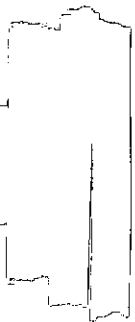




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Discrimination and Protection
of Minorities
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ELIMINATION OF ALL FORMS OF INTOLERANCE AND DISCRIMINATION
BASED ON RELIGION OR BELIEF

Working paper prepared by Mr. Theo van Boven,
pursuant to Commission resolution 1988/55 and
Sub-Commission decision 1988/112

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INTRODUCTION

1. On 1 September 1988, the Sub-Commission on Prevention of Discrimination and Protection of Minorities adopted decision 1988/112 pertaining to the elimination of intolerance and discrimination based on religion or belief. In that decision, the Sub-Commission noted the request of the Commission on Human Rights in its resolution 1988/55 of 8 March 1988 that the Sub-Commission undertake the following tasks:

"(a) To prepare a compilation of provisions relevant to the elimination of intolerance and discrimination based on religion or belief contained in the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief and other international instruments;

"(b) To examine, mindful of General Assembly resolution 41/120 of 4 December 1986, and taking into account the provisions of the existing international instruments in this field, the issues and factors which should be considered before any drafting of a further binding international instrument on freedom of religion or belief takes place."

In the same decision, the Sub-Commission requested the present author to prepare a working paper with a view to assisting the Sub-Commission to carry out the above-mentioned tasks at its forty-first session.

2. In its resolution 1989/44 of 6 March 1989, the Commission on Human Rights recalled its earlier request to the Sub-Commission and expressed the hope that the Sub-Commission at its forty-first session would report to the Commission at its forty-sixth session on the basis of a thorough consideration of the above tasks and issues, with a view to assisting the Commission in considering further means of strengthening international efforts to promote and protect the right to freedom of thought, conscience, religion and belief, including the question of the desirability of any further standard-setting in this area in the light of General Assembly resolution 41/120 of 4 December 1986.

3. This working paper consists of an introduction and two main parts. Part One contains a compilation of provisions relevant to the elimination of intolerance and discrimination based on religion or belief, as requested by the Commission on Human Rights in its resolution 1988/55 of 8 March 1988. Part Two examines, in response to the same resolution of the Commission on Human Rights, a number of issues and factors which should be taken into account before any drafting of a further binding international instrument on freedom of religion or belief takes place.

4. The author of this working paper is familiar with the various arguments advanced in favour and against a further binding international instrument on freedom of religion or belief and on the elimination of intolerance and discrimination based on religion or belief. However, this paper will not give an explicit answer to the question whether it is desirable to draw up such a further binding international instrument. The paper is focused on the issues which were referred by the Commission on Human Rights to the Sub-Commission in the terms cited in paragraph 1 above. This paper should be considered in the light of the stated wish of United Nations policy organs, as articulated by

the General Assembly in its resolution 41/120 of 4 December 1986, that "standard setting should proceed with adequate preparation". In the same resolution, the General Assembly emphasized that "the standard-setting activities of the United Nations should be as effective and efficient as possible".

5. It would go beyond the scope of the present paper to examine in depth the broad and complex substance of freedom of religion or belief and the connected issues relating to the elimination of intolerance and discrimination based on religion or belief. For that purpose, reference must be made to the two remarkable studies prepared by Special Rapporteurs of the Sub-Commission on Prevention of Discrimination and Protection of Minorities. The first is the Study of Discrimination in the Matter of Religious Rights and Practices by Mr. Arcot Krishnaswami. 1/ The other, more recent, study was prepared by Mrs. Elizabeth Odio Benito: "Study of the current dimensions of the problems of intolerance and of discrimination on grounds of religion or belief". 2/ The present working paper joins the two Special Rapporteurs in their understanding of the expression "religion or belief". In this paper, too, the expression "religion or belief" is used as including theistic, non-theistic and atheistic beliefs.

6. The compilation contained in Part One of this paper follows in its organization by and large the classification of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief. Under most sections of the compilation, this Declaration is referred to as the primary source. Other relevant provisions, which are of no less importance, have been taken from instruments drawn up in the United Nations system or in a regional context. As regards the latter, noteworthy developments can be registered in particular in the continuing process of the Conference on Security and Co-operation in Europe. The author of this paper considered it useful and relevant also to include in the compilation a section not covered by the Declaration, namely, on religious minorities and groups, as well as a section on the rights of some special categories of persons in matters of religion or belief. The compilation is based, as was the presumed intent of the Commission on Human Rights, only on multilateral instruments and documents; relevant provisions of bilateral treaties and arrangements are not included. Furthermore, the compilation covers only instruments and documents which are on the books as concluded and adopted. Important draft texts containing relevant provisions are still pending before policy organs in various stages of preparation. 3/ The author of the present paper felt that the compilation should be based on final texts and not include draft provisions.

7. Another limitation in the compilation is the absence of references to provisions of international humanitarian law relating to religious rites and practices. In fact, all four 1949 Geneva Conventions, and in particular Convention No. III, Relative to the Treatment of Prisoners of War, and Convention No. IV, Relative to the Protection of Civilian Persons in Time of War, contain elaborate provisions guaranteeing the unhindered exercise of religious freedom of the protected persons. The two 1977 Protocols on victims of international armed conflict and on victims of non-international armed conflict also contain relevant provisions. However, two reasons prompted the

non-inclusion of these provisions in the compilation. First, any future binding international instrument on religion or belief would presumably not focus on the area of humanitarian law. Secondly, the economy of the present working paper requires some self-restraint.

8. A final preliminary remark should be made with regard to the compilation. As the Special Rapporteur, Mrs. Odio Benito, has quite emphatically and correctly pointed out, the right to freedom of thought, conscience, religion or belief is closely linked to all other human rights and fundamental freedoms. She states clearly that this right is so intimately interconnected with other human rights that it is not possible to enjoy freedom of religion or belief if full realization of other rights and freedoms is restricted or denied. 4/ Indeed, the right to freedom of religion or belief cannot be isolated from other human rights and freedoms, and such a belief cannot be comprehensive set of international instruments as the International Bill of Human Rights, with its component parts, is based on the concept of the interdependence and indivisibility of all human rights and fundamental freedoms. Therefore, the selection and compilation of provisions on freedom of religion or belief and on the elimination of intolerance and discrimination based on religion or belief is a somewhat risky undertaking, inasmuch as it may result in provisions being read and interpreted in isolation from the broader contexts in which they are embedded. Anyone who examines the compilation is advised to be well aware of this risk.

PART ONE. COMPILATION OF PROVISIONS RELEVANT TO THE ELIMINATION
OF INTOLERANCE AND DISCRIMINATION BASED ON RELIGION
OR BELIEF

A. The right to freedom of thought, conscience and religion

1. Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (1981)

Article 1

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have a religion or whatever belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
2. No one shall be subject to coercion which would impair his freedom to have a religion or belief of his choice.

2. Universal Declaration of Human Rights (1948)

Article 18

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

3. International Covenant on Civil and Political Rights (1966)

Article 18

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

4. Proclamation of Teheran (1968)

Paragraph 5

5. The primary aim of the United Nations in the sphere of human rights is the achievement by each individual of the maximum freedom and dignity. For the realization of this objective, the laws of every country should grant each individual, irrespective of race, language, religion or political belief, freedom of expression, of information, of conscience and of religion, as well as the right to participate in the political, economic, cultural and social life of his country.

5. International Convention on the Elimination of All Forms of Racial Discrimination (1965)

Article 5

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

(d)

(vii) The right to freedom of thought, conscience and religion.

6. American Declaration of the Rights and Duties of Man (1948)

Article III

Every person has the right freely to profess a religious faith, and to manifest and practise it both in public and in private.

7. European Convention for the Protection of Human Rights and Fundamental Freedoms (1950)

Article 9

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

8. American Convention on Human Rights (1969)

Article 12. Freedom of conscience and religion

1. Everyone has the right to freedom of conscience and of religion. This right includes freedom to maintain or to change one's religion or beliefs, and freedom to profess or disseminate one's religion or beliefs, either individually or together with others, in public or in private.

2. No one shall be subject to restrictions that might impair his freedom to maintain or to change his religion or beliefs.

9. African Charter on Human and Peoples' Rights (1981)

Article 8

Freedom of conscience, the profession and free practice of religion shall be guaranteed. No one may, subject to law and order, be submitted to measures restricting the exercise of these freedoms.

10. Final Act of the Conference on Security and Co-operation in Europe (Helsinki, 1975)

Principle VII of the Declaration on Principles Guiding Relations Between Participating States

1. The participating States will respect human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief, for all without distinction as to race, sex, language or religion.
3. Within this framework the participating States will recognize and respect the freedom of the individual to profess and practise, alone or in community with others, religion or belief acting in accordance with the dictates of his own conscience.

11. Concluding Document of the Madrid Meeting of Representatives of the Participating States of the Conference on Security and Co-operation in Europe (1983)

Questions relating to security in Europe: Principle 10, paragraph 1

10. The participating States reaffirm that they will recognize, respect and furthermore agree to take the action necessary to ensure the freedom of the individual to profess and practise, alone or in community with others, religion or belief acting in accordance with the dictates of his own conscience.

12. Concluding Document of the Vienna Meeting of Representatives of the Participating States of the Conference on Security and Co-operation in Europe (1989)

Questions relating to security in Europe: Principle 11

11. They confirm that they will respect human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief, for all without distinction as to race, sex, language or religion. They also confirm the universal significance of human rights and fundamental freedoms, respect for which is an essential factor for the peace, justice and security necessary to ensure the development of friendly relations and co-operation among themselves, as among all States.

B. Prohibition of intolerance and of discrimination based on religion or belief

1. Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (1981)

Article 2

1. No one shall be subject to discrimination by any State, institution, group of persons, or person on the grounds of religion or other belief.

2. For the purposes of the present Declaration, the expression "intolerance and discrimination based on religion or belief" means any distinction, exclusion, restriction or preference based on religion or belief and having as its purpose or as its effect nullification or impairment of the recognition, enjoyment or exercise of human rights and fundamental freedoms on an equal basis.

Article 3

Discrimination between human beings on the grounds of religion or belief constitutes an affront to human dignity and a disavowal of the principles of the Charter of the United Nations, and shall be condemned as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights and enunciated in detail in the International Covenant on Human Rights, and as an obstacle to friendly and peaceful relations between nations.

Article 4

1. All States shall take effective measures to prevent and eliminate discrimination on the grounds of religion or belief in the recognition, fields exercise and enjoyment of human rights and fundamental freedoms in all fields of civil, economic, political, social and cultural life.
2. All States shall make all efforts to enact or rescind legislation where necessary to prohibit any such discrimination, and to take all appropriate measures to combat intolerance on the grounds of religion or other beliefs in this matter.

2. Universal Declaration of Human Rights (1948)

Article 2

1. Everyone is entitled to all the rights and freedoms set forth in this Declaration, 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.

Article 26

2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

3. International Covenant on Civil and Political Rights (1966)

Article 2

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, 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.

Article 4

1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.
2. No derogation from articles 6, 7, 8 (paras. 1 and 2), 11, 15, 16 and 18 may be made under this provision.

Article 20

2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

4. International Covenant on Economic, Social and Cultural Rights (1966)

Article 2

2. The States Parties to the present Covenant undertake to guarantee that the rights enumerated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 13

1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

5. Proclamation of Teheran (1968)

1. It is imperative that the members of the international community fulfill their solemn obligations to promote and encourage respect for human rights and fundamental freedoms for all without distinctions of any kind such as race, colour, sex, language, religion, political or other opinions;

11. Gross denials of human rights arising from discrimination on grounds of race, religion, belief or expressions of opinion outrage the conscience of mankind and endanger the foundations of freedom, justice and peace in the world.

6. American Declaration on the Rights and Duties of Man (1948)

Article II

All persons are equal before the law and have the rights and duties established in this Declaration, without distinction as to race, sex, language, creed or any other factor.

7. European Convention for the Protection of Human Rights and Fundamental Freedoms (1950)

Article 14

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

8. American Convention on Human Rights (1969)

Article 1

1. The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, colour, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

Article 27

1. In time of war, public danger, or other emergency that threatens the independence or security of a State Party, it may take measures derogating from its obligations under the present Convention to the extent and for the period of time strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law and do not involve discrimination on the ground of race, colour, sex, language, religion, or social origin.

2. The foregoing provision does not authorize any suspension of the following articles: article 3 (Right to juridical personality), article 4 (Right to life), article 5 (Right to humane treatment), article 6 (Freedom from slavery), article 9 (Freedom from ex post facto laws), article 12 (Freedom of conscience and religion), article 17 (Rights of the family), article 18 (Right to a name), article 19 (Rights of the child), article 20 (Right to nationality), and article 23 (Right to participate in government), or of the judicial guarantees essential for the protection of such rights.

9. African Charter on Human and Peoples' Rights (1981)

Article 2

Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.

10. Concluding Document of the Vienna Meeting of Representatives of the Participating States of the Conference on Security and Co-operation in Europe (1989)

Questions relating to security in Europe

[The participating States will] ...

13. (g) ensure human rights and fundamental freedoms to everyone within their territory and subject to their jurisdiction, 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.

16. In order to ensure the freedom of the individual to profess and practise religion or belief, the participating States will, inter alia,

16. (a) take effective measures to prevent and eliminate discrimination against individuals or communities, on the grounds of religion or belief in the recognition, exercise and enjoyment of human rights and fundamental freedoms in all fields of civil, political, economic, social and cultural life, and ensure the effective equality between believers and non-believers;

16. (b) foster a climate of mutual tolerance and respect between believers of different communities as well as between believers and non-believers.

11. Declaration of the Rights of the Child (1959)

Principle 1

The child shall enjoy all the rights set forth in this Declaration. Every child, without any exception whatsoever, shall be entitled to these rights, without distinction or discrimination on account of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, whether of himself or of his family.

Principle 10

The child shall be protected from practices which may foster racial, religious and any other form of discrimination. He shall be brought up in a spirit of understanding, tolerance, friendship among peoples, peace and universal brotherhood, and in full consciousness that his energy and talents should be devoted to the service of his fellow men.

12. Convention against Discrimination in Education (1960)

Article 2

When permitted in a State, the following situations shall not be deemed to constitute discrimination, within the meaning of article 1 of this Convention:

(b) The establishment or maintenance, for religious or linguistic reasons, of separate educational systems or institutions offering an education which is in keeping with the wishes of the pupil's parents or legal guardians, if participation in such systems or attendance at such institutions is optional and if the education provided conforms to such standards as may be laid down or approved by the competent authorities, in particular for education of the same level.

Article 5

1. The States Parties to this Convention agree that:

(a) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms; it shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

13. Convention (No. 111) concerning Discrimination in respect of Employment and Occupation (1958)

Article 1

1. For the purpose of this Convention the term "discrimination" includes:

(a) Any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation.

14. Convention (No. 122) concerning Employment Policy (1964)

Article 1

2. The ... policy shall aim at ensuring that:

(c) There is freedom of choice of employment and the fullest possible opportunity for each worker to qualify for, and to use his skills and endowments in, a job for which he is well suited, irrespective of race, colour, sex, religion, political opinion, national extraction or social origin.

15. Declaration on the Promotion among Youth of the Ideals of Peace, Mutual Respect and Understanding between Peoples (1965)

Principle III

Young people shall be brought up in the knowledge of the dignity and equality of all men, without distinction as to race, colour, ethnic origins or beliefs, and in respect for fundamental human rights and for the right of peoples to self-determination.

16. Declaration on Social Progress and Development (1969)

Article 1

All peoples and all human beings, without distinction as to race, colour, sex, language, religion, nationality, ethnic origin, family or social status, or political or other conviction, shall have the right to live in dignity and freedom and to enjoy the fruits of social progress and should, on their part, contribute to it.

17. Declaration on Race and Racial Prejudices (1978)

Article 3

Any distinction, exclusion, restriction or preference based on race, colour, ethnic or national origin or religious intolerance motivated by racist considerations, which destroys or compromises the sovereign equality of States and the right of peoples to self-determination, or which limits in an arbitrary or discriminatory manner the right of every human being and group to full development is incompatible with the requirements of an international order which is just and guarantees respect for human rights; the right to full development implies equal access to the means of personal and collective advancement and fulfillment in a climate of respect for the values of civilizations and cultures, both national and world-wide.

18. Declaration on the Right to Development (1986)

Article 6

1. All States should co-operate with a view to promoting, encouraging and strengthening universal respect for and observance of all human rights and fundamental freedoms for all without any distinction as to race, sex, language or religion.

C. The right to bring up children in accordance with the religion or belief chosen by their parents (or legal guardians) and protection of children against all forms of discrimination based on religion or belief

1. Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (1981)

Article 5

1. The parents or, as the case may be, the legal guardians of the child have the right to organize the life within the family in accordance with their religion or belief and bearing in mind the moral education in which they believe the child should be brought up.

2. Every child shall enjoy the right to have access to education in the matter of religion or belief in accordance with the wishes of his parents or, as the case may be, legal guardians, and shall not be compelled to receive teaching on religion or belief against the wishes of his parents or legal guardians, the best interests of the child being the guiding principle.

3. The child shall be protected from any form of discrimination on the ground of religion or belief. He shall be brought up in a spirit of understanding, tolerance, friendship among peoples, peace and universal brotherhood, respect for freedom of religion or belief of others, and in full consciousness that his energy and talents should be devoted to the service of his fellowmen.

4. In the case of a child who is not under the care either of his parents or of legal guardians, due account shall be taken of their expressed wishes or of any other proof of their wishes in the matter of religion or belief, the best interests of the child being the guiding principle.

5. Practices of a religion or belief in which a child is brought up must not be injurious to his physical or mental health or to his full development, taking into account article 1, paragraph 3, of the present Declaration.

2. International Covenant on Civil and Political Rights (1966)

Article 18

4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

3. International Covenant on Economic, Social and Cultural Rights (1966)

Article 13

3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be

laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

4. First Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms (1952)

Article 2

No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

5. American Convention on Human Rights (1969)

Article 12

Parents of guardians, as the case may be, have the right to provide for the religious and moral education of their children or wards that is in accord with their own convictions.

6. Concluding Document of the Vienna Meeting of Representatives of the Participating States of the Conference on Security and Co-operation in Europe (1989)

Questions relating to security in Europe

[The participating States will]

16. (g) in this context respect, inter alia, the liberty of parents to ensure the religious and moral education of their children in conformity with their own convictions.

7. Convention against Discrimination in Education (1960)

Article 5

1. The States Parties to this Convention agree that:

(b) It is essential to respect the liberty of parents and, where applicable, of legal guardians, firstly to choose for their children institutions other than those maintained by the public authorities but conforming to such minimum educational standards as may be laid down or approved by the competent authorities and, secondly, to ensure in a manner consistent with the procedures followed in the State for the application of its legislation, the religious and moral education of the children in conformity with their own convictions; and no person or group of persons should be compelled to receive religious instruction inconsistent with his or their conviction.

D. The right to manifest religion or belief, including the rights of collective bodies

1. Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (1981)

Article 6

In accordance with article 1 of the present Declaration, and subject to the provisions of article 1, paragraph 3, the right to freedom of thought, conscience, religion or belief shall include, inter alia, the following freedoms:

(a) To worship or assemble in connection with a religion or belief, and to establish and maintain places for these purposes;

(b) To establish and maintain appropriate charitable or humanitarian institutions;

(c) To make, acquire and use to an adequate extent the necessary articles and materials related to the rites or customs of a religion or belief;

(d) To write, issue and disseminate relevant publications in these areas;

(e) To teach a religion or belief in places suitable for these purposes;

(f) To solicit and receive voluntary financial and other contributions from individuals and institutions;

(g) To train, appoint, elect or designate by succession appropriate leaders called for by the requirements and standards of any religion or belief;

(h) To observe days of rest and to celebrate holidays and ceremonies in accordance with the precepts of one's religion or belief;

(i) To establish and maintain communications with individuals and communities in matters of religion and belief at the national and international levels.

2. Concluding Document of the Madrid Meeting of Representatives of the Participating States of the Conference on Security and Co-operation in Europe (1983)

Questions relating to security in Europe

10. The participating States reaffirm that they will recognize, respect and furthermore agree to take the action necessary to ensure the freedom of the individual to profess and practise, alone or in community with others, religion or belief acting in accordance with the dictates of his own conscience.

In this context, they will consult, whenever necessary, the religious faiths, institutions and organizations, which act within the constitutional framework of their respective countries.

They will favourably consider applications by religious communities of believers practising or prepared to practise their faith within the constitutional framework of their States, to be granted the status provided for in their respective countries for religious faiths, institutions and organizations.

Co-operation in humanitarian and other fields

Human contacts

10. They will further implement the relevant provisions of the Final Act, so that religious faiths, institutions, organizations and their representatives can, in the field of their activity, develop contacts and meetings among themselves and exchange information.

3. Concluding Document of the Vienna Meeting of Representatives of the Participating States of the Conference on Security and Co-operation in Europe (1989)

Questions relating to security in Europe

16. In order to ensure the freedom of the individual to profess and practise religion or belief the participating States will, *inter alia*,

16. (c) grant upon their request to communities of believers, practising or prepared to practise their faith within the constitutional framework of their States, recognition of the status provided for them in their respective countries;

16. (d) respect the right of religious communities to:

establish and maintain freely accessible places of worship or assembly,
organize themselves according to their own hierarchical and institutional structure,

select, appoint and replace their personnel in accordance with their respective requirements and standards as well as with any freely accepted arrangement between them and their State,

solicit and receive voluntary financial and other contributions;

16. (e) engage in consultations with religious faiths, institutions and organizations in order to achieve a better understanding of the requirements of religious freedom;

16. (f) respect the right of everyone to give and receive religious education in the language of his choice, individually or in association with others;

16. (h) allow the training of religious personnel in appropriate institutions;

16. (1) respect the right of individual believers and communities of believers to acquire, possess, and use sacred books, religious publications in the language of their choice and other articles and materials related to the practice of religion or belief;

16. (j) allow religious faiths, institutions and organizations to produce and import and disseminate religious publications and materials;

16. (k) favourably consider the interest of religious communities in participating in public dialogue, *inter alia*, through mass media.

Co-operation in humanitarian and other fields

Human contacts

32. They will allow believers, religious faiths and their representatives, in groups or on an individual basis, to establish and maintain direct personal contacts and communication with each other, in their own and other countries, *inter alia*, through travel, pilgrimages and participation in assemblies and other religious events. In this context and commensurate with such contacts and events, those concerned will be allowed to acquire, receive and carry with them religious publications and objects related to the practice of their religion or belief.

F. Remissible limitations

1. Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (1981)

Article 1

3. Freedom to manifest one's religion or belief may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others.

2. Universal Declaration of Human Rights (1948)

Article 29

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

3. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

3. International Covenant on Civil and Political Rights (1966)

Article 18

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

4. European Convention for the Protection of Human Rights and Fundamental Freedoms (1950)

Article 9

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

Article 18

The restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed.

5. American Convention on Human Rights (1969)

Article 12

3. Freedom to manifest one's religion and beliefs may be subject only to the limitations prescribed by law that are necessary to protect public safety, order, health, or morals, or the rights or freedoms of others.

Article 30

The restrictions that, pursuant to this Convention, may be placed on the enjoyment or exercise of the rights or freedoms recognized herein may not be applied except in accordance with laws enacted for reasons of general interest and in accordance with the purpose for which such restrictions have been established.

6. African Charter on Human and Peoples' Rights (1981)

Article 8

Freedom of conscience, the profession and free practice of religion shall be guaranteed. No one may, subject to law and order, be submitted to measures restricting the exercise of these freedoms.

7. Concluding Document of the Vienna Meeting of Representatives of the Participating States of the Conference on Security and Co-operation in Europe (1989)

Questions relating to security in Europe

17. The participating States recognize that the exercise of the above-mentioned rights relating to the freedom of religion or belief may be subject only to such limitations as are provided by law and consistent with their obligations under international law and with their international commitments. They will ensure in their laws and regulations and in their application the full and effective implementation of the freedom of thought, conscience, religion or belief;

21. The participating States will ensure that the exercise of the above-mentioned rights shall not be subject to any restrictions except to those which are provided by law and consistent with their obligations under international law, in particular the International Covenant on Civil and Political Rights and their international commitments, in particular the Universal Declaration of Human Rights. These restrictions have the character of exceptions. The participating States will ensure that these restrictions are not abused and are not applied in an arbitrary manner, but in such a way that the effective exercise of these rights is ensured.

F. Religious minorities and groups

1. International Covenant on Civil and Political Rights (1966)

Article 27

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

2. Convention on the Prevention and Punishment of the Crime of Genocide (1948)

Article 11

In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.

3. Concluding Document of the Vienna Meeting of Representatives of the Participating States of the Conference on Security and Co-operation in Europe (1989)

Questions relating to security in Europe: Principle 19

They (i.e. the participating States) will ...

protect and create conditions for the promotion of the ethnical, cultural, linguistic and religious identity of national minorities on their territory. They will respect the free exercise of rights by persons belonging to such minorities and ensure their full equality with others.

Co-operation in humanitarian and other fields: Principle 68

They (i.e. the participating States) will ...

ensure that persons belonging to national minorities or regional cultures on their territories can give and receive instruction on their own culture, including instruction through parental transmission of language, religion and cultural identity to their children.

G. Right of some special categories of persons in matters of religion or belief

1. Refugees

(a) Convention relating to the Status of Refugees (1951)

Article 3. Non-discrimination

The Contracting States shall apply the provisions of this Convention to refugees without discrimination as to race, religion or country of origin.

Article 4. Religion

The Contracting States shall accord to refugees within their territories treatment at least as favourable as that accorded to their nationals with respect to freedom to practise their religion and freedom as regards the religious education of their children.

(b) GAU Convention governing the specific aspects of refugee problems in Africa (1969)

Article IV. Non-discrimination

Member States undertake to apply the provisions of this Convention to all refugees without discrimination as to race, religion, nationality, membership of a particular social group or political opinions.

2. Stateless persons

Convention relating to the Status of Stateless Persons (1954)

Article 3. Non-discrimination

The Contracting States shall apply the provisions of this Convention to stateless persons without discrimination as to race, religion or country of origin.

Article 4. Religion

The Contracting States shall accord to stateless persons within their territories treatment at least as favourable as that accorded to their nationals with respect to freedom to practise their religion and freedom as regards the religious education of their children.

3. Prisoners

Standard Minimum Rules for the Treatment of Prisoners (1955)

6. (1) The following rules shall be applied impartially. There shall be no discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

(2) On the other hand, it is necessary to respect the religious beliefs and moral precepts of the group to which a prisoner belongs.

41. (1) If the institution contains a sufficient number of prisoners of the same religion, a qualified representative of that religion shall be appointed or approved. If the number of prisoners justifies it and conditions permit, the arrangement should be on a full-time basis.

(2) A qualified representative appointed or approved under paragraph (1) shall be allowed to hold regular services and to pay pastoral visits in private to prisoners of his religion at proper times.

(3) Access to a qualified representative of any religion shall not be refused to any prisoner. On the other hand, if any prisoner should object to a visit of any religious representative, his attitude shall be fully respected.

42. So far as practicable, every prisoner shall be allowed to satisfy the needs of his religious life by attending the services provided in the institution and having in his possession the books of religious observance and instruction of his denomination.

77. (1) Provision shall be made for the further education of all prisoners capable of profiting thereby, including religious instruction in the countries where this is possible. The education of illiterates and young prisoners shall be compulsory and special attention shall be paid to it by the administration.

4. Disabled persons
Declaration on the Rights of Disabled Persons (1975)

2. Disabled persons shall enjoy all the rights set forth in this Declaration. These rights shall be granted to all disabled persons without any exception whatsoever and without distinction or discrimination on the basis of race, colour, sex, language, religion, political or other opinions, national or social origin, state of wealth, birth or any other situation applying either to the disabled person himself or herself or to his or her family.

5. Juvenile offenders

United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules") (1985)

2.1 The following Standard Minimum Rules shall be applied to juvenile offenders impartially, without distinction of any kind, for example as to race, colour, sex, language, religion, political or other opinions, national or social origin, property, birth or other status.

6. Aliens

Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live (1985)

Article 5

1. Aliens shall enjoy, in accordance with domestic law and subject to the relevant international obligation of the State in which they are present, in particular the following rights:

(e) The right to freedom of thought, opinion, conscience and religion; the right to manifest their religion or beliefs, subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others.

PART TWO. ISSUES AND FACTORS TO BE CONSIDERED BEFORE ANY
DRAFTING OF A FURTHER BINDING INTERNATIONAL
INSTRUMENT

9. In this part of the working paper some observations will be offered with regard to issues and factors which should be taken into account if the United Nations were to embark upon the preparation of a further binding international instrument on freedom of religion or belief and on the elimination of intolerance and discrimination based on religion or belief. Furthermore, the issue will be discussed whether such a binding instrument should be a separate document with its own implementation machinery or an additional protocol to an existing binding instrument, notably the International Covenant on Civil and Political Rights. Finally, this part of the paper will review for present purposes the guidelines which the General Assembly included in its resolution 41/120, to be borne in mind in developing international instruments in the field of human rights.

A. Issues and factors

10. Whenever a United Nations policy organ faces the decision whether to draft a new international instrument in the field of human rights, two major considerations should be taken into account. First, the process of preparing and drafting a new instrument and the ensuing stages of its adoption and acceptance can never serve as an excuse for failure to implement already existing standards. This consideration was clearly expressed in operative paragraph 1 of General Assembly resolution 41/120:

"Calls upon Member States and United Nations bodies to accord priority to the implementation of existing international standards in the field of human rights and urges broad ratification of, or accession to, existing treaties in this field."

The second consideration also pertains to the existing body of relevant human rights law. The compilation presented in Part One of this paper provides a good deal of information as regards the nature and volume of existing provisions. Any further binding instrument should build on the standards already elaborated by the international community. A new binding instrument should in other words raise the level of protection and build on standards already adopted, notably the principles set forth in the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief. It is in this sense that operative paragraph 2 of General Assembly resolution 41/120 should be understood:

"Urges Member States and United Nations bodies engaged in developing new international human rights standards to give due consideration in this work to the established international legal framework."

11. An additional factor should be taken into account. In its resolution 1986/20, the Commission on Human Rights decided to appoint a Special Rapporteur to examine incidents and governmental actions inconsistent with the provisions of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, and to recommend remedial measures for such situations. Since receiving his mandate, which was renewed periodically renewed, the Special Rapporteur, Mr. Angelo Vidal d'Almeida Ribeiro, has presented annual reports 5/ to the Commission on Human Rights. These reports contain a wealth of information,

including a valuable analysis of the information collected. If a further binding instrument were to be drawn up - a course of action which was recommended by the Special Rapporteur - the drafters would be well advised to take into account the nature and range of problems identified and analysed by the Special Rapporteur. Such an approach would add to the effectiveness of the further standard-setting exercise. At the same time, this approach would reveal the complexity of the phenomenon of intolerance on the grounds of religion or belief. In this respect, the Special Rapporteur made the following pertinent observations in his most recent report:

"The data which the Special Rapporteur has been endeavouring to collect for nearly three years on incidents and governmental actions inconsistent with the provisions of the Declaration can only strengthen him in the idea, already developed in the initial report (E/CN.4/1987/35), that the extreme variety and dispersal throughout the world of situations inconsistent with those provisions derives from the complexity of the deep-seated factors and causes of the phenomenon. It is obvious in the circumstances that the promotion and protection of freedom of religion or belief represent a delicate, long-term undertaking, which must take into account factors as diverse as legislative provisions which do not conform, splits of a political, economic, social and cultural nature, tensions deriving from the interpretation of dogmas, etc." §/

12. Another important issue for consideration is how the preparatory work for any further binding international instrument should be organized. In this regard a number of factors should be taken into account. The first is the complexity of the various issues involved, as was underlined in the previous paragraph. The second is the need for broad international acceptance of a future binding instrument, in particular on the part of States which would have to undertake legal obligations. The third is the immediate interest of religions as well as institutions, bodies and movements based on religion or belief with regard to the scope and content of a further instrument in this matter. Moreover, one should be aware that attitudes and incidents of religious intolerance and discrimination are attributable not only to Governments but also to movements, groups and institutions based on religion or belief.

13. In the light of these various factors and in view of the need to enhance the quality and effectiveness of the envisaged standard-setting activities, it is advisable to involve in the drafting process both government representatives and experts and representatives of non-governmental organizations. ^{1/} In this line of thinking the groundwork and initial drafting should be carried out by experts on the basis of solid research and analysis of the legal and factual materials referred to in paragraph 11 above. Subsequently, Governments and non-governmental organizations should be invited to make their comments on the initial draft, thus enabling the experts to revise it in the light of the comments received. Thereupon the draft should be further considered, finalized and adopted by government representatives in the policy organs concerned. In order to create a favourable climate and to broaden the basis of support and co-operation with respect to a further instrument and its implementation, the United Nations, UNESCO and other intergovernmental and non-governmental organizations, including religious organizations and institutions, should promote inter-religious dialogue and the search for a common ethical ground. A new instrument would hardly meet the overall aim of elimination of intolerance and

discrimination based on religion or belief if it were to be identified with one or a few major religions instead of serving broad constituencies across religious, cultural and socio-political dividing lines. Finally, an important requirement for effective and efficient standard-setting is the availability of adequate and qualified secretarial staff, whose services are an indispensable asset in the standard-setting process.

B. The nature of the instrument

14. In discussions on a further binding international instrument on freedom of religion or belief, it is generally assumed that the existing declaration on the matter might be followed by a convention with its own machinery of implementation. However, impressed by the multitude of existing implementation mechanisms with all their intricacies, some observers wonder whether a new binding instrument should not be framed in the form of a protocol to be attached to an existing instrument. In this regard, reference is made to the International Covenant on Civil and Political Rights, and to the Human Rights Committee as a suitable supervisory mechanism. §/ The advantages and disadvantages of the latter suggestion deserve further consideration and of course, if such a solution were to commend itself, the Human Rights Committee might wish to give its views on the matter.

15. With regard to the question of an additional protocol, it is evident that the existing Optional Protocol to the International Covenant on Civil and Political Rights is of a different nature, inasmuch as it does not further define the substantive scope of the Covenant but provides, on an optional basis, for a procedural device, i.e. the right to individual petition. It should also be recalled that, during the drafting process of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the question was considered whether to designate the Human Rights Committee, established under the International Covenant on Civil and Political Rights, as the supervisory body within the framework of the Convention. That arrangement was at the time abandoned in view of the opinion of the Legal Counsel of the United Nations, who drew attention to the legal complexities resulting from the fact that the States parties to the International Covenant would not necessarily be the same as the States parties to the Convention against Torture. In such a situation the view prevailed that it was difficult to use the structure provided for the implementation of one convention and to implement another. ^{2/} In the meantime, a proposal for a second optional protocol to the International Covenant on Civil and Political Rights, prepared by Special Rapporteur Mr. Marc Bossuyt and aiming at the abolition of the death penalty, ^{10/} has been transmitted to the General Assembly for suitable action.

16. The following observations are not concerned with the legal and technical complexities referred to above, inasmuch as they do not appear to be insurmountable in the view of the author of this paper. For present purposes, some other considerations should be kept in mind. One reason d'être for a further binding international instrument in the matter of religion or belief would be its operation in relation to an effective and meaningful implementation machinery. The question then arises whether such machinery should be created in the form of a new treaty body. In this respect serious doubts must be expressed as to the advisability of such a course of action. It is a well known fact and a matter of concern that existing treaty bodies face serious problems as a result of the great backlog in the submission of

periodic reports by States parties, duplication in reporting requirements and financial problems. 11/ Not only the treaty bodies themselves but also policy organs such as the General Assembly and the Commission on Human Rights have become increasingly aware of these problems and are considering remedial actions. For present purposes, it is pertinent that the General Assembly in its resolution 43/115 of 8 December 1988 was "conscious that, in establishing additional treaty bodies long-term problems both in terms of enhanced reporting obligations and of financial implications should be appropriately addressed". The Commission on Human Rights, in its resolution 1989/47 of 6 March 1989 requested the Secretary-General to entrust an independent expert with the task of preparing a study on possible long-term approaches to enhancing the effective operation of existing and prospective bodies established under United Nations human rights instruments.

17. It follows from the foregoing that the creation of a new implementation machinery in the form of a treaty body should not be taken for granted and should be viewed in the light of long-term approaches and solutions. One of the long-term solutions might be the establishment of one consolidated implementation system for all United Nations human rights treaties along the lines of the supervisory machinery functioning in the framework of the International Labour Organisation. 12/ Another reason why the creation of a new treaty mechanism in the matter of freedom of religion or belief and the elimination of intolerance and discrimination based on religion or belief should not be taken for granted follows from some of the observations in the introductory section of this paper. As was pointed out in paragraph 8 of the introduction, the right to freedom of thought, conscience, religion or belief is closely connected with other human rights. The question arises whether a special and separate legal supervisory mechanism with regard to freedom of thought, conscience, religion or belief would do justice to the full scope of this freedom if it were not to take into account the obligations States have undertaken with respect to other human rights and fundamental freedoms.

C. Guidelines of General Assembly resolution 41/120

18. The General Assembly, in its resolution 41/120, invited Member States and United Nations bodies to bear in mind a number of guidelines in developing international instruments in the field of human rights. According to this resolution, such instruments should, *inter alia*:

- (a) Be consistent with the existing body of international human rights law;
- (b) Be of fundamental character and derive from the inherent dignity and worth of the human person;
- (c) Be sufficiently precise to give rise to identifiable and practicable rights and obligations;
- (d) Provide, where appropriate, realistic and effective implementation machinery, including reporting systems;
- (e) Attract broad international support.

19. It is useful briefly to review these guidelines against the background of any further binding international instrument in the matter of freedom of religion or belief.

(a) The consistency requirement is of cardinal importance in order to preserve and enhance the integrity of the body of international human rights law. It was with this consideration in mind that the General Assembly, in the preamble to its resolution 41/120, emphasized the primacy of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights in the extensive network of international standards in the field of human rights. Equally, the consistency requirement is reflected in article 5, paragraph 2, of both international covenants and, most important in the present context, in article 8 of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, which reads:

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

It will be indispensable to keep this consistency requirement constantly in mind with regard to any future international instrument.

(b) There can be no doubt that freedom of thought, conscience, religion or belief and the elimination of intolerance and of discrimination based on religion or belief are of a fundamental character and derive from the inherent dignity and worth of the human person. In this regard it is noteworthy that, according to article 4, paragraph 2, of the International Covenant on Civil and Political Rights, article 18 of the Covenant is one of the fundamental provisions which may not be subject to derogation in times of public emergency. It is also relevant to look into the wording of the preamble to the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief. In particular, reference should be made to the fourth preambular paragraph, which states that "religion or belief, for anyone who professes either, is one of the fundamental elements in his conception of life and that freedom of religion or belief should be fully respected and guaranteed".

(c) The requirement that a new binding instrument should be precise enough to form the basis of identifiable and practicable rights and obligations is important from the point of view of carrying out effective implementation at the national and international level and of devising appropriate remedial measures when called for. This requirement also implies that, before the actual drafting of a new instrument is embarked upon, careful preparatory work and research must be carried out as regards the precise meaning of existing standards. In this regard, any "general comments" which the Human Rights Committee on the basis of its broad experience, is expected to draw up with regard to article 18 of the International Covenant on Civil and Political Rights could be a helpful source for the drafting of sufficiently precise and detailed additional standards.

(d) The requirement of a realistic and effective implementation machinery was to a large extent discussed in connection with the issue whether or not a special additional treaty body should be created (see paras. 14 to 17 above). Whatever the solution of that issue, any meaningful implementation machinery should provide for such legal techniques and methods as reporting, the handling of complaints as well as fact-finding and conciliation procedures. However, taking into account the nature of the problems which arise in relations between peoples, groups and persons adhering to different religions or beliefs, non-legal techniques and methods are also called for, in particular dialogue and education. The relevant provisions in the compilation in Part One of this paper make it clear that the prevention and elimination of attitudes, practices and patterns of religious intolerance is a process which pertains to the minds of people and which should be effected by means of education and dialogue. While it is perhaps not the function of a legal instrument to provide for these non-legal means of implementation, the effectiveness of the legal instrument would largely depend on the will and the efforts of all concerned - Member States, organizations, non-governmental organizations, including movements, groups, associations and institutions based on religion or belief - to launch broad and intensive programmes of communication and education within constituencies as well as across national, religious and other boundaries. The effective implementation of a legal instrument would require not only the co-operation of Governments on the basis of their legal undertakings, but also the active involvement of religious communities, groups and institutions.

(e) The requirement of broad international support applies not only in the sense that a further binding international instrument would need the acceptance of at least a large part of the United Nations membership but also that it should receive the support of many different religions and beliefs. Therefore, prior to and during the drafting stages of the instrument, consultations should be held with interfaith participation and between representatives of different religions as well as atheists in order to prepare the ground and mobilize broad support as regards the scope and content of a new instrument (see also para. 4 above). It cannot be sufficiently emphasized that broad international support is an absolutely indispensable requirement. As a commentator put it quite rightly: "Only with the support of a large number of countries across a broad socio-political spectrum is there reason to hope that the product of the drafting process will be both legally sound and transformed into practice by States parties. Most important, great care must be exercised to ensure that a convention, if one is drafted, does not erode the achievement of the Declaration (i.e. the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief), and that the Declaration will continue to apply to States that do not become parties to the convention".^{13/}

D. Concluding observations

20. The overall thrust of this paper is the need for solid preparatory work, on the basis of sound research and careful analysis, if it were decided to draft a further binding international instrument on freedom of religion or belief. The complexity of the subject-matter and the potentially divisive phenomena of religious prejudice and intolerance require such a diligent approach. In the drafting process, the initial input should come from experts, but government opinion should also be duly and adequately taken into account. The drafting process should be accompanied by consultation and

dialogue among interested groups, organizations and movements from across a broad socio-political and religious spectrum. While full attention should be given to the need that a new instrument be consistent with existing standards and raise the level of protection, the issue of implementation merits further thought and reflection in the light of long-term approaches and solutions. This working paper may serve as a contribution to further consideration of these matters and stimulate eventual decision-making.

Notes

- 1/ United Nations publication, Sales No. 60.XIV.2.
- 2/ E/CN.4/Sub.2/1987/26.
- 3/ In this context should be mentioned: the draft convention on the rights of the child, the draft convention on the protection of the rights of all migrant workers and their families, a draft declaration on the rights of members of minority groups and a draft universal declaration on indigenous rights.
- 4/ E/CN.4/Sub.2/1987/26, paras. 22 and 42-43.
- 5/ E/CN.4/1987/35, E/CN.4/1988/45 and Add.1 and Corr.1, E/CN.4/1989/44.
- 6/ E/CN.4/1989/44, para. 103.
- 7/ See also comments by Norway in E/CN.4/1988/44/Add.1.
- 8/ *Ibid.*
- 9/ Commission on Human Rights, Report on the Thirty-Seventh Session (E/1981/25), para. 51.
- 10/ E/CN.4/Sub.2/1987/20.
- 11/ See the report of the meeting of chairpersons of human rights treaty bodies convened pursuant to General Assembly resolution 42/105 of 7 December 1987 and a report of the Netherlands Human Rights and Foreign Policy Advisory Committee (A/C.3/43/5).
- 12/ See also the pertinent observations by S. Chernichenko at the United Nations Training Course on the administration of justice and human rights for East European Countries, Moscow, 21-25 November 1988, United Nations publication, HR/PUB/89/2, at p. 9.
- 13/ Donna J. Sullivan, "Advancing the freedom of religion or belief through the UN Declaration on the Elimination of Religious Intolerance and Discrimination", *American Journal of International Law*, Vol. 82, No. 3, July 1988, pp. 487-520 (at p. 520).