

La Nouvelle-Calédonie jouit donc d'un niveau de vie élevé comparable à celui de la Nouvelle-Zélande ou de l'Australie, avec un PNB par habitant de plus de 6 200 dollars américains pour l'année 1984.

Sur le plan du régime foncier, il est important de noter que pendant ses quatre ans de fonctionnement l'Office foncier a acquis 54 000 hectares de terre et en a déjà rétrocédé 18 000 aux communautés mélanésiennes.

Le souci de promouvoir le développement rural et l'aménagement foncier de la Nouvelle-Calédonie d'une manière encore plus efficace est également à l'origine de la création d'une agence de développement rural et d'aménagement foncier créée par la loi du 17 juillet 1986.

Pour faciliter l'accès des jeunes du territoire à l'enseignement supérieur, la France a décidé la création d'une université en Nouvelle-Calédonie qui ouvrira ses portes à la prochaine rentrée.

4. Un référendum d'autodétermination fixé au 13 septembre prochain

La loi No 87-369 du 5 juillet 1987 votée par le Parlement français organise la consultation des populations intéressées de la Nouvelle-Calédonie et dépendances qui avait été prévue par la loi No 86-844 du 17 juillet 1986.

Seuls sont admis à participer à la consultation les électeurs inscrits sur les listes électorales du territoire établies par des commissions administratives, et résidant en Nouvelle-Calédonie et dépendances depuis au moins trois ans à la date de la promulgation de la présente loi.

La question posée aux électeurs appelés à participer à cette consultation est :

"Voulez-vous que la Nouvelle-Calédonie accède à l'indépendance ou demeure au sein de la République française ?"

A cette question, les électeurs peuvent apporter l'une des réponses suivantes :

"Je veux que la Nouvelle-Calédonie accède à l'indépendance."

"Je veux que la Nouvelle-Calédonie demeure au sein de la République française."

Par là, la France poursuit une politique conforme au principe de l'autodétermination en proposant à l'ensemble de la population véritablement concernée de choisir son destin.

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

Study of the current dimensions of the problems of intolerance
and of discrimination on grounds of religion or belief

Report by Mrs. Elizabeth Odio Benito, Special Rapporteur

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Introduction

1. Three decades ago, in 1956, the Sub-Commission on Prevention of Discrimination and Protection of Minorities decided to proceed with a study of discrimination in the matter of religious rights and practices, and appointed Mr. Arcot Krishnaswami as its Special Rapporteur for the study.
2. Mr. Krishnaswami presented his final report 1/ to the Sub-Commission at its twelfth session, in 1960. It was welcomed not only because of the profound analysis of the problem of discrimination in the matter of religious rights and practices which it contained, based upon voluminous information which had been collected and which threw light upon an exceedingly delicate and much-misunderstood problem, but also for its scrupulous objectivity and for the excellence of its literary style. It was characterized as a landmark in the efforts of the United Nations to eradicate prejudice and discrimination based on religion or belief. 2/
3. Before the study could be issued in printed form, an outbreak of manifestations of intolerance and discrimination based on religion or belief occurred in Europe. These manifestations, which took place in several countries and were of such a serious nature as to arouse the concern of the international community, appeared to many to indicate a possible revival of Nazism or at least the subsistence in some areas of Nazi, neo-Nazi or similar groups active in fomenting hatred against various religious groups. On 12 December 1960 the General Assembly condemned all such manifestations and practices as violations of the Charter of the United Nations and of the Universal Declaration of Human Rights, and called upon the Governments of all States to take all necessary measures to prevent them. 3/
4. In 1961 the Sub-Commission recorded with satisfaction the widespread and spontaneous reaction of many Governments, organizations and individuals to the manifestations which had occurred. On its recommendation the General Assembly, in resolution 1779 (XVII) of 7 December 1962, called upon the Governments of all States to rescind discriminatory laws which had the effect of perpetuating racial prejudice and national and religious intolerance, to adopt legislation if necessary to prohibit such discrimination, and to take other appropriate measures to combat such prejudice and intolerance. The Assembly recommended that all Governments should, through education and all media of information, actively discourage the creation, propagation and dissemination of such prejudice and intolerance in any form whatever.
5. On 7 December 1962, the Assembly also initiated the preparation of a draft declaration and a draft convention on the elimination of all forms of religious intolerance. 4/ It specified that the draft declaration should be submitted to it for consideration in 1963, and the draft convention for consideration in 1964 if possible, but in any case not later than 1965.
6. The Sub-Commission completed a preliminary draft declaration in 1964 and a preliminary draft convention in 1965. The Commission completed its work on the draft convention, to which it accorded priority, in 1967. The General Assembly began its work on the draft convention at its twenty-second session, in 1967, and was able to adopt the preamble and article 1 thereof, in the Third Committee, at that session.

7. From that moment on, however, the sense of urgency appeared to dissipate. The Assembly postponed consideration of the item at its twenty-third to twenty-sixth sessions. An effort was made to revive it in 1972, at which time the Assembly decided to give priority to the draft declaration. ^{5/} In 1973 the Assembly affirmed the equal importance of the proposed declaration and convention, and in 1974 it requested the Commission to submit to it a single draft declaration. The Commission began to formulate such a draft, using the preliminary draft which the Sub-Commission had prepared in 1964 as a basis, at its thirtieth session, in 1974. It completed this work only in 1981. The General Assembly was then able, late in 1981, to adopt and proclaim, by unanimous vote, the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief. ^{6/}

8. Although the General Assembly considered the question of an international convention on the elimination of all forms of intolerance and of discrimination based on religion or belief at its twenty-second session, in 1967, and was able at that session to adopt the preamble and article 1 of such a convention (see A/7930, paras. 19-20), using as a basis for its work the texts submitted to it by the Commission on Human Rights (A/7930, annex III), it has not yet completed its consideration of the draft convention. It has, however, authorized wide dissemination of, and publicity for, the Declaration, and has requested the Commission "to consider what measures may be necessary to implement the Declaration and to encourage understanding, tolerance and respect in matters relating to freedom of religion or belief." ^{7/}

9. To a remarkable extent, the Study of Discrimination in the Matter of Religious Rights and Practices, which initiated the activities described above, is as relevant today as it was at the time of its publication in 1960. In particular, its analysis of the concept of the right to freedom of thought, conscience and religion or belief remains unassailable although new insights have served to develop and to clarify it.

10. The present report has been prepared in accordance with General Assembly resolution 37/187, Commission on Human Rights resolution 1983/40, and resolution 1983/31 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities. The Commission requested the Sub-Commission to undertake "a comprehensive and thorough study of the current dimensions of the problems of intolerance and of discrimination on grounds of religion or belief", using the Declaration as terms of reference, and the Sub-Commission appointed the Special Rapporteur to prepare such a study. It requested her to include therein:

- "(a) A report on the various manifestations of intolerance and discrimination on the grounds of religion or belief in the contemporary world and on the specific rights violated, using the Declaration as a standard;
- "(b) The various manifestations of intolerance and discrimination on the grounds of religion or belief, identifying their root causes;
- "(c) Recommendations as to specific measures that can be adopted to combat intolerance and discrimination on the grounds of religion or belief, with special emphasis on action that can be taken in the field of education." ^{8/}

11. In seeking the material required for the present report, the Special Rapporteur found it necessary to analyse further, in the light of the new insights mentioned above, Mr. Krishnaswami's elaboration of the concept of the right to freedom of thought, conscience and religion, to review the scope of that concept, and to update its terminology.

12. Mr. Krishnaswami referred, for example, to "freedom of thought, conscience and religion" throughout his report, and with good reason, since these are the words used in article 18 of the Universal Declaration of Human Rights and article 18 of the International Covenant on Civil and Political Rights. However, a consensus has since developed that freedom of belief cannot be overlooked, and as a consequence the terminology "freedom of thought, conscience, religion and belief" is now in vogue.

13. Mr. Krishnaswami stated, in the report, that the term "religion or belief" was used there to include, in addition to various theistic creeds, such other beliefs as agnosticism, free thought, atheism and rationalism. As a result of lengthy discussions in various international bodies, it is now generally accepted that "religion or belief" includes theistic, non-theistic, and atheistic beliefs.

14. Mr. Krishnaswami did not examine the question of intolerance based on religion or belief in his study, being limited by his terms of reference to the question of discrimination in the matter of religious rights and practices. The question of intolerance was introduced by the Third Committee only in 1967, when it changed the title of the draft convention to include that term.

15. It has since been realized that intolerance based on religion or belief has two separate aspects: first, an unfavourable attitude of mind towards persons or groups of a different religion or belief, and secondly, manifestations of such an attitude in practice. Such manifestations often take the form of discrimination, but in many cases they go much further and involve the stirring up of hatred against, or even the persecution of, individuals or groups of a different religion or belief.

16. In some cases intolerance is institutionalized and based upon legislation, but most often it stems from voluntarily intolerant attitudes and conduct derived from habit, prejudice or hatred. The one common denominator in all forms of intolerance - and the number of forms is unlimited - is the inequality of material benefits accruing respectively to the author and to the victim.

17. In a reflection of such a general nature that the Special Rapporteur allows herself to make on discrimination, it is pertinent to remember that the idea of superiority of one group over another and the consequences of such an idea have not disappeared. It is also important to take into account that equality among all human beings means the absence of discrimination. Equality, however, is not uniformity. A régime of absolute respect for human rights must reconcile unity with diversity, interdependence with liberty. The equal dignity owed to all seeks respect for the differences in the identity of each person. It is in absolute respect for the right to be different that we find authentic equality and the only possibility of the full enjoyment of human rights without racial, sexual, or religious discrimination.

18. The Special Rapporteur concludes therefore, that the term "intolerance and discrimination based on religion or belief" encompasses not only discrimination infringing upon or negating the right to freedom of thought, conscience, religion and belief, but also acts which stir up hatred against, or persecution of, such persons or groups; and that the term refers to intolerance and discrimination between religions within religions between beliefs, or between religions or beliefs, as well as between the State and religions and beliefs and between individuals or groups of individuals having different religions or beliefs as well as between nations or within nations. She has used the term in this sense in the present report.

19. Like Mr. Krishnaswami, she has refrained from attempting to define "religion", since the meaning of the word is generally well understood by all. Nevertheless, it perhaps useful to point out that "religion" can be described as "an explanation of the meaning of life and how to live accordingly". Every religion has at least a creed, a code of action and a cult. Further, she has avoided any attempt to describe or evaluate any particular religion or belief or any religious institution. Where she has used the term "Church", it is not intended to refer to a particular religion or belief but only to a stable and institutionalized organization or community of believers having an administration, a clerical hierarchy, a fixed body of beliefs and practices and an established form of ritual.

20. In the process of preparing the report, the Special Rapporteur was occasionally confronted with problems of interpretation of existing international standards. With regard to the question of the freedom of everyone to change his religion or belief, she found that (1) the Universal Declaration of Human Rights states, in article 18, that "everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief"; (2) the International Covenant on Civil and Political Rights states, in article 18, that "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 (3) the Declaration of All Forms of Intolerance and of Discrimination Based on Religion or Belief states, in article 1, that "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...". (Emphasis added.)

21. After careful examination of these provisions she came to the conclusion that although they varied slightly in wording, all meant precisely the same thing: that everyone has the right to leave one religion or belief and to adopt another, or to remain without any at all. This meaning, in her view, is implicit in the concept of the right to freedom of thought, conscience, religion and belief, regardless of how that concept is presented.

22. Finally, while concentrating upon realization of the right to freedom of thought, conscience, religion and belief, the Special Rapporteur did not overlook other rights and freedoms which are essential to the realization of that right, such as freedom of opinion and expression (without which it may not be possible to reveal and denounce instances of intolerance and discrimination based on religion or belief when they occur), and freedom of peaceful assembly and association (without which groups bound by a particular religion or belief may not be able to meet or to organize themselves

effectively). In her view, the right to freedom of thought, conscience, religion and belief is so closely linked to all other human rights and fundamental freedoms, and so intimately interconnected with them, that it is not possible to enjoy freedom of religion or belief if full realization of other rights and freedoms is restricted or denied.

23. It is the sincere hope of the Special Rapporteur that the present report, which outlines what has been accomplished in the way of creating and implementing international legal standards with reference to the right to freedom of thought, conscience, religion and belief since the coming into force of the Charter of the United Nations and suggests concrete measures which may be taken to reduce and to eradicate abuses of that right, will stimulate in the competent United Nations bodies a frank, patient and constructive dialogue - hopefully free of polemics and invective - by means of which the question of implementation of the principles set out in the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief may be dealt with and resolved.

24. In accordance with Sub-Commission resolution 1983/31, the report includes information on manifestations of intolerance and discrimination based on religion or belief in the contemporary world, and on specific rights violated thereby, using the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief as a standard, an attempt to identify the root causes of those manifestations, and a series of recommendations as to specific measures that can be adopted to combat religious intolerance and discrimination, with special emphasis on action in the field of education.

25. In addition, the report includes a summary of international concern with realization of the right to freedom of thought, conscience, religion and belief, and an exposition of the concept of intolerance and discrimination based on religion or belief.

26. As requested by the Sub-Commission, the Special Rapporteur has included in the present report relevant information received from Governments, specialized agencies, regional intergovernmental organizations and non-governmental organizations, particularly those in consultative status with the Economic and Social Council. She has also included relevant information made available to the Secretary-General by Governments for inclusion in the Compendium of the national legislation and regulations for States on the question of freedom of religion or belief with particular regard to the measures taken to combat intolerance or discrimination in this field. (E/CN.4/1986/37 and Add.1/Rev.1 and Add.2-5).

27. In order to obtain information for the study, the Special Rapporteur prepared a questionnaire, using the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief as a basis. (See E/CN.4/Sub.2/1984/28, annex I.) At her request the Secretary-General transmitted the questionnaire to all States by note verbale dated 28 September 1984. On the same day the questionnaire was also forwarded to all specialized agencies and regional intergovernmental bodies within the United Nations system, as well as to those non-governmental organizations in consultative status thought to have information on the subject of the study.

Governments

28. As at 30 June 1986, substantive replies to the questionnaire had been received from the following 51 States: Argentina, Austria, Barbados, Bolivia, Burkina Faso, Burundi, Cape Verde, Chad, Chile, Colombia, Costa Rica, Cyprus, Czechoslovakia, Denmark, Dominican Republic, Ecuador, France, German Democratic Republic, Ghana, Guatemala, Holy See, Honduras, Iraq, Israel, Italy, Jordan, Madagascar, Mexico, Monaco, Morocco, Netherlands, Niger, Pakistan, Panama, Peru, Portugal, Qatar, Rwanda, Sudan, Suriname, Sweden, Syrian Arab Republic, Thailand, Tonga, Trinidad and Tobago, Turkey, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America and Venezuela.

29. Substantive information relating to the following 18 States appeared in the compendium: Australia, Bahamas, Bulgaria, Byelorussian Soviet Socialist Republic, Finland, Germany, Federal Republic of, Italy, Jamaica, Madagascar, Malawi, Mauritius, Mexico, Netherlands, Niger, Solomon Islands, Spain, Switzerland and Zambia.

30. Thus in total information relating to the situation in 64 States was made available by the Governments of those States.

Specialized agencies

31. As at 30 June 1986, substantive replies had been received from the International Labour Organisation (ILO), and from the United Nations Educational, Scientific and Cultural Organization (UNESCO).

Regional intergovernmental organizations

32. As at 30 June 1986, only one substantive reply had been received, from the Organization of American States (OAS).

Non-governmental organizations

33. As at 30 June 1986, substantive replies had been received from the following non-governmental organizations: Ahmadiyya Movement in Islam, American Jewish Committee, Amnesty International, Bahá'í International Community, Buddhist Union of Europe, Christian Peace Conference, Churches' Human Rights Programme for the Implementation of the Helsinki Final Act, Commission of the Churches on International Affairs, Four Directions Council, Friends World Committee for Consultation, International Association for Religious Freedom, International Association for the Defence of Religious Liberty, International Catholic Child Bureau, International Humanist and Ethical Union, International Islamic Federation of Student Organizations, International Organization for the Elimination of All Forms of Racial Discrimination, International Sociological Association, Lutheran World Federation, Religious Freedom Crusade, Scientific Buddhist Association, World Federation of Trade Unions, World Federation of United Nations Associations and World Student Christian Federation.

CHAPTER I. CURRENT DIMENSIONS OF THE PROBLEM OF INTOLERANCE AND DISCRIMINATION BASED ON RELIGION OR BELIEF

34. The present chapter, while broad in scope, makes no claim to completeness. Its shortcomings have many sources, among them the limited availability of material and the shortage of time for analysis. Nevertheless, the information available to the Special Rapporteur makes it clear beyond any doubt that both intolerance and discrimination based on religion or belief subsist in many areas of the contemporary world, that all efforts to reduce and to eliminate them have not been adequate and have not met with much success, and that the problem of implementing the principles proclaimed in the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief is a serious one demanding immediate attention and action by the international community.

35. Fortunately, relatively few immoderate manifestations of such intolerance and discrimination have been brought to light in recent years, and only one or two of these have involved systematic killings, persecution, or physical or mental torture. Fortunately also, it is now possible for some victims of such intolerance or discrimination, who have exhausted all available domestic remedies, to draw their problem to the attention of an international body such as the Human Rights Committee or the Committee on the Elimination of Racial Discrimination with some hope that a satisfactory adjustment may be reached. ^{9/}

36. However, outbreaks of intolerance and discrimination based on religion or belief have proved to be totally unpredictable. In the Study of Discrimination in the Matter of Religious Rights and Practices, ^{10/} completed early in 1985, the author summed up the dimensions of the then-existing problems in the following terms: ^{11/}

"... while on the whole there is a trend - more pronounced now than in the nineteenth century - in favour of recognition of the right of everyone to freedom of thought, conscience and religion, certain unfavourable factors continue to operate. It is to be remembered that respect for human rights has evolved only after a long struggle, now and then mankind has witnessed reversals - sometimes very serious ones - of the general trend to a larger measure of freedom. To cite a recent example: up to the 1930s, it was easily assumed that the basic premises of religious freedom and other human rights would not be challenged, and that progress - even though slow in some parts of the world - would be certain. But suddenly Nazism emerged in Germany, advocating outright denial of human rights to individuals on grounds of race and religion. So systematic was that policy of discrimination that many assurances which had been given to racial and religious minorities in international instruments were repudiated and these groups had to pass through a dark period of travail and persecution.

Although traditional forms of discrimination have now disappeared in most parts of the world because of the change in opinion of churches, of Governments, and of the general public towards dissenters - and above all because of the change in climate of the world community - a reversal of these happy trends cannot be ruled out in the future. It is the duty of the United Nations to see to it not only that all types of discrimination - whether they are remnants of the past or something new -

are eradicated, but also that in the future no one should be subjected to any treatment likely to impair his right to Freedom of thought, conscience and religion. In short, its duty is to ensure that the trend towards equality should become both universal and permanent."

37. The conclusion that "a reversal of these happy trends cannot be ruled out in the future" was so accurate that before the Study could be issued in printed form early in 1960, serious manifestations of intolerance and discrimination based on religion or belief - of such a magnitude as to cause concern to the international community - occurred in several European countries. These manifestations were condemned by the Sub-Commission on Prevention of Discrimination and Protection of Minorities, the Commission on Human Rights and other international bodies as violations of principles embodied in the Charter of the United Nations and the Universal Declaration of Human Rights, and in particular as a violation of the human rights of the groups against which they were directed and as a threat to the human rights and fundamental freedoms of all peoples.

38. In a footnote added in the printed version of the Study, the author made the following comment: 12/

"It is ... to be hoped that these manifestations do not represent part of a trend towards intolerance. In any event, the price of freedom of thought, conscience and religion, like that of all other freedoms, is eternal and increasing vigilance."

Renal and increasing vigilance against intolerance and discrimination based on religion or belief is as necessary today as it was in the 1930s and the 1950s. The damage and destruction wrought by manifestations of such intolerance and discrimination can never be undone.

39. Fortunately there is hope that it may be prevented through the teaching and practice of tolerance on the part of individuals, groups, and Governments. Fortunately also, States Members of the United Nations, the entire system of international organizations, and individuals and groups of all religions or beliefs seem now to be inclined to participate in co-operative efforts to promote understanding, tolerance and respect in matters of religion and belief and to ensure that neither is misused for ends inconsistent with existing international standards.

40. However, manifestations of intolerance and of discrimination based on religion or belief are unquestionably still in evidence in some areas of the world, and the goal set out in the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief - that the rights and freedoms set forth therein shall be accorded in national legislation in such a manner that everyone shall be able to avail himself of such rights and freedoms in practice - is as yet far from being realized.

A. Rights violated by manifestations of intolerance and discrimination based on religion or belief

41. In reviewing information concerning manifestations of intolerance and discrimination based on religion or belief, it must be borne in mind that such manifestations are not only serious in and of themselves, but are particularly

grave because they tend to develop into gross violations of human rights or even crimes against humanity, such as the crime of genocide, and thus to pose a threat to international peace and security.

42. Such manifestations first and foremost abridge or violate the basic right to freedom of thought, conscience, religion and belief, as well as one or more of its corollary 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 or 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; and (i) to establish and maintain communications with individuals and communities in matters of religion and belief at the national and international levels.

43. In addition, such manifestations abridge or violate many other human rights, including the right to life, liberty and security of person; the right to freedom from torture or cruel, inhuman or degrading treatment or punishment; the right to freedom from discrimination and any incitement thereto; the right to a fair and public hearing by an independent and impartial tribunal; the right to freedom of movement and residence; the right to freedom of opinion and expression; the right to freedom of peaceful assembly and association; the right to privacy; and the right of religious minorities to profess and practice their own religion.

44. Viewed in this light, it is imperative that States act promptly to protect the right to freedom of thought, conscience, religion and belief in all its aspects, and in particular to meet the standards set out in the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief. The goal to be achieved, established in article 7 of the Declaration, is for all the rights set forth in the Declaration to be accorded in national legislation "in such a manner that everyone shall be able to avail himself of such rights and freedoms in practice".

B. Intolerance and discrimination based on religion or belief in the contemporary world

45. There is a wealth of evidence to indicate that intolerance and discrimination based on religion or belief persist in the contemporary world, and indeed that in some areas prejudice and bigotry have given rise to outright hatred, persecution and repression. Situations alleged to involve such intolerance or discrimination have been examined by United Nations organs, including the General Assembly, the Commission on Human Rights, and the Sub-Commission on Prevention of Discrimination and Protection of Minorities. They have found such situations to involve violations not only of the right to freedom of thought, conscience, religion and belief, but also of

the right to life, the right to freedom from torture and from cruel, inhuman or degrading treatment or punishment, the right to liberty and security of person and to freedom from arbitrary arrest or detention, the right to a fair trial, and the right of religious minorities to profess and practice their own religion.

46. For example, pursuant to Commission on Human Rights resolution 1984/54, the Chairman of the Commission, on 19 October 1984, designated Mr. Andrés Aguilar as Special Rapporteur of the Commission and authorized him to establish contacts with the Government of the Islamic Republic of Iran and to make a thorough study of the human rights situation in that country. An interim report of the Special Representative (A/40/874) transmitted to the General Assembly by Commission resolution 1985/39 of 13 March 1985, was considered by the Assembly at its fortieth session.

47. In the course of July 1985, the Special Representative held a series of informal hearings with 13 persons who claimed to have had first-hand experience of various aspects of the human rights situation in the Islamic Republic of Iran. Among the persons interviewed were members of the Baha'i community. The essence of their allegations was as follows:

"The Baha'i faith is not recognized by the Iranian authorities as an official religion; as a result, members of that faith wishing to register themselves as Baha'is are refused identification cards, passports and other official documents, are dismissed from jobs and are refused admittance to universities;

"All Baha'is who are active members in their community, e.g. members of the Baha'i National Council or members of regional councils, face harassment, detention without any charges and, in many cases, execution. According to these persons, the purpose of the persecution to which Baha'is were subjected was to bring pressure to bear on them publicly to recant their faith;

"Several had relatives who had been put on trial, which was always held in camera, was extremely brief - most witnesses spoke of a few minutes - the charges faced by the defendants were unknown or vague; and the accused were not given the possibility to defend themselves or to appeal their sentences;

"Members of their family or relatives had been executed; they sometimes learned about the execution from the newspaper or as a result of a casual telephone call;

"Most had relatives who had allegedly been tortured under detention;

"One who was an active member of the Baha'i National Council had a trial in absentia held against him in 1983, on unknown charges, but presumably on the grounds of his former activity. This person submitted a copy of the sentence pronounced by the Islamic Revolutionary Court of Tehran, and confirmed by the Islamic Revolutionary High Court. The sentence refers to him as one of the apostles of heresy ... for whom the honourable verse says: 'Execute them. God will punish them'. The verdict against him was the transfer of all his property to Muslim Treasury." (A/40/874, para. 8).

48. The Special Representative drew these allegations, amongst others, to the attention of the Permanent Representative of the Islamic Republic of Iran, and stated that he would appreciate receiving any information or comments that the Government concerned might wish to provide. In response, the Permanent Representative forwarded to him a report prepared by the Ministry of Foreign Affairs of the Islamic Republic of Iran.

49. While the Special Representative expressed his appreciation that the Government concerned had taken a positive step in the direction of co-operation and dialogue with him and with the Commission on Human Rights by providing him with the report on the performance of the Islamic Republic of Iran in 1985 (A/40/874, annex IV), he noted that, although the report described some legal provisions relating to human rights, it failed to provide information on the way those provisions had been applied in practice. Furthermore, the information available to the Special Rapporteur and that contained in the report appeared to be contradictory. The Special Representative was therefore obliged to conclude that the allegations could not be dismissed as groundless unless proved to be so on the basis of detailed information which the Government concerned was in the best position to collect and provide; he expressed his belief that continued monitoring of the human rights situation in the Islamic Republic of Iran was called for. He appealed to the Government to strengthen its co-operation with him and with the Commission.

50. Endorsing the Special Representative's conclusions, the General Assembly, in resolution 40/141 of 13 December 1985, urgently appealed to the Government of the Islamic Republic of Iran to respond satisfactorily to the allegations made and, as a State party to the International Covenant on Civil and Political Rights, to respect and ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in that Covenant.

51. The Commission on Human Rights also endorsed the Special Representative's conclusions and appealed to the Government concerned to respond satisfactorily to the allegations. In resolution 1986/41 of 12 March 1986, the Commission requested its Chairman to appoint a new Special Representative to fill the vacancy created by the resignation of Mr. Andrés Aguilar, and requested the new Special Representative to present an interim report to the General Assembly and a final report to the Commission on the human rights situation in the Islamic Republic of Iran, including the situation of minority groups such as the Baha'is.

52. Earlier, at its thirty-eighth session, held in August 1985, the Sub-Commission on Prevention of Discrimination and Protection of Minorities considered two other situations said to involve intolerance and discrimination based on religion or belief: the situation in Albania and the situation in Pakistan.

53. The Sub-Commission, in resolution 1985/20 of 29 August 1985, indicated that it was deeply disturbed by the constitutional and legal measures adopted by the Socialist People's Republic of Albania to forbid the exercise of the right to freedom of conscience and religion to all individuals within its territory, and that it believed that those measures constituted an affront to human dignity, a flagrant and systematic violation of human rights, a

disavowal of the principles of the Charter of the United Nations and an obstacle to friendly and peaceful relations between nations. Bearing in mind that the Commission on Human Rights, in resolution 1985/51 of 14 March 1985, had urged States, in accordance with their respective constitutional systems, to provide, where they had not already done so, adequate constitutional and legal guarantees for freedom of thought, conscience, religion and belief, the Sub-Commission, by its resolution 1985/20, requested the Commission to urge the Government of the Socialist People's Republic of Albania to provide such measures consistent with the provisions of the Universal Declaration of Human Rights, the International Covenants on Human Rights and the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, with a view to ensuring that freedom of religion or belief was assured in a concrete manner, that discrimination on the ground of religion or belief was proscribed, and that adequate safeguards and remedies were provided against such discrimination.

54. In resolution 1985/21, also adopted on 29 August 1985, the Sub-Commission expressed its grave concern at the promulgation by Pakistan of Ordinance XX of 28 April 1984 which, *prima facie*, violated the right to liberty and security of persons, the right to freedom from arbitrary arrest or detention, the right to freedom of thought, expression, conscience and religion, the right of religious minorities to profess and practise their own religion, and the right to an effective legal remedy. The Sub-Commission further expressed its grave concern that persons charged with and arrested for violations of ordinance XX had reportedly been subjected to various punishments and confiscation of personal property, and that the affected groups as a whole had been subjected to discrimination in employment and education and to the deprivation of their religious property. The Sub-Commission requested the Commission on Human Rights to call on the Government of Pakistan to repeal Ordinance XX and to restore the human rights and fundamental freedoms of all persons within its jurisdiction, and alerted the Commission to the situation in Pakistan which, in its view, was one with great potential to cause a mass exodus, especially of members of the Ahmadi community.

55. At its forty-second session, the Commission on Human Rights examined a report by the Special Rapporteur on the question of human rights and fundamental freedoms in Afghanistan (E/CN.4/1986/24), in paragraph 64 of which the Special Rapporteur stated that "in those areas under the control of the Government forces, the educational system is largely controlled by non-traditional ideas. This problem concerns the right to freedom of thought, conscience and religion as well as the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own conviction (see art. 18, para. 1 and 4, of the International Covenant on Civil and Political Rights ...)".

56. In resolution 1986/40 of 12 March 1986, the Commission expressed its profound distress and alarm at the widespread violations of the right to life, liberty and security of person, as well as increasing evidence of a policy of religious intolerance; and noted with great concern that the educational system did not appear to respect the liberty of parents to ensure the religious and moral education of their children in conformity with their own convictions.

57. In addition to the allegations examined in connection with the particular situations mentioned above, United Nations bodies have received a constant flow of communications in recent years from non-governmental organizations in consultative status with the Economic and Social Council drawing attention to apparent violations of the right to freedom of thought, conscience, religion and belief. A few of these have been examined by the Human Rights Committee or the Committee on the Elimination of Racial Discrimination (see annex), and some by bodies established to deal with such matters of discrimination in education and discrimination in employment and occupation, but for the most part they have not been dealt with effectively due to the weakness of the existing implementation machinery.

58. The reports of non-governmental organizations allege, in respect of many countries, grave and persistent violations of the right to freedom of thought, conscience, religion and belief. These violations include a wide variety of acts of intolerance or discrimination based on religion or belief, such as outright denial, or undue limitation, of freedom to manifest one's religion or belief in worship, observance, practice and teaching; coercion impairing or negating the enjoyment of freedom to have a religion or belief of one's choice; unequal treatment as regards State recognition, or support, of various religions or beliefs; and the propagation of religious hatred and contempt by individuals and groups, with or without the concurrence of the State.

59. Ahmads, Bahais, Baptists, Buddhists, Copts, devotees of Hare Krishna, Jehovah's Witnesses, Jews, Jethrans, Muslims, Pentacostalists, Roman Catholics and Seventh Day Adventists are reported to have been imprisoned, tortured or executed because of the peaceful exercise of their right to freedom of religion.

60. Officially prohibited activities are said to include preaching and evangelizing, teaching religion to children, distributing or copying religious materials, attending religious services during the working week (instead of during the weekend) and ringing of church bells. People have also been imprisoned for converting from one religion to another, for displaying religious symbols such as verses or crucifixes, and for carrying out certain rituals such as circumcision of male infants or washing the body of a deceased person before burial. Sanctions for the infringement of these prohibitions range from various forms of harassment to the infliction of the death penalty. Religious believers have been subjected to deprivation of liberty varying from a few days of detention without trial to several decades of imprisonment or confinement to a labour camp or a psychiatric institution for exercising their right to freedom of thought, conscience, religion and belief.

61. While the situations in Afghanistan, Albania, the Islamic Republic of Iran and Pakistan, mentioned above, continue to evoke deep concern at the time of the preparation of this report in June 1986, serious manifestations of discrimination and intolerance based on religion or belief are reported to have occurred in a number of countries located in various areas of the world.

62. In one western European country, for example, a law was put into effect in 1984 which provided for obligatory religious instruction in kindergartens. A non-governmental organization in that country endeavoured to lodge an official complaint against the law but could find only a few parents to

support such a complaint because it could not possibly have effect until after their children had left the kindergartens. Consequently a situation of unequal treatment for non-religious people in that country was established; they must send their children to kindergartens where they have to attend lessons in religion, regardless of the wish of their parents.

63. In another European country, Christians are reported to face serious problems in schools and in the teaching profession. It is said that although discrimination against young Christians is officially prohibited, entrance into many professions, especially the teaching profession, is often contingent upon the person not belonging to a church. All those who are Christians are closely observed in their places of work. Children and youth actively engaged in the church have problems in gaining access to higher education programmes. Children are said to be frequently questioned in school as to whether they belong to a church; and Christian parents are often denied participation in parents' school councils. One church recently reported on 40 cases in which young Christians had been discriminated against by having their applications for higher educational training rejected. In only one case was the State decision reversed on appeal.

64. In a country of the Americas, where freedom of conscience and religion is constitutionally guaranteed, religious teaching is contrary to the educational policy, according to one report. Under the Family Code of this country, parents can be deprived of the custody of their children if they keep them at home to observe religious holidays; and Jehovah's witnesses have been imprisoned because their children refused to salute the national flag. Under the new Penal Code, parents are subject to imprisonment of from three to nine months for such conduct, which is deemed to abuse religious freedom and to be contrary to the normal development of minors. Moreover, the Constitution of this country does not provide protection against discrimination on religious grounds.

65. In another American country, where questions of religion or belief have rarely resulted in detentions or arrests, note has nevertheless been taken of various instances where legal incursions have been proposed or enacted which could violate freedom of religion or belief. The areas of tension include governmental regulatory requirements, military policies and immigration policies. Some of the regulatory requirements involve the Church's payment of social security taxes for lay people, the use of the tax code to define narrowly the proper functions of religious organizations, and State certification requirements for church schools. Some of the matters relating to military policies include conscription and conscientious objection, the use of taxes for military purposes in general, or for specific weapons systems, and protest against military preparations. With respect to immigration policies, the major concern has been with the provision of sanctuary for, and/or illegal assistance to, persons lacking the required identity papers, to help them avoid arrest or deportation. In the same country, the religious practices of the indigenous Indian Peoples are reportedly being destroyed by restrictive interpretations of constitutional guarantees by the courts.

66. The problems reported to exist in some eastern European countries are somewhat different in nature and in scope. In one such country, for example, it is said that religious believers may conduct their observances only within stringent restrictions imposed by the State. By law they are required to

register their congregations with the authorities and, in doing so, to give up their rights, among other things, to evangelize, to teach religion to children, and to do charitable work. Religious believers who violate these restrictions are liable to imprisonment and internal exile for up to 10 years on charges of "engaging in anti-social religious activity" and "violating the laws separating church from State." At least 300 religious believers are said to have been arrested and imprisoned under laws restricting freedom of religion or freedom of expression. About half the known cases involved "dissenting" Baptists, who have rejected the official restrictions on their religious freedom and so do not register their congregations with the State; the remainder include Pentecostals, Seventh Day Adventists, Jehovah's Witnesses, Roman Catholics, Muslims, Jews and devotees of Hare Krishna.

67. In another country of eastern Europe, the authorities are reported to have attacked Islamic traditions, and Islam in general, with growing frequency in official publications. Despite public assurance of freedom to practice Islam, some Islamic practices, especially circumcision of male infants, are said to have been penalized. Parents who allow their children to be circumcized face imprisonment of between three and five years. The Islamic custom of washing the body of the deceased prior to burial has also been forbidden by the authorities. At the same time, unregistered Pentecostals are reported to have been the victims of renewed persecution since mid-1985; their church meetings have been dispersed and the names of those present noted by the authorities.

68. In another country in the same region, the activities of the churches and religious communities are reported to have been increasingly restricted in recent years. Church assemblies and religious meetings of young people and children now require official permission. Children of practising Christians are frequently barred from higher education. The theological faculties (Roman Catholics and Protestants alike - operate on a strict quota system) those wishing to attend must obtain approval from the State authorities. After being ordained, priests need State approval before they can practice their office. Two to three hundred out of a total of around 3,500 Roman Catholic priests are thus barred from exercising their office and have to earn their living as manual workers. Since 1970 religious orders have not been allowed to accept novices, and Roman Catholic nuns have been prohibited from working in hospitals and from attending schools of nursing. In 1985 about 20 people were arrested for engaging in religious activities without official permission. Others were charged with "violating foreign trade distributing unauthorized religious writings, or with 'violating foreign trade regulations' for attempting to import religious materials. In nearly all cases the persons so charged were sentenced to short terms of imprisonment, given suspended sentences, detained for a short time or charged without being remanded in custody.

69. In still another eastern European country, there were some 60 recognized active religious denominations before the Second World War. It is reported that only 14 of these denominations are now officially recognized, and they are under the close supervision of the State authorities. One of the largest of these denominations, the Roman Catholic Church, lacks legal standing in the country. There are reports of the arrest and harassment of religious believers. Some people have been imprisoned in connection with possessing or distributing Bibles, and some of those detained for religious reasons are said to have been beaten while being held in custody.

70. In a fifth country in the same area, there are reports of the imprisonment of clergy and believers from the three main religious groups. They are generally charged with having "abused" religion, or their religious position, for nationalistic political ends. Moreover, although the country's constitution guarantees equality to all citizens, religious believers are not admitted to the League of Communists, this effectively means that religious believers are barred from all political posts. Further, although prejudice against religious believers is officially disapproved of as "sectarianism", in practice such prejudice is often prevalent in official circles.

71. The problems reported in African countries are somewhat different. In one of those countries, the Government is reported to have taken steps in recent years to reduce the general influence of Christian churches and the number of foreign missionaries. Virtually all religious activities involving laymen and lay women were prohibited during the working week and restricted to Saturday afternoons, Sundays and official holidays. This meant that although religious services during the working week, non-members of the public were not allowed to attend. Furthermore, religious meetings of any sort were banned outside recognized places of worship. Prayer-meetings involving small groups of people meeting in private homes thus became illegal. Directives issued by the Government also stipulated that certain signs of religion were to be removed from public places and could only be placed inside church buildings; religious communities were therefore obliged to move crucifixes which had been erected next to a church, or which were displayed on the outside of the church. The ringing of church bells was also banned during the working week in some provinces. The same directives are also reported to have restricted the ways in which religious groups could spend money, and the extent to which they could involve themselves in social and economic issues. Christian churches, for example, were told that they could use their money for purposes of propagating their religion, but not involve themselves in development projects without prior authorization from local government officials. In July and August 1985, 13 Roman Catholic priests were reportedly arrested as a direct result of their failure to respect the prohibition on early morning weekday religious services. They were detained for periods ranging from one day and September 1985 four other priests and more than a dozen other people were arrested on account of their suspected involvement in the preparation and distribution of a letter addressed to the Roman Catholic Bishop of Bulumba protesting against the Government's restrictions on religious activities. In December five people were convicted on charges of insulting the Head of State for having allegedly helped prepare or distribute the letter which criticized the Government's policies and implied that they were "satanic". Their sentences were confirmed upon appeal in March 1986.

72. In another African country, persecution of Jehovah's Witnesses is reported to have begun in the 1960s, mainly on account of their refusal to recognize the sovereignty of the State by saluting the national flag or by voting. Hundreds of Jehovah's Witnesses are said to have been detained without trial for periods of up to five years since the group was banned. Some of those detained were tortured. There are also reports that individual Jehovah's Witnesses were detained because of their refusal to adhere to the country's only political party.

73. In a third country on the same continent, hundreds of persons are alleged to have been arrested in 1985 on religious grounds. They included individuals who distributed pamphlets in mosques and elsewhere calling for the full implementation of the Islamic shariah, and others deemed to be "heretical" to the Islamic faith, as well as Christians who converted from Islam. There are indications that approximately 100 arrests took place during June 1985; however, a number of those arrested are believed to have been released without charge. Those arrested were alleged to be members of Islamic groups which have been campaigning for full implementation of the shariah. Some were reportedly distributing, or were in possession of, leaflets, considered by the authorities to be a "threat to public order", in the vicinity of a Mosque.

74. In another African country, the Government of which has denied having any policy of suppressing any church and has stated its commitment to freedom of religious expression and worship, a clear pattern of repression is nevertheless reported to have emerged against a particular church and against other churches linked to foreign missionary organizations. Several hundred people are said to have been arrested in recent years on account of their beliefs or religious activities and many are believed to have been tortured or ill-treated and held under harsh conditions. There is concern about the prolonged detention without charge or trial of several clergy and lay members of a number of Christian churches in the country, apparently because of their beliefs and religious activities. There is also concern because the Government has failed to clarify the fate or whereabouts of two church leaders who "disappeared" in 1979.

75. In still another country in Africa, more than 100 students belonging to certain Islamic organizations were reportedly arrested in March 1985 shortly after the authorities had placed restrictions on the religious activities of their organizations, which were apparently regarded as critical of certain official policies. Later, in June 1985, some 30 more members of Islamic organizations were arrested for their religious activities. All those detained, however, are reported to have been released by November 1985 without being charged. In August 1985 an official decision prohibited religious speeches or preaching in mosques without official authorization; it also stipulated that no Koranic school be started without an authorization from the appropriate ministry, and that all Koranic schools would thenceforth be subject to ministerial control.

76. In a seventh African country, about 50 members of a movement advocating a new interpretation of Islam and engaging in non-violent political activities, such as distributing leaflets and holding public meetings, are reported to have been imprisoned in 1983. In 1985 the leader of the movement and four of his followers were arrested for preparing and distributing leaflets. They were charged with subversion, tried, and sentenced to death. The competent appeal court upheld the sentence, at the same time declaring them guilty of apostasy (advocating an alternative form of Islam), and condemned them to death on that count too, without a new trial. After the leader of the movement had been publicly executed, his four co-defenders were given one month in which to recant or be hanged. They subsequently signed declarations of repentance of apostasy before the appeal court, and were freed. Persecution of the movement ended after a new Government took office in 1985.

77. Asian countries have also experienced problems with regard to freedom of thought, conscience, religion and belief. Some years ago, the Government of one such country invited church leaders to a conference and asked them to co-operate with it and to purge their churches of "foreign imperialist" influences. Over the following years the authorities took steps to control religious affairs, and strong pressure was put on churches in the country to sever their links with churches abroad. Such steps included the creation of a patriotic Catholic Association, independent of the Vatican. Priests and bishops were pressed to join the Association, which soon started supervising the ordination of priests and other church affairs. Under pressure, those who joined the Association severed their links with the Holy See and ceased to recognize the authority of the Pope. Some priests, however, opposed these changes. Many of them were arrested and subsequently spent more than 20 years in prison and labour camps. Some were arrested for a second time in 1981, after a brief period of freedom, for persisting in their refusal to co-operate with the Catholic Association and for carrying out religious activities independently of the official church. Several of the priests are reported to have been brought to trial in 1983 and again sentenced to long prison terms. A period of tolerance was initiated in 1984, but did not extend to those Christians who did not adhere to an official religious association. For example, there were reports in 1985 of Christian leaders being sentenced to prison terms of up to 10 years on charges of "inciting counter-revolution" and distributing Christian literature.

78. In another Asian country, there has been increasing tension since 1984 between Government authorities and Muslim organizations, brought on by the Government's attempts to establish a State ideology. Muslim misgivings about this ideology have intensified as a result of Government efforts to require all political parties and social organizations to acknowledge it as their fundamental ideological principle. Many preachers who publicly advocated rejection of the State ideology as the sole principle are reported to have been arrested on charges of "subversion".

79. In a third Asian State, where conversion is prohibited under the Constitution, there are continuing reports of the arrests of Christians converting from Hinduism to Christianity. Dozens of Christians are said to have been arrested during 1985 and some of them were reported to have been ill-treated in police custody following their arrest. However, those arrested are reported to have secured bail after several days or some weeks in custody, both following arrest and after conviction by the lower courts pending appeal. Moreover, not all cases brought to court resulted in conviction.

80. In a fourth Asian country, any attempt to change the secular nature of the State is prohibited by the Penal Code. Under relevant provisions of the Code, many members of Islamic sects and religious activists are reported to have been convicted and sentenced to terms of imprisonment. Jehovah's Witnesses have also been imprisoned under this provision.

81. In still another Asian country, Buddhists and Catholics have been the principal focus of religious intolerance. Buddhists who oppose the Government's attempts to unite all Buddhist sects under the leadership of a single "front" organization have been charged with "obstructing the work" of the Government department charged with unification of Buddhists. Roman Catholic priests and Protestant pastors who had served as military chaplains in the Army, and who were judged to be reactionaries, were arrested in 1975, and many continue to be held in re-education camps without trial.

82. Such incidents and actions, all clearly inconsistent with the provisions of the Declaration on the Elimination of all forms of intolerance and of Discrimination Based on Religion or Belief, call for immediate examination and remedial action. Hopefully this very urgent and necessary task will be taken up with enthusiasm and skill by the Special Rapporteur appointed for this purpose by the Commission on Human Rights. ^{13/}

C. Relationships between State and Church

83. The Special Rapporteur examined information on this question supplied by the Governments of 37 States, ^{14/} reproduced or summarized in appendix A. ^{15/} These data indicate that a wide variety of arrangements between State and Church exists, along the following lines: ^{16/}

- (a) State religions: Costa Rica, Pakistan, Qatar
- (b) Established churches: Denmark, United Kingdom
- (c) Neutral or secular as regards religion: Burundi, Chad, Madagascar, Niger, Turkey
- (d) No official religion: Argentina, Bulgaria, Cape Verde, Germany, Federal Republic of Ghana, Honduras, Mauritius, Spain, Sudan, Thailand
- (e) Separation of church from State: Belorussian SSR, Cape Verde, France, German Democratic Republic, Netherlands, Peru, Portugal, Rwanda, Trinidad and Tobago, Ukrainian SSR, USSR, United States of America
- (f) Agreements with the Catholic church: Bolivia, Colombia, Italy
- (g) Protection of legally-recognized religious groups: Cape Verde, Czechoslovakia, Portugal, Spain
- (h) Millet system, recognizing a number of religious communities: Israel.

84. Several important questions concerning the relationship between the State and religions or beliefs have aroused considerable controversy. One is the question whether, and if so to what extent, the establishment of an official State religion or belief, or the recognition by the State of one or more religions or beliefs, gives rise to intolerance or discrimination based on religion or belief.

85. When this question was examined at the seminar on the dangers of a recrudescence of intolerance in all its forms and the search for ways of preventing and combating it, held under the human rights advisory services programme at Nice, France, from 24 August to 6 September 1971, some participants stated that "the existence in any State of an established religion might be equivalent to an official declaration of such intolerance, since a religion deriving its privileged position from law could inevitably influence the process and content of legislation. Other participants, however, stated that an established church was not necessarily a ruling organ of the State concerned and that, consequently, there could be no presumption of intolerance on the part of the State on that account. Moreover, recent

changes in religious attitudes, reflecting modern developments, tended to reduce the problem of religious intolerance in general. It was pointed out by several participants that certain faiths, such as Buddhism and Islam, are considered any form of intolerance incompatible with their basic tenets. One participant stated that the best means of overcoming religious intolerance was the separation of State from church and church from State. Another participant said that what applied to a State religion also applied to State atheism" (S/P/MO/HR/44, paragraph 30).

86. When the same question was considered some years later at the seminar on the encouragement of understanding, tolerance and respect in matters relating to freedom of religion or belief, held under the same advisory services programme at Geneva, Switzerland, from 3 to 14 December 1984, the view was expressed that "when a religion had been declared official or a State religion, manifestations of intolerance for other religions by the State concerned might occur through a variety of means, such as the adoption of discriminatory measures or crude attempts at forced conversions. Other participants however expressed the conviction that tolerance could exist in a State where there was no separation between temporal and spiritual powers provided that freedom of religion or belief was legally guaranteed. The view was also held that the separation of State from religion, constitutional guarantees for freedom and equality of treatment of all religions and institutional arrangements for redress of grievances helped secure religious freedoms (S/P/HR/SER.A/16, paragraph 40). Some participants in the seminar stated that "freedom of religion related to the inner conscience of the individual and therefore belonged to the sphere of private affairs, and that the full enjoyment of freedom of religion and belief could best be guaranteed through a separation of church and State. The view was, however, expressed that a State religion teaching mutual respect and understanding could vary well safeguard tolerance and religious freedom" (S/P/HR/SER.A/16, paragraph 54).

87. A second question, which arose at the Geneva seminar, was that of the meaning and significance of the "neutral State", which in some areas is defined as separation of State and political parties from all religions and beliefs, and in some others as the State's equal concern for all religions and beliefs. When that question was considered, "the opinion was expressed that various factors such as economic, social, cultural or political conditions had a decisive impact on the religious life of a country, and that the law character of a State should not be considered as an obstacle to the enjoyment of various religious rights. The view was also expressed that the lay character of a State and the full enjoyment of equal treatment without discrimination on grounds of religion need not inhibit a constructive dialogue between a State and religious groups nor the entering into conventions or protocols between States and churches" (S/P/HR/SER.A/16, paragraph 54).

88. The following conclusions may be drawn from the above: (1) More than half of the States for which information is available have constitutional or legal provisions separating State from church or establishing neutrality between State and church. Of the remainder, three have State religions, two have established churches, and three have agreements with the Catholic church recognizing the Catholic religion. All claim to respect religions or beliefs regardless of whether or not they may be legally recognized; (2) From the available data it is not possible to draw a firm conclusion as to whether, and to what extent, any of the existing arrangements gives rise, either per se or in practice, to intolerance based on religion or belief. However, it would

appear from these data that practices such as the establishment of a religion or belief by the State do in fact amount to certain preferences and privileges being given to the followers of that religion or belief, and are, therefore, discriminatory. While such practices may not per se constitute intolerance, they tend to lead various authorities, organizations or groups to claim rights or to take other action which may indeed amount to further and more accentuated discrimination against particular religions or beliefs; (3) A recommendation that further study of the effects of various relationships between State and church be undertaken would seem to be warranted.

D. Analysis of existing constitutional and legal guarantees of freedom of thought, conscience, religion and belief

89. The Special Rapporteur is well aware of the fact that most countries have constitutional and/or statutory provisions in respect of the rights and freedoms dealt with in the present section which have not been made available as part of the information provided for the purpose of the present report. Such provisions, concerning specific rights and freedoms, are generally separate and clearly applicable for purposes connected with religion or belief. As the Special Rapporteur did not have either the resources or the means to engage in independent research for these purposes, she had to rely on the information assembled by the United Nations Centre for Human Rights (in the form of replies to her questionnaire and contributions to the compendium) for the preparation of the present report. The analysis that follows is, therefore, based exclusively on the information thus made available.

90. This information includes numerous reports of incidents and actions in all parts of the world which are patently inconsistent with the provisions of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief. In reviewing such information the Special Rapporteur bore in mind the mandate of the Special Rapporteur appointed by the Commission on Human Rights early in 1986 to examine such incidents and to recommend remedial measures. In view of the creation of this new entity, which the Special Rapporteur welcomes as a significant step in the direction of effective international implementation of the Declaration, she refrained from examining or evaluating reports of particular incidents or actions.

91. The content of the data furnished by Governments varied widely, and in many cases included general statements indicating the approach which the Government concerned had adopted with reference to the problem of intolerance or discrimination based on religion or belief. In some cases, Governments gave their own evaluation of the results achieved, in several cases only the relevant constitutional or statutory provisions (or some of them) were supplied, without any statements or comments of any kind as to their effects.

92. In view of the importance of such statements to a full understanding of the dimensions of the problem in the contemporary world, they are reproduced, or summarized, in appendix B. As will be seen, they indicate for the most part a strong desire and willingness on the part of States Members of the United Nations to conform to the standards proclaimed in the Declaration on the Elimination of Intolerance and of Discrimination based on Religion or Belief. However in some cases general statements were not accompanied by relevant legal texts, making it impossible to compare national standards with those proclaimed in the Declaration.

93. In some other cases, such comparison was impossible for other reasons. For example, the constitutions of two States (Israel and the United Kingdom) are of the non-documentary type; those of two States (Australia and the United States of America) deal with the question succinctly by providing only that the legislature "shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof," and those of five States (Burundi, Chad, Madagascar, Niger and Turkey) by providing that the State is neutral or secular as regards religions or beliefs.

94. The analysis which follows is based upon all the relevant information made available to the Special Rapporteur by Governments and other reliable sources, including non-governmental organizations in consultative status with the Economic and Social Council. Although by no means exhaustive, it is as complete as possible in view of the comparatively small number of detailed responses received from Governments and the urgency of the Special Rapporteur's mandate to present her report to the Sub-Commission on Prevention of Discrimination and Protection of Minorities at its thirty-ninth session.

1. Constitutional and legal guarantees of freedom of thought, conscience, religion and belief, and of freedom from intolerance and discrimination based on religion or belief

95. Provisions of the constitutions and basic laws of States are of supreme importance to the realization of human rights because they create an area of individual or group liberty immune from invasion by public authorities, particularly with respect to fundamental principles such as freedom of thought, conscience, religion and belief. By setting out such principles, by placing all public authorities under a solemn obligation to respect and observe them, and by indicating how the rules to implement them will be made, applied and adjudicated, they establish standards for legislators, administrators, and judges.

96. Many new or newly-revised constitutions or basic laws contain formulae borrowed from outside sources, and it is not unusual to find provisions of the Universal Declaration of Human Rights or of the International Covenants on Human Rights "nationalized" by incorporation in those of Member States. There is naturally a greater likelihood that the newly-adopted constitutional texts will contain guarantees concerning freedom of thought, conscience, religion and belief approximating more closely to those of the pertinent international instruments.

97. Because constitutions and basic laws are essentially political documents and political acts, comparative analysis of specific provisions is seldom meaningful, since their true significance can only be found in the totality of each instrument, including its legislative history, preamble, amendments, and interpretation in practice by competent administrative and judicial officials.

98. Accordingly the Special Rapporteur has confined herself to pointing out certain facts which become clear upon examination of these materials, which are reproduced, or summarized, in appendix C (Provisions of constitutions, basic laws and legislation guaranteeing the right to freedom of thought, conscience, religion and belief), and appendix D (Provisions of constitutions, basic laws and legislation guaranteeing freedom from intolerance and discrimination based on religion or belief).

2. National constitutional and legal guarantees of freedom of thought, conscience, religion and belief

99. As at 30 June 1986 the Special Rapporteur reviewed the data available from the Governments of the States listed above, in paragraphs 28 and 29 concerning provisions of their national constitutions, basic laws, or ordinary legislation intended to guarantee the right to freedom of thought, conscience, religion and belief as defined in articles 18 and 26, paragraph 2 of the Universal Declaration of Human Rights, article 18 of the International Covenant on Civil and Political Rights, article 13, paragraph 3, of the International Covenant on Economic, Social and Cultural Rights, and article 1 of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, as well as concerning provisions intended to guarantee the elimination of intolerance and discrimination based on religion or belief as defined in article 2, paragraph 2, of the latter Declaration. She found great disparity in the contents of those data, some being limited to quotation of a single basic constitutional provision while others provided full transcripts of the relevant constitutional and legislative provisions.

100. These data indicate that guarantees of freedom of thought, or conscience, or religion, or belief, or of several of these, are explicitly incorporated in the constitutions or basic laws of 44 States. In addition, they are implicit in seven constitutions, two of which are "unwritten" (Israel and the United Kingdom), two of which forbid the making of any law respecting the establishment of religion or prohibiting the free exercise thereof (Australia and the United States of America), and five of which establish State neutrality as regards religions or beliefs (Burundi, Chad, Madagascar, Niger and Turkey). Twelve of the texts refer to all three of the freedoms mentioned in article 1 of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief - freedom of thought, conscience and religion (Cyprus, France, Israel, Italy, Jamaica, Mauritius, Monaco, Niger, Tonga, Trinidad and Tobago, and the United Kingdom). None, however, refers to all four of the freedoms now generally accepted in this context, namely thought, conscience, religion and belief. Thirty-nine of the texts refer to freedom of religion (Argentina, Barbados, Cape Verde, Chile, Colombia, Cyprus, Czechoslovakia, Ecuador, Finland, German Democratic Republic, Germany, Federal Republic of, Guatemala, Honduras, Iraq, Israel, Italy, Jamaica, Jordan, Mauritius, Mexico, Netherlands, Niger, Pakistan, Peru, Portugal, Qatar, Rwanda, Solomon Islands, Spain, Suriname, Sweden, Syrian Arab Republic, Thailand, Tonga, Trinidad and Tobago, Turkey, United Kingdom, Venezuela and Zambia). Twenty-seven of the texts refer to freedom of conscience (Bahamas, Bulgaria, Byelorussian SSR, Chile, Colombia, Cyprus, Dominican Republic, Finland, German Democratic Republic, Germany, Federal Republic of, Israel, Italy, Jamaica, Mauritius, Niger, Portugal, Qatar, Rwanda, Solomon Islands, Switzerland, Syrian Arab Republic, Tonga, Trinidad and Tobago, Turkey, Ukrainian SSR, USSR and United Kingdom. Eleven of the texts refer to freedom of thought (Barbados, Israel, Italy, Jamaica, Mauritius, Niger, Qatar, Spain, Tonga, Trinidad and Tobago, and United Kingdom). Eight of the texts refer to freedom of belief (Bulgaria, German Democratic Republic, Germany, Federal Republic of, Guatemala, Jordan, Switzerland, Syrian Arab Republic and Zambia).

101. These data further indicate that certain guarantees of freedom from intolerance and discrimination based on religion or belief are incorporated, explicitly or implicitly, in the constitutions or basic laws of a number of States. The explicit guarantees, as indicated by the Governments concerned, are reproduced, or summarized, in appendix C. Of the texts cited, 14 guarantee equality before the law (Byelorussian SSR, Cyprus, German Democratic Republic, Germany, Federal Republic of Italy, Pakistan, Portugal, Rwanda, Spain, Thailand, Turkey and USSR); four guarantee equality of churches before the law (Cyprus, Czechoslovakia, German Democratic Republic, and Italy); five guarantee the right to work, or to reasonable conditions of work, without discrimination based on religion or belief (Argentina, Cape Verde, Finland, German Democratic Republic and the USSR); three guarantee the right to take part in government without discrimination based on attitude towards religion or belief (Byelorussian SSR, Denmark and USSR); and three prohibit exemption from any public duty on the ground of religion or belief (Cape Verde, Denmark and Spain).

102. The following conclusions may be drawn from the above: (1) many contemporary constitutions and basic laws expressly guarantee, either explicitly or implicitly, the right to freedom of thought, conscience, religion and belief, or at least important aspects of that right, while others ensure that individuals and groups shall enjoy all human rights and fundamental freedoms without intolerance or discrimination based on religion or belief; (2) such constitutional or legal guarantees however have not been reported in connection with the present study by a majority of the States Members of the United Nations which have submitted information in this respect; (3) where they were reported they cover only certain - and by no means all - aspects of that freedom; and (4) on the whole the existing situation falls far below the standard set in the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief. Regardless of the comparative rigidity or flexibility of particular constitutions, all may be adjusted in one way or another to meet contemporary needs. A recommendation that all States must find ways to incorporate in their fundamental instruments prevailing international standards relating to freedom of thought, conscience, religion and belief - if they have not done so already - would seem to be warranted.

3. Penal laws to prevent and punish acts of intolerance or discrimination based on religion or belief

103. The Special Rapporteur also reviewed the data available from the Governments of 23 States 17/ concerning penal laws adopted to prevent and punish acts of intolerance or discrimination based on religion or belief. Again bearing in mind the great disparity in the contents of these data, they may be said to indicate that laws defining certain acts of intolerance and discrimination based on religion or belief as criminal offences and providing appropriate penalties and punishments for those found guilty are in effect in a number of countries. Such intolerance and discrimination are considered to be crimes because they seriously infringe upon the rights and freedoms of innocent victims.

104. The mere existence of such laws, the perceived willingness of the authorities to invoke them, and the size of the penalty or punishment which may be exacted all serve as deterrents to those who might otherwise be tempted to participate in such acts or to encourage others to do so.

105. It is quite impossible to categorize the many forms and manifestations of intolerance and discrimination based on religion or belief, which are innumerable. The Special Rapporteur accordingly has confined herself to listing below the most serious and reprehensible acts prohibited by the relevant penal laws made available to her, which are reproduced, or summarized, in appendix E. Thirteen of the texts provide for prohibition and punishment of defamation of a religion or belief, or of its members or leadership individually or collectively, by ridicule, scorn, contempt or insulting language, with a view to diminishing their stature and exciting feelings of enmity, hatred or ill-will towards them, or incitement to such acts (Czechoslovakia, Denmark, France, Iraq, Jordan, Madagascar, Mauritius, Pakistan, Portugal, Spain, Sudan, Sweden and Syrian Arab Republic). Seven of the texts provide for prohibition and punishment of use of force, or threat of force, against persons, groups or organizations with the purpose or effect of compelling them to participate, or to refrain from participating, in the worship or rites of a religion or belief, or incitement to such acts (Czechoslovakia, Finland, Israel, Jordan, Mauritius, Panama and Venezuela). Six of the texts provide for prohibition and punishment of obstruction or disturbances of the worship or rites of a religion or belief by willful acts interfering with, or interrupting, lawful assemblies convened for such purposes; or incitement to such acts (Finland, Israel, Jordan, Mauritius, Ukrainian SSR and Venezuela). Five of the texts provide for prohibition and punishment of refusal of a service or of a right to a person or group based on their religion or belief, or incitement to such acts (France, Iraq, Rwanda, Sweden and the Ukrainian SSR). Other texts provide for prohibition and punishment, for example, of encroachment on the person and rights of citizens under the pretext of performing religious ceremonies (Ukrainian SSR), disturbance of religious peace (Finland), propagation of confessional or sectarian bigotry (Iraq), publishing or uttering words or other material which are calculated to outrage the religious feelings or beliefs of other persons (Israel), assaulting or outraging a minister of religion (Mauritius), carrying out acts of profanation that offend legally protected religious susceptibilities (Spain), and organizing or directing a group whose activity, conducted in the guise of propagating religious beliefs or performing religious ceremonies, is harmful to citizens' health or otherwise encroaches on their personal rights, or which incites citizens to refuse social activity or performance of civic duties, or seeks to attract minors to such group (USSR). In some States, certain articles of the penal codes are derived from religious law. In that case, unless they are recognized as being applicable only to members of the religion involved, they may be considered discriminatory by members of other religions or beliefs.

106. The following conclusions may be drawn from the above: (1) a number of States have declared certain manifestations of intolerance and discrimination based on religion or belief to be criminal acts, and have provided for their prevention and punishment by means of penal laws; and (2) the adoption and implementation of such penal laws is viewed by Governments as a positive step towards making it possible for everyone to avail himself, in practice, of the rights and freedoms set out in the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.

107. A recommendation that all States, if they have not already done so, should explore the desirability of adopting and implementing appropriate penal laws for this purpose would seem to be warranted.

4. Constitutional and legal provisions prohibiting coercion which would impair one's freedom to have a religion or belief of one's choice

108. Bearing in mind the general comments made earlier concerning the great disparity in the contents of the data available, the Special Rapporteur reviewed information made available by the Governments of 26 States 18/ concerning constitutional and legal provisions prohibiting coercion in matters of religion or belief, and compared the substantive elements of those provisions with those of article 1, paragraph 2, of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, which reads: "No one shall be subject to coercion which would impair his freedom to have a religion or belief of his choice."

109. These data, reproduced or summarized in appendix F, indicate that the laws of only four States appear to prohibit coercion to leave one's religion or belief or to adopt a new one (Cyprus, Israel, Qatar and Spain). However, there are other constitutional and legal provisions which prohibit forms of coercion which would impair one's freedom to change one's religion or belief, among those prohibited by law are the following:

(a) Coercion to take part in, or not to take part in, an observance or ceremony of a religion or belief not one's own (Barbados, German Democratic Republic, Germany, Federal Republic of, Jamaica, Mauritius, Morocco, Pakistan, Spain, Switzerland and Turkey);

(b) Coercion to reveal one's religion or belief or to have it revealed without one's consent (Cyprus, Ecuador, Germany, Federal Republic of, Peru, Portugal, Spain, Turkey and Ukrainian SSR);

(c) Coercion to receive religious education in a religion not one's own (Barbados, Israel, Italy, Jamaica, Pakistan, Switzerland and Trinidad and Tobago);

(d) Coercion to pay a tax or to contribute to a fund used for the purposes of a religion not one's own (Cyprus, Denmark and Pakistan);

(e) Coercion to practice a particular religion or belief (Mauritius and Morocco);

(f) Various other acts of coercion are occasionally prohibited, including coercion to perform a religious act, to become a member of a religious association, to take an oath contrary to the principles of one's religion or belief, or to observe - or not to observe - certain holidays or days of rest.

110. The following conclusions may be drawn from the above: (1) only very few States Members of the United Nations report having in effect constitutional or legal provisions prohibiting coercion, which would impair the freedom to have a religion or belief of one's choice; (2) the standard proclaimed in article 1, paragraph 2, of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief is far from being realized in the majority of States; and (3) a recommendation that all Member States should explore the desirability of adopting and implementing such provisions, if they have not already done so, would seem to be warranted.

5. Constitutional and legal provisions relating to the right of children to have access to education in the matter of religion or belief

111. The Special Rapporteur examined data on this question made available by the Governments of 28 States 19/ and compared the substantive elements of the constitutional and legislative provisions cited with those of article 5 of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, which reads:

"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 fellow men.

"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 beliefs 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."

112. These data, reproduced or summarized in appendix G, indicate that in a majority of the countries about which information was available, the right of children to have access to education in the matter of religion or belief is guaranteed by law. They further indicate that some countries have legislation in force protecting children against discrimination on the ground of religion or belief in so far as their education is concerned.

113. With reference to access to education, 20 of the texts cited by Governments provide specifically that every child has a right to access to education in the matter of religion or belief in accordance with the wishes of his parents or legal guardians, and shall not be compelled to receive teaching about religion or belief against their stated or implied wishes (Chile, Denmark, Finland, Germany, Federal Republic of, Ghana, Guatemala, Honduras, Iraq, Israel, Italy, Jamaica, Netherlands, Peru, Portugal, Qatar, Rwanda, Spain, Switzerland, Trinidad and Tobago, and United Kingdom). As regards

Freedom from discrimination, six of the texts cited provide that every child shall be protected against any form of discrimination based on religion or belief (Ghana, Guatemala, Israel, Jamaica, Peru and Venezuela). None of the texts cited, however, appears to implement the provisions of paragraphs 1, 4 or 5 of article 5.

114. The following conclusions may be drawn from the above: (1) in a number of States - but only a small percentage of States Members of the United Nations - constitutional or legal provisions are in effect which ensure that 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 legal guardians, and that every child shall be protected from any form of discrimination based on religion or belief; 20/ (2) the adoption and implementation of such provisions is recognized by the Governments concerned as a positive step towards full implementation of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief; (3) however, all of the standards proclaimed in article 5 of the Declaration - and particularly those set out in paragraphs 1, 4 and 5 thereof - are still far from being realized, either in law or in practice, in a large number of Member States; and (4) a recommendation that all Member States which have not already done so should explore the desirability of adopting and implementing appropriate legal provisions to ensure realization of the standards proclaimed in article 5 of the Declaration would seem to be warranted.

6. Constitutional and legal provisions guaranteeing freedom to manifest one's religion or belief, and limitations applicable to that freedom

115. The Special Rapporteur examined data on this question supplied by the Governments of 29 States 21/ and compared the substantive elements of the constitutional and legislative provisions cited with those of article 1, paragraph 3, of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, which reads:

"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."

116. These data, reproduced or summarized in appendix H, indicate that in nearly all countries about which information was available, freedom to manifest one's religion or belief is reported to be guaranteed either by a constitutional provision or by law. They indicate further that the limitations placed upon this freedom are nearly always prescribed by law and thus are the same for all within the jurisdiction of the State. Finally, they indicate that for the most part such limitations are, in the words of article 1, paragraph 3, "necessary to protect public safety, 22/ order, health or morals, or the fundamental rights and freedoms of others". However, in a few cases, they appear to fall outside that standard.

117. The Governments of the States concerned indicate that the limitations upon freedom to manifest a religion or belief currently in effect include the following:

- (a) Public safety (Barbados, Cyprus and Jamaica);
 - (b) Order (Barbados, Bulgaria, Chile, Cyprus, Israel, Jamaica, Madagascar, Netherlands, Peru, Portugal, Spain and Thailand);
 - (c) Health (Barbados, Byelorussian SSR, Cyprus, Jamaica, Netherlands and Spain);
 - (d) Morals (Barbados, Bulgaria, Cape Verde, Chile, Colombia, Cyprus, Ecuador, Finland, Israel, Italy, Jamaica, Madagascar, Peru, Spain and Thailand); and
 - (e) Respect for the rights and freedoms of others (Byelorussian SSR, Cyprus, Ecuador, Jamaica, Portugal and Spain).
118. Some of the limitations currently in effect which are not mentioned in article 1, paragraph 3, are:

- (a) Security (Cyprus, Ecuador, Portugal, Rwanda and Spain);
- (b) Defence (Barbados);
- (c) Incitement of citizens "to refuse social activity or performance of civic duties" (Byelorussian SSR);
- (d) Performance of acts "which may be inconsistent with the life, physical integrity or dignity of persons" (Cape Verde);
- (e) Interests of traffic (Netherlands); and
- (f) Tranquillity or salubrity (Rwanda).

119. The following conclusions may be drawn from the above: (1) in a number of States constitutional or legal provisions are in effect which guarantee freedom to manifest one's religion or belief; (2) however, the standard in this regard proclaimed in the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief is still far from being realized, either in law or in practice, in a majority of States Members of the United Nations; (3) in some States limitations are placed upon realization of the freedom to manifest one's religion or belief, other than those mentioned in article 1, paragraph 3, of the Declaration, which could constitute a basis for derogations from that freedom; and (4) a recommendation that all Member States explore the desirability of adopting and implementing appropriate legal safeguards to ensure that everyone has freedom to manifest his religion or belief, including only 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, would seem to be warranted.

7. Constitutional and legal provisions relating to freedom to worship or assemble in connection with a religion or belief

120. Bearing in mind the general comments made earlier concerning the great disparity in the contents of the available data, the Special Rapporteur examined information on this question supplied by the Governments of 30 States, reproduced or summarized in appendix I, 23/

121. These data show that only eight States indicate that they conform to the standard established in article 6 (a) of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief by providing for recognition and enjoyment of: (a) freedom of worship; (b) freedom of assembly; (c) freedom to establish places for these purposes; and (d) freedom to maintain such places. (Chile, Czechoslovakia, Honduras, Italy, Netherlands, Pakistan, Trinidad and Tobago and Spain.) Other States ensure some, but not all, of these freedoms.

122. Of the texts cited, 18 protect freedom of worship (Bulgaria, Chile, Czechoslovakia, German Democratic Republic, Honduras, Israel, Italy, Netherlands, Pakistan, Peru, Portugal, Rwanda, Spain, Sweden, Trinidad and Tobago, Turkey, United Kingdom and Venezuela); 9 protect freedom to establish places for worship or assembly (Bulgaria, Chile, Czechoslovakia, Honduras, Italy, Netherlands, Pakistan, Spain and Trinidad and Tobago); and 8 protect freedom to maintain such places (Chile, Czechoslovakia, Honduras, Italy, Netherlands, Pakistan, Spain and Trinidad and Tobago).

123. The texts cited also indicate that, in one country, places for worship and assembly are established and maintained by the State (German Democratic Republic), while in another they are maintained, but not furnished, by the State (Bulgaria).

124. The available data further indicate that in some States limitations are placed upon freedom to worship or assemble in connection with a religion or belief other than those mentioned in article 1, paragraph 3, of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief. In Israel, for example, "there exists a right of public assembly so long as it is not an 'unlawful' gathering, or does not create a public nuisance". In Mexico, "every religious act of public worship must be performed specifically in a place of worship, which shall be subject to the supervision of the Government at all times". In Portugal, "authorization to build or install temples or places of worship is permitted only when they are intended for a religious faith already recognized by law". In Trinidad and Tobago, the construction of places of worship is subject to approval by Government authorities. In the Ukrainian SSR, "the freedom to perform religious ceremonies is guaranteed in so far as they do not violate social order and do not constitute an encroachment on the rights of citizens." Further, the performance of religious rites and ceremonies and the placing of any religious objects are prohibited in the premises and on the territory of State, co-operate and public enterprises, establishments and organizations."

125. The following conclusions may be drawn from the above: (1) the standard proclaimed in article 6 (a) of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief is far from being realized, either in law or in practice, in many of the States Members of the United Nations; and (2) a recommendation that all Member States, if they have not already done so, explore the desirability of adopting and implementing legal safeguards to ensure realization of the rights set out in article 6 (a) would seem to be warranted.

8. Constitutional and legal provisions relating to freedom to establish and maintain appropriate charitable or humanitarian institutions

126. The Special Rapporteur examined data on this question supplied by the Governments of 14 States, ²⁴ reproduced or summarized in appendix J.

127. These data indicate that each of those States recognizes the right to freedom to establish and maintain appropriate charitable or humanitarian institutions. However, of the texts cited, only one - article 20 of the Constitution of Pakistan, which provides that every religious denomination and every sect thereof shall have the right to establish, maintain and manage its religious institutions - conforms to the standard proclaimed in article 6 (b) of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.

128. Other texts cited include article 138 (2) of the Basic Law of the Federal Republic of Germany, which provides that the right to own property and other rights of religious bodies or associations in respect of their institutions, foundations and other assets destined for purposes of worship, education, or charity, are guaranteed; Associations Act No. 1 of Iraq, which guarantees freedom to establish associations; the Inuit Law of Israel, which provides for the establishment of non-profit-making associations; and article 6 (2) of Organic Law No. 7/1980 of Spain, which provides that Churches, confessions and religious communities may establish and encourage, in order to attain their purposes, associations, foundations and institutions, in conformity with the provisions of ordinary law.

9. Constitutional and legal provisions relating to freedom 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

129. The Special Rapporteur examined data on this question supplied by the Governments of four States, ²⁵ reproduced or summarized in appendix K. These data indicate that each of those States recognizes the right to freedom 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, and that there are no limitations on the realization of that right.

10. Constitutional and legal provisions relating to freedom to write, issue and disseminate relevant publications in areas of religion or belief

130. The Special Rapporteur examined data on this question supplied by the Governments of 11 States, ²⁶ reproduced or summarized in appendix L. These data indicate that each of those States recognizes the right to freedom to write, issue and disseminate relevant publications in areas of religion or belief. The right is guaranteed in the Constitutions of Denmark, Pakistan, Panama and Rwanda.

11. Constitutional and legal provisions relating to freedom to teach a religion or belief in places suitable for these purposes

131. The Special Rapporteur examined data on this question supplied by the Governments of 11 States, ²⁷ reproduced, or summarized, in appendix M. These data indicate that each of these States recognizes the right to freedom to

teach a religion or belief in places suitable for these purposes. The right is guaranteed in the Constitutions of Barbados, the Netherlands, Pakistan and Portugal.

12. Constitutional and legal provisions relating to freedom to solicit and receive voluntary financial and other contributions from individuals and institutions

132. The Special Rapporteur examined data on this question supplied by the Governments of eight States, 28/ reproduced, or summarized, in appendix N. These data indicate that each of those States recognizes the right to freedom to solicit and receive voluntary financial and other contributions from individuals and institutions. In Israel, the right is limited by the Consumer Protection Law, which provides that the solicitation must be made in non-misrepresentative fashion.

13. Constitutional and legal provisions relating to freedom to train, appoint, elect or designate by succession appropriate leaders for the requirements of any religion or belief

133. The Special Rapporteur examined data on this question supplied by the Governments of five States, 29/ reproduced, or summarized, in appendix O. These data indicate that each of those States recognizes the right to freedom to train, appoint, elect or designate by succession appropriate leaders called for by the requirements of any religion or belief. In Rwanda there is a limitation upon the appointment of legal representatives of religious associations, and their alternates, which would appear to fall outside the scope of legitimate limitations defined in article 1, paragraph 3, of the Declaration.

14. Constitutional and legal provisions relating to freedom to observe days of rest and to celebrate holidays and ceremonies in accordance with the precepts of one's religion or belief

134. The Special Rapporteur examined data on this question supplied by the Governments of nine States, 30/ reproduced, or summarized, in appendix P. These data indicate that each of those States recognizes the right to freedom to observe days of rest and to celebrate holidays and ceremonies in accordance with the precepts of one's religion or belief.

15. Constitutional and legal provisions relating to freedom to establish and maintain communications with individuals and communities in matters of religion or belief at the national and international levels

135. The Special Rapporteur examined data on this question supplied by the Governments of seven States, 31/ reproduced, or summarized, in appendix Q. These data indicate that each of those States recognizes the right to freedom to establish and maintain communications with individuals and communities in matters of religion or belief at the national and international levels. Article 15 of the Constitution of Italy guarantees secrecy of correspondence and all other forms of communication. In Rwanda, this right is guaranteed by ordinary law.

136. Conclusions which may be drawn from the above indicate the following: (1) only very few States Members of the United Nations - roughly less than 20 per cent - report that they have in effect constitutional or legal provisions protecting the particular freedoms included in the right to freedom of thought, conscience, religion and belief set out in article 6 of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief; (2) the standard proclaimed in articles 1 and 6 of the Declaration is far from being realized in the majority of Member States; and (3) a recommendation that all Member States explore the desirability of adopting and implementing such provisions, if they have not already done so, would seem to be warranted.

16. Constitutional and legal provisions relating to the holder of the rights and freedoms of religion or belief

137. One aspect that is a major element in the process of recognition of the rights and freedoms of religion or belief pertains to the holder of these rights and freedoms.

138. The very way in which this is affirmed affords an initial but none the less revealing idea of the manner in which these rights and freedoms are conceived and the fundamental significance that is attached to them within a particular legal system. In establishing which person is recognized as holding these rights and freedoms, the State expresses some of the substantive concepts it has taken into account in enacting legislation in this regard.

139. At any one time, the people in the territory of the State include those who have been born and lived there all their lives or have completed the relevant procedures and fulfilled the requirements to acquire citizenship. These are the nationals of the State, whether native-born (in the former instance) or naturalized (in the latter instance). Again, there are persons who do not have this legal tie of citizenship but have fulfilled certain other basic conditions, namely aliens formally domiciled in the country or those who have obtained permits to live there more or less permanently (foreign residents). Similarly, there are other foreigners who are not domiciled or resident in the country but nevertheless have some status as visitors or tourists for shorter stays. Lastly, there are travellers who spend only a few hours or a few days in the country on their way by sea, air or land to other destinations. Hence, aliens make up a number of categories; those permanently domiciled in the country, those with residence permits for a specified period, those who intend to stay for some time and those who are merely in transit. These four groups can thus be broken down into two major categories, in terms of their stay in the country's territory. Firstly, those who, along with the nationals living in the country, have acquired domicile or are residents and are thus regarded as inhabitants or residents, and secondly, visitors or tourists and persons in transit - in other words, persons who do not inhabit and have no intention of inhabiting the country and are only there for short periods because they live in other countries from which they are temporarily absent. 32/

140. Consequently, it is important to ascertain whether the rights and freedoms of religion or belief set forth in the constitution and the laws of each country are recognized for anyone who, for whatever reason, happens to be in the country, or only for those who live there with some permanence and are

therefore considered to be inhabitants or residents of the country, regardless whether or not they are nationals, or whether these rights and freedoms are simply points of reference for determining those of persons who are not nationals or domiciled or resident in the country and are therefore visitors or persons merely in transit.

141. The countries which have furnished information form three main groups, depending on the scope of the precepts in this regard, countries in which these rights and freedoms are recognized only for citizens by birth or by naturalization; countries in which they are recognized for all inhabitants of the country or residents, whether nationals or aliens domiciled or living there for lengthy periods, in other words, those who live in the country regularly, regardless of whether they have ties of citizenship; and countries in which these rights and freedoms are recognized for everyone who is in the country's territory and is thus under the country's jurisdiction in one way or another. In other words, depending on the system, these rights and freedoms are recognized for "nationals", "inhabitants" or "residents", or "everyone" under the State's jurisdiction, even if they are in transit.

142. We shall now turn to the relevant information available. Some countries, such as Austria, Burkina Faso and Chad, did not include anything on this point in the information supplied for this study. The information from other countries contained items from which inferences could be drawn, but it was decided not to attempt any interpretations, for the existing elements were not sufficiently conclusive. This is true of the information concerning Australia (a federated country, since Tasmania speaks of the "citizens" of the State); the Dominican Republic; Germany, Federal Republic of; Honduras; Italy; Morocco (which none the less speaks of "Hebrew Moroccans"); Monaco (the page that ought to have contained the provisions of the Constitution was missing); Niger; Panama (where the Constitution states that "Panamanians and aliens are equal before the law"; and Switzerland.

143. The information furnished by Costa Rica refers to the provisions of the American Convention on Human Rights, an international instrument which Costa Rica has ratified and which, in article 12, states that everyone has the right to freedom of conscience and religion (paragraph 1) and that no one shall be subject to restrictions that might impair his freedom to keep or to change his religion or beliefs (information from the Government).

(a) Recognition for nationals

144. According to the available information, some States seem to recognize these rights and freedoms only in the case of nationals, whereas others do so quite clearly. It may be said that some States "seem" to do so, since the information supplied and the information the Special Rapporteur has been able to find elsewhere do not allow her to be more categorical in this respect. The relevant provisions relate only to certain rights and freedoms, as in Denmark, a country in which they apply only to freedom to form religious congregations, which, in addition, must not be at variance with good morals or public order (Constitution, art. 67, information from the Government). Or again, the provisions cited in the information which was supplied for this study and proved to be impossible to amplify or clarify with further data, relate simply to the equality of nationals before the law, or as in the case of Rwanda, where article 16 of the Constitution stipulates that "all citizens

shall be equal before the law, without any discrimination, more particularly of ... religion ...". The information adds that "freedom of conscience and freedom of worship are also enunciated in the Constitution, in which article 13 lays down that 'freedom of religion and public worship, freedom of conscience and freedom to manifest one's opinions on any matter are guaranteed' and 'exercise of these freedoms is limited by penalization of infringements of the law committed in the course of such exercise'" (information from the Government).

145. Still with emphasis on equality before the law but with the addition of other elements that broaden the scope of such provisions, it is possible to cite the constitutional precepts of other countries which speak in particular of citizens. They will be mentioned in ascending order of precision and scope. In the Syrian Arab Republic, according to information from the Government, "our law makes no distinction between citizens in this regard [religion or belief], all citizens being treated equally". In Sudan, the Constitution stipulates that "the State shall treat religious believers and holders of noble, spiritual beliefs without any discrimination whatsoever in regard to their rights and freedoms which are guaranteed to them as citizens under the Constitution. The State does not have the right to impose any constraints on citizens or groups of citizens by virtue of their religious beliefs" (art. 16 (d), quoted by the Government in its information for this study). In Pakistan, under article 20 of the Constitution "every citizen has the right to profess, practice and propagate his religion and establish, maintain and manage religious institutions" (information from the Government). In Jordan, the Constitution "lays down firm rules concerning the rights and duties of citizens". These rights and duties include those listed in article 6 (1): "Jordanians are equal before the law and there shall be no discrimination between them with regard to their rights and duties on grounds of ... religion" (information from the Government).

146. Other countries clearly specify that it is citizens who have the rights and freedoms dealt with in this study. This is true, for example, of the German Democratic Republic, where it is laid down that "every citizen has the same rights and duties, irrespective of ... religious confession ..." and that "freedom of conscience and freedom of belief are guaranteed. All citizens are equal before the law" (Constitution, art. 20 (1)). The Constitution also establishes that "every citizen of the German Democratic Republic has the right to profess a religious creed and to carry out religious activities" (art. 39 (1)) (information from the Government).

147. These rights and freedoms are similarly recognized for citizens in other legal systems. For example, in Bulgaria "all citizens in the People's Republic of Bulgaria are ensured freedom of conscience and belief" (Religious Denominations Act, art. 1). In Cape Verde it is stipulated that "the freedom of citizens to manifest their religion is guaranteed by law" (information from the Government). In the United States of America "it is [in] our Bill of Rights" however, the first 10 amendments to the United States Constitution, that the fullest modern expression of a United States citizen's right to personal liberty, including religious liberty, is to be found" (information from the Government). In Finland, article 8 of the Constitution (the Form of Government of 1919) lays down that "a Finnish citizen has the right to practise his religion publicly and privately in so far as this is not contrary to law or public morals. Furthermore, he has the right ... to resign

from the religious community to which he belongs and join another ..."
(E/CN.4/1986/37/Add.2, p. 4, para. 1). The Constitution of the Byelorussian Soviet Socialist Republic states that "citizens of the Byelorussian SSR are equal before the law, without distinction on grounds of ... attitude to religion ..." (art. 32) and that "citizens of the Byelorussian SSR are guaranteed freedom of conscience, that is to say, the right to profess or not to profess any religion, and to engage in religious worship or atheistic propaganda. Incentive to hostility or hatred on grounds of religious beliefs is prohibited" (art. 50) (E/CN.4/1986/37/Add.1/Rev.1, p. 2, para. 1).
Articles 32 and 50 of the Constitution of the Ukrainian Soviet Socialist Republic contain provisions identical to those mentioned in the case of the Byelorussian SSR (Compendium). The Constitution in Sweden states that "every citizen shall, in relation to the community, be guaranteed, ... 6. Freedom of religion: the freedom to practise one's religion either alone or together with others" (Instrument of Government, chap. 2, art. 1; E/CN.4/1986/37, p. 44). The Constitution of the Union of Soviet Socialist Republics contains, in articles 34 and 52, provisions identical to those quoted above in the case of the Byelorussian SSR and the Ukrainian SSR.

(b) Recognition for the inhabitants of the country

148. In some legal systems the rights and freedoms in matters of religion or belief are expressly recognized as belonging to the inhabitants of the territory over which the State in question has jurisdiction. For example, Burundi mentions in this regard "any individual or legal person, whether Burundi or foreign, resident in the country", and in Israel reference is made to "all its inhabitants (Declaration of Independence, E/CN.4/1986/37, p. 23). In Qatar these rights and freedoms are explicitly recognized for "citizens of Qatar and residents in the territory of Qatar" and "all residents of Qatar, who are citizens or immigrants" (information from the Government). Similarly, in Argentina, which is a federal country, both the National Constitution (arts. 14 and 28) and a number of the constitutions of the provinces (in other words the federated States, which recognize these rights and freedoms for the inhabitants of the country or of the province in question, for example, Córdoba, art. 2; La Pampa (art. 18), Neuquén (art. 13), Rio Negro (art. 5), San Juan (art. 22) and Santa Fe (art. 3).

(c) Broad recognition for everyone ("every person", "any person")

149. In many countries, the rights and freedoms of religion or belief are recognized for "every person", "every individual", "everyone", "any persons". This is the positive version of this broad formulation, which is also found in the negative form by stating that "no one" or "no person" shall be deprived of these rights and freedoms. Generally speaking, the same is true in these legal systems of equality before the law and other related rights and freedoms.

150. The positive formulation has been adopted in most of the countries that can be placed in this group and they include Argentina, which has a number of provincial constitutions, namely the provinces of Buenos Aires (art. 6), Chaco (art. 13), Entre Rios (art. 7), Formosa (art. 30), La Rioja (art. 5), Mendoza (art. 6), Misiones (art. 10), Neuquén (art. 25), Salta (art. 6), San Luis (art. 6), Santiago del Estero (art. 10) and Tucumán (art. 25). The positive formulation has also been adopted by: Bolivia; Chile "all persons" (Constitution, art. 19 (6), information from the Government); Cyprus "every

person", "all persons" (Constitution, arts. 18 (1) and 28 (2), information from the Government); Czechoslovakia "everyone" (Constitution, art. 32, information from the Government); Ecuador "any individual" and "persons" (Constitution, art. 19, information from the Government); Ghana "every person" (information from the Government); Guatemala "everyone" (Constitution, art. 36, information from the Government); Iraq "any person" (information from the Government); Italy "everyone" (Constitution, art. 19, information from the Government); Madagascar "everyone" (information from the Government); Mexico "everyone", "is the private affair of every individual" (information from the Government); Netherlands "every person" (Constitution, art. 6, information from the Government); Peru "every individual" (Constitution, art. 2, E/CN.4/1986/37, p. 32); Portugal "all persons" (information from the Government); Solomon Islands "all individuals" (E/CN.4/1986/37, p. 34); Spain "individuals" (Constitution, art. 16, information from the Government); Suriname "everyone" (Constitution, art. 7, information from the Government); Thailand "every person" (Constitution, art. 25, information from the Government); Tonga "every person" (information from the Government); Turkey "everyone" (Constitution, art. 24, E/CN.4/1986/37, p. 50) and Venezuela "all" (Constitution, art. 65, information from the Government).

151. A number of States have adopted a negative formulation and, for the purposes of the relevant provisions, use the following words: Bahamas "no person" (Constitution, arts. 15 and 22, E/CN.4/1986/37, p. 8); Barbados "no person" (Constitution, art. 19 (1), information from the Government); Colombia "no one" (Constitution, art. 35, information from the Government); Guyana "no person" (Constitution, art. 145, information from the Government); Mauritius "no person" (Constitution, art. 11, information from the Government) and Zambia "no person" (information from the Government).

152. The 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief proclaims in article 1 that "everyone shall have the right to freedom of thought, conscience and religion" (para. 1) and that "no one shall be subject to coercion which would impair his freedom to have a religion or belief of his choice" (para. 2). Article 2 stipulates that "no one shall be subject to discrimination by any State, institution, group of persons or person on the grounds of religion or belief" (para. 1).

153. It is plain, therefore, that these rights and freedoms are for "everyone" and that "no one" should be subject to coercion that impairs them or to discrimination on these grounds.

154. In view of the terms of the 1981 Declaration, which, as stated above, refers to everyone and not to a State's nationals or its inhabitants or permanent residents, any restriction in specifying who holds the rights and freedoms with which the Declaration is concerned curtails the comprehensive scope of the Declaration.

155. Consequently, it may be inferred in this regard that it would be desirable for States which have not yet done so to bring their legal provisions into line with the 1981 Declaration and recognize that everyone holds these rights and freedoms, not merely the nationals of the country concerned, and they should not be restricted to the country's inhabitants or permanent residents.

CHAPTER II. ROOT CAUSES OF INTOLERANCE AND DISCRIMINATION
BASED ON RELIGION OR BELIEF

156. "One of the most basic of human rights is that of religious liberty, for religion is perhaps the most comprehensive of all human activities Since this is so, it also, however, often tends towards absolutism and authoritarianism ..." 33/

157. History is full of stories resulting at least partly from religious intolerance between nations: the Crusades (against Jews, Orthodox Christians and Muslims) from the eleventh to the fifteenth centuries, the sixteenth-century wars of religion, the Thirty Years War, in the seventeenth century, the wars between Islam and Christendom from the eighth to the nineteenth centuries, etc. Unfortunately, we are not yet free from such international human destruction resulting from religious intolerance. Even today billions of people - 2.2 billion by one estimate 34/ - enjoy only limited freedom of thought, conscience, religion and belief.

158. Pope John Paul II made reference to the problem as it exists in the contemporary world in the discourse which he gave at Lourdes on 4 August 1983, as follows: 35/

"In the persecutions of the early centuries, the usual penalties were death, deportation and exile.

"Today, besides prison, concentration camps, forced labour camps and expulsion from one's country, there are other punishments less well known but more subtle: not violent death, but a kind of civil death, not only isolation in prisons or in camps, but social discrimination or permanent restriction of personal liberty.

"There are today hundreds of thousands of witnesses to the faith, all too often ignored or forgotten by public opinion, whose attention is drawn elsewhere. They are often known to God alone. They suffer daily hardships, in various parts of every continent.

"They include believers forced to meet in hiding because their religious community is not legally authorized.

"They include bishops, priests and religious who are forbidden to exercise their sacred ministry in churches or in public gatherings.

"They include nuns who have been dispersed and cannot live their consecrated life.

"They include young women who are denied the possibility of consecrating themselves to a common life dedicated to prayer or to works of charity.

"They include parents who are refused the right to have their children educated according to their faith.

"They include men and women, manual workers, intellectuals, or those carrying out other occupations, who, simply because they profess their faith, run the risk of being deprived of interesting opportunities for their careers or their studies.

"In these cases can be added the serious and distressing condition of prisoners, internment and exile, not only among Catholics and other Christians, but also among other believers. Their plight is like a hymn which rises continually to God from the sanctuary of their conscience, like a spiritual offering certainly pleasing to God".

159. This background leads us to a brief reflection on the grim reality that the problem of intolerance and discrimination based on religion or belief is one of great magnitude today despite the existence of far-reaching guarantees of the right to freedom of thought, conscience, religion and belief in the constitutions of many States, of provisions to prevent and punish interference with legitimate manifestations of religions or beliefs in the laws and regulations of those States, and of continuing efforts on the part of Governments, religions and beliefs, to foster tolerance by means of education. The problem involves not only discrimination negating rights and freedoms of individuals and groups of different religions or beliefs, but also attitudes and manifestations of intolerance between religions, within religions, between beliefs, between religions and beliefs, between individuals and groups having different religions or beliefs, as well as between nations and within nations.

160. These manifestations of intolerance, discrimination, and oppression based on race, sex, religion, or belief sometimes occur in isolation and sometimes in combination. We cannot, however, look for the origin of, and therefore the possible solutions to, such serious problems exclusively within the legal norms that apply internally and internationally among States. The profound reasons for such attitudes and behaviour of the human being must be sought in the social and cultural spheres.

161. Norms, judgments, prejudices, superstitions, myths, and archetypes whereby we model our behaviour in society and which are culturally transmitted structures that result in regional majorities of human beings sunk into misery and ignorance, all foster the germination of dogmatism, intolerance, and discrimination, and with it persecution and armed aggression. These norms, judgments and prejudices, which give rise to deep feelings and to the transformation of unfocused emotions into sharp feelings that condition our ideas about equality among human beings, as well as tolerance and respect for the ideas and feelings of others, are a product of societal forces. This means that in order to eliminate discrimination and intolerance in all its forms there must necessarily be a change in attitude of the human being which will be a product of the needed social changes and psychic transformations of individuals.

162. In discussing the meaning of the terms "tolerance" and "freedom," participants in the seminar on the encouragement of understanding, tolerance and respect in matters relating to freedom of religion or belief expressed the opinion that "while tolerance meant acceptance by individuals of the right of other individuals to hold different views, the concept of freedom went beyond the situation of individuals, it involved the State and placed heavy responsibilities upon it, in particular, the duty to guarantee religious freedom and to ensure that discrimination on religious grounds was proscribed by law. It was also said that tolerance was not just a matter of non-discrimination but an act of understanding which had to come from the individual rather than from the State. However, the State should take

measures to encourage such attitudes of tolerance and to ensure respect for different religions and beliefs. It was also noted in this connection that while tolerance entailed respect for the religion or belief of others, it need not imply approval of all beliefs. In the view of some participants the principle of tolerance should not be considered as something absolute. There were other fundamental values that a society had to defend and, therefore, there could be limits to the application of the principle of tolerance with respect to freedom to manifest religion or belief. Tolerance in this view meant only that it was not legitimate to exert physical or psychological pressure on persons because of their religion or belief" (SR/HR/SER.A/16, para. 26).

163. A final point that should be borne in mind when seeking out the causes of intolerance and discrimination based on religion or belief is that these causes are often interrelated. The underlying causes of any form of discrimination are complex, multifaceted and intertwined. Gordon Allport, the late, leading social psychologist, offers several general reasons for religious discrimination in his book, 36/ on the nature of prejudice. One cause suggests that piety is a "mask" for prejudices which intrinsically have nothing to do with religion. Instead it is historical, socio-cultural or physical factors that have provoked the dislike and hostility. Hence religion is not the cornerstone of the discrimination. Rather, the conceptions of the teachings of a religion have been twisted and construed to condone the prejudice. This is seen in the racial discrimination existing in South Africa today. The white South Africans claim that their Christian principles and doctrines justify the cruel and brutal institution of apartheid. This excuse is also employed to sustain and perpetuate religious discrimination.

164. Information on the subject available to the Special Rapporteur would seem to indicate that among the most important root causes of intolerance and discrimination in the matter of religion and belief are: ignorance and lack of understanding, conflicts in religiosity, exploitation or abuse of religion or belief for questionable ends, developments of history, social tensions, government bureaucracy and the absence of dialogue between those holding different religions or beliefs.

165. It would appear, from the information available, that atheists are no less intolerant than members of religions, and that both religion and irreligion sometimes need to be protected from each other's encroachments. However, agnostics - those who have not yet taken a definite stand in matters of religion or belief - fall into a somewhat different category. Because the word "belief" does not apply to agnostic views and philosophies, agnostics cannot be said to have any convictions in this area. It is conceivable, however, that some agnostics may show intolerance both for religions and for non-religious beliefs, and act accordingly to impinge upon the tenets and principles of one and/or the other.

166. The Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief clearly proclaims the obligation to respect all convictions held by individuals or groups in the matter of religion or belief. This can only mean that anyone who claims respect for his own convictions must in turn recognize and respect the convictions held by others.

A. Ignorance and lack of understanding

167. Widespread ignorance and lack of understanding of the most basic elements of various religions or beliefs is probably the most prevalent cause of intolerance and discrimination based on religion or belief in the world today. 168. There are literally thousands of religions or beliefs, and each is unique in certain respects. Each, for example, may have its own:

- System of beliefs, such as theistic, non-theistic, or atheistic beliefs;
- Doctrines, such as doctrines of immortality, predestination, or vesting of property in the community;
- Basic writings, such as the Bible, the *Qur'an*, or the *Koran*;
- Forms of worship, such as masses, ceremonies or assemblies;
- Objects of worship, such as nature, ancestors, or one or more deities; and
- Customary practices, such as baptism, pilgrimages, celebration of feasts or festivals, or marriage or funeral ceremonies.

169. Most people, if they adhere to a particular religion or belief, do so because they have been born into or brought up in that religion or belief. Attitudes learned in childhood from parents, teachers, Churches or assemblies have a lasting and profound influence upon their whole approach to life, and it is almost impossible to set them aside, to be convinced that they are in error, and to adopt new ones. Familiar only with the tenets of their own religion or belief, they have little interest in learning about, or learning to understand, those of another faith. Indeed, their attitude in this respect may be totally negative. Those who do attempt to comprehend religions or beliefs other than their own find the task to be extremely difficult, not only because such understanding involves acceptance, as a matter of faith, of ideas outside their everyday experience and way of life, but also because it means changing their whole order of life.

B. Variations in religiosity

170. The constant changes in public religiosity which have occurred and still occur in many areas of the world are another root cause of intolerance and of discrimination based on religion, belief or conviction. On the one hand there is the phenomenon of secularization, anti-clericalism or de-clericalization, by which morality is based on the well-being of mankind in this world without any consideration of religious systems and forms of worship, or at least religion, being introduced into public education or the management of public affairs. On the other hand, there is sacralization or clericalism by which clerical control over education, marriage laws, cemeteries, public charities, etc., is made a principle or is incorporated into a policy, or at least efforts are made to preserve the authority or influence of the Church in social and political matters. The struggle for predominance between these two tendencies has been important - and sometimes violent - in the past and present centuries.

171. The present effects of this dichotomy are summarized in the study paper of the World Council of Churches in the following terms: 37/

"The present era is characterized by what might be called a "crisis of the secular". The predominant trend in Western industrial culture during the twentieth century has been an ever expanding secularization of society, progressively pushing the religious dimension from operative participation toward the fringes of society, into the private realm. Secularization became an integral part of the dominant ideological systems whose developmental models were exported throughout the world.

...

"The Christian Church has always been somewhat ambivalent about secularization, often warning against its excesses, or against "secularism", its anti-clerical and anti-religious ideological equivalent. And yet, the dualism between the sacred and the secular which became a strong component especially of Protestant theology, has helped to pave the way for the rise of the secular at the expense of the sacred. It was a reaction against such simplistic dichotomizing of reality (and the related phenomena of "other-worldiness", the internalization of religious concerns and the removal of Christian engagement from the social and political realm) that a number of post-Second World War theologians have contributed to what has been called the 'sacralization of the secular', beginning with Dietrich Bonhoeffer's 'religionless Christianity' and culminating in the late 1960s, with a wave of 'Death of God' theologians.

"Even apart from these more extreme expressions, the mainstream theological traditions were fully able to legitimize the secular trends. The Second Vatican Council, for example has been called a 'peace treaty between the Church and the world'. Within the ecumenical movement, the Church and Society Conference of 1966, and the IV Assembly of WCC in 1968 underlined the necessity for Churches to involve themselves decisively in the secular realm, by responding to the 'agenda of the world'. More recently, the Orthodox Churches have coined the concept 'liturgy after the liturgy', whose connotations also imply a responsibility on the part of the churches within the secular realm, at the same time preserving the distinction or honoring the autonomy of the latter.

"It has been assumed (and to a certain extent also substantiated by historical development) that secularization leads to an enhancement of religious liberty, since it provides for a neutral political context in which various churches and religions can coexist in friendly competition. Indeed, for many religious minorities, secularization has been seen as a liberating process, creating guarantees against the encroachment of dominating majority religions.

"These assumptions are now under radical challenge by a movement that has been called 'the return of the sacred', which has in the course of the 1970s, become almost a de-secularization process. Its manifestations can be seen not only within Christianity, for instance with the rise of Charismatic and Parish renewal movements and the resurgence of radical fundamentalism, but also on the fringes or outside Christianity, with the

rise of neo-religious movements (or 'new youth religions') and the penetration of Eastern religions and sects into the fabric of Western culture.

"In many parts of the third world, there is taking place a religious renaissance with a strong socio-political component which challenges the modernist and secularist ideologies of the North, both East and West. The fact is that a large number of communities consider religion an important focus both in the struggle for liberation from oppression and the struggle for critical self-identity and development, in terms of their own historical ethos. In an increasing number of 'periphery' countries, such perceptions have begun to conflict with 'modernization' models as propagated or imposed by 'centre' countries, since these models are seen not as promoting true development, but on the contrary, as distorting development and perpetuating underdevelopment. And since such misdevelopment has been associated with secularization, disenchantment with the former has gone hand in hand with disenchantment with the latter. And because Christian theology has been able to accept and even legitimize the secular development, Christianity itself tends increasingly to become a target, along with secularism, of religious reaction.

"Whereas in the past, the discussion on religious liberty has been too often cast in the framework of ideological considerations and was thereby given a strongly East-West dimension, the present phenomena involving religious liberty pose the question as to whether the patterns of political, social, economic and cultural life as evolved in the North are necessarily the only or the most suitable basis on which the future of world society is to be constructed.

"Immediate reactions to these trends have at times been informed by emotional responses, as well as by political events, economic manipulation and even military developments which have aggravated underlying religious instabilities and thereby have strengthened excessively zealous expressions of faith and confrontation mentalities. The rapid escalation of these mutually reinforcing phenomena has led to new anxieties regarding what are perceived to be threats to the liberty of religious communities, many of whom are seeking a reaffirmation of their historical mission."

172. Both emerging or resurgent secularization and emerging or resurgent de-secularization or sacralization are signs that people are thinking for themselves and refusing to be bound by traditions of the past or seduced by promises of future "rationality" or "religiosity." Unfortunately neither of these trends is known to be all-understanding, and their advocates have been known not to embrace with enthusiasm those who persist in thinking for themselves, who are held to be some kind of "fanatics."

173. On the one hand, such "fanatics" often become the victims of intolerance or discrimination, or both, even on the part of former associates whose system of belief or conviction they are no longer able to support. On the other hand, their fresh or independent ideas may come to undermine the tenuous relationships existing between various religions, various believers, or various

convictions, and between religions and beliefs, religions and convictions, and beliefs and convictions or between religions, beliefs, and convictions, and thereby undermine or destroy such balances and tolerance as may have existed. These causes of intolerance and/or discrimination in matters of religion, belief or conviction will disappear with the coexistence of religions, beliefs and convictions in a climate of mutual and reciprocal respect and tolerance.

174. As regards the second of the abuses mentioned, Governments are sometimes faced with a dilemma when they become aware of widespread intolerance and discrimination based on religion or belief in a country or territory outside their jurisdiction: whether to accept such intolerance or discrimination in silence and surrender, or to expose it and thereby to bring public pressure to bear on it. If they openly condemn it, they may well be charged with exploiting the situation as an excuse for interference in the domestic affairs of the country or territory concerned. And unfortunately the act of exposure may - and often does - give rise to more serious and extended manifestations of intolerance and discrimination, sometimes orchestrated by the quality of intolerance and discrimination, sometimes orchestrated by the quality of intolerance and discrimination, sometimes orchestrated by the quality of intolerance and discrimination, sometimes orchestrated by the quality of intolerance and discrimination. Those who may suffer by acts of retaliation can only be hailed as front-line fighters in the world-wide campaign to guarantee to everyone the right to freedom of thought, conscience, religion and belief.

175. As regards the third abuse, there now exist thousands of pseudo-religions which exploit or abuse freedom of religion or belief. Some of them use weird "beliefs" as a facade to conceal illegal activities; others advocate the use of narcotics or the abuse of chemicals or sex in order to attract new members. Some insist upon blind obedience to their leaders, some teach members to suppress all critical thinking, some aim at group identity at the expense of personal growth. Defectors often live in fear of physical revenge or harassment. Most aim primarily at growth and wealth. Such groups, as the Government of Austria has pointed out in its reply to the Special Rapporteur's questionnaire, "are increasingly responsible for the infringements of personal freedom and liberty." These situations may become even more complex when the "exposing" State itself also engages in intolerance or discrimination, or both.

C. Developments of history

176. The Government of Iraq, in its reply to the Special Rapporteur's questionnaire, stated that manifestations of intolerance were attributable, *inter alia*, to the historic consequences of the colonial era which helped to promote intercommunal intolerance and discrimination in order to consolidate control by the colonial power.

177. This theme is elaborated in the study paper prepared by the Commission of the Churches for International Affairs, mentioned above, as follows: 38/
"Complicity of some Churches and religious communities with the economic, political and ideological structures of certain societies leads them to a self-willed conformity with these structures of State and society, often augmented by theological legitimation. Such self-entanglement limits the freedom with which these Churches can act and compromises their influence with regard to effective engagement in struggles for justice and

liberation. In this way they can both directly and indirectly contribute to the curtailment of their own and others' religious liberty. This is not to be confounded with conformity to one's own religious tradition, or the real possibility of participation in the socio-political and cultural life of a community as a whole. There may be self-limitations that a community accepts in terms of its own self-understanding of what its criteria demand. There may also be limitations on the rights of religious communities because of former identification with imperial or colonial powers, resulting in an alienation between such communities and their local situations.

...

"Reaction against an imposed development along secularist lines has given legitimacy to the rise of a variety of fundamentalist movements in both Christian and non-Christian religions. In some cases these were latent movements which, though limited in size, have awaited the right moment to recover an unbalanced situation produced by the history of colonialism. In every fundamentalist situation there is an element of return to purity, to the source from which to retrieve the power of revival. As such, fundamentalism is a basic kind of affirmation of historic identity and integrity of peoples, in which religion is a formative element. This often brings fundamentalism into a radical opposition to the imposition of ideological, religious and institutional structures emanating from the history of another region of the world.

"These developments can have negative effects, such as the production of tensions among Christian and religious groups and communities, which in turn can affect the realization of human rights and religious liberty. Christians, for example, who had previously become accustomed to imposing their criteria on others are now faced with the radical question of recognizing the criteria and self-definitions of other communities."

178. Unquestionably the colonial powers used intolerance and discrimination based on religion or belief as weapons in their struggle to subdue and conquer the peoples of vast territories of Asia, Africa, America and other parts of the world. By bridging or negating their right to freedom of thought, conscience, religion and belief, by treating them as "heathens" and "infidels", and by forcibly converting many who fought to retain their traditional religions or beliefs, colonial authorities not only taught, but spread, intolerance.

179. It is little wonder that, since liberation, some of the peoples and leaders of some newly-independent countries are intolerant in matters of religion or belief. There can be no excuse for their actions, which can only be described as an historical paradox.

180. Often the successors to the colonists of large areas of the world, with more recent flows of immigrants of the same origin or from other regions, still practise intolerance towards the religions of the indigenous population. There are today countries which have incorporated the indigenous population without consulting them in this regard. In these countries, the indigenous religions and beliefs are the object, apart from marked intolerance, of discriminatory practices which, although not always embodied

in legal texts, are manifested in exclusions or differences in effective treatment that place these religions or beliefs in what is clearly an underprivileged position.

D. Social tensions

181. Social tensions, which deny their victims the right to live in dignity and to enjoy the fruits of social progress, are another important cause of intolerance and discrimination based on religion or belief.

182. The Government of the Netherlands, for example, mentions in its reply to the Special Rapporteur's questionnaire the fact that such tensions are sometimes associated with the arrival in the Netherlands of large numbers of adherents of the Hindu and Muslim religions. "These," it states, "involve clashes with - and changes in - the social and legal systems deriving solely from unfamiliarity with the beliefs, rituals and customs associated with these religions. There is no question of structural discrimination or unequal treatment on the grounds of religious or other beliefs. The adherents of these religions are entitled to all the freedoms and rights ... They may, for example, establish schools and old people's homes on the basis of their beliefs, provided these conform to the statutory requirements ...".

183. Similar phenomena have occurred, or are occurring, in other European countries. The Governments of those countries have likewise found that the presence and employment of a large number of foreign immigrants in territories under their jurisdiction is likely to cause or encourage a revival of intolerance and discrimination on the part of the local population, especially when the immigrants are of a different religion or belief. Many of the former colonial Powers have experienced such problems when residents of their former colonies have sought to reside or to work in metropolitan areas.

184. Another possible, root cause of religious intolerance stems from the fact that religion usually encompasses more than faith. Often it is the focal point of the cultural tradition of a group. 39/ This is true of Christianity, which is so woven into the fabric of western civilization that it is hard to recall its origins, Islam, which is a "cluster of related cultures" and encourages a feeling of "Islamic nationalism" among its believers; and the Jews, who are primarily a religious group but are sometimes viewed as a race, a nation, or a culture. 40/ Unfortunately, prejudice against these groups of people has manifested itself in religious persecution.

185. A final general and broad cause of religious discrimination involves the question whether such discrimination can ever be - or ever is - totally religious. Allport argues that deviation in creed alone does not account for the persecution. 41/ In fact, the discrimination is not caused by the doctrines or teachings of religions at all. Instead, it is usually a political, historical or stereotyped reason that fosters religious persecution. For example, Pentecostals are disliked and considered primitive not because of their theology but for their emotionalism, while Jehovah's Witnesses are universally persecuted for their political convictions, which differ from the norm. 42/

186. In addition to the causes of intolerance and discrimination based on religion considered above, there are root causes of manifestations of

religious intolerance that are specific to certain religions in certain States. These causes, even though specific to a State, seem to share a common element. The States and Governments concerned apparently view a particular religion or belief as their chief competitor for power and control. They then resort to intolerance, discrimination or even persecution in order to contain the "adversary" religion or belief.

187. The above discussions indicate that religious intolerance occurs when religion and prejudice are merged. Hence there does not seem to be any discrimination that is purely and exclusively religious. Persecution occurs when countries, Governments and men use or attack religion to justify the pursuit of power, prestige, wealth or "ethnic self-interest". 43/ Therefore religion is used or abused by those in power to oppress and destroy others for many reasons that far supersede differences in religious beliefs and convictions.

CHAPTER III. THE DECLARATION ON THE ELIMINATION OF ALL FORMS OF
INTOLERANCE AND OF DISCRIMINATION BASED ON RELIGION
OR BELIEF, ITS NATURE AND JURIDICAL SCOPE

A. Some background and initial considerations

186. As pointed out in the introduction, the General Assembly's adoption in 1981 of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief was preceded by 20 years of intensive and exhaustive discussion in various organs of the United Nations.

187. Undeniably, the adoption of the Declaration is an enormously important step forward on the difficult path of eradicating discriminatory practices and attitudes of intolerance towards all aspects of the human right to freedom of religion and belief.

189. With the Declaration, the General Assembly has reminded the nations of the world that it is in the higher interests of mankind to put an immediate end to persecution based on religion, or belief and to the manifestations of prejudices that exist in this connection. However, the very length of the process of adopting the Declaration is itself a reflection of how sensitive this issue is. The right to freedom of thought, conscience, religion and belief can be discussed and examined only in the context of the freedom and the equality of all human beings in terms of dignity and rights. To admit that freedom of religion or belief can best be exercised in a clearly defined separation between political power and religion is to raise questions that all touch very closely on the institutions and structures of political power in modern-day States. Hence, in our opinion the international community has decided in the first instance to promulgate a Declaration as the first step towards further measures in the future.

B. Juridical scope of the Declaration

191. The technique followed by the General Assembly in proclaiming declarations of fundamental rights and freedoms of the individual has played an extraordinarily important role in developing the international legal rules pertaining to human rights. Starting with the 1948 Universal Declaration, a lengthy list of declarations has shaped and defined the content of fundamental rights. The juridical scope of these declarations can be viewed from different standpoints. One school of legal thinking has consistently denied the binding effect of such declaration on Member States, since they are issued in the legal form of resolutions of the General Assembly of the United Nations, resolutions which, in principle, are no more than mere recommendations about the conduct to be adopted by those to whom they addressed.

192. If we were to accept this interpretation, a Member State would be under an obligation solely to examine in good faith the substance of the conduct proposed by the Assembly and decide, as appropriate, whether to follow or refuse to follow such conduct in its internal legal system. Accordingly, the freedom of the State would be ensured and private individuals would not be able to lodge complaints with the State's courts or administrative authorities about any rights stemming from the declarations, since the declarations do not constitute instruments that have direct binding force on the Member State of the United Nations.

193. In practice, the work done for 40 years by the United Nations organs and bodies concerned with human rights has gone beyond this restrictive interpretation of the legal effect of General Assembly resolutions. Following the distinction drawn by some writers between international rules which express an "obligation of conduct" i.e. to follow a particular source of conduct, and those which contain an "obligation of result", i.e. to achieve a particular result, it could be said that on the basis of Article 1, paragraph 3, of the Charter of the United Nations, which establishes the general purpose of the United Nations to "achieve international co-operation ... in promoting and encouraging respect for human rights and for fundamental freedoms for all ...", such declarations entail concrete "obligations of conduct" which, although not directly imposed on States, as is compliance with a convention signed by the State, none the less link it to the achievement of the goals set out in such declarations.

194. It follows from this interpretation that a refusal to accept United Nations resolutions on human rights places a State in a position that is incompatible with its status as a Member of the United Nations.

195. Again, in the case of individuals and groups, the declarations adopted by the General Assembly imply "obligations of conduct" regarding respect for the fundamental rights and freedoms of all human beings. Lastly, while the General Assembly's declarations do not give rise to "rights" from the strictly legal standpoint, they do unquestionably contain "values" that should govern the daily conduct of individuals and States and no part of them can be taken away by political action, whether individual or collective, whether by a law, an administrative act or a court interpretation.

C. Contents of the Declaration

196. In the preamble to the 1981 Declaration, the States Members of the United Nations reaffirm that the basic principles of the Charter of the United Nations, the Universal Declaration of Human Rights and the International Covenants on Human Rights regarding the dignity and equality of all human beings are the guiding principles of the Declaration.

197. Consequent upon such principles, the Declaration proclaims that religion or belief, for those who profess them, is one of the fundamental elements in their conception of life and, therefore, freedom of religion or belief should be fully respected and guaranteed. It declares that freedom of religion or belief should also contribute to the attainment of the goals of world peace, social justice and friendship among peoples and to the elimination of ideologies or practices of colonialism and racial discrimination. And it states that the international community is resolved "to adopt all necessary measures for the speedy elimination of such intolerance in all its forms and manifestations and to prevent and combat discrimination on the grounds of religion or belief".

198. In the operative part, the Declaration enumerates the basic principles of freedom of religion or belief stemming from the general right to freedom of thought, conscience and religion. It explicitly includes the freedom to manifest one's religion or belief, subject to such limitations as are prescribed by law and are intended to protect public safety, order, health or morals or the fundamental rights and freedoms of others. These categories of law, as is usual in this kind of instrument, are not defined.

CHAPTER IV. RECOMMENDATIONS

199. In adopting the Declaration, States undertook to prevent and eliminate any discrimination on the grounds of religion or belief by effective measures to this end. Enacting and rescinding legislation are mentioned in the Declaration as being among the measures that can be adopted to prohibit any discrimination of this kind.

200. A particularly important contribution made by the Declaration to the international legal order is undoubtedly the enumeration in article 6 of the specific freedoms covered by the overall freedom of thought, conscience, religion or belief. The freedoms listed in article 6 do not include the freedom of everyone to change his or her religion or belief.

201. Nevertheless, as pointed out in the introduction, this freedom is expressly recognized in article 18 of the Universal Declaration of Human Rights and in article 18 of the International Covenant on Civil and Political Rights. In addition, article 1 of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief states that the right to freedom of thought, conscience and religion includes the freedom of everyone "to have a religion or whatever belief of his choice". All this implies that the 1981 Declaration, without repeating the Universal Declaration or the International Covenant word for word, encompasses the right to change one's religion or belief and to adopt another or to have none at all.

202. Furthermore, the Special Rapporteur is of the view that this right is inseparable from freedom of thought, conscience and religion and that the 1981 Declaration was adopted precisely to struggle for the elimination of each and every form of intolerance and discrimination based on religion or belief, something which necessarily includes a struggle against attitudes, actions or laws that prevent a human being from changing his religion or belief or having none whatsoever, for attitudes, actions or laws of this kind would be intolerant and discriminatory.

203. The 1981 Declaration, by the very fact that it is a resolution, has no machinery for examining the progress made in implementing the principles and measures adopted. But like the Universal Declaration of 1948, the definition of the rights it sets forth and the principles and values that underlie it constitute a firm foundation for a programme of measures and action that should be carried out both by the States Members of the United Nations and the organs and agencies of the United Nations system. At the same time, non-governmental organizations and groups of individuals ought to engage in activities that will help to eradicate discrimination and intolerance based on thought, conscience and religion.

204. This report proposes some measures that could be adopted to safeguard and ensure the freedom of religion and belief of human beings.

205. The brief survey in this report of the current dimensions of the problem of intolerance and discrimination based on religion or belief confirms the assumption that attitudes of intolerance and discrimination by individuals, groups and the State in many countries are a matter of concern. As pointed out in the introduction, the idea that one group is superior to another for reasons of religion or belief has not disappeared. The equality of all human beings, which is the basic tenet of the philosophy of human rights, has still not become a reality. Failure to observe the right to be different continues to be a negation of this essential freedom of not thinking or not acting like the majority or as required by those who wield political power.

206. These conclusions, drawn from an examination of acts which occur every day in our modern world form the basis for the recommendations included in this chapter, which are aimed essentially at helping to eliminate or to prevent and combat intolerance and discrimination based on religion or belief. These measures include some procedures to secure effective application of, and compliance with, the provisions of the 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.

207. When they adopted the 1981 Declaration, the States Members of the United Nations assumed "obligations of conduct" that appear in article 4 of the Declaration, which reads:

"1. All States shall take effective measures to prevent and eliminate discrimination on the grounds of religion or belief in the recognition, 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 belief in this matter."

The text of the article clearly defines the obligation incumbent on States to formulate and implement a suitable policy to guarantee religious tolerance, protect freedom of conscience and eliminate discrimination on the grounds of religion or belief. This policy must be reflected in "effective measures" that will be adopted in "all fields of civil, economic, political, social and cultural life".

208. In the Special Rapporteur's view, these "effective measures" have to be adopted by States within the United Nations system, in other words, within the ambit of the international community and of international law, and again, within each State, in other words, within the ambit of the sovereign action of each State. In both instances, the measures have to be "effective", as required by article 4, quoted above. "Effective" must be taken to mean measures which can be expected to produce a positive result after some time, and not necessarily straightforward. The measures proposed here relate to these fields of action and endeavour to be in keeping with this concept of effectiveness. To begin with, we shall discuss the measures that can be adopted within the United Nations system.

A. Elaboration of an international convention for the elimination of all forms of intolerance and discrimination based on religion or belief

209. As indicated in the introduction, it is now more than 20 years since the elaboration of a draft international convention on this topic has required the attention of the United Nations organs dealing with human rights.

210. In December 1962, the General Assembly initiated the preparation of a draft declaration and a draft convention on the elimination of all forms of religious intolerance. The Sub-Commission completed the draft convention in 1965. The Commission did so in 1967. In the same year, the Assembly started its work on the convention, and the preamble and article 1 were adopted by the Third Committee.

211. From 1973 onwards, the Assembly attached the same priority to the declaration as to the convention, but changed its position and, in 1974, requested the Commission to submit a draft declaration. The work was not completed until 1981, when the text of the Declaration was adopted and proclaimed unanimously.

212. In this report, we have expressed our opinion that, as an instrument of international law, a declaration adopted by the General Assembly of the United Nations imposes on the Member States obligations of conduct and not simply obligations of result, in other words, mere recommendations for which observance is left to the good will of each State.

213. Nevertheless, the continuing dimensions of the problems of discrimination and intolerance on the grounds of religion or belief, as ascertained in the course of preparing this study, point to the urgent need for further legal instruments which will help to banish dogmatism and intolerance among men and among peoples.

214. The unquestionably binding force of the commitments entered into by States parties to a convention, the necessary submission of reports, the establishment of specialized committees to consider the reports, and the extent of the implementation of the convention are all good reasons for proposing that the international community should continue its work to adopt in the short term a convention to eliminate all forms of intolerance and discrimination in regard to religion or belief.

215. The United Nations seminar on the encouragement of understanding, tolerance and respect in matters relating to freedom of religion or belief, held in Geneva, Switzerland, from 3 to 14 December 1984, included among its recommendations:

"(g) The need to develop further international standards for the protection of freedom of religion or belief should be kept under continuing review in the light of experience. While continuing emphasis should be given to the implementation of existing standards, attention should also be given to the question of drawing up an international convention for the promotion and protection of freedom of religion or belief." (SR/HR/SER.A/16, para. 102).

216. Similarly, at the special colloquium held in Haverford, Pennsylvania, United States of America, from 3 to 8 November 1985, which was attended by scholars in religion and related disciplines who represented five of the world's religions, namely Buddhism, Christianity, Hinduism, Islam and Judaism, and came from 13 countries on four continents to discuss "Religious liberty and human rights between nations, in nations and in religions", the final declaration included the following recommendation:

"3. Non-governmental organizations and independent experts should draft the outline for a United Nations convention on the elimination of all forms of intolerance and discrimination on grounds of religion or belief and the promotion of full religious freedom. They should include in the draft the principles and minimum standards of the United Nations Declaration of 1981." 44/

217. Under this recommendation, non-governmental organizations and independent experts are entrusted with the task of working on the preparation of the draft convention. The Special Rapporteur attaches the utmost importance to this work by the groups that have devoted and still devote the best part of their time to the cause of peace and tolerance and respect for everyone's right to freedom of religion and belief, namely non-governmental organizations that specialize in the matter and a substantial number of independent experts. They should again join in promoting with the organs of the United Nations the procedure of drafting an international convention on the subject.

B. Action and activities of United Nations organs and bodies to prevent and eliminate discrimination and intolerance on the grounds of religion or belief

218. Undoubtedly, a prominent place among the United Nations organs which are chiefly concerned with human rights and fundamental freedoms and can perform major work in safeguarding the rights and freedoms of religion or belief goes to the Sub-Commission on Prevention of Discrimination and Protection of Minorities and to the Commission on Human Rights. The following paragraphs sketch out some of the measures that these bodies working in the field of human rights could take in the immediate future.

1. The Sub-Commission on Prevention of Discrimination and Protection of Minorities

219. The activities that could be undertaken by the Sub-Commission in this regard include in particular: (a) inclusion in its annual agenda of the item "The problem of discrimination and intolerance based on religion or belief" as long as these phenomena continue; (b) studies, either by the Secretary-General or by the special rapporteurs of the Sub-Commission, on major aspects of these rights and freedoms; (c) annual consideration of information gathered for the purpose; and (d) the establishment of a sessional working group to help in analysing the information submitted to the Sub-Commission as a result of these activities.

(a) Inclusion of the item "The problem of discrimination and intolerance based on religion or belief" in the Sub-Commission's annual agenda

220. It is suggested that this item should necessarily be included in the agenda of the Sub-Commission's sessions so long as these problems continue to exist. Such a course would give a proper place to this matter in the Sub-Commission's activities during its annual sessions and afford an opportunity to pursue the other activities mentioned above. Hence this is an initial step to engage in the other activities, with the certainty that they will receive attention during the sessions in the years ahead. In the Special Rapporteur's opinion, the current situation fully warrants this new measure.

(b) Preparation of studies on major aspects of this topic

221. The United Nations seminar on the encouragement of understanding, tolerance and respect in matters relating to freedom of religion or belief, held in Geneva from 3 to 14 December 1984, recommended, among other things:

"(a) In the context of the Second Decade to Combat Racism and Racial Discrimination, the seminar recommends that studies also be made of situations where intolerance, denial of religious freedom and discrimination on grounds of religion or belief is linked to discrimination on grounds of race or ethnic or national origin" (SR/HR/SR. A/16, para. 102)

Such studies could be entrusted to the Secretary-General or to Special Rapporteurs of the Sub-Commission and should cover major aspects of the topic which have not yet been examined. They could in the view of this Special Rapporteur, include at least the following very important issues:

- (i) Discrimination against women, within Churches and within religions. It is only too well known that, historically, women have been the object of discrimination on grounds of sex, in religions such as Christianity, Judaism and Islam. The way in which women have been disregarded and pushed aside in the ceremonies of worship, in becoming ministers of religion and having a part in the hierarchical organization of Churches, for example, calls for immediate attention by the organizations of the United Nations system. Accordingly, it is specifically recommended that the Sub-Commission should undertake studies in this regard;
- (ii) Discrimination against and intolerance of ancient or centuries-old religions which are not organized in the form of Churches or the like and are not considered as part of the group of "major religions";
- (iii) The "official religions" or those which enjoy recognition as the religion of the majority of the peoples in a number of States, along with their behaviour and the conduct of the public authorities in those countries regarding other religions or beliefs;
- (iv) The emergence of new religions, their content and the practices of the sects which claim to support or actually support them.

(c) Annual review of the world-wide situation regarding the rights and freedoms of religion or belief and related problems of discrimination and intolerance

222. As yet another part of the consideration of the item on the Sub-Commission's annual agenda and in addition to the examination of studies submitted by the Secretary-General, by the special rapporteurs specially appointed by the Sub-Commission or prepared by non-governmental organizations or recognized experts and authorities, with the assistance of the working group referred to below a review should be conducted of the information gathered for this purpose.

223. The special rapporteur is of the opinion that, pending the adoption signature and ratification of an international convention containing appropriate and effective measures of implementation, including arrangements for a lasting review of the world-wide situation in regard to the rights and freedoms of religion or belief on the basis of periodic reports required under the convention, it is essential to set up an information system for the situation to be scrutinized by the United Nations bodies dealing with human rights and fundamental freedoms. To this end, procedures should be devised for gathering and reviewing the relevant information and proposing any measures deemed advisable in the light of the circumstances and of the international instruments currently in force. The information should, on the basis of annual requests by the Secretary-General, come from Governments, United Nations organs and bodies, specialized agencies, regional intergovernmental organizations, non-governmental organizations in consultative status and bodies with special competence in the matter.

224. In this connection, it would be possible to resort to Article 64 of the Charter of the United Nations. It is well known that, under this Article of the Charter, the Economic and Social Council may make arrangements with Member States and with the specialized agencies to obtain reports on the steps taken to give effect to its own recommendations and to recommendations on matters falling within its competence made by the General Assembly - a typical course in the case of the Declaration of 25 November 1981 (resolution 36/55).

225. Pursuant to this recommendation, the Economic and Social Council could be requested, through the Commission on Human Rights, to make special arrangements with the Member States and with the above-mentioned organizations and bodies for reports on specific action taken to implement the obligations set forth in the Declaration.

226. These reports from States, organizations and bodies would be considered in the first instance by the Sub-Commission and transmitted to the Commission on Human Rights, which would make the appropriate recommendations to the Council after considering the Sub-Commission's work on the reports. In keeping again with Article 64 of the Charter, the Council could then communicate its observations on the reports to the General Assembly.

227. The Special Rapporteur thinks it worthwhile to reiterate that, until such time as an international convention establishing machinery for a periodic review of the world-wide situation regarding freedom of religion or belief enters into force, this recommendation could fulfil the aim of keeping under continuous review the situation regarding the observance of these essential human rights and improving it through the relevant recommendations and the action that would be taken in accordance with the findings of the review.

(d) Establishment of a sessional working group of the Sub-Commission to assist in the preliminary consideration of the information gathered and to submit conclusions and recommendations to the plenary of the Sub-Commission

228. It is suggested that a working group should be established and, in accordance with the usual principle of equitable geographical distribution in such cases, should consist of one member from each of the Sub-Commission's five geographical groups. It would be appointed at the end of each session in order to start work at the following session. The Chairman of the Sub-Commission would appoint the members in consultation with the groups in question. The working group's functions would be to help in the consideration of the studies prepared at the Sub-Commission's request and the information submitted pursuant to the note verbale sent out at the end of each year in sufficient time for the next session. The group would submit a report containing conclusions and recommendations to the plenary of the Sub-Commission, which would consider it along with other relevant data under the appropriate item and, in turn, submit its conclusions and recommendations to the Commission on Human Rights.

2. The Commission on Human Rights

229. The Commission could take the following measures: (a) inclusion of the item in its annual programme of work; (b) consideration of the report by the special rapporteur on the topic; (c) contribution to the preparation of the draft convention on the rights and freedoms of religion or belief; and (d) annual establishment of a working group to meet during the Commission's session and elaborate the draft convention and submit any appropriate recommendations to the plenary of the Commission.

(a) Inclusion of the item in the annual programme of work

230. The Commission, like the Sub-Commission, should deal each year with this important item and, accordingly, it has to be included in the annual programme of work. In the coming year the Commission will necessarily have to deal with this topic because it has appointed a Special Rapporteur to examine and study situations that exist or may arise and to submit a report to the Commission at its forty-third session, in 1987. The Commission will also have to discuss the normative side of this matter in order to carry on the excellent work done in the past on this sensitive subject.

(b) Consideration of the report of the Special Rapporteur appointed

231. To fulfil his mandate, the Special Rapporteur will have not only to examine the relevant situations referred to in the preceding paragraph but to submit a report to the Commission that contains conclusions and suggestions.

232. Justice cannot be done to the Special Rapporteur's work unless sufficient time is set aside to consider the report, the cases submitted, the conclusions reached and the suggestions and recommendations the Special Rapporteur deems fit to submit to the Commission. Under resolution 1986/20, of 10 March 1986, the Commission decided to appoint for one year a special rapporteur whose tasks can well be of enormous importance in the struggle to secure effective

observance of the rights and freedoms of religion or belief. Under the terms of the resolution, he will be required to examine the incidents that occur and propose remedial measures. He will have to work independently and with discretion. He will submit a report to the Commission that includes his assessment of the dimensions of incidents inconsistent with the principles of the Declaration. There can be no doubt that this work will not be completed in the course of this year and will have to be continued for some time. This means that the Commission's annual review of the situation regarding the rights and freedoms of religion or belief throughout the world will be based on reliable and verified facts and considerations that will unquestionably afford a firm foundation for the conclusions and recommendations that will be submitted to the Economic and Social Council and for the resolutions that will be adopted on specific situations. At the same time, this will lead to a more accurate perception of the requisite substance of the norms to be worked out for the draft convention which forms yet another aspect of the Commission's work on this subject.

(c) Contribution to the preparation of the draft convention

233. As already indicated in the body of this report, the Special Rapporteur is of the opinion that arrangements should be made as soon as possible to resume the work on elaborating the draft convention. The draft prepared in 1967 could, at least initially, form the basis for this work. The conduct of States, viewed in the light of the principles enunciated in the 1981 Declaration and enriched by the lessons that will be drawn from studying such conduct and examining situations and incidents of importance will provide clear guidance for the Commission's work in this regard, particularly if the relevant information brought to the attention of the Commission is sifted and classified by the efforts of a small group of the Commission's members who will concentrate on these tasks during the annual session. For this purpose, it is fitting to make the suggestion contained in the next paragraph.

(d) Annual establishment of a working group of the Commission

234. The Special Rapporteur takes the view that these tasks in connection with the item on the rights and freedoms of religion or belief, and particularly the elaboration of the draft convention, will be made easier and will be streamlined by establishing every year a working group of the Commission. It could be appointed at the end of a session for the next session and could, on the basis of equitable geographical distribution, consist of members from the geographical groups in the Commission. It could be "open-ended" in that the group could also undertake a preliminary review of the situations and incidents brought to the Commission's attention, either as a result of the work of the Sub-Commission, the fulfilment of the mandate of the Commission's Special Rapporteur and matters submitted directly by members of the Commission or by accredited observers from Governments, the specialized agencies, regional intergovernmental organizations or non-governmental organizations attending the Commission's sessions. The Commission might consider establishing an informal open-ended working group for the session, without prejudice to establishing a more formal working group or adopting any other appropriate course for future sessions, with the aim, more particularly, of engaging in the elaboration of the draft convention on religion or belief.

3. Activities by the specialized agencies of the United Nations system

235. One of the recommendations reached at the United Nations seminar held in Geneva in December 1984 was the following:

"(k) Adequate publicity for international standards dealing with the freedom of religion or belief is also crucial. The seminar recommends that the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief be translated into as many national and local languages as possible and disseminated throughout the world. An urgent action programme should be launched to this effect by the United Nations, specialized agencies concerned, especially UNESCO and the ILO, regional intergovernmental organizations and non-governmental organizations in consultative status". (ST/HR/SER.A/16, para. 102).

236. The Special Rapporteur recommends that the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the International Labour Organization (ILO) should each include in their activities specific programmes for preventing and combating all manifestations of intolerance and discrimination, particularly those based on religion or belief. UNESCO, which works precisely in the educational and cultural fields, could devise a world-wide year-long campaign to publicize the principles and the significance of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief. A programme of this kind could best be planned and carried out by UNESCO itself, which has specialized technical personnel in the sciences of education and communications.

237. By means of posters, brochures, audio-visual methods and suitable educational material, UNESCO could lead a world-wide crusade against intolerance and discrimination and promote human rights, tolerance and respect for the right to be different and to think differently. The campaign should aim, in the first place, at moulding attitudes so as to eliminate prejudices and stereotypes among children and adolescents, and also among teachers. Secondly, the campaign would be aimed at heads of families, public officials and the mass media.

238. Similarly, an organization like UNICEF could join in a campaign of this kind.

239. As to action by the ILO, a suggestion could be made for it to examine communications and reports that it receives from workers' and employers' organizations in order to detect manifestations of intolerance or discrimination in the labour field that are based on religion or belief. Depending on the problem involved, the ILO would, in the way it deemed best, transmit the relevant information to the competent organ of the United Nations.

240. With regard to prevention, both of these organizations could make a highly positive contribution by introducing the topic of the 1981 Declaration into their courses, seminars and other activities for the training of teachers and educators in the case of UNESCO, and of workers and employers in the case of ILO.

C. Action by the States Members of the United Nations

(1) In internal law

241. At the United Nations seminar held in Geneva in 1984, one which has already been mentioned so many times, it was recommended:

"(a) High priority [should] be given to activities for the implementation of United Nations standards for the protection of freedom of religion or belief and in particular the Universal Declaration of Human Rights, the International Covenants on Human Rights and the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief;

(b) Each State, in accordance with its own constitutional system, should provide, if necessary, adequate constitutional and legal guarantees for freedom of religion or belief consistent with the provisions of the Universal Declaration of Human Rights, the International Covenants on Human Rights and the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, with a view to ensuring that freedom of religion or belief is assured in a concrete manner, discrimination on grounds of religion or belief is proscribed, and adequate safeguards and remedies are provided against such discrimination" (ST/HR/SER.A/16, para. 102).

242. All the foregoing recommendations, which the Special Rapporteur fully endorses, are clearly founded on the obligations incumbent upon States under the terms of article 4, paragraph 1, of the 1981 Declaration, which was reproduced above. Similarly, States must make all efforts to enact or rescind legislation where necessary to prohibit any such discrimination on the grounds of religion or belief (art. 4, para. 2).

243. Nevertheless, without detracting from the important task of reviewing national legislation and bringing it into line with the rules of international law, either by rescinding conflicting legislation or enacting laws to incorporate in internal law the values and principles contained in international standards, this Special Rapporteur feels it is essential to point out that the paramount task for each of the States Members of the United Nations lies in the field of education and teaching.

(2) Teaching and education

244. The Special Rapporteur's mandate under Sub-Commission resolution 1983/31 specified the need to include recommendations as to specific measures that can be adopted to combat intolerance and discrimination on the grounds of religion or belief "with special emphasis on action that can be taken in the field of education". The seminar held in Geneva in 1984 recommended that:

"(f) The spirit of tolerance [should] prevail throughout society, in the family, in the workplace, in education in schools and teaching institutions of all types, from kindergarten to universities. The importance of education for tolerance from the earliest years should be emphasized,

(g) The curricula for educating teachers and tutors for schools and institutions of learning of all types and levels [should] emphasize the importance of human rights and deal with freedom of religion or belief in the context of an understanding of the international instruments on human rights" (SE/HR/SER.A/16, para 102).

245. In the introduction, it was pointed out that the serious problem of manifestations of intolerance and discrimination in regard to freedom of religion does not lie exclusively in national legal systems. The root causes of such attitudes and behaviour among human beings are social and cultural. This means that, if the phenomena of intolerance and discrimination in all forms are to be eliminated, a change must necessarily take place in the attitudes adopted by human beings, a change which can be achieved only through a consistent process of education that encompasses the family and society. Consequently, this Special Rapporteur considers that the obligation incumbent on States under article 4 of the 1981 Declaration to establish and implement a suitable policy to guarantee the religious tolerance, protect freedom of conscience and eliminate discrimination on the grounds of religion or belief would have to consist, essentially, in devising and applying a policy for human rights education.

246. The recent history of fostering education in human rights has produced two instruments of enormous importance: the Recommendation concerning Education for International Understanding, Co-operation and Peace and Education relating to Human Rights and Fundamental Freedoms, adopted by UNESCO in 1974, and the Final Document of the International Congress on the Teaching of Human Rights, held under the auspices of UNESCO in Vienna in 1978 (see E/CN.4/274/Add.1 - E/CN.4/132/Add.1, annex I).

247. The point of departure of the 1974 Recommendation is to cover all stages and forms of education, and it sets out a number of guiding principles designed, firstly, to highlight the normally limited scope of educational activity by States and by UNESCO itself, for it simply reaches a limited number of young people and adults, and secondly, to draw attention to the fact that educational programmes and methods must include an international dimension for a comprehensive understanding of the problems that affect us all, a dimension that is missing.

248. The international community has displayed its concern for education of this kind ever since the inception of the United Nations. This is immediately apparent from article 26, paragraph 2, of the Universal Declaration of Human Rights, which conveys of human rights education not as an end in itself but as a means of developing the conscience of human beings.

249. UNESCO's 1974 Recommendation and the principles and considerations set forth in the Final Document of the 1978 International Congress in Vienna should act as the fundamental guidelines for human rights education and teaching programmes. Some of these basic principles should be the following:

Both human rights education and human rights teaching should be based on the international Bill of Human Rights and other international instruments;

Equal importance should be attached to teaching all human rights, in view of their universal and indivisible character;

Human rights should be taught not in the conventional or traditional way, for new realities and problems should be dealt with, such as self-determination, exploitation and all forms of discrimination;

Concern must be shown at all times to foster a clear awareness of the close links between human rights, peace and development.

250. In the light of these principles, the educational policy that should be formulated and applied by States to prevent and eliminate all forms of intolerance and discrimination necessarily includes organization of the role to be fulfilled by the educational system in the process of promoting and changing attitudes. Specialists in the matter point out that a process of education is a process of apprenticeship based on attitudes towards handling knowledge and information. However, it is not sufficiently clear what strategies should be employed to arrive at changes of a cultural kind, for as we have already said, it is precisely in cultural attitudes that we find the prejudices which breed intolerance.

251. On the question of how to cover human rights teaching - apprenticeship in traditional educational system, there are a number of answers which can, in simplified form, be classed in two major categories. On the one hand there are the answers which might be termed "incorporation of content" namely, that it is enough to include human rights in some existing school subject, or at most to work out a specific subject so that pupils and students will achieve the goals set by the educational system. There are two objections to this stance. One is that the conception of human rights underlying this position is merely declaratory, nominalistic, and thus reduces them to a set of data; Formulating them is enough to ensure that they exist in reality. The second objection is the widespread criticism of educational systems in terms of curricular encyclopaedism. The addition of topics or subjects reinforces such encyclopaedism and makes the work of teaching institutions more questionable.

252. The other category of answers to this problem may be termed "integration within the existing curriculum", which starts out from the principle that information on human rights is of little significance in the teaching-apprenticeship process in primary or secondary education. At these levels, the important thing is the practice and experience of human rights, rather than the philosophical foundations, the legal concepts or the historical developments. It is, in short, a process of forming attitudes, and the requisite ingredients are knowledge, affective levels and manifestations of behaviour. The necessary information does not relate to human rights but concerns the situations in which they come into play. Hence, from this standpoint it is necessary not only to include a special human rights content but also to change the approach. In other words, with the current syllabus content in the most common systems of education, it is perfectly easy to arrive at teaching - apprenticeship processes that will promote and strengthen the full exercise of human rights. Only a new way of seeing or doing things is needed. This applies particularly to primary and secondary education. If education is viewed as the dynamics that can develop and perfect the human qualities of those who are involved in the process, human rights teaching consists in shaping attitudes of respect and tolerance that are directly bound up with the principles and the practice of human rights.

253. A UNESCO document lists the attitudes and knowledge to be developed in human rights apprenticeship and teaching and they can be summed up as follows:

"1. An attitude of acceptance of people of different race, religion, culture and nationality;

(a) Recognition that all people are equally entitled to basic human rights;

(b) Tolerance of differences in beliefs, customs, social, economic and political systems;

(c) Appreciation of the contribution of "foreign" people to valued aspects of civilization;

(d) Interest in and recognition of the validity of the arts of other cultures, with some capacity to enjoy them;

(e) Capacity and desire to look at questions of many kinds from the point of view of foreign people; to "enter into the skin" of others;

(f) Disposition to derive generalizations about foreign peoples and opinions about individuals from evidence rather than from stereotypes and prejudices;

(g) Desire to co-operate with and help foreign people for the alleviation of suffering, the achievement of human rights and the maintenance of peace;

(h) Disposition to look at major problems facing nations today from a global or world-wide point of view as well as from the national point of view.

2. Knowledge and understanding about foreign peoples and countries, about the human race and about the condition of human society today is necessary, useful and appropriate for cultivating qualities such as these. The scope of such knowledge is without limits". 45/

254. If these results are to be achieved, at least two features are required in the current teaching-apprenticeship process:

(a) Teaching which, in particular, is removed from dogmatism and involves constant analysis, assessment and criticism of the content of the teaching;

(b) Unrestricted freedom of public expression of thought, criticism and counter-criticism regarding the topics dealt with.

These two conditions are essential, any impairment of either of them will have direct repercussions on the possibility of achieving these aims.

255. The Special Rapporteur considers that, among the most important programmes States can develop in keeping with the postulates of human rights teaching, the training of the teachers occupies a prominent place. Clearly, if the teacher is not properly trained, it will be difficult to achieve the

above-mentioned aims in the human rights teaching-apprenticeship process. Similarly, text books have a very great impact and special care is required in preparing them.

256. Lastly, in an educational process that is aimed essentially at changing attitudes, it is important to select teaching methods which are consistent with the knowledge that is being provided and the practices that are being fostered. They must be methods that act as a spur for student participation, that allow for different views, that open up the mind, that systematically seek to develop the thinking process and that bring to a child, from his earliest years, a clear awareness of the intrinsic freedom of every human being and of the equality, in terms of values and rights, of all members of the human race.

257. Change through education is, as we all know, a slow business. Things change much more slowly than people suppose. Social reform, and even revolution, do not necessarily imply a change in attitudes, and the struggle to defend human freedom is unceasing. But this change and this struggle through education will always bring us the true victories of peace.

D. Action by non-governmental organizations and religious bodies and groups

258. The Special Rapporteur recommends, as did the seminar held in Geneva in December 1984, the following:

"(h) Religious bodies and groups at every level have a role to play in the promotion and protection of religious freedoms or beliefs. They should foster the spirit of intolerance within their ranks and within religions or beliefs. Inter-faith dialogue based on the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief should be pursued at all levels. The seminar also recommends that the text of the Declaration be disseminated to their members as a basis for instruction and that religious bodies consider recommending a common day of prayer or of dedication to the aims set out in the Declaration. Other groups are similarly recommended to consider a day of dedication to the aims of the Declaration;

"(p) Non-governmental organizations have an important role to play in the promotion and protection of freedom of religion or belief. They may initiate, develop, publish and present proposals on tolerance, on issues of religion or belief. They may also play a valuable role in disseminating international standards, particularly the text of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief" (SR/HR/SRR.A/16, para.107).

259. The colloquium on human rights and religious freedom held in Haverford, Pennsylvania, in November 1985, mentioned in paragraph 216 above, also enumerated in its final declaration important tasks to be carried out by non-governmental organizations and religious groups, and the Special Rapporteur endorses the recommendations, which state:

"2. Non-governmental organizations should explore the possibility of establishing, individually or collectively, an independent documentation centre to supply the public with information on violations of religious freedom and on manifestations of intolerance in matters of religion or belief, as defined in the 1981 United Nations Declaration)

4. The United Nations General Assembly should declare 25 November as the 'Day of Religious Freedom' in order to celebrate the day on which the 1981 Declaration was adopted and in order for it to act as a focal point and a stimulus for educational and promotional activities in support of the Declaration". */

260. The common day of prayer and day of dedication to the aims set out in the 1981 Declaration, recommended by the United Nations seminar held in December 1984, could well be 25 November, as urged by the theologians who met in Pennsylvania. The General Assembly should adopt such a course, but the Special Rapporteur would add the recommendation that 25 November should be declared by the General Assembly as the "Day of Freedom of Religion or Belief", so as to bring it more into line with the spirit of the 1981 Declaration.

261. Reconciliation and understanding that lead to respect and tolerance between various religious conceptions and different beliefs are possible only through dialogue. This is categorically affirmed in the recommendations of the experts who met in Geneva in 1984, and is endorsed by the theologians who met in Pennsylvania in 1985, as pointed out earlier.

262. The aim is to speak with and learn from one another. An attitude of dialogue will alone enable us to reach a proper understanding of members of our own religion or belief and those of other religions or creeds and live with them as neighbours, each of us enjoying full freedom of thought, conscience, religion or belief. This dialogue between equals, which was proposed by the Second Vatican Council (par cum pari), an inter-faith and inter-ideology dialogue, is possible only if it is founded on mutual trust, and the participants will have to be completely sincere and honest. The fundamental purpose of dialogue is to learn, in other words, to change and to grow in the perception of reality and, therefore, to act accordingly. 46/

263. The tasks proposed for States in these recommendations to alter attitudes among their peoples through education, and the work which, it is suggested, should be done by non-governmental organizations, religious groups and all those who promote freedom of thought, conscience, religion and belief in order to engage in dialogue in which each participant will learn from the other, so that everyone may change and grow, would in the opinion of the Special Rapporteur be the best ways to combat intolerance and discrimination based on religion or belief. Or to put it another way, the best ways to become aware of the inescapable obligation incumbent upon us all to use at least part of our time to change the world.

*/ Translator's note: The recommendations are translated from Spanish.

Notes

- 1/ Study of Discrimination in the Matter of Religious Rights and Practices (United Nations publication, Sales No. 60.XIV.2).
- 2/ The term "religion or belief" is used in the present study, as it was in the study prepared by Mr. Krishnaswami, to include all beliefs, whether theistic, non-theistic, or atheistic.
- 3/ Resolution 1510 (XV).
- 4/ Resolution 1781 (XVII).
- 5/ Resolution 3027 (XXVII).
- 6/ For the text, see resolution 36/55 of 25 November 1981.
- 7/ Resolution 37/187.
- 8/ Sub-Commission resolution 1983/31.
- 9/ For a summary of the relevant activities of these Committees, see annex.
- 10/ United Nations publication, Sales No. 60.XIV.2.
- 11/ *Ibid.*, pp. 59-60.
- 12/ *Ibid.*, p. 60.
- 13/ Commission resolution 1986/20 of 10 March 1986.
- 14/ Argentina, Bolivia, Bulgaria, Burundi, Byelorussian Soviet Socialist Republic, Cape Verde, Chad, Colombia, Costa Rica, Czechoslovakia, Denmark, Finland, France, German Democratic Republic, Germany, Federal Republic of, Ghana, Israel, Italy, Madagascar, Mauritius, Netherlands, Niger, Pakistan, Panama, Peru, Portugal, Qatar, Rwanda, Spain, Sudan, Thailand, Trinidad and Tobago, Turkey, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland and United States of America.
- 15/ Copies of the appendices, which the Special Rapporteur considers to be an integral part of the present report, are available for consultation in the files of the Secretariat.
- 16/ Some overlapping of categories is to be found: for example, both Cape Verde and Spain, which have no official religions, protect legally-recognized religious groups.
- 17/ Czechoslovakia, Denmark, Finland, France, Iraq, Israel, Madagascar, Mauritius, Morocco, Niger, Pakistan, Panama, Portugal, Rwanda, Spain, Sudan, Sweden, Syrian Arab Republic, Trinidad and Tobago, Ukrainian SSR, USSR, Venezuela and Zambia.

18/ Australia, Bahamas, Barbados, Colombia, Cyprus, Czechoslovakia, Denmark, Ecuador, Finland, German Democratic Republic, Germany, Federal Republic of, Iraq, Israel, Italy, Jamaica, Mauritius, Morocco, Pakistan, Peru, Portugal, Qatar, Spain, Switzerland, Trinidad and Tobago, Turkey and Ukrainian SSR.

19/ Chile, Colombia, Denmark, Ecuador, Finland, Germany, Federal Republic of, Ghana, Guatemala, Honduras, Iraq, Israel, Italy, Jamaica, Jordan, Netherlands, Pakistan, Peru, Portugal, Qatar, Rwanda, Spain, Switzerland, Thailand, Trinidad and Tobago, Turkey, Ukrainian SSR, United Kingdom and Venezuela.

20/ In this connection the Special Rapporteur would like to point out that the right of parents to choose the kind of education that shall be given to their children, which is almost universally accepted, has been formulated in different wordings in article 26, paragraph 3, of the Universal Declaration of Human Rights, article 5 (b) of the UNESCO Convention against Discrimination in Education, article 13, paragraph 3, of the International Covenant on Economic, Social and Cultural Rights and article 5 of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief. Some confusion as to its content is almost inevitable.

21/ Barbados, Bulgaria, Byelorussian SSR, Cape Verde, Chile, Colombia, Cyprus, Ecuador, Finland, Germany, Federal Republic of, Guatemala, Israel, Italy, Jamaica, Madagascar, Monaco, Netherlands, Peru, Portugal, Rwanda, Spain, Sweden, Thailand, Tonga, Trinidad and Tobago, Turkey, Ukrainian SSR, United Kingdom and Zambia.

22/ The precise meaning of "public safety" is unknown to the Special Rapporteur, although the term appears in other international instruments such as the International Covenant on Civil and Political Rights (art. 18).

23/ Bahamas, Bulgaria, Byelorussian SSR, Chile, Czechoslovakia, Denmark, German Democratic Republic, Honduras, Israel, Italy, Mauritius, Mexico, Morocco, Netherlands, Pakistan, Peru, Portugal, Qatar, Rwanda, Spain, Sudan, Sweden, Syrian Arab Republic, Thailand, Trinidad and Tobago, Turkey, Ukrainian SSR, USSR, United Kingdom and Venezuela.

24/ Bulgaria, German Democratic Republic, Germany, Federal Republic of, Iraq, Israel, Italy, Netherlands, Pakistan, Portugal, Qatar, Rwanda, Spain, Suriname and Trinidad and Tobago.

25/ Israel, Italy, Netherlands and Pakistan.

26/ Denmark, Ecuador, German Democratic Republic, Israel, Netherlands, Pakistan, Panama, Portugal, Qatar, Rwanda and Sweden.

27/ Bahamas, Barbados, Chile, German Democratic Republic, Israel, Jamaica, Netherlands, Pakistan, Portugal, Rwanda and Venezuela.

28/ Costa Rica, Czechoslovakia, Israel, Italy, Netherlands, Pakistan, Qatar and Rwanda.

29/ Czechoslovakia, Israel, Netherlands, Pakistan and Rwanda.

30/ Federal Republic of Germany, Iraq, Israel, Italy, Netherlands, Pakistan, Qatar, Rwanda and Trinidad and Tobago.

31/ German Democratic Republic, Iraq, Israel, Italy, Pakistan, Rwanda and Trinidad and Tobago.

32/ It was considered important to consult the Declaration which, as the Special Rapporteur was informed, the General Assembly adopted at the end of 1985 on the basis of the study prepared by Mrs. Eiles on the rights of non-citizens (see the annex to General Assembly resolution 40/144 of 13 December 1985).

33/ Leonard Swidler, Human Rights and Religious Liberty from the Past to the Future, (Philadelphia, Pa. Ecmendical Press, 1986), p. vii.

34/ Working Paper submitted to the United Nations seminar on the encouragement of understanding, tolerance and respect in matters relating to freedom of religion and belief by the International Association for the Defence of Religious Liberty (HR/GENEVA/1984/WP.2).

35/ Working Paper submitted to the seminar by the Holy See (HR/GENEVA/1984/WP.4, p. 5).

36/ Gordon Allport, The Nature of Prejudice, (Cambridge, Massachusetts, USA, Addison-Wesley, 1954).

37/ Study paper on religious liberty, prepared for the Central Committee of the World Council of Churches by the Commission of the Churches on International Affairs, 1981, paras. 2.2 and 2.5-2.11.

38/ *Ibid.*, paras. 3.4, 3.6 and 3.7.

39/ Gordon Allport, *op.cit.*, p. 446.

40/ *Ibid.*

41/ *Ibid.*, p. 449.

42/ *Ibid.*

43/ *Ibid.*, p. 447.

44/ Religious Liberty and Human Rights in Nations and in Religions, edited by Leonard Swidler, Philadelphia, 1986, p. 246. The Special Rapporteur received an invitation and took part as an observer at the colloquium, which was held under the auspices of the Journal of Documental Studies, the Department of Religion of Temple University and the Jacob Blaustein Institute for the Development of Human Rights, New York.
[Translator's note: The recommendation has been translated from Spanish].

45/ United Nations Educational, Scientific and Cultural Organization, Some suggestions on teaching about human rights, Paris, UNESCO, 1969, pp 16-17.

46/ Leonard Swidler, The Decalogue of Dialogue, basic rules for inter-faith and inter-ideology dialogue, Temple University, p. 251.

Annex

RELEVANT ACTIVITIES OF THE COMMITTEE ON THE ELIMINATION OF
RACIAL DISCRIMINATION AND THE HUMAN RIGHTS COMMITTEE

1. Both the Committee on the Elimination of Racial Discrimination (CERD) and the Human Rights Committee have dealt with questions relating to intolerance and discrimination on grounds of religion or belief in the course of their activities implementing the International Convention on the Elimination of All Forms of Racial Discrimination and the International Covenant on Civil and Political Rights respectively.

2. The Committee on the Elimination of Racial Discrimination, consisting of 18 experts serving in their personal capacity, receives reports from States parties to the Convention on the legislative, judicial, administrative or other measures which they have adopted and which give effect to the provisions of the Convention, reviews them, and reports annually to the General Assembly on its activities. Under article 14 of the Convention, a State party may declare that it recognizes the competence of the Committee to receive and consider communications from individuals or groups of individuals within its jurisdiction claiming to be victims of a violation by that State party of any of the rights set forth in the Convention. The Convention entered into force on 20 November 1963; article 14 came into force on 3 December 1982, following deposit of the tenth declaration of a State party recognizing the competence of the Committee with regard to the communications mentioned therein. The Committee's work under article 14 has not yet reached the reporting stage.

3. Under article 5 of the 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 a number of rights, including the right to freedom of thought, conscience and religion.

4. Constituted in 1969, the Committee held 32 sessions up to the end of 1985. At many of those sessions, in the course of examining the periodic reports of States parties to the Convention, it has considered various aspects of intolerance and discrimination based on religion or belief. In particular, members of the Committee raised questions and requested information with respect to the following matters:

- (a) Situation of persons belonging to non-dominant religions or beliefs, or to religious minorities; a/
- (b) Protection of members of indigenous religions; b/
- (c) Protection of the right to manifest one's religion or belief in worship, observance, practice, teaching or instruction; c/
- (d) Prevention and elimination of discrimination based on religion or belief; d/
- (e) Prevention of discrimination in matters of civil law; e/

- (f) Limitations on activities based on religion or belief; f/
- (g) Relations between State and Church. g/

5. The Human Rights Committee, consisting of 18 nationals of the States parties of high moral character and recognized competence in the field of human rights, also receives reports from States parties on the measures they have adopted which give effect to the rights recognized in the Covenant and on the progress made in the enjoyment of those rights, studies them, and reports annually to the General Assembly on its activities. Under article 41 of the Covenant, a State party may declare that it recognizes the competence of the Committee to receive and consider communications to the effect that a State party claims that another State party is not fulfilling its obligations under the Covenant. Under article 42, an ad hoc Conciliation Commission may be set up to deal with a matter referred to the Committee in accordance with article 41 which has not been resolved to the satisfaction of the States parties concerned. To date, neither the procedure established in article 41 nor that established in article 42 has been applied.

6. Under the Optional Protocol to the International Covenant on Civil and Political Rights, a State party to the Covenant that becomes a party to the Protocol recognizes the competence of the Human Rights Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by that State of a right set forth in the Covenant. Individuals who make such a claim, and who have exhausted all available domestic remedies, are entitled to submit written communications to the Committee. The Committee, after deciding upon their admissibility, brings such communications to the attention of the State party concerned, which must submit to the Committee within six weeks written explanations or statements clarifying the matter and indicating the remedy, if any, that it might have taken. A summary of the Committee's activities in this area is included in its annual report to the General Assembly.

7. Constituted in 1976, the Committee had held 35 sessions by the end of 1985. At many of these sessions in the course of examining the periodic reports of States parties to the Covenant, it considered various aspects of intolerance and discrimination based on religion or belief. In particular, members of the Committee have raised questions and requested information with respect to the following matters:

- (a) Privileges enjoyed by a national Church or dominant religion; extent of rights enjoyed by adherents of other religions, by non-believers, and by atheists; h/
- (b) Scope of freedom of religion or belief in regard to education, employment, access to public service and conditions of work; i/
- (c) Legal restrictions on freedom of religion and belief, guarantees of protection against discrimination based on religion or belief, rights of individuals who claim that their freedom of religion or belief has been violated; j/
- (d) The age at which children may choose their own religion or belief; k/

Notes

- (e) Treatment and legal protection of conscientious objectors to military service; 1/
- (f) Protection of members of indigenous religions. 2/
8. In its views on the merits of communications prepared in accordance with article 5, paragraph 4, of the Optional Protocol, the Committee has explained its understanding of the right to freedom of religion (article 18 of the Covenant).
9. The Committee has examined the right of atheist parents to secure exemption for their children from religious instruction in accordance with article 18, paragraph 4, of the Covenant, which provides that "States parties ... undertake to have respect for the liberty of parents ... to ensure the religious and moral education of their children in conformity with their own convictions". Although the Committee found (case No. 40/1978) that the author's submissions did not substantiate his allegation of a violation of article 18, the State party concerned has taken action in response to the Committee's views by revising a law and charging the Board of Education with closer inspection of instruction in ethics and the history of religions. 3/
10. In another case (No. 185/1984) the author claimed that the failure of the State party concerned to recognize his status as a conscientious objector made him a victim of a breach of articles 18 and 19 of the Covenant. The Committee, however, declared the communication inadmissible because "the Covenant does not provide for the right to conscientious objection; neither article 18 nor article 19 of the Covenant, especially taking into account paragraph 3 (c) (ii) of article 8, can be construed as implying that right". 4/
11. In 1981, the Committee began to formulate general comments to assist States parties inter alia to (a) promote further their implementation of the Covenant; (b) draw their attention to patterns showing insufficiencies in their reports; and (c) propose ways to improve the reporting procedure. The Committee has since issued general comments on 12 articles of the Covenant, but not on article 18. 5/

Notes

- 6/ Official Records of the General Assembly, Twenty-eighth Session, Supplement No. 18 (A/9018), paras. 237, 238. Twenty-ninth Session, Supplement No. 18 (A/9618), paras. 135 and 137, Thirtieth Session, Supplement No. 18 (A/10018), para. 92, Thirty-first Session, Supplement No. 18 (A/31/18), paras. 87, 89 and 131, Thirty-second Session, Supplement No. 18 (A/32/18), paras. 98-100, 102, 227, 228, 273-275, 280; Thirty-third Session, Supplement No. 18 (A/33/18), paras. 253, 285, 286, Thirty-fourth Session, Supplement No. 18 (A/34/18), paras. 224, 230, 237, Thirty-fifth Session, Supplement No. 18 (A/35/18), paras. 90, 92, 262, 265, 352, 358, Thirty-sixth Session, Supplement No. 18 (A/36/18), paras. 96, 105 and 396, Thirty-seventh Session, Supplement No. 18 (A/37/18), paras. 270, 276, 290, 294, Thirty-eighth Session, Supplement No. 18 (A/38/18), paras. 140, 294, 296, Thirty-ninth Session, Supplement No. 18 (A/39/18), paras. 254, 260, 291, 295, Fortieth Session, Supplement No. 18 (A/40/18), paras. 105, 112, 195, 199, 542, 552, 553.
- 7/ Ibid., Thirty-ninth Session, Supplement No. 18 (A/39/18), para. 337, Fortieth Session, Supplement No. 18 (A/40/18), paras. 449, 460, 564 and 571.
- 8/ Ibid., Thirty-second Session, Supplement No. 18 (A/32/18), paras. 98, 99, 100 and 102, Thirty-third Session, Supplement No. 18 (A/33/18), para. 234, Thirty-fifth Session, Supplement No. 18 (A/35/18), paras. 183, 188, 409 and 420, Thirty-sixth Session, Supplement No. 18 (A/36/18), para. 140, Thirty-seventh Session, Supplement No. 18 (A/37/18), paras. 355, 358 and 426, Thirty-eighth Session, Supplement No. 18 (A/38/18), paras. 243 and 248, Fortieth Session, Supplement No. 18 (A/40/18), paras. 75, 78, 122, 126, 320, 490, 497, 542, 552 and 553.
- 9/ Ibid., Thirty-first Session, Supplement No. 18 (A/31/18) para. 61, Thirty-fourth Session, Supplement No. 18 (A/34/18) paras. 197 and 231, Thirty-fifth Session, Supplement No. 18 (A/35/18), paras. 339, 344, 358, 409 and 420, Thirty-sixth Session, Supplement No. 18 (A/36/18), para. 96, 105 and 140, Thirty-seventh Session, Supplement No. 18 (A/37/18), para. 261, Thirty-eighth Session, Supplement No. 18 (A/38/18) paras. 164, 172, 258 and 271, Thirty-ninth Session, Supplement No. 18 (A/39/18), paras. 215 and 222.
- 10/ Ibid., Thirty-fifth Session, Supplement No. 18 (A/35/18), paras. 119, 123 and 352, Thirty-seventh Session, Supplement No. 18 (A/37/18), paras. 173 and 180.
- 11/ Ibid., Thirty-fifth Session, Supplement No. 18 (A/35/18), paras. 262, 265, 339 and 344, Thirty-ninth Session, Supplement No. 18 (A/39/18), paras. 161, 249 and 251, Fortieth Session, Supplement No. 18 (A/40/18), paras. 122 and 126.
- 12/ Ibid., Thirty-fifth Session, Supplement No. 18 (A/35/18), paras. 409 and 420, Thirty-seventh Session, Supplement No. 18 (A/37/18), para. 418, Fortieth Session, Supplement No. 18 (A/40/18), paras. 275 and 280.

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