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

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

Chairman-Rapporteur: Mr. A. Bozović (Yugoslavia)

I. Introduction

Establishment of the Working Group

1. By its resolution 1982/38 of 11 March 1982, the Commission on Human Rights decided to establish, at its thirty-ninth session, an open-ended Working Group in order to continue consideration of the revised draft declaration proposed by Yugoslavia. The Group held five meetings on 8, 11, 16, 22 February and on 2 March 1983. At its 1st meeting, the Group unanimously elected Mr. Bozović (Yugoslavia) as its Chairman-Rapporteur. The Working Group had before it the following documents:

(a) The report of the informal open-ended Working Group set up by the Commission at its thirty-eighth session to consider the drafting of a declaration on the rights of persons belonging to national, ethnic, religious and linguistic minorities (E/CN.4/1982/L.42) as reproduced in chapter P of the addendum to the report of the Commission on its thirty-eighth session (E/1982/12/Add.1).

(b) A note by the Secretary-General incorporating all provisions relevant to the rights of persons belonging to national, ethnic, religious or linguistic minorities, as contained in international instruments (E/CN.4/Sub.2/L.735).

(c) A note by the Secretary-General containing a revised and consolidated text of the draft declaration on the rights of persons belonging to national, ethnic, religious or linguistic minorities (E/CN.4/Sub.2/L.734).

The following documents were also submitted to the Working Group during the session:

- E/CN.4/1983/WG.5/CRP.1 - Problems related to the concept and definition of minorities
- E/CN.4/1983/WG.5/CRP.2 - Preliminary discussions on article 1 of the draft declaration
- E/CN.4/1983/WG.5/CRP.3 - Proposals by Australia, Bulgaria, China, India, and the United States of America, on articles 1, 2, 3, 5 and 6 of the draft declaration.

Background information

2. At its thirty-fourth session in 1978, the Commission established an informal, open-ended working group, pursuant to resolution 5 (XXX) adopted by the Sub-Commission on Prevention of Discrimination and Protection of Minorities. In that resolution, the Sub-Commission recommended that the Commission consider drafting a declaration on the rights of members of minorities, within the framework of the principles set forth in article 27 of the International Covenant on Civil and Political Rights. A draft declaration on the rights of persons belonging to national, ethnic, religious and linguistic minorities proposed by Yugoslavia (E/CN.4/L.1367/Rev.1), in order to serve as a starting point for an exchange of views, was referred to the Working Group.

3. At each subsequent session of the Commission an informal open-ended working group has been established to continue consideration of the drafting of a declaration.

4. Following Commission resolution 37 (XXXVI) of 12 March 1980, a revised and consolidated text of the draft declaration was prepared by Mr. Toševski, Chairman-Rapporteur of the Working Group established at the Commission's thirty-sixth session and placed before the Commission, in document E/CN.4/Sub.2/L.734, at its thirty-seventh session in 1981. This revised draft declaration formed the basis of the discussions of the two Working Groups set up by the Commission respectively at its thirty-seventh and thirty-eighth sessions. At each of these two sessions, the Working Group agreed that it would undertake a first reading of the draft and that such agreement, as could be reached during this first reading, would be of a preliminary character. The Working Group has so far provisionally adopted the title and the preamble of the draft declaration. 1/

II. Issues discussed

General observations

5. The revised draft declaration (E/CN.4/Sub.2/L.734) prepared by Mr. Toševski, Chairman-Rapporteur of the Working Group established at the Commission's thirty-sixth session, formed the basis of the discussions of the Group. The Working Group continued the task of a first reading of the draft. It resumed its consideration of article 1 and began consideration of articles 2, 3, 4, 5 and 6. No text was adopted at the present session.

6. The necessity of a prior agreement on a definition of the term "minority" was considered by a number of speakers as an essential step in the progress of the work of the Group. In that connection, a conference room paper (E/CN.4/1983/WG.5/CRP.1) was submitted to the Working Group, in which reference was made to existing studies of the Sub-Commission where problems relating to the definition of that term are discussed. The lack of a generally accepted definition of this term was stressed and it was generally agreed that the Group should pursue its work despite the absence of an agreed definition.

1/ See annex ... to the report.

7. It was also recalled that a formula had been agreed upon at previous sessions whereby the words "rights of minorities" would be replaced by the words "rights of persons belonging to minorities". Acceptance of that formula rendered the words "and of their members" superfluous. It was further observed that the formula "[national or], ethnic, religious or linguistic minorities" should be used to follow the wording in the title of the draft declaration in accordance with the agreement reached on that point at the thirty-seventh session. Reference was also made to paragraph 13 of the report of the Working Group ^{2/} established by the Commission on Human Rights at its thirty-seventh session, in which it was stated that the Group agreed to defer final debate on this issue.

8. During the discussions, various proposals were made relating to articles 1 to 6. The informal character of these proposals was emphasized.

Consideration of articles of the draft declaration

Article 1

9. Article 1, as it appears in the revised draft declaration, reads as follows:

"National, ethnic, linguistic and religious minorities (hereinafter referred to as minorities) have the rights to existence, to respect for and promotion of their own national, ethnic, linguistic, religious and other characteristics and to enjoyment of equality in relation to the rest of the population of the State in which they live."

10. In the course of the debates, reference was made to a number of suggestions made last year. It was in particular recalled that one of the suggestions was to include in article 1 of the draft declaration a list of six specific rights as follows: (1) the right to life, liberty and security of person; (2) a right including respect for national, ethnic, religious or linguistic characteristics; (3) the right to equality before the law; (4), (5) and (6) the rights, for minorities, to enjoy their own culture, to profess and practise their own religion, and to use their own language. Another suggestion was to combine article 3, paragraph 1 and article 1 of the draft declaration.

11. The representative of Bulgaria submitted the following proposal for a new text of article 1:

"1. Persons belonging to [national or] ethnic, religious or linguistic minorities (hereinafter referred to as persons belonging to minorities) have the right to life, liberty and security of person; to equality before the law; to respect for their [national or] ethnic, religious or linguistic identity; to enjoy their own culture; to profess and practise their own religion; or to use their own language.

2. Persons belonging to minorities shall enjoy equal human rights and fundamental freedoms without any discrimination as to [national or] ethnic origin, religion or language with the rest of the population of the States in which such minorities exist."

12. It was observed that the text submitted by the representative of Bulgaria was based on previous suggestions and took into account article 27 of the International Covenant on Civil and Political Rights.

13. In the view of some speakers, however, certain elements of the text submitted by Bulgaria would raise difficulties. It was noted, in that connection, that while the aim of the draft declaration should be to encourage the promotion of the rights of members of minorities, taking into account their specific needs, and to set an international standard for the protection of minorities at the national level, the text submitted by Bulgaria did not go beyond ensuring the legal equality of members of minorities with the rest of the population. Such equality and non-discrimination, it was stated, was already guaranteed in a number of international instruments in particular in the International Bill of Human Rights. It was also stated that the reference to the rights of "persons belonging to" minorities did not take into account the collective aspect of the rights of minorities. It was further stated that the draft declaration should ensure equal rights and non-discrimination de jure and de facto of persons belonging to minorities in relation to the rest of the population. The proclamation of special rights of persons belonging to minorities, it was said, could place them in a position of advantage and privileges.

14. The inclusion, in article 1, of references to "religious minorities" gave rise to some discussion. According to a view, such mention could raise problems in some States where it would be difficult to determine whether certain religious groups should be considered as "minorities". Another view, on the contrary, was that the operative part of the draft declaration must contain references to religious minorities if any type of minority was specifically identified.

15. Without necessarily endorsing the proposal made by the representative of Bulgaria and without prejudice to subsequent modifications of its contents, a number of speakers made proposals as follows, regarding that text:

(a) The representative of Australia proposed the replacement of the word "use" in the last line of the Bulgarian proposal for paragraph 1 of article 1 by the word "maint.in". He also proposed the following reformulation of paragraph 2 of article 1:

"2. Persons belonging to minorities shall be enabled to exercise their human rights and fundamental freedoms without any discrimination as to the rest of the population of the States in which they live."

(b) The representative of Austria orally submitted the following suggestion:

"Persons belonging to [national or] ethnic, religious or linguistic minorities (hereinafter referred to as minorities) shall be enabled to exercise the same rights on equal terms as the rest of the population; they have the right, in community with other members of their group, to enjoy their own culture, to profess and practise their own religion or to use their own language in order to ensure their right to respect for [and promotion of] their ethnic, linguistic and religious identity."

(c) The representative of India suggested a new text for article 1, paragraph 2, which slightly modified the text proposed by Australia. It read as follows:

"Persons belonging to minorities shall be enabled to exercise their human rights and fundamental freedoms without any discrimination vis-à-vis the rest of the population of the States in which such minorities live."

(d) The representative of India had previously suggested to add, between the words "any" and "discrimination", the word "negative". However, in the light of the observations made, he agreed to delete this suggestion.

(e) The representative of Senegal suggested the following text for article 1, paragraph 2:

"Persons belonging to minorities shall enjoy equal human rights and fundamental freedoms, without any discrimination, under the same conditions as the rest of the population of the States in which they are residing."

Article 2

16. Article 2, as it appears in the revised draft declaration, reads as follows:

"Any propaganda or other activity which is threatening or which may threaten the existence of minorities or discriminating against them or impeding their right to express and develop freely, on an equitable basis, their own characteristics is incompatible with the fundamental principles of the Charter of the United Nations and other relevant international instruments and should be prevented, condemned and proclaimed illegal by the member States of the United Nations."

17. The attention of the Group was drawn to the conflict that might arise between the provisions of article 2 as it appears in the revised draft declaration, and other legally binding provisions included in some international instruments, in particular those referring to the right to freedom of expression.

18. The question was also raised as to whether, in view of the existence of the Convention on the Prevention and Punishment of the Crime of Genocide, the mention, in article 2, of "any ... activity which is threatening ... the existence of minorities ..." was necessary.

19. It was further suggested that, in the formulation of article 2, priority should be given to the positive rights that minorities should be able to exercise. It would then be appropriate to proceed to address ways and means of avoiding threats to such rights.

20. A number of proposals were submitted with regard to article 2, as follows:

(a) The representative of Australia presented the following text:

"Persons belonging to minorities shall be able to exercise, individually and in community with others and without prejudice to the rights and freedoms of others the right to express and develop freely their own ethnic, cultural and religious identity. Appropriate measures shall be taken against any propaganda or other activity which is incompatible with the fundamental principles of the Charter and other relevant international instruments and which may impede or threaten the exercise of this right."

(b) The representative of the Ukrainian SSR submitted the following proposal:

"Any propaganda or other activity which threatens or may threaten the life of persons belonging to minorities or is discriminatory against them or makes obstacles to the exercise of their right to respect for their identity is incompatible with the fundamental principles of the Charter of the United Nations and other relevant international instruments and should be prevented, condemned and proclaimed illegal by the member States of the United Nations."

(c) The representative of Bulgaria suggested to add, in the second line of article 2, the words "persons belonging to" before the word "minorities".

Article 3

21. Article 3, as it appears in the revised draft declaration, reads as follows:

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

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

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

22. As indicated above, during the discussion of article 1, the suggestion was made to combine article 3, paragraph 1, with article 1. The above-mentioned proposal submitted by the representative of Bulgaria for a new article 1, as well as the various amendments thereto reflect that suggestion. Therefore, the discussions on article 3 focused on paragraphs 2 and 3 of that article, as it appears in the revised draft declaration contained in document E/CN.4/Sub.2/L.734.

23. In the course of the debates, it was suggested to use in paragraph 2 of article 3 the same formula as in article 2, paragraph 2, of the United Nations Convention on the Elimination of All Forms of Racial Discrimination.

24. As the word "conditions" appeared twice, in the first two lines of paragraph 2, it was suggested that a new wording should be used in order to avoid this repetition.

The following proposals were made:

(a) The representative of Bulgaria proposed to add, in the second line of paragraph 2, the words "persons belonging to" before the word "minorities"; to add, in the third line, the words "when the circumstances so warrant", after the word "measures"; to add, in the fifth line, the words "in conformity with the law" after the word "customs".

(b) The representative of China proposed to add the following sentence at the end of paragraph 3: "These contacts and activities shall be within the limits of the laws of the countries in which they live."

Article 4

25. Article 4, as it appears in the revised draft declaration, reads as follows:

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

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

No suggestions were made with regard to article 4.

Article 5

26. Article 5, as it appears in the revised draft declaration, reads as follows:

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

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

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

27. The representative of the United States of America suggested to replace, in the second line of paragraph 1, the word "non-interference" by the word "non-intervention".

Article 6

28. Article 6, as it appears in the revised draft declaration, reads as follows:

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

29. It was observed that a declaration should aim at defining principles rather than adopting measures. The view was also expressed that the reference to the creation of favourable political conditions might raise some difficulties as such a concept was not easy to define.

30. The representative of India, referring to the use of the word "conditions", twice in this article, suggested an amendment according to which article 6 would read as follows:

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

31. At the end of the discussions, there was a general feeling in the Group that Governments should be requested, through the Commission, to provide concrete proposals regarding articles 1 to 6 of the draft declaration, taking into consideration the various suggestions made by the Group.

ANNEX

Text of that part of the draft declaration on which preliminary
agreement has been reached so far

Draft Declaration on the rights of persons belonging to [national or]
ethnic, religious or linguistic minorities

The General Assembly,

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

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

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

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

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

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

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

Bearing in mind the work done so far within the United Nations system, in particular the Commission on Human Rights, the Sub-Commission on Prevention of Discrimination and Protection of Minorities as well as the bodies established pursuant to the International Covenants on Human Rights and other relevant international human rights instruments on promoting and protecting the rights of persons belonging to [national or] ethnic, religious or linguistic minorities,

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

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