

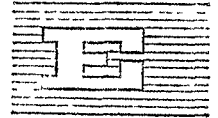
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RIGHTS OF PERSONS BELONGING TO NATIONAL, ETHNIC,
RELIGIOUS AND LINGUISTIC MINORITIES

Addendum

Note by the secretariat

1. In paragraph 31 of the report of the open-ended Working Group established by the Commission on Human Rights at its thirty-ninth session (E/CN.4/1983/66), it is stated that Governments should be requested, through the Commission, to provide concrete proposals regarding articles 1 to 6 of the draft declaration submitted by Yugoslavia. By resolution 1983/53 of 10 March 1983 the Commission approved the report of the Working Group.
2. Accordingly, on 13 July 1983, a note verbale was sent to Governments inviting them to make proposals concerning the draft declaration and forward them to the Centre for Human Rights.
3. The present document contains comments and proposals, submitted by the Government of the Federal Republic of Germany.

FEDERAL REPUBLIC OF GERMANY

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The Federal Government commented in January 1979 on the general question of a declaration on the rights of minorities and specifically on the draft resolution originally submitted by Yugoslavia.

One of the recommendations made in these comments was that the question as to how a declaration on the rights of minorities could usefully supplement the existing international instruments should be thoroughly examined. In the opinion of the Federal Government, all States which have not yet done so should be urged to ratify and implement fully the existing international instruments on the protection of the rights of minorities.

The following comments are made on articles 1 to 6:

Article 1

The protection of minorities as stipulated, for instance, in article 27 of the International Covenant on Civil and Political Rights is impaired by the fact that States have not yet agreed on a definition of a national, ethnic, religious or linguistic minority. Persons who regard themselves as belonging to a minority are denied their rights derived from article 27 of the Covenant on the grounds that they do not belong to a recognized minority. Article 1 of the draft declaration contains attempts to find a more precise definition.

The Federal Government considers it necessary that the term "minority" be even more precisely defined in the declaration. The Federal Government's interpretation of minorities corresponds to that agreed on during the preliminary work on article 27 of the International Covenant on Civil and Political Rights, namely "separate or distinct groups, well-defined and long-established on the territory of a State". Such a definition should be included in a declaration on the protection of national, ethnic, religious or linguistic minorities.

Whereas article 27 of the International Covenant on Civil and Political Rights recognizes only "ethnic, religious or linguistic" minorities as being in need of protection, article 1 also seeks protection for "national" minorities. The distinction between the meanings of "national" and "ethnic" minorities needs to be clarified.

In the view of the Federal Government, it must be clearly stipulated that the words national, ethnic, religious and linguistic minorities refer to those groups whose members, despite possessing the nationality of their host country, enjoy or ought to enjoy special (minority) status in that country as a closed (national, ethnic, religious or linguistic) group.

The absence of such clarification could give rise to the danger of the declaration being misinterpreted to mean that non-nationals, i.e. foreigners, should likewise enjoy the rights referred to therein. The declaration would then overlap in some areas with the many resolutions, conventions and agreements dealing with questions of racism, minorities and migrant workers. As a result, the intelligibility of the relevant international instruments on this subject and of individual human rights guarantees would be forfeited. This would run counter not only to the practical requirements of Governments, but also to the need that the persons affected have for clearly defined and hence effective protection by international law.

The "right to existence" provided for in article 1 does not seem to have been defined with sufficient precision. Consideration should be given to the relation which the right of a minority to exist bears to any wish of the minority to be assimilated. The discussions in connection with the preparation of article 26 of the International Covenant on Civil and Political Rights could provide the basis for such consideration (document A/2929 dated 1 July 1955, page 63).

If the "right to enjoyment of equality" is meant to apply to all spheres of activity, certain restrictions must be made, particularly if the protection afforded to minorities is to be extended to foreigners. In the latter case, either the text from the words "and to enjoyment" up to the end of the sentence should be deleted or a formula be found such as that contained in the Bulgarian proposal: "equality before the law" (para. 11 of the working group report).

Article 2

In article 2 the relationship between "propaganda" and freedom of expression needs to be defined more precisely along the lines of articles 19 and 20 of the International Covenant on Civil and Political Rights. The wording proposed by Australia (para. 20 (a) of the working group report) seems to meet this requirement.

Article 3

With regard to article 3 (1), it should be noted that the International Covenant on Civil and Political Rights does not prevent a State from differentiating between its own nationals and foreigners; hence, in guaranteeing human rights, article 2 (1) of the Covenant does not include "national origin" as a prohibited criterion of differentiation. Article 3 (1) of the draft, however, apparently seeks to preclude this form of differentiation.

This issue, which is presumably of importance to the national legislation of most States, should be resolved unequivocally.

The Federal Government concurs in principle with the ideas contained in article 3 (2), namely that formal equality of minorities does not necessarily mean material equality and that instead measures have to be taken to ensure that minorities can participate on an equitable basis in the cultural, social, economic and political life of the country in which they live. In the Federal Republic of Germany numerous measures have already been taken to promote the interests of minorities (e.g. financial assistance for schools and nurseries featuring instruction in Danish, representation of the Danish minority in the Parliament of the Federal Land Schleswig-Holstein even though the minority is not large enough to obtain a seat through the electoral process). However, the question of the extent to which States should be requested to take such measures requires thorough examination.

If the declaration is to include rights which go beyond article 26 of the International Covenant on Civil and Political Rights, it would probably be advisable to refer to the suggestion which was made during the preparation of article 26 but rejected at the time, to the effect that minorities should be given the right "... to possess their national schools, libraries, museums and other cultural and educational institutions" (document A/2929, page 63).

If the principle contained in article 3 (2) is intended to apply to foreigners too, the wording "equitable basis" should be replaced by "appropriate basis".

The idea contained in article 3 (3) is particularly welcomed by the Federal Government.

Article 4

There are no proposals with regard to article 4.

Article 5

Article 5 (1) gives rise to fundamental objections. Where individual human rights problems are addressed, equivalent principles set forth in the Charter of the United Nations should not be distorted. Nor should the impression be created that a declaration contradicts the provisions of the Charter on the protection of human rights (articles 55 and 56). Article 5 (1) could wrongly create the impression that the question whether a country grossly violates minority rights, is a purely internal matter of the country concerned.

The United States proposal that in line 3 of paragraph 1 the term "non-interference" be replaced by "non-intervention" (para. 27 of the working group report) is supported by the Federal Government.

In article 5 (2) the term "commitments" should be replaced by the juristically more precise term "obligations". For the sake of clarity it should be borne in mind that in the discussions on article 26 of the International Covenant on Civil and Political Rights, the correct term "obligations" was always used (document A/2929, page 63). This expression reflects the binding character under international law of the obligations in question.

Article 5 (3), like article 5 (1), conveys the false impression that the declaration could take precedence over international treaties and its wording is therefore open to question.

Article 6

The purport of article 6 of the draft is too wide and hence more liable to weaken than strengthen the existing legal protection afforded to minorities.