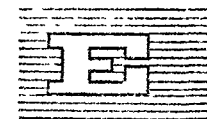


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DRAFT DECLARATION ON THE ELIMINATION OF ALL FORMS  
OF INTOLERANCE AND OF DISCRIMINATION  
BASED ON RELIGION OR BELIEF

Comments received from Governments pursuant  
to Commission resolution 22 (XXXIV)

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## I. INTRODUCTION

1. By its resolution 22 (XXXIV) of 3 March 1978, entitled "Draft declaration on the elimination of all forms of intolerance and of discrimination based on religion or belief", the Commission on Human Rights, inter alia, suggested that States Members of the United Nations or members of specialized agencies, specialized agencies, regional intergovernmental organizations and non-governmental organizations in consultative status with the Economic and Social Council which had views to submit on the elaboration of a draft declaration might wish to do so in writing to the Secretary-General in order that their views would be available to all members prior to the Commission's thirty-fifth session.

2. Accordingly, appropriate notes verbales were sent to Governments, and letters were dispatched to the above-mentioned agencies and organizations. By 1 December 1978 substantive replies had been received from: Finland, Germany, Federal Republic of, Netherlands. These replies are reproduced below. Any further replies received will be issued as addenda to the present document.

## II. REPLIES RECEIVED FROM GOVERNMENTS

## FINLAND

[Original: ENGLISH]

[16 October 1973]

The Government of Finland has already submitted its observations on the preliminary draft declaration on the elimination of all forms of religious intolerance, as prepared by the Sub-Commission on Prevention of Discrimination and Protection of Minorities. At that time the Government of Finland indicated its general agreement with the substance of the preliminary draft, although some reservations were made, in particular regarding Article XII.

As for the articles that have been recorded in the Working Group set up by the Commission on Human Rights, the Government of Finland finds it difficult to take a position in view of the fact that the Working Group has not completed its work. The Articles that have been drafted so far in the Working Group seem to be largely acceptable although some rewording would be preferable in certain cases, but for a definite evaluation the Articles would have to be examined in the context of a complete draft declaration.

As a general observation, the Government of Finland wishes to emphasize that the declaration should be drafted in a realistic manner, making sufficient allowance for different situations in different States, while retaining unequivocal formulations on the right to freedom of thought, conscience and religion and on the implementation of the principle on non-discrimination.

GERMANY, FEDERAL REPUBLIC OF

[Original: ENGLISH]

[9 October 1978]

The Government of the Federal Republic of Germany considers working for a genuine respect of religious tolerance as an essential contribution towards peace and gives high priority to the adoption of a declaration and to the drafting of a convention against religious intolerance.

In this context, it is worth recalling what legal instruments are already applicable within the United Nations framework to fight religious intolerance:

In keeping with the United Nations' overriding objectives of peaceful relations and of the protection of the individual human being, United Nations Charter Article 1 (3) provides that Member States shall promote human rights and fundamental freedoms without distinction as to race, sex, language or religion. Article 18 of the International Covenant on Civil and Political Rights (1966), provisions of the United Nations Convention on the Prevention and Punishment of the Crime of Genocide (1948), the ILO Convention Concerning Discrimination in respect of Employment and Occupation (1958), and the UNESCO Convention against Discrimination in Education (1960) seek to protect the right to practice and manifest one's religion or belief. The United Nations, however, have not yet adopted an international instrument that specifically calls for the elimination of religious intolerance, although it has been more than a decade by now that work on such an instrument was first undertaken.

In 1967, the General Assembly requested the Commission on Human Rights to prepare a Draft Declaration. The Commission, in turn, set up a sessional working group.

After the latter had finished its work on the preamble, it started at the thirty-third session of the Commission on Human Rights deliberations on the operative part. A critical issue centres on defining the limits of the freedom to be protected. Article 18 of the Universal Declaration provides that everyone has the right to freedom of thought, conscience and religion, including freedom to change religion or belief, and freedom, either alone or in community with others and in public or in private, to manifest religion or belief in teaching, practice, worship and observance.

As to the limits of this freedom, article 18 (3) of the Covenant stipulates that the 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 freedom of others.

In this context, the Government of the Federal Republic of Germany would like to stress its conviction that, beyond the scope of the limitations already provided for in art. 18 (3), the right to freedom of religion should not be restricted even further. The declaration that is to be drafted must spell out the obligations of the States inherent in art. 18 of the Covenant; it should not contradict the spirit and the letter of art. 18.

The co-operation of delegates from different parts of the world and different religious background is needed if the work undertaken is to be brought to a satisfactory and timely conclusion. It might further be helpful if the findings of the Special Rapporteur of the Sub-Commission who has been preparing a special study on the problem of ethnic, religious and linguistic minorities could be made available to the working group of the Commission for their consideration as they continue to draft the Declaration.

The Government of the Federal Republic of Germany would like to express the opinion that, beyond the speedy completion of the Declaration, it should be ensured that the rights guaranteed in the principles just spelt out are put into practice by drafting a Convention to eliminate all forms of religious intolerance.

The Government of the Federal Republic of Germany hopes that more progress towards a text acceptable to all will be made during the forthcoming session of the Commission on Human Rights.

NETHERLANDS

[Original: ENGLISH]

[16 November 1978]

1. Reference is made to earlier comments on the same subject submitted by the Netherlands Government on 17 May and 21 August 1973, appearing in documents A/9134 and Add.1. The latter contains a draft declaration on the elimination of all forms of religious intolerance. Reference is made further to the observations communicated on 8 January 1974 (doc. E/CN.4/1146). Moreover, attention is drawn to the draft declaration submitted by the Netherlands and Sweden as a working paper to the Third Committee of the General Assembly on 11 November 1974 (doc. A/C.3/L.2131). It will be recalled that this draft was subsequently brought to the attention of the Commission on Human Rights at its thirty-first session (1975) in the report of the Third Committee (doc. A/9893). The Netherlands provided a brief explanatory note to the draft in doc. E/CN.4/L.1289. For the sake of clarity, it is pointed out that the operative part of the 1974 draft, which has been before the Commission as document E/CN.4/L.1289/Add.1, is identical to that of the 1973 draft, except for a few minor changes.

2. The Netherlands Government deplores the fact that while so many articles of the Universal Declaration have been elaborated into various separate international instruments, article 18 has thusfar remained an exception. The Government wishes to reiterate its attachment to the preparation of a draft declaration on religious intolerance. It is fully aware of the comprehensive nature of the subject-matter. Freedom of religion or belief is, after all, not sufficiently safeguarded if such other rights as freedom of opinion and expression, freedom of peaceful assembly and association, freedom of movement within and beyond borders, freedom from arbitrary interference with privacy, are not respected as well. Obviously, the complexity of the issues has a direct bearing on the amount of time involved in drafting a pertinent legal instrument. Still, as the Commission on Human Rights was first entrusted with preparing a draft declaration sixteen years ago, 1/ the pace by which work on

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1/ General Assembly res. 1780 (XVII) of 7 December 1962.

the subject is progressing cannot be termed encouraging. The report on the Commission's thirty-fourth session bears ample testimony to that, especially the report of the working group the Commission has set up for the purpose of drafting a declaration. It is disappointing (noted also in para. 260 of the report) that the working group even found it impossible to agree on the wording of article 18 of the International Covenant on Civil and Political Rights as a basis for article 1 of the declaration. Particularly so, while wording of a basically different character was proposed by representatives of States which were among the thirty-five to ratify the Covenant before it entered into force.

Under the circumstances, the Netherlands Government, instead of putting forward once again the wording it proposed for article 1 together with Sweden, favours the compromise text suggested by the representative of Austria in the working group (para. 35 of its report). The text follows that of the first three paragraphs of article 18 of the Covenant. It could be argued, as did the representative of Canada in the working group (para. 37), that reverting to the Covenant would not represent a step forward, which, in fact, a declaration of this kind should. Still, if accepted, the Austrian proposal could at any rate be considered as positive, in that it might provide the Commission with the momentum necessary to arrive at an early completion of its task. Even though the text only reaffirms a rule of international law, that rule can still be further developed and elaborated in the remaining articles of the draft declaration. In the final analysis, therefore, the freedom of thought, conscience and religion, when broken down to its constituent elements and with various aspects and ramifications brought to light, may very well find itself the subject of a significant effort in international law-making. The Government of the Kingdom of the Netherlands continues to hold the view that the 1974 draft, mentioned above, could serve as a useful basis for the Commission's further actions in the matter.

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