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COMMISSION ON HUMAN RIGHTS

Forty-third session

In-session open-ended working group
to consider the drafting of a
declaration on the rights of persons
belonging to national, ethnic, religious
and linguistic minorities

Compilation of proposals concerning the definition of
the term "minority"

1. The present document, prepared at the request of the open-ended working group established by the Commission on Human Rights at its forty-second session, 1/ constitutes a compilation of proposals relating to a definition of the term "minority". With the exception of those mentioned in paragraphs 2 and 3 of the present report, all the other proposals listed here in a chronological order, have been made to or by United Nations bodies.

2. In an advisory opinion of 31 July 1930 in connection with the emigration of the Greco-Bulgarian communities, the Permanent Court of International Justice, referring to the Convention of 27 November 1919 between Bulgaria and Greece, interpreted the concept of minority in the following manner:

"The criterion to be applied to determine what is a community within the meaning of the articles of the Convention ... is the existence of a group of persons living in a given country or locality, having a race, religion, language and traditions of their own, and united by the identity of such race, religion, language and traditions in a sentiment of solidarity, with a view to preserving their traditions, maintaining their form of worship, securing the instruction and upbringing of their children in accordance with the spirit and traditions of their race and mutually assisting one another." 2/

3. In another advisory opinion of 6 April 1935 regarding Minority Schools in Albania, the Permanent Court of International Justice stated:

"The idea underlying the treaties for the protection of minorities is to secure for certain elements incorporated in a State, the population of which differs from them in race, language, or religion, the possibility of living peaceably alongside that population and co-operating amicably with it, while at the same time preserving the characteristics which distinguish them from the majority, and satisfying the ensuing special needs." 3/

4. At its first session in 1947, the Sub-Commission on Prevention of Discrimination and Protection of Minorities submitted for consideration to the Commission on Human Rights a "Scope of the terminology regarding prevention of discrimination and protection of minorities", 4/ which reads as follows:

"1. Prevention of discrimination is the prevention of any action which denies to individuals or groups of people equality of treatment which they may wish.

"2. Protection of minorities is the protection of non-dominant groups which, while wishing in general for equality of treatment with the majority, wish for a measure of differential treatment in order to preserve basic characteristics which they possess and which distinguish them from the majority of the population. The protection applies equally to individuals belonging to such groups and wishing the same protection. It follows that differential treatment of such groups or of individuals belonging to such groups is justified when it is exercised in the interest of their contentment and the welfare of the community as a whole. The characteristics meriting such protection are race, religion and language. In order to qualify for protection a minority must owe undivided allegiance to the Government of the State in which it lives. Its members must also be nationals of that State.

"If a minority wishes for assimilation and is debarred, the question is one of discrimination and should be treated as such."

5. At the same session, the Sub-Commission proposed for inclusion in the Universal Declaration of Human Rights two alternative texts the relevant parts of which read:

"In States inhabited by well-defined ethnic, linguistic or religious groups which are clearly distinguished from the rest of the population, and which want to be accorded differential treatment, persons belonging to such groups ...". 5/

"In States inhabited by a substantial number of persons of a race, language or religion other than those of the majority of the population, persons belonging to such ethnic, linguistic or religious groups ...". 6/

6. At its fourth session, in 1951, the Sub-Commission prepared a draft article on the rights of persons belonging to minorities for inclusion in the

International Covenant on Civil and Political Rights. The article, as amended by the Commission at its eighth session, in 1952, was later adopted as article 27 of the Covenant, and reads as follows:

"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 other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language."

7. In a memorandum, entitled "Definition and Classification of Minorities", submitted by the Secretary-General to the Sub-Commission in 1950, it was observed that minorities vary in so many ways that they must be grouped under a variety of classifications, based on different criteria. 7/ Accordingly, the memorandum established the following classifications:

"A. Classification from a quantitative viewpoint, i.e. according to the number of individuals included in the minority as compared to the size of the predominant group or to that of the remainder of the population. 8/

"B. Measured by the criterion of contiguity, the following types of minorities may be distinguished:

"(a) A minority which constitutes actually or nearly the only population of a section of the country;

"(b) A minority which constitutes the largest part of the population of a section of the country;

"(c) A minority, settled in a section of the country, which constitutes only a small part of the population of that section;

"(d) A minority the members of which live partly in a section of the country and partly scattered throughout the remainder of the territory;

"(e) A minority which is settled in several different sections of the country, but in different proportions in each section;

"(f) A minority which is scattered throughout the whole country;

"(g) A minority which is scattered through a large portion of the country, but not through all of it; and

"(h) A minority which lives partly within the country and partly outside that territory. 9/

"C. Classification from the viewpoint of citizenship, i.e. minority elements represented either by individuals who have the nationality of the country or by foreigners. 10/

"D. Classification from the viewpoint of the national characteristics of the State, leading to a distinction between the following two types of minorities:

"(a) Minorities under the jurisdiction of a State which is principally the embodiment of the national characteristics of the predominant group; and

"(b) Minorities under the jurisdiction of a State which is not identified with any one nation but which occupies a neutral position above national and cultural differences. 11/

"E. Measured against the criterion of the origin and situation of the minority in relation to the State, the following types of minorities can be distinguished:

"(a) Minorities descending from groups which existed before the establishment of the State;

"(b) Minorities descending from groups which formerly belonged to another State, but which afterwards were annexed to the State by virtue of an international act such as, for example, a treaty effecting territorial readjustments;

"(c) Minorities formed by persons having a common origin, language, religion, culture, etc., who have migrated or who have been imported into a country and have become citizens of the State; or by their descendants. 12/

"F. Classification according to the circumstances under which minorities were included within the State, meaning:

"(a) Minorities which were compulsorily brought within the jurisdiction of the State usually in comparatively recent times; and

"(b) Minorities which came within the jurisdiction of the State voluntarily. 13/

"G. Classification from the viewpoint of total or partial inclusion within the territorial jurisdiction of the State, leading to the following distinctions:

"(a) Minorities forming parts of a group which is divided between the jurisdictions of several States; and

"(b) A minority which is totally included within the territorial jurisdiction of a State.

"In the case of minorities falling into category (a), the following sub-types may be distinguished:

"(i) Minorities forming parts of a group divided between two or more contiguous States;

"(ii) Minorities forming parts of a group divided among two or more non-contiguous States;

"(iii) Minorities forming parts of a group distributed among several States, some contiguous and some non-contiguous. 14/

"H. Taking the desires of various minority groups as a criterion for classification, the following types can be distinguished:

"(a) A minority which wishes at most only to preserve certain of its distinguishing characteristics and has little or no interest, because of a feeling of active solidarity with the predominant group, in becoming autonomous;

"(b) A minority which not only desires preservation and further development of its distinguishing characteristics but also desires to attain either political or administrative autonomy, or full independence or annexation to another State." 15/

8. In 1951, the Sub-Commission submitted to the Commission a draft resolution 16/ containing a "definition of minorities for purposes of protection by the United Nations". The draft resolution, after pointing out that not all minorities require special protection and that many complexities have to be taken into account in each case, concluded that:

"(i) the term minority includes only those non-dominant groups in a population which possess and wish to preserve stable ethnic, religious or linguistic traditions or characteristics markedly different from those of the rest of the population;

"(ii) such minorities should properly include a number of persons sufficient by themselves to preserve such traditions or characteristics; and

"(iii) such minorities must be loyal to the State of which they are nationals."

9. At its sixth session, in 1954, the Sub-Commission adopted resolution F, entitled "Study of the Present Position as Regards Minorities Throughout the World", 17/ the relevant parts of which read:

"Considering that minorities differ vastly in origin, composition and character, and that it is, therefore, extremely difficult to arrive at a single general definition that is universally applicable,"

...

"2. Decides that for the purpose of such a study, and with no intention of determining which groups should receive special protection, the term minority shall include only those non-dominant groups in a population which possess and wish to preserve ethnic, religious or linguistic

traditions or characteristics markedly different from those of the rest of the population; and that no further work on the problem of definition can serve any useful purpose at present;

"3. Decides further that in carrying out the study the following considerations shall be borne in mind:

- "(i) there are among the nationals of many States distinctive population groups possessing ethnic, religious, or linguistic traditions or characteristics different from those of the rest of the population, and among these are groups that need to be protected by special measures, national and international, so that they can preserve and develop their traditions or characteristics;
- "(ii) among minority groups not requiring protection are those seeking complete identity of treatment with the rest of the population, in which case their problems are covered by those articles of the Charter of the United Nations, the Universal Declaration of Human Rights and the draft international covenants on human rights that are directed towards the prevention of discrimination;
- "(iii) it is most undesirable to hinder by any action spontaneous development of minority groups towards integration with the rest of the population of the country in which they live, which takes place when impacts such as those of a new environment, or that of modern civilization, produce a state of rapid racial, social, cultural, or linguistic evolution;
- "(iv) it is highly desirable that minorities should settle down happily as citizens of the country in which they live, and therefore in any measures that may be taken for the protection of their special traditions and characteristics, including the study, nothing should be done that is likely to stimulate their consciousness of difference from the rest of the population;
- "(v) minorities must include a sufficient number of persons to preserve by themselves their traditions and characteristics;
- "(vi) account should be taken of the circumstances under which each minority group has come into existence, for example whether it owes its existence to a peace treaty or to voluntary immigration;"

10. At the Seminar on the Promotion and Protection of the Human Rights of National, Ethnic and Other Minorities, held at Ohrid, Yugoslavia, from 25 June to 8 July 1974, one participant proposed the following general definition of the term "minority":

"A group of citizens, sufficient in number to pursue the aims of the group, but numerically smaller than the rest of the people, linked together by historical, ethnic, cultural, religious or linguistic bonds and wishing to preserve such bonds, which are different from those of the rest of the people". 18/

The discussion on the meaning of the word "minority" is summarized at some length in the Seminar's report. 19/

11. In the conclusions of his "Study on the Rights of Persons belonging to Ethnic, Religious and Linguistic Minorities", submitted to the Sub-Commission in 1977, the Special Rapporteur, Mr. Francesco Capotorti, proposed a definition with a limited objective, drawn up solely with the application of article 27 of the International Covenant on Civil and Political Rights in mind. In that precise context, according to the Special Rapporteur, the term "minority" may be taken to refer to:

"A group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members - being nationals of the State - possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language." 20/

Preceding his final report, the Special Rapporteur had requested and received a large number of observations and opinions on the definition question from governments, specialized agencies and members of the Sub-Commission all of which are duly summarized in the Study. 21/

12. In pursuance of Commission resolution 14 A (XXXIV) of 6 March 1978, the Secretary-General requested governments to submit their comments on a number of documents relating to minority rights. In response, the Government of Greece stated that the following criteria, among others, should be applicable to a group of persons for it to qualify as a minority:

- "(i) The characteristic features should be sufficiently distinctive for the group concerned to be clearly distinguishable as separate from the majority.
- "(ii) The difference between a minority group and the rest of the population should not only be sufficiently distinct, as stated in the preceding subparagraph, but also sizeable forming a substantially compact element in the community.
- "(iii) It is doubtful that the words 'a group numerically smaller than the rest of the population' constitute a sufficiently adequate criterion for an interpretation of the term 'minority'.

"There should be taken into account not only the number of persons belonging to a particular group but also the relation between the number and the size of the geographical area in which the group lives.

- " (iv) The subjective factor, that is to say, the desire expressed by the minority group to preserve its own traditions and characteristics, should be an essential element of any interpretation of the term 'minority'.

The extent to which a minority actually feels itself to be a separate section of the community, or is felt to be and is perhaps treated as such by others should also be taken into consideration for any interpretation of the term 'minority'." 22/

Several governments submitted, on the same occasion, additional comments of a general nature relating, inter alia, to the question of definition. 23/

13. On several occasions in the past the open-ended working group discussed the definition of the term "minority". In general, the need for prior agreement on a definition was emphasized by a number of members of the open-ended working group. In that connection a conference room paper (E/CN.4/1983/WG.5/CRP.1) was submitted to the working group in 1983 in which reference was made to the existing studies of the Sub-Commission where problems relating to the definition of that term had been discussed. At the working group's session that year the lack of a generally accepted definition of this term was stressed and it was agreed that the group should pursue its work despite the absence of an agreed definition.

14. At the request of the open-ended working group established by the Commission at its thirty-ninth session 24/, in 1983, the Government of the Federal Republic of Germany proposed that a definition containing the words "separate or distinct groups, well-defined and long-established on the territory of a State" should be included in a declaration on the protection of national, ethnic, religious or linguistic minorities. 25/

15. The Government of Canada suggested a refinement of the definition offered by the Special Rapporteur, Mr. Capotorti, with underlinings indicating the proposed changes:

"A group numerically smaller than the sum of the population of a State, in a non-dominant position, whose members - being nationals of the State - possess ethnic, religious or linguistic characteristics differing from those of others of the population and show, if only implicitly, a sense of solidarity directed towards preserving their culture, traditions, religion or language". 26/

16. Additional comments relating to, inter alia, the question of definition are contained in the replies made by other governments. 27/

17. At the forty-first session of the Commission in 1985, the Bahá'í International Community, a non-governmental organization in consultative status (Category II), submitted a proposal to the open-ended working group:

"For the purposes of this declaration, a minority shall be considered to be a group within a State whose members possess national, ethnic, religious, linguistic or other characteristics which are distinctive and clearly differ from those of the majority of the population." 28/

18. In pursuance of Commission resolution 1984/62 and at the request of the Sub-Commission, at its thirty-seventh session, on 13 August 1984, 29/

Mr. Jules Deschênes, member of the Sub-Commission, wrote a paper on the subject 30/ concluding with the following definition of minority:

"A group of citizens of a State, constituting a numerical minority and in a non-dominant position in that State, endowed with ethnic, religious or linguistic characteristics which differ from those of the majority of the population, having a sense of solidarity with one another, motivated, if only implicitly, by a collective will to survive and whose aim is to achieve equality with the majority in fact and in law." 31/

19. At its thirty-eighth session, the Sub-Commission considered the above-mentioned proposal of Mr. Deschênes. 32/ In the discussion of this issue, members of the Sub-Commission commented on the desirability of proceeding with the task of defining a minority. According to one set of views, a definition of the term was not necessary in order to draft standards for the protection of minorities. Attention was drawn in this connection to the fact that the United Nations had declared the right of peoples to self-determination without having defined the term "people". Another view shared by various speakers was that the attempt to define the term should not be seen as an academic exercise and the Sub-Commission was not expected to produce a scientifically perfect definition. Rather, the United Nations needed a working definition of the term on the basis of which further norms could be elaborated for the protection of the rights of minorities.

20. Everyone agreed that international standards for the protection of human rights applied to every person. It was therefore necessary, in considering the definition of minority, to bear in mind this universal guarantee which would apply to every member of every minority. It would further be necessary to take into account the specific needs of minorities, as such, for the

protection of their rights. It was the latter aspect, it was felt, which should be taken into account by the Sub-Commission in its discussion on this question.

21. Another issue which was raised in the discussion was whether the problem should be tackled from the point of view of the rights of individuals belonging to minorities only or also in relation to the rights of minorities as groups. Several speakers felt that collective aspect would need to be retained in the discussion of the definition of minority. Some speakers disagreed with that proposal.

22. The relationship between the terms "minorities" and "peoples" was suggested as one which might require further clarification.

23. On the question of the sources to be consulted in further work on this matter, attention was drawn to the fact that the Special Rapporteur in his conscientious examination of available materials did not have access to Islamic law. It was suggested that this source might be consulted in further work on the question.

24. It was emphasized by many speakers that the situation of minority groups in different parts of the world varied considerably and it would be necessary to take account of their situations in the course of the work on this question.

25. Specific comments were made on the definition proposed by Mr. Deschênes.

(a) The requirement of citizenship

Several members felt that the definition could not be confined to citizens only. Attention was drawn, in this connection to the judgment 33/ of the International Court of Justice which, it was felt, did not appear to support the criterion of citizenship in this context. Attention was drawn to the situation of many groups of non-citizens deserving of protection which, it was felt, would be excluded if the definition applied only to citizens.

(b) Indigenous populations

Several speakers expressed support for the view that indigenous populations should be treated separately. One member expressed the view, however, that some indigenous populations might qualify as minorities; hence while respecting the wish of some indigenous populations to be considered as peoples and not as minorities, it would, nevertheless, be necessary to ensure that those indigenous populations which did appear to share the characteristics of minorities were not excluded from protection.

(c) Numerical minority

Comments were made on the meaning of this term. It was asked whether the group should be a numerical minority in relation to the population of the State as a whole or in relation to particular areas. In this connection, attention was drawn to the fact that in some areas of a country a group - although being a minority in relation to the population of the country as a whole - might be a majority within its particular region.

(d) Non-dominant position

Some speakers felt that non-dominant groups should be protected even if they constituted a numerical majority. Their rights should be taken into account in the further consideration of this topic. Attention was drawn to the fact that some groups, while being in a non-dominant position within a State as a whole, might be in a dominant position within a particular region.

(e) Endowed with ethnic, religious or linguistic characteristics

The view was expressed that certain group characteristics other than those relating to ethnic, religious or linguistic features, should be taken into account. There were, for instance, cultural bonds to be kept in mind which might not be ethnic, religious or linguistic. The example of the gypsies was cited in this connection. Comments were made on the question of national minorities, which existed in various parts of the world, especially in Europe, as specific groups, distinct from ethnic, religious or linguistic minorities.

(f) A sense of solidarity

The view was expressed that this was a term which itself would require further definition and elaboration.

(g) Collective will to survive

It was felt that "survival" could have various possible meanings: physical survival or preservation of language, culture, and way of life. The view was expressed that there were possibly two types of groups: those who wished to be integrated and to be incorporated into the majority and those who wished to retain their identity. The expression "collective will to survive" could lead to the exclusion of the former category from the definition of minority, which would be unfortunate since the group was nevertheless in need of protection.

(h) Whose aim is to achieve equality with the majority in fact and in law

It was recognized that equality and non-discrimination were primary goals for all aspects of the protection of human rights including the protection of minorities. The question was raised, however, as to whether the formulation proposed would mean that once equality had been achieved a group would no longer qualify as a minority.

Other matters

26. Various points were mentioned for consideration in the future, including the following:

To what extent should the element of consent be taken into account in drafting a definition of minority?

To what extent also should the element of origin be kept in mind?

The element of region was raised for further reflection.

The elements of geography and geographic boundaries were also raised for discussion. Because of the accident of boundaries a group might be in a minority situation in one country but if those boundaries were changed it could, in fact, become the majority. In this regard attention was drawn to the fact that many of the newer countries were engaged in the process of nation building and had inherited different groups within their existing boundaries. The territorial integrity of States, it was mentioned, should be fully kept in mind as one of the elements of the future discussion.

27. Finally, the comment was made that perhaps difficulties arose because what was being attempted was an abstract definition of a minority. It was suggested that if the realities were looked at and the enjoyment of specific rights were used as the starting point, it might be possible to define groups which should enjoy those rights. An example was mentioned of the right to education in one's own language. The question was, therefore, raised whether it might not be a more profitable approach to go about stating specific rights and identifying groups which should enjoy those rights.

28. In the final analysis the Sub-Commission decided to congratulate and thank Mr. Deschênes for his thorough study and to take note of his proposal concerning a definition of the term "minority". It further decided to transmit to the Commission on Human Rights Mr. Deschênes' study and proposal concerning a definition of the term "minority", together with the records of the discussion thereon by the Sub-Commission from its 13th to 16th meetings (resolution 1985/6).

29. At the forty-second session of the Commission on Human Rights, in 1986, the delegation of Senegal proposed the following definition to the open-ended working group:

"A 'minority' is a group of citizens of a State, or a separate community of individuals living in a numerical minority and in a non-dominant position in a specific country, locality or region, enjoying genuine homogeneity stemming from a race, a religion, a language or its own traditions and whose members are linked by a sentiment of solidarity and mutual assistance in order to perpetuate the values that characterize them and to co-exist peacefully on terms of de jure and de facto equality with the majority." 34/

Notes

- 1/ E/CN.4/1986/43, para. 12
- 2/ P.C.I.J., Series B, No. 17, p. 33.
- 3/ P.C.I.J., Series A/B, No. 64, p. 17.
- 4/ E/CN.4/52, p. 13, Section V.
- 5/ E/CN.4/Sub.2/38, p. 6, with remarks made by members of the Sub-Commission summarized on pp. 7-8.
- 6/ Ibid., as prepared by the Drafting Committee. See also document E/CN.4/95, pp. 13-14.
- 7/ United Nations publication, Sales No. 1950.XIV.3, para. 60.
- 8/ Ibid., para. 61.
- 9/ Ibid., para. 64.
- 10/ Ibid., para. 67.
- 11/ Ibid., para. 73.
- 12/ Ibid., para. 75.
- 13/ Ibid., para. 80.
- 14/ Ibid., paras. 84-85.
- 15/ Ibid., para. 88.
- 16/ E/CN.4/641, Annex I, resolution II.
- 17/ E/CN.4/703, E/CN.4/Sub.2/157, pp. 71-74.
- 18/ ST/TAO/HR/49, para. 36.
- 19/ Ibid., paras. 29-36.
- 20/ United Nations publication, Sales No.E.78.XIV.1, para. 568.
- 21/ Ibid., paras. 30-49.
- 22/ E/CN.4/1298, pp. 9-10.
- 23/ E/CN.4/1298 and Add.1-10.
- 24/ E/CN.4/1983/66, para. 31.
- 25/ E/CN.4/1984/42/Add.1, p. 2.

- 26/ E/CN.4/1984/42/Add.2, p. 2.
- 27/ See: E/CN.4/1984/42 and Add.1-2, and E/CN.4/1985/24.
- 28/ E/CN.4/1985/WG.5/WP.1, para. 2.
- 29/ E/CN.4/1985/3, para. 420.
- 30/ E/CN.4/Sub.2/1985/31 and Corr.1, para. 181.
- 31/ Ibid., para. 181.
- 32/ E/CN.4/Sub.2/1985/SR.13-16.
- 33/ See Nottebohm case, Order of 21 March 1953; I.C.J. Reports 1953, p. 7.
- 34/ E/CN.4/1986/WG.5/WP.3.