of chapter III as contained in CRP.7.

32. At the 11th and 12th meetings, on 29 January, certain delegations made statements regarding their positions on the text of article 3 of chapter III as adopted at the first reading.

33. The observer for Turkey emphasized one fact that human rights defenders and all other responsible bodies in that field had the right to oppose not only violations of human rights and fundamental freedoms perpetrated by the State but also violations for which groups and individuals were directly responsible. That idea was expressed in article 3 of chapter III of the first reading text, with the notion for the right of human rights defenders to protection.

34. The delegation of China considered that the expression "national law" in the second paragraph should be the national law of the country of origin of the persons or groups seeking protection. No one can seek protection under the laws of more than one country at a time, at a given moment and at a given place. Accordingly, the article "the" should be inserted before "national law". Furthermore, in order to make the wording consistent with the first part of the paragraph, the delegation repeated its suggestion concerning reversing the positions of "the State" and "persons".

35. The delegation of the United Kingdom stated that the rights referred to in chapter III, article 3, were those of individuals, exercisable individually or in association with others, rather than of groups as such. Furthermore, the words "reacting against" in the second sentence seemed unnecessary at best, the distinction between these words and "opposing" being unclear and possibly damaging. The words "aimed at" would be better replaced by more objective language such as "leading to" or "which result in". The delegation reserved the right to return to these questions at the second reading.

36. The delegations of Canada and the United States of America associated themselves with the observations made by the delegation of the United Kingdom.

37. The observer delegation of the International Commission of Jurists stated that the text adopted acknowledged that in too many cases, non-governmental organizations and individuals were ahead of Governments in recognizing human rights violations, in expressing peaceful opposition to them and in demanding action to prevent and remedy abuses. Article 3 confirmed the obligation of States, through legislation and active measures, to protect human rights defenders in their peaceful, yet often dangerous, efforts.

B. Chapter III, article 4

38. At the 2nd meeting, on 18 January, the Chairman-Rapporteur identified three main questions in connection with article 4 of chapter III: (i) the right to solicit funding as such; (ii) the right to solicit funding from foreign sources; and (iii) the non-discriminatory basis of financial contributions.

39. In the general discussion that followed, the observer for the International Commission of Jurists emphasized that non-governmental organizations and individuals active in the human rights field depended primarily on voluntary contributions of time, funds, documents and other materials. Human rights defenders were already subject to more than adequate

scrutiny wherever they operated, and no special mechanisms were needed to control their ability to solicit and use funds for peaceful human rights promotion. Since some general controls on the influx of money into a country were needed, the compromise text of article 4 adequately allowed for this legitimate State interest although, in the opinion of the International Commission of Jurists, no statement on this point was called for in the declaration.

40. The representative of Cuba stated that the question of funding had, inter alia, two facets: financial contributions could be subject to manipulation and, consequently, could create an ethical problem because certain associations would not be able to enjoy external funding. This question also touched upon the issues of sovereignty and interference in the domestic affairs of States, particularly in relation to the validity of national legislation.

41. The observer delegation of Sweden referred to the alternative text that it had drafted jointly with Portugal last year and contained in annex II to the previous report of the Working Group (E/CN.4/1992/53), to be included as article 1 of chapter III with eventual deletion of article 4. The delegation of the United Kingdom supported this proposal by Sweden and Portugal and pointed out that the limitation clause contained in article 3 of chapter V would also apply to funding.

42. The delegation of the United States of America noted that all relevant provisions of national legislation would apply to external funding. In addition, this issue was successfully dealt with in other international instruments, for example article 6 of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.

43. The representative of Cuba expressed his disagreement with the proposal by Sweden.

44. At the 5th meeting, on 20 January, at the invitation of the Chairman-Rapporteur, some delegates made general comments on the subject of financial contributions.

45. The representative of Canada stated that the right to receive contributions should be subject only to such limitations as were provided in references to national legislation in chapter V. She noted in particular article 3 of chapter V which provided that such legislated limits should be solely for purposes consistent with the rights and freedoms of others.

46. The representative of Cuba felt that treating internal and external funding in the same manner might create difficulties for the Working Group. He proposed to include in chapter III a reference to limitations.

47. The Chairman-Rapporteur, as well as the delegations of the United States of America and Canada, expressed their preference for placing all provisions concerning limitations in chapter V.

48. The representative of Chile felt that while provision on financial contributions could be included in chapter III, as proposed by Sweden, there also might be a reference to this issue in chapter V in connection with limitations. This view was shared by the representative of Australia.

49. The observer for Greece expressed some doubts with regard to the proposal made last year jointly by Portugal and Sweden concerning the financial contributions and conceived as a new paragraph (d) of article 1 of chapter III. She felt that it was an attempt to put together different rights. In the view of her delegation, it was preferable to leave the issue of funding in article 4 of chapter III.

50. The representative of the Syrian Arab Republic stated that famous human rights defenders did not receive financial contributions to pursue their struggle. In his view, it was necessary to be precise as to who would be receiving such financial assistance, since the activities of certain organizations might be prohibited as being contrary to the cultural values and traditions of a particular society. Reference was made to the assistance provided by the United Nations Centre for Human Rights under the programme of advisory services and technical cooperation which was important for the development of appropriate national legislation on the subject.

51. In this connection, the observer for the International Commission of Jurists noted that much of the voluntary assistance given to human rights defenders was not financial support, but donated time, advice and technical assistance as well as office supplies, communication equipment, books and other publications. The International Commission of Jurists was convinced that human rights defenders could obtain and use resources from inside or outside their countries (including resources from United Nations and other international official bodies and from non-governmental organizations) and that any laws applied to the receipt and employment of such assistance must comply with universal human rights standards. Such laws must not limit unreasonably the freedoms of expression, communication, assembly, association, etc. which were central to the purposes of the draft declaration. The term "on a non-discriminatory basis", used in draft article 4, meant the obligation of States not to treat human rights defenders worse than other groups or individuals.

52. The delegation of Cuba emphasized that the role of multilateral aid was not under discussion by the Working Group. The observer delegation of Ethiopia pointed out that the character of the activities of human rights associations should be clarified in order to decide whether funding was acceptable to Governments.

53. The delegation of China considered funding from abroad as a highly sensitive and complicated matter. Several questions were put before the Working Group in this connection, such as how to determine whether foreign assistance was used for human rights purposes, who would make such a judgement and what should be the criteria. The delegation's preference was, therefore, to delete the text of this article.

54. At the same meeting, the Chairman-Rapporteur introduced CRP.2, which was composed of two parts. The first contained the proposal by Portugal and Sweden relating to chapter III, article 1; the second was the competing proposal No. 3 to chapter III, article 4, second sentence, as reproduced in annex I to the 1992 report. The Chairman-Rapporteur explained that the proposal by the delegations of Portugal and Sweden, as suggested by those delegations, should constitute paragraph (d) of article 1, chapter III, while the other text would be the second paragraph of article 3, chapter V. The text of CRP.2 read as follows:

"Chapter III, article 1 (d)

"To solicit, receive and utilize for the purpose of promoting and protecting [universally recognized] human rights and fundamental freedoms voluntary financial contributions."

Chapter V, article 3

New second paragraph

"Such contributions from abroad shall be subject, on a non-discriminatory basis, to the national legislation applicable to the entry of funds, goods and services."

55. As regards the new second paragraph of article 3, chapter V, the delegation of China expressed its preference for the formulation contained in competing proposal No. 2 to chapter III, article 4, second sentence, as reproduced in annex I to the 1992 report of the Working Group. This proposal read as follows:

"Such contributions from abroad shall be subject, on a non-discriminatory basis, to the applicable national legislation."

56. At the 10th meeting, on 27 January, the Working Group considered the text of article 4 of chapter III as contained in CRP.9, proposed by the Chairman-Rapporteur on the recommendation of the informal drafting group. The text read as follows:

"1. Everyone has the right [is entitled], individually and in association with others, to solicit, receive and utilize voluntary financial or other contributions, for the purpose of promoting and protecting, through peaceful means, [universally recognized] human rights and fundamental freedoms.

"2. In this connection, all contributions, including those from foreign sources, and the use thereof, shall be subject, on a non-discriminatory basis, to the national legislation as referred to in chapter V."

57. The Working Group adopted the text of article 4 of chapter III, as contained in CRP.9, at the first reading.

58. After the adoption of CRP.9, the delegation of the Syrian Arab Republic expressed reservations concerning article 4 of chapter III which it regarded as not properly placed and basically unnecessary since it involved a highly sensitive matter conducive to abuse. The delegation stated that it could not regard it as a human right and added that it would explain its position again during the second reading.

59. The delegations of Australia, Canada, United States of America and the United Kingdom felt that clarity and consistency would require that paragraph 1 of article 4, chapter III, continue to refer to a "right", rather than replace that word with "entitled to", currently in brackets.

60. At the 12th meeting, on 29 January, the delegation of China stated that it regarded the text of paragraph 1 ("Everyone has the right [is entitled]") as an unresolved question. The delegation felt that the wording of the draft should not contain anything tendentious. The Chinese delegation reserved the right to return to this issue at the second reading.

C. Chapter V, article 5

61. At the 2nd meeting, on 18 January, the Chairman-Rapporteur drew the attention of the Working Group to article 5 of chapter V which had been discussed in 1992. He asked whether the deletion of the square brackets in article 5 would be acceptable to all delegations and invited comments on this issue.

62. The delegation of Cuba expressed its disagreement with such a solution since it deemed article 5 still incomplete and unclear.

63. The observer for Sweden, while ready to accept paragraphs 1 and 2 of article 5, stated that his delegation had difficulties with paragraph 3 and proposed the adoption of the third paragraph of alternative proposal No. 6, as described in the 1992 report.

64. The representative of Finland referred to the comments of his Government on the first reading text (E/CN.4/1993/WG.6/1, para. 89) in which it proposed that the complete omission of article 5 from a text meant for the twenty-first century should be considered. If such a solution was not acceptable to the Working Group, the delegation of Finland would be ready to agree to the proposal by Sweden. This approach was shared by the observer for the International Commission of Jurists.

65. The proposal by Sweden was also supported by the representative of Austria.

66. The representative of Tunisia introduced resolution AFRM/9, contained in the report of the Regional Meeting for Africa held at Tunis from 2 to 6 November 1992 in preparation for the World Conference (A/CONF.157/AFRM/14-A/CONF.157/PC/57). The resolution was entitled "Role and responsibility of individuals, groups, institutions and non-governmental organizations in the protection and promotion of human rights". He expressed the hope that the Working Group would take account of the proposals in the resolution.

67. The African countries, he added, recognized the responsibility and the duty of States in promoting and protecting human rights, but also held the view that the international community should pay special attention to the role and responsibility of individuals, groups and organs of society in the full realization of human rights and fundamental freedoms.

68. Having heard the different points of view, the Chairman-Rapporteur decided to postpone consideration of this question.

69. At the 3rd meeting, on 19 January, the Working Group continued its discussion of article 5 of chapter V. The Chairman-Rapporteur stated that, in his opinion, the main elements of this article were acceptable to all delegations, and the task of the Working Group was therefore not to eliminate anything from this article, but to introduce new elements in order to complete the conceptual framework. The Chairman-Rapporteur drew the attention of the Working Group to resolution AFRM/9, adopted by the Regional Meeting for Africa of the World Conference on Human Rights, held at Tunis in November 1992, and in particular to paragraph 8 of that resolution (see A/CONF.157/PC/57, chap. II).

70. In making reference to article 29, paragraph 1, of the Universal Declaration of Human Rights, the delegation of Cuba emphasized that individuals had not only rights but duties, and expressed its concern about the absence of the definition of "duties". It further stated that the nature of every society and its cultural heritage should be preserved in the light of present-day attempts to homogenize the world according to a particular cultural or political model.

71. The observer delegation of Cameroon agreed with the delegation of Cuba regarding the parallelism between rights and duties and added that it would be erroneous to introduce a new category of individuals: those who had only rights and no duties. The delegation of Tunisia referred to resolution AFRM/2 adopted at the Tunis meeting.

72. The observer delegation of Amnesty International stressed that article 29, paragraph 1, of the Universal Declaration of Human Rights should be seen solely as an acknowledgement of the fact that everyone had duties, but it did not imply any obligations for individuals.

73. The representative of the United States of America pointed out that spelling out additional limitations for human rights defenders would be a mistake and that his delegation would be sceptical of any language which would impose or imply greater limitations than those already contained in existing international instruments. The purpose of the declaration should be to foster the activities of human rights defenders.

74. The delegations of China and the Syrian Arab Republic felt that rights and duties were both interdependent and inseparable. The concepts of rights and duties were not in opposition to each other, but rather mutually guaranteed their existence. In the opinion of the delegation of China, there should also be a provision on the non-infringement on the rights of others.

75. The delegation of Canada agreed with the delegation of the United States of America and proposed an alternative version of the third paragraph of article 5. The proposal read as follows:

"States have the primary responsibility for the creation of national and international conditions in which the rights and fundamental freedoms as set forth in the Universal Declaration of Human Rights can be fully realized".

76. The representative of Canada added that the retention of the first paragraph of article 5 would be acceptable to her delegation. The delegation of Australia agreed with this proposal.

77. The delegations of the Russian Federation and Sweden and the observer delegation of the International Commission of Jurists felt that article 5 was not necessary and stated that they would prefer its deletion. However, in view of the wish of some other delegations to preserve it, they would accept retaining certain parts of article 5, for example paragraph 1. The observer for Sweden indicated that paragraph 2 was also acceptable to his delegation with the exception of the words "as well as for the identity of the community as a whole".

78. The representative of the Russian Federation added that any duties and limitations should not be such as to remove the possibility of normal activities of human rights defenders. In any case, articles 3 and 4 of chapter V already contained certain limitation provisions.

79. The observer for the International Commission of Jurists also felt that no additional limitations were called for in the text. To meet the concerns of several delegations which insisted that some duties for human rights defenders be spelled out in article 5, he suggested that a restatement of the moral duty proclaimed in article 29 of the Universal Declaration of Human Rights might be appropriate.

80. The representative of Poland stated that the Working Group had to focus on crucial elements of the declaration, but duties of individuals were not among them. It was enough, therefore, to retain only paragraph 1 of article 5.

81. The representative of the United Kingdom, referring to the third paragraph of competing proposal No. 6 as contained in the 1992 report stated that his delegation would prefer that the words "should strive" be replaced by "is entitled to strive", as was already done in competing proposal No. 3. The observer for Sweden indicated that this formula was also acceptable to his delegation.

82. The delegation of Chile stated that rights and duties coexisted but they did not need to be emphasized to the same extent. For the purpose of drafting, paragraphs 1, 2 and 6 of resolution AFRM/9 of the Regional Meeting held in Tunis could be useful.

83. The observer for the International Commission of Jurists noted in this connection that the duties that arose from the existence of rights were not always duties for the holder of the rights. Individual and group rights gave rise primarily to obligations for States.

84. The delegations of Cuba and China noted that the proposal by the delegation of Canada focused on the responsibility of States, while article 5 of chapter V, as well as article 29 of the Universal Declaration of Human Rights, related to the duties and responsibilities of individuals. The representative of China stated that his delegation would be opposed to any proposal to dispense with article 5 and pointed out that the title of the draft declaration mentioned responsibilities.

85. The observer for Sweden noted in this connection that the title of the draft declaration specified "responsibility ... to promote and protect universally recognized human rights ...".

86. The delegation of Amnesty International agreed with the delegation of Sweden that nothing in the title of the declaration implied that the Working Group should elaborate on duties; in any case, the relevant provisions in article 29 of the Universal Declaration merely acknowledged that States could lay down duties, but it did not establish any obligations itself. With regard to the issue of cultural specificity, Amnesty International noted that some traditions permitted violations of human rights, and therefore the Working Group should be extremely careful with respect to references to cultural identity and diversity.

87. At the 4th meeting, on 19 January, the Chairman-Rapporteur introduced CRP.1 containing his proposals relating to article 5 of chapter V. He pointed out that the proposed text incorporated first reading text as well as various proposals made during the present session and therefore was not definitive. The text of CRP.1 read as follows:

"1. Everyone has duties to the community in which alone the free and full development of his personality is possible.

"2. Everyone, individually and in association with others, should have and promote respect for the rights, freedoms, identity and human dignity of all other members of the community as well as for the identity of the community in which human rights are implemented.

"3. Non-governmental organizations and institutions seeking to promote and protect human rights have an important responsibility to educate and train individuals to respect human rights because education and training are necessary for the promotion of human rights and the prevention of their violation.

"4. Apart from its obligation to promote and protect the rights enjoyed by individuals, groups and bodies in society, the international community should pay special attention to the responsibility of individuals, groups and bodies to promote human rights and fundamental freedoms. The members of the international community should furthermore fulfil, jointly and separately, their obligations to

promote and foster human rights and fundamental freedoms without distinction as to race, colour, sex, language, religion or political opinion.

"5. States have the primary responsibility for the creation of national and international conditions in which human rights and fundamental freedoms set forth in the Universal Declaration of Human Rights can be fully realized, bearing in mind that the individual is the central subject of these rights and should be the active participant and beneficiary of the implementation of the same rights."

88. After a brief exchange of views, several delegations informed the Chairman-Rapporteur that they needed more time to evaluate his proposal.

89. At the same meeting, the delegation of Turkey proposed an alternative text for article 5 of chapter V, later identified as CRP.4, based on the fusion of paragraphs 4 and 6 of resolution AFRM/9 and on the Chairman's proposals in CRP.1. The text of CRP.4 read as follows:

"1. Everyone has duties towards and within the community, outside of which the free and full development of one's personality is impossible.

"2. Everyone, individually or in association with others, should have and promote respect for the rights, freedoms, identity and human dignity of all other members of the community, as well as for the cultural identity of the community as a whole.

"3. Individuals, groups and non-governmental organizations have an important role to play in safeguarding and promoting democracy and human rights; they do not have the right to pursue programmes or engage in activities aimed at the destruction of the democratic process and human rights and fundamental freedoms."

The delegation of Turkey stated that in the formulation of this proposal it had tried to take into account the various points of view and concerns expressed by several delegations during the discussions on that article.

90. The delegations of the United Kingdom and Canada and the observer delegations of the International Commission of Jurists and Amnesty International expressed their concern with regard to the use of the wording of paragraph 6 of resolution AFRM/9 which, in their view, was too broad and could give rise to abuses.

91. The delegation of Amnesty International indicated that it had some difficulties with the wording of paragraph 3 of CRP.1.

92. The delegation of France stated that the proposal of the delegation of Turkey could replace paragraphs 4 and 5 of the proposal of the Chairman-Rapporteur in CRP.1, while the delegation of Tunisia thought that the proposal of Turkey could replace paragraph 2 of the Chairman-Rapporteur's proposal.

93. The delegations of Austria, France and Turkey pointed out that the concept expressed in paragraph 3 of the proposal by the Chairman-Rapporteur had already been reflected in the preamble to the declaration.

94. At the 6th meeting, on 21 January, the Working Group had before it the proposal of the delegation of China (CRP.3) relating to article 5, chapter V. The text of CRP.3 read as follows:

"Everyone, individually or in association with others, shall have:

- (a) duties towards and within the community, outside of which the free and full development of one's personality is impossible;
- (b) responsibility to respect and to promote the respect for the rights, freedoms, socio-cultural identity and human dignity of all other members of the community as well as for the social and cultural identity of the community in which human rights are implemented;
- (c) responsibility to strive for the establishment of a social and international order in which the rights and freedoms set forth in the Universal Declaration of Human Rights can be effectively realized."

95. The representative of Cuba referred to the study by the Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, Mrs. Erica-Irene A. Daes, published in 1990 under the title Freedom of the Individual under Law: An Analysis of Article 29 of the Universal Declaration of Human Rights (Study Series No. 3, United Nations publication, Sales No. E.89.XIV.5) which, in his view, could be useful for drafting article 5.

96. With reference to CRP.4, the delegation of Tunisia stated that the change of the word "destruction" in paragraph 3 and the rewording of this paragraph might be necessary.

97. The delegation of France stated that it had some difficulties with the wording and concepts contained in the proposal by Turkey.

98. The representatives of the United States of America and the United Kingdom and the observer for Greece stated that the proposal by China was not acceptable to their delegations since it seemed to establish additional limitations and restrictions on human rights defenders. The observer for Greece stated that her delegation had difficulties with paragraphs 2 and 3 of the proposal of Turkey (CRP.4), especially with regard to the concept of "cultural identity", which it considered obscure and open to possible abuses.

99. The observer delegation of Sweden was of the opinion that paragraph 3 of the proposal by the delegation of Turkey (CRP.4) was in contradiction with article 19 of the International Covenant on Civil and Political Rights. The delegation also felt that the words "as well as for the identity of the community as a whole" in the first reading text should be deleted.

100. The delegations of the Syrian Arab Republic and Cuba expressed their support for the proposal by the observer delegation of Turkey. The representative of the Syrian Arab Republic emphasized the importance and the value of paragraph 6 of resolution AFRM/9. The representative of Cuba noted that the purpose of the Working Group was not to create new rights but to try to refine the contents of the Universal Declaration. He found that CRP.1, the Chairman-Rapporteur's proposal, disregarded certain key concepts which were emphasized in the first reading text. He also expressed his appreciation of the proposals by the delegation of China (CRP.3). In this connection, the Chairman-Rapporteur noted that in drafting new proposals he had tried to avoid texts on which it would be difficult to reach a consensus. The delegation of Tunisia added that although the declaration should be in line with the major international instruments in the field of human rights, it was important for the declaration to provide an original contribution.

101. The delegation of Malaysia proposed that paragraph 2 of the proposal by China, as contained in CRP.3, and paragraph 2 of the proposal of Turkey, as contained in CRP.4, could be integrated. It also proposed the following amendments to the proposal by the delegation of Turkey in CRP.4: to replace, in paragraph 3, the words "aimed at the destruction of" by "detrimental to" and to insert before "human rights and fundamental freedoms", the words "to the promotion of".

102. Several delegations expressed their concern about the words "cultural identity", appearing both in CRP.3 and 4, the real significance of which seemed to them unclear and ambiguous. In this connection, the delegation of China noted that some other expressions in the draft declaration, as well as in other international human rights instruments, appeared to be equally unclear.

103. The observer delegation of Amnesty International felt that the new elements in the first paragraph of the proposal by Turkey could be better replaced by appropriate formulations of article 29 of the Universal Declaration of Human Rights.

104. The observer for the International Commission of Jurists also felt that a new formulation of the concept contained in article 29 of the Universal Declaration was open to new interpretations, some of which may be regressive for human rights.

105. At the 11th meeting, on 29 January, the Working Group considered three proposals by the Chairman-Rapporteur contained in CRP.13, 15 and 16 concerning, respectively, paragraphs 2, 1 and 3 of article 5 of chapter V, the texts of which had been widely discussed in the informal drafting group.

106. The text of CRP.13 read as follows:

"2. Everyone, individually and in association with others, should have respect for the rights, freedoms, identity and human dignity of all others, and have respect for the culture of the whole community and the cultures within the community, consistent with human rights and fundamental freedoms."

107. The text of CRP.15 read as follows:

"1. Everyone has duties towards and within the community in which alone the free and full development of his personality is possible."

108. The text of CRP.16 read as follows:

"3. Individuals, groups, institutions and non-governmental organizations have an important role to play and a responsibility in safeguarding and promoting democratic processes, a democratic society, democracy and human rights and fundamental freedoms. This does not imply the right to carry out programmes or to engage in any other activity aimed at the destruction of democratic processes and human rights and fundamental freedoms, including progress accomplished in these areas."

109. At the same meeting, CRP.15, 13 and 16 were adopted by the Working Group in the first reading as paragraphs 1, 2 and 3 of article 5, chapter V. Several delegations made statements relating to the adopted texts and asked for their inclusion in the report of the Working Group.

110. The delegation of Finland stated that articles 1, 3 and 4 of chapter V formed a sufficient basis for the obligations and duties of individuals and groups and that there was no real legal or other need for article 5 of chapter V, even though it was the result of a compromise adopted by the Working Group in the first reading. The delegation reserved the right to reconsider certain elements of article 5 at the second reading, especially concerning the insertion of the words "and a responsibility" in paragraph 3 of article 5, and the omission of the determining phrase "universally recognized" before the words "human rights and fundamental freedoms" in paragraph 5 of article 5.

111. With regard to paragraph 2 of article 5, the delegation of Sweden stated that it did not consider it correct to deal with respect for human rights and fundamental freedoms of all others and the cultural aspects of the community in the same paragraph. Concerning paragraph 3, the delegation stated that it would have preferred to have had the words "and a responsibility" deleted or put between brackets. Instead of the expression "democratic process, a democratic society and democracy" it would have preferred only the word "democracy".

112. The delegation of the Libyan Arab Jamahiriya noted that the cultural identity of the individual was only a part of his or her identity. For this reason, cultural minorities could coexist with the identity of the community as a whole.

113. The delegation of the Syrian Arab Republic stated with respect to CRP.13 that every culture had an identity which distinguished it from other cultures. Accordingly, it would be preferable to refer to that identity in the paragraph in question. Furthermore, the final phrase of paragraph 2 was superfluous in that context.

114. The observer delegation of Greece reserved the right to return, in the second reading, to the question of the order of the words "democratic

processes, a democratic society, democracy" in CRP.16 and expressed its preference for the placement of the word "democracy" before the others. The Greek delegation would also like to have the words "democracy" and "democratic society" inserted in the last phrase of the same article.

115. The delegation of the United States of America, with respect to paragraph 2 of article 5, emphasized a point made by a number of delegations that respect for the culture of the community as a whole and for the cultures within the community did not preclude working to change the culture or cultures. In addition, it believed that the final phrase of this paragraph ("consistent with human rights and fundamental freedoms") was of great importance. On second reading, however, the Working Group might usefully make clearer that respect for the cultures of and within a community should be exercised only to the extent that such respect, as well as the cultures themselves, were consistent with international standards of human rights and fundamental freedoms. The delegation of the United States of America did not disagree with the ideas expressed in paragraph 3 of article 5, but it believed that they should be clarified. In particular, the provision should refer only to "democracy" rather than to "a democratic society" and "democratic processes" since the first term included the others.

116. The delegation of Canada stated that it had reservations regarding references to the culture of the community in paragraph 2 of article 5. At second reading, it hoped that the text could be made clearer so that it ensured the right of the individual to speak out against those aspects of his/her culture which would undermine his/her human rights and fundamental freedoms. The text should reflect the fact that the collectivity or community was composed of individuals who, within that community, exercised their individual human rights and fundamental freedoms. It was important that the reference to consistency with human rights and fundamental freedoms be included.

117. The delegation of the Russian Federation reserved the right to consider again the text of article 5 during the second reading. The delegation felt that the wording of paragraph 3, as contained in CRP.16, could be improved and that the word "democracy" should replace the expression "democratic processes, a democratic society, democracy".

118. The delegation of the United Kingdom stated that it associated itself with the remarks made by the representatives of the United States of America, Canada and the Russian Federation.

119. The delegation of Australia also reserved the right to consider again the text of article 5 during the second reading. The delegation welcomed the recognition, in paragraph 2 of the adopted first reading text for article 5 of chapter V, of the multicultural character of countries like Australia.

120. The delegation of Austria said it reserved the right to return at the second reading to all aspects of the articles as adopted at the first reading. It attached great importance to the pluralistic concept of "the culture of the whole community and the cultures within the community" as contained in chapter V, article 5, paragraph 2. It believed that the introduction of this concept would have consequences with regard to other articles in the draft

declaration. It considered the retention of the phrase "consistent with human rights and fundamental freedoms" to be essential to the substantive meaning of the paragraph.

121. With regard to chapter V, article 5, paragraph 3, the delegation of Austria stated that it would like to join other delegations in their preference for the single word "democracy" as encompassing other aspects of democracy spelled out in this article.

122. The delegation of China had reservations about the expression "important role" of individuals, groups, etc., proclaimed in article 5, paragraph 3. It considered the paragraph to be irrelevant to the issues of rights and responsibilities addressed by chapter V as a whole, and hence inappropriate. The delegation reserved the right to revert to this at the second reading.

123. The delegation of China also had reservations about paragraph 2. It considered that the original thrust of the paragraph ought to be the regard for the rights and freedoms of others shown by the individual as he exercised his own rights, because an individual could fully enjoy his own rights only if the rights of others were respected. The delegation stated that it would therefore return to this matter at second reading.

124. The observer for Turkey emphasized the need to incorporate the idea of "democracy" in the text. His delegation was firmly convinced that democracy was the most auspicious setting for the protection and effective promotion of human rights and fundamental freedoms. Consequently, the role and responsibility of individuals, groups and non-governmental organizations in protecting and promoting democracy were as important as their role and responsibility in protecting and promoting human rights and fundamental freedoms.

125. In that regard, it should also be pointed out that the activities of individuals, groups and non-governmental organizations should not prejudice the gains in the fields of democracy and human rights and fundamental freedoms. That was important inasmuch as there had been a need for a definition of groups or non-governmental organizations for which the Working Group was drafting a declaration.

126. The delegation of Turkey considered that, with this provision, and the provision set out in article 3 of Chapter II, both of them consistent with the Universal Declaration, which itself is a modern text capable of responding to the needs of our times, the Group would be contributing, so far as it was able, to the updating and further enhancement of the essential principles of human rights and fundamental freedoms.

127. The International Commission of Jurists felt that references to democracy and many other worthy goals were not necessary in this declaration since human rights defenders have been asking for a proclamation of their rights, and not for a new statement on democracy as such. In any case, most aspects of the democratic process that assisted human rights defenders were already included in the first reading text. For the same reasons, the International Commission of Jurists saw no necessity for the inclusion in this article of references to "culture". The International Commission of Jurists emphasized that there was

a danger that some States might use references to "culture" and to "community" as a pretext for repression of human rights defenders whose legitimate work called into question some of the policies or methods of the State rulers.

128. The International Commission of Jurists also endorsed the view that respect for traditions (or for alleged traditions) should not stop the search for understanding of cultural mores that permitted greater respect for the human rights and freedoms of women, indigenous peoples, persons who have disabilities, children, and other currently disadvantaged groups.

D. Second reading

Preamble

129. At the 12th meeting, on 29 January, the Working Group began consideration of the preamble at the second reading. The delegation of Germany submitted a proposal contained in CRP.17/2nd reading/1, relating to the fifth paragraph of the preamble. The text read as follows:

"Acknowledging the important role of international cooperation for and the valuable work of individuals, groups and associations in contributing to the effective elimination of all forms of violation of human rights and fundamental freedoms,"

130. In introducing this proposal, the delegation explained that to retain the list enumerating particular human rights would imply that some human rights would have more relevance than others.

131. Several delegations expressed their general agreement with the proposal by the delegation of Germany and stated their preference for a short preamble which would reflect the core aspects of the declaration.

132. The delegation of the Russian Federation stated that it would like to see the words "effective elimination" replaced with "ending".

133. In supporting the proposal by Germany, the observer delegation of Sweden expressed its preference for the proposal by the delegation of Australia, contained in annex II of last year's report, seeking the deletion of the first, fifth, sixth and seventh paragraphs.

134. The delegation of the United States of America was of the opinion that the preamble should be shortened and that the seventh paragraph should be deleted.

135. With respect to the expression "all mass, flagrant or systematic violations", the observer delegation of Greece noted that the use of this formula would exclude single cases of violation of human rights.

136. The observer delegation of Amnesty International and the delegation of Canada supported the amendment by the delegation of the Russian Federation to the proposal by Germany.

137. The delegation of Austria welcomed the proposal by Germany and added that the fifth paragraph of the preamble should not be modelled on the Declaration of Tehran drafted in 1968; in order to update the contents of the fifth paragraph, account should be taken of the results of the forthcoming World Conference on Human Rights to be held in Vienna in June 1993.

138. Several other delegations expressed their disagreement with the proposal by the delegation of Germany.

139. The representative of the Syrian Arab Republic recalled that there were no square brackets in the fifth preambular paragraph which had already been agreed upon during the first reading. Therefore, any proposals relating to it should constitute a new paragraph. He felt that the fifth paragraph, because of its content, was a basic point of the declaration as a whole. His delegation opposed the proposal by Germany and regretted that the second reading of the declaration had started before the first reading was fully completed.

140. The delegations of China, the Libyan Arab Jamahiriya and Cuba and the observer delegation of Cameroon were also in favour of retaining the fifth paragraph in the version already adopted at first reading.

141. At the same meeting, the delegation of Cuba introduced CRP.17/2nd reading/4, which contained texts amending the fourth and fifth paragraphs of the preamble. The proposal read as follows:

1. To add at the end of the fourth preambular paragraph:

"..., which reflect the diversity of the various cultural traditions, juridical systems and political institutions existing in the world."

2. The first part of the fifth preambular paragraph should be amended to read as follows:

"Acknowledging the important role of international cooperation for the solution of problems in this sphere and the need to encourage individuals, groups and associations to carry out their moral responsibility in contributing to the effective..." [The remainder of this paragraph would remain as it stands.]

142. The delegation of Cuba noted later that it did not agree with the proposal by the delegation of Germany.

143. The representative of the United States of America pointed out that certain delegations might have problems with the proposal by the delegation of Cuba.

144. The delegation of Indonesia supported the formulation of the fifth paragraph as it was in the first reading text and expressed its support for the formulation of the fourth paragraph as contained in the proposal by Cuba.

145. The observer for the International Commission of Jurists favoured a more concise preamble. He reiterated the view of his delegation that the only

essential paragraphs in the preamble were the final two, which affirmed the rights of human rights defenders and the obligations of States in this field.

146. Due to lack of time, the Working Group was unable to conclude the second reading of the preamble.

E. General issues

147. At the 2nd meeting, on 18 January, the Working Group discussed the meaning of the expression "universally recognized" that was in square brackets and appeared 14 times throughout the text of the draft declaration in the 1992 report. All delegations stated their willingness to reach an agreement on that expression.

148. The delegation of Cuba felt that the expression "universally recognized" was too ambiguous. In addition, since not all human rights were universally recognized, there was a danger that the declaration would not cover certain rights, like the right to development or other economic, social and cultural rights.

149. The delegation of the United States of America felt that the words "universally recognized" were meaningless in certain circumstances.

150. The delegation of China and the observer delegation of Cameroon felt that this expression should be defined and therefore needed further consideration since appropriate criteria were to be established.

151. The observer delegations of Sweden and the Philippines and the delegation of Australia stated that the deletion of the words "universally recognized" would be advisable since that would be in line with the language of the Charter of the United Nations. The delegation of Australia welcomed the flexibility of the United States in relation to the "universally recognized" qualification and noted that its concern was to preserve the content of the right of free speech in the draft declaration.

152. The Chairman-Rapporteur of the Working Group identified the following competing proposals: (i) deleting "universally recognized" from the expression "universally recognized human rights and fundamental freedoms"; (ii) replacing it with "all human rights"; and (iii) replacing it with "human rights".

153. The delegation of Cuba supported the alternative formulation of "all human rights" and explained that the use of the term "universally recognized" would immediately put the question as to which human rights are not universally recognized.

154. The delegation of Austria proposed the formula "human rights and fundamental freedoms and in particular those of a universal nature".

155. The delegation of the United Kingdom stated that the value of the expression should be seen in a specific context, and that in some cases it might have a beneficial meaning.

156. The delegation of Canada proposed that a flexible approach be taken towards the expression "universally recognized" since it might be useful in some circumstances, and proposed to consider this matter on a case-by-case basis during the second reading.

157. The observer delegation of the International Commission of Jurists agreed with the remarks of the United Kingdom and Canada and noted that it would not be appropriate to establish a hierarchy of human rights.

158. Certain delegations felt that the Working Group should not be too much engaged in the theoretical and philosophical discussion of the concept of "universally recognized" human rights. Other delegations strongly felt otherwise.

159. At the 3rd meeting, on 19 January, the Working Group continued its discussion of the concept of "universally recognized" human rights. The Chairman-Rapporteur recalled that this term was not an invention of the Working Group and that it had already been present in the mandate given to the Group by the Economic and Social Council in 1985. It was only in 1990 that there had been some controversy over the expression. This was reflected in the Working Group's report (E/CN.4/1990/47, paras. 28 and 29). The Chairman-Rapporteur also pointed out that this expression appeared annually in the mandate given to the Working Group by the Commission on Human Rights. He was of the opinion that the Working Group could not change the mandate given to it by the Commission but it could eventually advise the Commission and the Economic and Social Council on this aspect of the question. He added that the expression "universally recognized" was a functional concept and its definition might change from one place to another. He also stated that the title of the draft declaration should not compel the Working Group to use the expression exclusively and that the same expression did not necessarily have to be used throughout the whole text. The Chairman-Rapporteur further suggested that among the alternatives proposed earlier, the expression "all human rights and fundamental freedoms" could be appropriate with the addition of the words "recognized in the United Nations system".

160. The delegation of Cuba underlined the fact that the mandate of the Commission was in no way restrictive and there was no breach of it in searching for a change or improvement in the wording.

161. The observer delegation of Sweden was of the same opinion and referred in this connection to paragraph 13 of the technical review of the first reading text (E/CN.4/1993/WG.6/2), in which the Legal Counsel of the United Nations suggested that, in order to harmonize the title with the rest of the draft declaration, the words "universally recognized" contained in the title should also be put in brackets.

162. The delegation of Romania and the observer delegation of Cameroon, while appreciating the efforts of the Chairman-Rapporteur, thought it preferable to continue using the expression "universally recognized", at least in the title of the draft declaration.

163. The observer for the International Commission of Jurists stated that the use of "universally recognized" was inappropriate in several parts of the draft declaration and expressed his preference for the use of "human rights and fundamental freedoms" without any qualification.

164. The Chairman-Rapporteur concluded that the Working Group was not able, during the first reading, to come up with a single concept on the issue of "universally recognized" human rights. The Working Group therefore decided to return to this question again during the second reading.

F. Structure of the report

165. At the 12th meeting, on 29 January, and at the 13th meeting, on 1 March, the Working Group considered the question of the structure of its 1993 report to the Commission. After extensive discussion it was decided that the report would include the following three annexes:

(a) In annex I, the text of the draft declaration on which agreement had already been reached would be reproduced;

(b) In annex II, all CRPs relating to the first reading and issued during the 1993 session, whether or not discussed in plenary meetings, would be reproduced;

(c) In annex III, all CRPs relating to the second reading and issued during the 1993 session of the Working Group, whether or not discussed in plenary meetings, would be reproduced.

166. The competing proposals and the CRPs introduced during last year's session would not be reported in the 1993 report, on the understanding that any delegation could present new proposals or reintroduce old proposals at any time.

G. Future work

167. At the 12th meeting, on 29 January, the Working Group discussed the necessity of holding another session in 1994 prior to the fiftieth session of the Commission on Human Rights in order to continue its work on the drafting of the declaration. In order to speed up the drafting, it was suggested that the Working Group could be convened for a supplementary session, either in 1993 or 1994. In this connection, some delegations underlined the fact that a supplementary session would require additional financial resources. Another proposal was to convene the next session of the Working Group in 1995.

Annex I

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

Preamble

The General Assembly,

Stressing that all members of the international community shall fulfil, jointly and separately, their 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, and stressing the paramount importance of achieving international cooperation to fulfil this obligation, according to the United Nations Charter,

Recalling the importance of the observance of the purposes and principles of the Charter of the United Nations for the promotion and protection of [universally recognized] human rights and fundamental freedoms for all persons in all countries of the world,

Reaffirming the importance of the Universal Declaration of Human Rights and the International Covenants on Human Rights as basic elements of international efforts to promote universal respect for and observance of human rights and fundamental freedoms and the importance of other human rights instruments adopted within the United Nations system,

Reaffirming further the importance of regional human rights instruments in the international efforts to promote universal respect for and observance of human rights and fundamental freedoms,

Acknowledging the important role of international cooperation for and the valuable work of individuals, groups and associations in contributing to the effective elimination of all mass, flagrant or systematic violations of the human rights and fundamental freedoms of peoples and individuals, such as those resulting from apartheid, all forms of racial discrimination, colonialism, 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,

Recognizing the relationship between international peace and security and the enjoyment of human rights and fundamental freedoms, and mindful that the absence of international peace and security does not excuse non-compliance,

Reiterating that all human rights and fundamental freedoms are indivisible and interdependent, without prejudice to the implementation of each of these rights and freedoms,

Stressing that each State has the prime responsibility and duty to promote and protect [universally recognized] human rights and fundamental freedoms,

Recognizing the right and the responsibility of individuals, groups and associations to promote respect for, and foster knowledge of, human rights and fundamental freedoms at the national and international level.

Declares:

Chapter I

Article 1

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 individually or in association with others, to violate or otherwise be associated with violations of [universally recognized] human rights and fundamental freedoms.

Article 2

Each State has a prime responsibility and duty to promote and protect [universally recognized] human rights and fundamental freedoms, *inter alia* 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, individually and in association with others, are able to enjoy these rights and freedoms in practice.

Article 3

Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of [universally recognized] human rights and fundamental freedoms at the national and international levels. Each State shall adopt such legislative, administrative and other steps as much as may be necessary to ensure that the rights and freedoms referred to in this declaration are effectively guaranteed.

Chapter II

Article 1

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

Article 2

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 having full access to information as to how 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.

Article 3

Everyone has the right, individually and in association with others, to study, discuss and form opinions as to whether these rights and freedoms are observed, both in law and in practice, [in their own country and elsewhere, and to solicit public attention on these matters].

Article 4

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

Article 5

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 IIIArticle 1

For the purpose of promoting and protecting [universally recognized] human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels:

(a) To meet or assemble peacefully;

(b) To form, join and participate in non-governmental organizations, associations, or, where relevant, groups;

(c) To communicate with non-governmental or intergovernmental organizations.

Article 2

Everyone has the right, individually and in association with others, to have effective access, on a non-discriminatory basis, to participation in the Government of his country and in the conduct of public affairs. This includes, inter alia, the right, individually and in association with others, to submit to governmental bodies and agencies and organizations concerned with public affairs criticism and proposals for improving their functioning and to draw attention to any aspect of their work which may hinder or impede the promotion, protection and realization of human rights and fundamental freedoms.

Article 3

Everyone has the right, individually and in association with others, to participate in peaceful activities against violations of [their] human rights and fundamental freedoms.

In this connection, persons and groups are entitled to be protected under national law in reacting against or opposing, through peaceful means, activities and acts carried out by the State, groups or persons aimed at the destruction of [their] human rights and fundamental freedoms.

Article 4

1. Everyone has the right [is entitled], individually and in association with others, to solicit, receive and utilize voluntary financial or other contributions, for the purpose of promoting and protecting, through peaceful means, [universally recognized] human rights and fundamental freedoms.

2. In this connection, all contributions, including those from foreign sources, and the use thereof, shall be subject, on a non-discriminatory basis, to the national legislation as referred to in chapter V.

Chapter IV

Article 1

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.

Article 2

To this end, everyone has the right, inter alia, to:

(a) Draw public attention to violations of human rights and to complain about the policies and actions of individual officials and governmental bodies by petitions or other means to competent national judicial, administrative, or

legislative authorities or any other competent authority provided for by the legal system of the State, as well as to any relevant competent international bodies;

(b) Complain to and have that complaint promptly reviewed in a public hearing and decided by an independent, impartial and competent judicial or other authority established by law;

(c) Obtain a just decision and award providing redress, including any compensation due as well as enforcement of the decision and award, all without undue delay;

(d) Attend such relevant hearings or proceedings or, as the case may be, trials to assess their fairness and compliance with national and international standards;

(e) Offer and provide assistance, including professionally qualified legal assistance, in defending [universally recognized] human rights and fundamental freedoms;

(f) 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 and procedures.

Article 3

To the same end, each State shall, inter alia:

(a) Ensure the protection by the competent authorities of everyone, individually or in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of their legitimate exercise of the rights referred to in this declaration;

(b) Encourage and support the development of further institutions for the promotion and protection of [universally recognized] human rights and fundamental freedoms in all territory under its jurisdiction, such as ombudsmen, human rights commissions and other appropriate mechanisms;

(c) Conduct or ensure that a prompt and impartial investigation or inquiry takes place whenever there is reasonable ground to believe that a violation of [universally recognized] human rights and fundamental freedoms has occurred in any territory under its jurisdiction.

Article 4

Individuals or groups whose professional or occupational activities may affect the enjoyment of [universally recognized] human rights and fundamental freedoms have, in the exercise of their profession or occupation, the right and responsibility to promote, respect and observe these rights and freedoms and the dignity and self-respect of every individual, as well as such national

and international standards of professional or occupational conduct or ethics as may be applicable. This right and responsibility is also incumbent upon those who establish or supervise the implementation of such standards.

Chapter V

Article 1

Nothing in the present declaration shall be construed as impairing or contradicting the purposes and principles of the Charter of the United Nations nor as restricting or derogating from the provisions of the Universal Declaration of Human Rights and the International Covenants on Human Rights [and other international instruments in this field].

Article 2

Domestic law consistent with the United Nations Charter and other international obligations and commitments of the State in the field of human rights and fundamental freedoms, is the juridical framework within which human rights and fundamental freedoms should be implemented and enjoyed, and within which all activities referred to in this declaration for the promotion, protection and effective realization of those rights and freedoms should be conducted.

Article 3

In the exercise of the rights and freedoms referred to in this declaration, everyone, acting individually or in association with others, 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 and in accordance with applicable international obligations and commitments.

Article 4

Nothing in the present declaration shall be interpreted as implying for any individual, group or organ of society the right to engage in any activity or to perform any act aimed at the destruction of the rights and freedoms referred to in this declaration or at their limitations to a greater extent than is provided for in this declaration.

Article 5*

1. Everyone has duties towards and within the community in which alone the free and full development of his personality is possible.

* There was agreement in the Working Group on article 5 (1), (2) and (3), but the discussion of a further paragraph containing additional elements was not concluded.

2. Everyone, individually and in association with others, should have respect for the rights, freedoms, identity and human dignity of all others, and have respect for the culture of the whole community and the cultures within the community, consistent with human rights and fundamental freedoms.

3. Individuals, groups, institutions and non-governmental organizations have an important role to play and a responsibility in safeguarding and promoting democratic processes, a democratic society, democracy and human rights and fundamental freedoms. This does not imply the right to carry out programmes or to engage in any other activity aimed at the destruction of democratic processes and human rights and fundamental freedoms, including progress accomplished in these areas.

Annex II

COMPILATION OF FIRST READING
PROPOSALS

CRP.1 - Chairman-Rapporteur

Chapter V, Article 5

1. Everyone has duties to the community in which alone the free and full development of his personality is possible.
2. Everyone, individually and in association with others, should have and promote respect for the rights, freedoms, identity and human dignity of all other members of the community as well as for the identity of the community in which human rights are implemented.
3. Non-governmental organizations and institutions seeking to promote and protect human rights have an important responsibility to educate and train individuals to respect human rights because education and training are necessary for the promotion of human rights and the prevention of their violation.
4. Apart from its obligation to promote and protect the rights enjoyed by individuals, groups and bodies in society, the international community should pay special attention to the responsibility of individuals, groups and bodies to promote human rights and fundamental freedoms. The members of the international community should furthermore fulfil, jointly and separately, their obligations to promote and foster human rights and fundamental freedoms without distinction as to race, colour, sex, language, religion or political opinion.
5. States have the primary responsibility for the creation of national and international conditions in which human rights and fundamental freedoms set forth in the Universal Declaration of Human Rights can be fully realized, bearing in mind that the individual is the central subject of these rights and should be the active participant and beneficiary of the implementation of the same rights.

CRP.2 - Chairman-Rapporteur

Chapter III, Article 1 (d)

"to solicit, receive and utilize for the purpose of promoting and protecting [universally recognized] human rights and fundamental freedoms voluntary financial contributions".

Chapter V, Article 3New second paragraph:

"Such contributions from abroad shall be subject, on a non-discriminatory basis, to the national legislation applicable to the entry of funds, goods and services."

CRP.3 - Delegation of ChinaChapter V, Article 5

Everyone, individually or in association with others, shall have:

(a) duties towards and within the community, outside of which the free and full development of one's personality is impossible;

(b) responsibility to respect and to promote the respect for the rights, freedoms, socio-cultural identity and human dignity of all other members of the community as well as for the social and cultural identity of the community in which human rights are implemented;

(c) responsibility to strive for the establishment of a social and international order in which the rights and freedoms set forth in the Universal Declaration of Human Rights can be effectively realized.

CRP.4 - Delegation of TurkeyChapter V, Article 5

1. Everyone has duties towards and within the community, outside of which the free and full development of one's personality is impossible.

2. Everyone, individually or in association with others, should have and promote respect for the rights, freedoms, identity and human dignity of all other members of the community, as well as for the cultural identity of the community as a whole.

3. Individuals, groups and non-governmental organizations have an important role to play in safeguarding and promoting democracy and human rights; they do not have the right to pursue programmes or engage in activities aimed at the destruction of the democratic process and human rights and fundamental freedoms.

CRP.5 - Delegation of TurkeyChapter III, Article 3

1. Everyone has the right, individually and in association with others, to participate in peaceful activities against violations of human rights and fundamental freedoms, regardless of the perpetrators.

2. Everyone, in his peaceful efforts (actions), individually and in association with others, to oppose acts perpetrated by a State, group or persons and aimed at the destruction of human rights and fundamental freedoms, has the right to receive necessary protection.

CRP.6 - Delegation of France

Chapter V, Article 5

1. The individual has duties to the community, in which alone free and full development of his personality is possible.

2. Everyone, individually and in association with others, should respect and encourage respect for the human rights and fundamental freedoms of all other members of the community.

3. Non-governmental organizations have an important role in protecting and promoting human rights and fundamental freedoms, and in preventing them from being violated.

4. The international community should pay special attention to the role of individuals, groups and non-governmental organizations in the promotion of human rights and fundamental freedoms.

5. Nothing in the present declaration shall be construed as implying any right for a State, group or individual to engage in any activity or perform any act aimed at the destruction of the rights and freedoms enunciated in the present declaration and in other universal human rights instruments.

CRP.7 - Chairman-Rapporteur

Chapter III, Article 3

Everyone has the right, individually and in association with others, to participate in peaceful activities against violations of [their] human rights and fundamental freedoms.

In this connection, persons and groups are entitled to be protected under national law in reacting against or opposing, through peaceful means, activities and acts carried out by the State, groups or persons aimed at the destruction of [their] human rights and fundamental freedoms.

CRP.8 - Chairman-Rapporteur

Chapter V, Article 4

1. Everyone has duties towards and within the community, outside of which the free and full development of one's personality is impossible.

2. Everyone, individually or in association with others, should have and promote respect for the rights, freedoms, identity and human dignity of all other members of the community, as well as for the customs and traditions of the community.

3. Individuals, groups, institutions and non-governmental organizations have an important role to play in safeguarding and promoting the democratic principles of governing and human rights.

4. The individual is the central subject of the human rights and fundamental freedoms and should be an active participant and beneficiary of the implementation of these rights. The individual and every organ of society shall, furthermore, strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance. By doing so, they shall also bear in mind that everyone is entitled to a social and international order in which the rights and freedoms set forth in the Universal Declaration of Human Rights can be fully realized.

Article 5

Nothing in the present declaration shall be interpreted as implying for any individual, group or organ of society the right to engage in any activity or to perform any act aimed at the destruction of the rights and freedoms referred to in this declaration or at their limitations to a greater extent than is provided for in this declaration nor aimed at the destruction of the democratic process and the human rights and fundamental freedoms in general.

CRP.9 - Chairman-Rapporteur

Chapter III, Article 4

1. Everyone has the right [is entitled], individually and in association with others, to solicit, receive and utilize voluntary financial or other contributions, for the purpose of promoting and protecting, through peaceful means, [universally recognized] human rights and fundamental freedoms.

2. In this connection, all contributions, including those from foreign sources, and the use thereof, shall be subject, on a non-discriminatory basis, to the national legislation as referred to in chapter V.

CRP.10 - Delegation of the United States of America

Chapter V, Article 5 (3)

3. Individuals, groups, institutions and non-governmental organizations have an important role to play in safeguarding and promoting democratic processes and human rights and fundamental freedoms. This role does not imply the right [to pursue programmes or] to engage in any activity aimed at the destruction of democratic processes and human rights and fundamental freedoms, including progress accomplished in these areas.

CRP.11 - Delegation of Cuba

Chapter V, Article 5

Individuals, groups, institutions and non-governmental organizations have an important role to play and a responsibility in safeguarding and promoting a democratic society, democratic processes and human rights and fundamental freedoms.

No individual, group or organization has the right to pursue programmes or to engage in activities aimed at the destruction [or undermining] of any democratic process or that might jeopardize progress accomplished in these areas.

CRP.12 - Delegation of Austria

Chapter V, Article 5 (3)

3. Individuals, groups, institutions and non-governmental organizations have an important role to play and a responsibility in safeguarding and promoting democratic processes and human rights and fundamental freedoms. This does not imply the right [to pursue programmes or] to engage in any activity aimed at the destruction of democratic processes and human rights and fundamental freedoms, including progress accomplished in these areas.

CRP.13 - Chairman-Rapporteur

Chapter V, Article 5

2. Everyone, individually and in association with others, should have respect for the rights, freedoms, identity and human dignity of all others, and have respect for the culture of the whole community and the cultures within the community, consistent with human rights and fundamental freedoms.

CRP.15 - Chairman-Rapporteur

Chapter V, Article 5

1. Everyone has duties towards and within the community in which alone the free and full development of his personality is possible.

CRP.16 - Chairman-Rapporteur

Chapter V, Article 5

3. Individuals, groups, institutions and non-governmental organizations have an important role to play and a responsibility in safeguarding and promoting democratic processes, a democratic society, democracy and human rights and fundamental freedoms. This does not imply the right to carry out programmes or to engage in any other activity aimed at the destruction of democratic processes and human rights and fundamental freedoms, including progress accomplished in these areas.

Annex III

COMPILATION OF SECOND READING
PROPOSALS

CRP.17/2nd reading/1* -
Delegation of Germany

Preamble

Acknowledging the important role of international cooperation for and the valuable work of individuals, groups and associations in contributing to the effective elimination of all forms of violations of human rights and fundamental freedoms,

* To replace the text issued as CRP.14.

CRP.17/2nd reading/2 -
Delegation of Germany

Chapter IV

Article 1

[Unchanged]

Article 2

1. To this end, everyone has the right, inter alia, to

(a) Take proceedings against a violation of his human rights and have his case reviewed without delay by an independent, impartial and competent judicial or other authority established by law;

(b) Obtain in this proceeding a just decision and award providing redress, including any compensation due as well as enforcement of the decision and award, all without undue delay;

2. Furthermore, everyone has the right to

(a) Draw public attention to violations of human rights and to complain about the policies and actions of individual officials and governmental bodies by petitions or reports to competent national investigative, administrative or legislative authorities or any other competent authority provided for by the legal system of the State, as well as to any relevant competent international bodies;

(b) Attend relevant hearings or proceedings or, as the case may be, trials to assess their fairness and compliance with national and international standards;

(c) Offer and provide assistance, including professionally qualified legal assistance, in defending [universally recognized] human rights and fundamental freedoms;

(d) Have 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 and procedures.

CRP.17/2nd reading/3 -
Delegation of Sweden

Chapter IV

Article 2

To this end, everyone whose rights and freedoms are violated has the right to

(a) [as (b) unchanged].

(b) [as (c) unchanged].

Article 2 bis

Furthermore, everyone has the right, inter alia, to

(a) [unchanged].

(b) Attend relevant hearings [as in (d)].

(c) [as (e) unchanged].

(d) [as (f) unchanged].

CRP.17/2nd reading/4 -
Delegation of Cuba

Preamble

1. To add at the end of the fourth preambular paragraph:

"..., which reflect the diversity of the various cultural traditions, juridical systems and political institutions existing in the world."

2. The first part of the fifth preambular paragraph should be amended to read as follows:

"Acknowledging the important role of international cooperation for the solution of problems in this sphere and the need to encourage individuals, groups and associations to carry out their moral responsibility in contributing to the effective..." [The remainder of this paragraph would remain as it stands.]
