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REPORT OF THE SUB-COMMISSION ON PREVENTION OF DISCRIMINATION
AND PROTECTION OF MINORITIES

Minimum humanitarian standards

Report of the Secretary-General prepared pursuant
to Commission resolution 1995/29

Addendum

The present document contains a summary of comments submitted by the Governments of Belize, Finland, Germany and Malta, as well as by the following non-governmental organization: Pax Christi International.

Belize

[Original: English]
[1 December 1995]

1. No review of Belizean legislation is necessary pursuant to the Declaration of Minimum Humanitarian Standards since all the matters covered in the Declaration are already legally protected under the Constitution of Belize, and other pieces of legislation.
2. Belize does not have a record of internal strife, civil war or violence.

Finland

[Original: English]
[20 December 1995]

1. The Government of Finland notes that the purpose of the (Turku) Declaration of Minimum Humanitarian Standards (E/CN.4/Sub.2/1991/55) is to list as minimum humanitarian standards the irreducible core of basic human rights and humanitarian norms applicable to everybody in every situation.
2. Protection of human rights through customary international law and international human rights treaties covers both times of peace and armed conflict. Humanitarian international law applied in conflict situations strengthens and supplements this protection. There might occur situations where the extent of human rights obligations is limited and the threshold for applicability of international humanitarian law not reached. In other situations the basic structures of a State may have collapsed or responsibility for prohibited measures otherwise cannot be imputed to a certain State.
3. Problems of this kind have been evident in recent conflicts. For instance the conflicts which occurred in Rwanda as well as in Bosnia and other parts of the former Yugoslavia demonstrate the variety of situations where a concise document of minimum humanitarian standards could more effectively contribute to protection of human rights and fundamental freedoms.
4. The Government of Finland finds that the protection of persons especially in situations described above could be intensified by adopting a specific declaration on minimum humanitarian standards applicable to all situations and respected by all parties to the conflicts.
5. Such a declaration should codify the key principles of protection of human rights and fundamental freedoms as they are expressed in customary international law, international human rights treaties and international humanitarian law. These standards should be so concisely phrased that they can be directly, immediately and efficiently applied in various situations.
6. It is essential that the standards of a declaration do not weaken the protection of the rights and freedoms guaranteed as absolute in other relevant international documents. Nor should they broaden the preconditions necessary for temporary suspension of other rights and freedoms in situations of public emergency. On the other hand, the development which has taken place for instance with regard to the abolition of the death penalty and to the key elements of fair trial should be taken into account in further discussion on the contents of a declaration to be adopted. The standards should also cover positive actions necessary to secure basic needs. They should be respected by, and applied to all persons, groups and authorities, irrespective of their legal status. Accordingly, attention should also be paid to the responsibility of the individual for violations of the said standards.

7. The Government of Finland supports the adoption of a declaration on minimum humanitarian standards on the basis of further elaboration of the Turku Declaration. The Commission should take necessary measures to this effect at its next meeting.

Germany

[Original: English]
[27 December 1995]

1. As co-sponsor of Commission resolution 1995/29 on minimum humanitarian standards, the Federal Republic of Germany gave its backing at an early stage to the objective of the Declaration, namely to reaffirm certain core rights of the civilian population affected by a conflict, which must be safeguarded under any circumstances.

2. International humanitarian law as laid down in the four Geneva Conventions and their additional protocols takes precedence in cases of international or non-international armed conflicts. The priority enjoyed by international humanitarian treaty law is also stated in article 18 of the Declaration of Turku, which reaffirms that nothing can be interpreted as restricting or impairing the provisions of any international humanitarian or human rights instrument.

3. In reality, however, situations may arise where the additional protocols, in particular the additional protocol relating to the protection of victims of non-international armed conflicts (Additional Protocol II) do not apply. Additional Protocol II sets the threshold for its applicability high as article 1 (2) expressly excludes from the scope of application situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature, as not being armed conflicts. For these situations, as well as borderline cases, the Declaration of Turku, which largely reflects the provisions embodied in Additional Protocol II, provides the civilian population concerned with the necessary protection.

4. In peacetime the human rights contained in the two Covenants of 1966 apply in full. However, article 4 of the International Covenant on Civil and Political Rights for example permits the suspension of these rights with certain restrictions in time of public emergency. The Declaration of Turku extends the catalogue of rights which cannot be derogated from and thus sets down standards for States which they should not fall short of when suspending human rights in a public emergency.

5. The provisions on public emergencies enshrined in the Basic Law of the Federal Republic of Germany, dealing with natural disasters, as well as internal and external emergencies, are in full compliance with the rule of law and guarantee the minimum standards referred to in resolution 1995/29.

6. Furthermore, the Federal Government advocates that the minimum age of 15 years for the participation of children in armed conflicts still contained in article 10 of the Declaration be raised to 18 years.

Malta

[Original: English]
[20 December 1995]

The Government of Malta submitted the following legislation regarding the period of public emergency, contained in section 47, subsections 2, 3 and 4 of the Constitution of Malta.

Section 47

"Subsection (2)

In this Chapter 'period of public emergency' means any period during which:

- (a) Malta is engaged in any war; or
- (b) there is in force a proclamation by the President declaring that a state of public emergency exists; or
- (c) there is in force a resolution of the House of Representatives supported by the votes of not less than two thirds of all the Members of the House declaring that democratic institutions in Malta are threatened by subversion.

"Subsection (3)

(a) Where any proclamation of emergency has been made, the occasion therefore shall forthwith be communicated to the House of Representatives and, if the House is then separated by such adjournment or prorogation as will not expire within ten days the President shall by proclamation summon it to meet within five days and it shall accordingly meet and sit upon the day appointed by the proclamation and shall continue to sit and act as if it had stood adjourned or prorogued to that day.

(b) A proclamation of emergency shall, unless it is sooner revoked by the President, cease to be in force at the expiration of a period of fourteen days beginning on the date on which it was made or such longer period as may be provided under the next following paragraph, but without prejudice to the making of another proclamation of emergency at or before the end of that period.

(c) If at any time while a proclamation of emergency is in force (including any time while it is in force by virtue of this paragraph) a resolution is passed by the House of Representatives approving its continuance in force for a further period, not exceeding three months, beginning on the date on which it would otherwise expire, the proclamation shall, if not sooner revoked, continue in force for that further period.

"Subsection (4)

A resolution such as is referred to in paragraph (c) of subsection (2) of this section shall, unless it is sooner revoked by the House of Representatives, cease to be in force at the expiration of twelve months beginning on the date on which it was passed or such shorter period as may be specified therein, but without prejudice to the passing of another resolution by the House of Representatives in the manner prescribed by that paragraph at or before the end of that period."

Pax Christi International

[Original: English]
[19 December 1995]

1. Pax Christi International and the Unrepresented Nations and Peoples Organization regard the Declaration of Minimum Humanitarian Standards as an important step in the protection of human rights.
2. PXI and UNPO believe it is important that this Declaration be applicable to all circumstances of "internal violence", states of emergency, etc., including wars (declared or otherwise), counter-insurgency campaigns, and "police actions".
3. The rights contained in the Declaration should be respected regardless of compliance with the Declaration by the opposing side in the conflict.
4. In addition, the possibility should be created for declarations of adherence to be undertaken by non-members of the United Nations, including entities not recognized as States, regardless of their status.
5. PXI and UNPO would like to add the following suggestions:

Article 8, paragraph 4: Anyone sentenced to death shall have the right of appeal

Article 9: Anyone convicted shall have the right of appeal.
