

DECLARATION ON THE RIGHTS OF PERSONS BELONGING TO NATIONAL OR ETHNIC, RELIGIOUS AND LINGUISTIC MINORITIES

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On 18 December 1992, the United Nations General Assembly adopted, without a vote, the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (the “1992 Declaration”). While it is not legally binding, the 1992 Declaration is the only United Nations soft law instrument that is entirely devoted to minority rights and its key provisions have notably influenced subsequent legal developments. Yet the drafting phase lasted more than a decade until the declaration was ultimately adopted in 1992. The UN Special Rapporteur on minority issues, Fernand de Varennes, noted that “[t]he United Nations earliest documents and structures thus hint at divisions, or even an unwillingness or unease about how and to what extent to deal with minorities, because of disagreements and divergences between Member States themselves” (A/77/246).

Historical context

After the First World War and its subsequent redrawing of territorial boundaries, several multilateral treaties dealing with the protection of minorities were adopted under the umbrella of the League of Nations between 1919 and 1923. However, their drafters did not aspire “to set principles of government of universal application” (P. Thornberry, *International Law and the Rights of Minorities*, Clarendon Press, Oxford, 1991). The various treaties neither aimed at protecting minorities broadly, nor did they oblige all States in which minorities existed. Instead, the treaties imposed specific obligations to protect the rights of minorities on some new nation States, particularly in Central and Eastern Europe. Yet the old-established States were not willing to grant similar minority protection in their own territories. Unsurprisingly, this led to criticism of double standards and even discredited for some the approach of minority protection as such.

In the wake of the Second World War, the United Nations shifted the paradigm from minority protection to proclaiming respect for universal human rights of each individual. The 1945 Charter of the United Nations did not refer to the terms “minority” or “group”. Rather, it reaffirmed faith in fundamental human rights, in the dignity and worth of the human person. Similarly, the 1948 Universal Declaration of Human Rights proclaimed that all human beings are born free and equal in dignity and rights. While the Drafting Committee on an International Bill of Rights in 1947 had suggested incorporating minority rights in draft article 36 (“In States inhabited by a substantial number of persons of a race, language or religion other than those of the majority of the population, persons belonging to such ethnic, linguistic or religious minorities shall have the right as far as compatible with public order to establish and maintain their schools and cultural or religious institutions, and to use their own language in the press, in public assembly and before the courts and other authorities of the State.”), the drafters also stressed the “supreme importance of this Article to many countries” and thus suggested thorough pre-examination of the minority aspects (E/CN.4/21). The Union of Soviet Socialist Republics, Yugoslavia and Denmark subsequently submitted to the Third Committee of the General Assembly three separate proposals relating to the protection of minorities (A/C.3/307/Rev.2). However, in Part C of its resolution 217 (III), the General Assembly, on 10 December 1948, ultimately decided “not to deal in a specific provision with the question of minorities” in the text of the Universal Declaration of Human Rights in view of the difficulties of adopting “a uniform solution of this complex and delicate question, which has special aspects in each State in which it arises”. Some commentators went much further when concluding that the shift towards human rights would per se imply a rejection

of minority rights. Thus the impression emerged that human rights, with their focus on rights of all human beings, on the one hand, and minority rights, with a focus on specific groups, on the other, would mutually exclude each other. Against this dichotomized view, it is important to note that the General Assembly took a clear position in favour of minorities. It considered that the United Nations could not “remain indifferent to the fate of minorities” (A/RES/217(III)) and thus requested the Commission on Human Rights and the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities to prepare a thorough study of the problem of minorities, with a view to effectively protecting racial, national, religious or linguistic minorities. This is an early testimony of the need to reconcile the human rights agenda with a commitment to protecting minorities.

In 1949, the Sub-Commission decided to place on its agenda the definition and classification of minorities. The related memorandum submitted by the Secretary-General stressed the principle of non-discrimination and universal human rights, thus placing minority protection within the human rights matrix. At the same time, it also noted that claims to certain “special rights” and “positive services” should be examined “in the light of past and present circumstances as well as the light of the general principles of the Charter of the United Nations” (E/CN.4/Sub.2/85). In 1950, the Secretary-General’s Study of the Legal Validity of the Undertakings Concerning Minorities (E/CN.4/367) noted that the League of Nations’ minorities protection system “was an exceptional regime which applied to a minority of States” and had been “established for the benefit of one section of the population”, but it left the door open for retaining or adopting minority protection standards “in certain special cases [...] even in the world of today.”

Since the 1960s, minority rights have been gradually included in specific provisions of legally binding conventions. The 1960 Convention Against Discrimination in Education recognized in its article 5 “the right of members of national minorities to carry on their own educational activities, including the maintenance of schools and, depending on the educational policy of each State, the use or the teaching of their own language, provided however: (i) [t]hat this right is not exercised in a manner which prevents the members of these minorities from understanding the culture and language of the community as a whole and from participating in its activities, or which prejudices national sovereignty [...]”. Furthermore, the 1966 International Covenant on Civil and Political Rights (ICCPR) provided in its article 27 that “[i]n those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.” A similar provision was also included in article 30 of the 1989 Convention on the Rights of the Child (CRC), protecting the rights of children belonging to an ethnic, religious or linguistic minority.

Significant Developments in the Negotiating History

In his 1977 Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities (E/CN.4/Sub.2/384/Rev.1), the Sub-Commission’s Special Rapporteur Francesco Capotorti stressed the importance of specifying the measures needed for observing the rights recognized under article 27 of the ICCPR, which had entered into force in 1976. For this purpose, he suggested drafting a declaration on the rights of members of minority groups. Upon the Sub-Commission’s recommendation, the Commission on Human Rights established, in 1978, an open-ended Working Group, which discussed an initial draft declaration submitted by Yugoslavia. In 1981, the Chairman-Rapporteur of the Working Group, Ivan Toševski, prepared a revised and consolidated version based on feedback received from the other members of the Working Group.

Yet the *travaux préparatoires* of the draft declaration took more than a decade due to protracted discussions in various UN bodies. In its resolution 1984/62, the Commission on Human Rights requested the Sub-Commission to prepare a text that defined the term “minority”, taking into account studies already carried out, other relevant documentation as well as comments and views provided by Governments (E.CN.4/1984/77). In this context, Sub-Commission member Jules Deschênes proposed the following definition of minority in 1985: “A group of citizens of a State, constituting a numerical minority and in a non-dominant position in that State, endowed with ethnic, religious or linguistic characteristics which differ from those of the majority of the population, having a sense of solidarity with one another, motivated, if only implicitly, by a collective will to survive and

whose aim is to achieve equality with the majority in fact and in law.” (E/CN.4/Sub.2/1985/31). However, this definition did not find consensus in the Sub-Commission and, in 1986, the Working Group postponed the definitional question in order to continue working on the draft declaration. In 1990, it adopted in first reading a draft text which comprised ten preambular paragraphs and nine substantive articles, albeit with several non-consensual formulations still surrounded by square brackets (E/CN.4/1990/41, Annex I).

In December 1991, the Working Group agreed in second reading upon the text of the draft declaration. However, the Turkish delegation stated that the failure to provide a definition of “minorities” was the major deficiency of this text, warning that it “may lead to confusion or misinterpretation” (E/CN.4/1992/48). The delegation of Germany in the Commission on Human Rights interpreted the term “minorities” to refer only to “well-defined separate and distinct groups which had been long established in the territory of a State”, explicitly arguing that the minority rights provisions “did not entitle a group of persons living in the territory of a State, such as foreign nationals benefiting from immigration laws, to form separate communities within that State” (E/CN.4/SR.38). Yet, despite their diverging views, all delegations joined in the consensus on the text of the declaration as the Commission on Human Rights resolution 1992/16 (E/CN.4/1992/84), Economic and Social Council resolution 1992/4 (E/RES/1992/4) and General Assembly resolution 47/135 (A/RES/47/135) were each adopted without a vote. In the Third Committee of the General Assembly, several delegates emphasized the importance of fully applying the declaration in practice, including Wolfgang Schallenberg (then Secretary General of Austria’s Ministry of Foreign Affairs) who stressed, on 24 November 1992, that the declaration should “not be filed and forgotten, but implemented and filled with life, so as to contribute to overcome situations of tension relating to minorities” (see A/C.3/47/SR.47 and P. Thornberry, “The UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities: Background, Analysis and Observations”, in A. Phillips and A. Rosas (eds.), *The UN Minority Rights Declaration*, Åbo Akademi/Minority Rights Group International, London, 1993).

Summary of Key Provisions

Already the title of 1992 Declaration cuts across the sterile juxtaposition of ‘individualism’ and ‘collectivism’; it focusses on protecting “persons belonging to” national or ethnic, religious and linguistic minorities. This formulation is repeated twenty-four times throughout the 1992 Declaration, which accounts for its significance. It stresses the rights of individual human beings who see themselves as members of minorities. While individual persons constitute the entry point, the group rights dimension also comes clearly to the fore. The preamble contains two references to the “protection of minorities”, albeit in the general context of the roles of the United Nations, intergovernmental and non-governmental organizations in protecting minorities. Furthermore, article 1(1) outlines the general purpose of minority rights by providing that “States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity.”

While the 1992 Declaration does not directly provide group rights to self-determination, the UN Working Group on Minorities commented that the State’s duties to protect the identity of minorities and to ensure their effective participation, in line with article 2, “might in some cases be best implemented by arrangements for autonomy in regard to religious, linguistic or broader cultural matters” (E/CN.4/Sub.2/AC.5/2005/2). Furthermore, the Committee on the Elimination of Racial Discrimination drew the attention of Governments to the 1992 Declaration in the context of implementing the principle of self-determination (A/51/18). At the same time, minority rights “do not freeze existing collective identities against further changes” but, rather, the human rights framework “requires respect for people’s self-understanding, for their freely articulated self-definitions, and for their free self-development, which in practice can go in quite different directions” (H. Bielefeldt and M. Wiener, *Religious Freedom Under Scrutiny*, University of Pennsylvania Press, Philadelphia, 2019).

Article 2 provides a detailed list of rights of persons belonging to minorities, including the rights to enjoy their own culture, to profess and practise their own religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination. This call for positive action in article 2(1) of the 1992 Declaration is more explicit than the similar

formulation in article 27 of the ICCPR, which expresses in negative terms that these rights “shall not be denied” to persons belonging to minorities. However, the UN Human Rights Committee commented that the ICCPR also obliges States parties to take positive protection measures, both against State acts of its legislative, judicial or administrative authorities and against acts of other persons within the State party (CCPR/C/21/Rev.1/Add.5). In line with article 2(4) and (5) of the 1992 Declaration, persons belonging to minorities also have the right to establish and maintain their own associations as well as the right to free and peaceful intra-minority, inter-minority and trans-frontier contacts.

Article 3 clarifies that persons belonging to minorities may exercise their rights individually and collectively with other members of their group, without any discrimination, noting that they also should not be disadvantaged in any way for choosing not to belong to the minority concerned. The 1992 Declaration, thus, implies at least moral duties for persons representing minorities as well as the obligation of States to prohibit measures by minorities that impose their rules on any person who does not want to be part of the minority concerned (E/CN.4/Sub.2/AC.5/2005/2).

Article 4(2) calls for State measures to create favourable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs, except where specific practices are in violation of national law and contrary to international standards. This “enabling” role of the State is in line with the evolving self-understanding of minorities and their members, who should be free to determine whether and how they wish to cherish their various characteristics and traditions. The caveat concerning international standards was included to cover traditions and customs that violate human rights law, such as female genital mutilation (E/CN.4/1992/48). When dealing with this issue, the Working Group on Minorities stressed that these practices should be outlawed not only for minorities but also for majorities as a universal principle applicable to everyone (E/CN.4/Sub.2/AC.5/2005/2).

In the field of education, article 4(4) requires States, on the one hand, to take measures in order to encourage knowledge of the history, traditions, language and culture of the minorities existing within their territory. Especially during or in the aftermath of armed conflicts, the traditions and culture of minority groups have often been represented in a distorted or stereotypical manner which may lead to intolerance, hatred and xenophobia in the wider community. On the other hand, persons belonging to minorities should have adequate opportunities to gain knowledge of the society as a whole, with a view to counteracting any “tendencies towards fundamentalist or closed religious or ethnic groups” (E/CN.4/Sub.2/AC.5/2005/2). Related calls for combating prejudices and adopting educational measures are also contained in article 7 of the International Convention on the Elimination of All Forms of Racial Discrimination and in article 29 of the Convention on the Rights of the Child.

Under article 5 of the 1992 Declaration, the legitimate interests of persons belonging to minorities should be given reasonable weight in planning and implementing national policies as well as programmes of cooperation and assistance among States. In this context, development agencies and financial institutions should ensure that legitimate interests of minorities are not negatively affected by any envisaged international cooperation and also ensure that persons belonging to minorities can benefit as much as members of majorities from that cooperation. Furthermore, States should cooperate on questions relating to persons belonging to minorities at the bilateral level (article 6) as well as at the global, regional and sub-regional levels in order to promote respect for the rights set forth in the 1992 Declaration (article 7).

Article 8 clarifies that nothing in the 1992 Declaration shall prevent the fulfilment of international obligations of States in relation to persons belonging to minorities and that the exercise of their rights shall not prejudice the enjoyment by all persons of universally recognized human rights and fundamental freedoms. Thus, agencies of a minority cannot, based on the 1992 Declaration, adopt measures which interfere with the individual human rights of any person belonging to that minority. Regarding special measures in favour of national or ethnic, religious or linguistic minorities, article 8(3) points out that such measures shall not, *prima facie*, be considered contrary to the principle of equality. Already in 1935, the Permanent Court of International Justice stressed, in the *Minority Schools in Albania* advisory opinion, that minority institutions in Albania were “indispensable to enable the minority to enjoy the same treatment as the majority, not only in law but also in fact. [...] Far from

creating a privilege in favour of the minority, as the Albanian Government avers, this stipulation ensures that the majority shall not be given a privileged situation as compared with the minority.”

Finally, article 9 requires the specialized agencies and other organizations of the UN system to contribute to the full realization of the the rights and principles set forth in the 1992 Declaration, within their respective fields of competence. Consequently, they should give special consideration to requests for technical cooperation and assistance that are designed to achieve the aims of the 1992 Declaration.

Influence on Subsequent Legal Developments

In the three decades since the adoption of the 1992 Declaration, more than five hundred United Nations reports, resolutions, summary records, letters by States and statements by civil society organizations have made reference to it. For example, the 1993 World Conference on Human Rights in Vienna reaffirmed the obligation of States to ensure that persons belonging to minorities may exercise fully and effectively all human rights and fundamental freedoms without any discrimination and in full equality before the law in accordance with the 1992 Declaration (A/CONF.157/23). In 2021-2022, the General Assembly explicitly referred to the 1992 Declaration in its thematic resolutions on promoting a culture of peace and tolerance to safeguard religious sites (resolution 75/258), on cooperation between the United Nations and the Council of Europe (resolution 75/264), on effective promotion of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (resolution 76/168) and on multilingualism (resolution 76/268).

Since 2005, a Special Rapporteur on minority issues (referred to, until 2014, as “Independent expert on minority issues”) has been mandated to promote the implementation of the 1992 Declaration, including through consultations with Governments, taking into account existing international standards and national legislation concerning minorities. The Special Rapporteur also guides the work of the Forum on Minority Issues, prepares its annual meetings and recommends the thematic subjects of the Forum, such as its 2022 theme “Review. Rethink. Reform. 30th anniversary of the UN Declaration on Minority Rights”. The Special Rapporteur on minority issues and other Special Procedures mandate-holders regularly rely on provisions of the 1992 Declaration in their joint communications to Governments on individual cases. In addition, the Special Rapporteur cooperates and coordinates closely, while avoiding duplication, with existing relevant United Nations bodies, mandates and mechanisms and with regional organizations. In this regard, the Human Rights Committee monitors the implementation of article 27 of the ICCPR and the Committee on Rights of the Child does the same with regard to articles 17 and 30 of the CRC.

At the regional level, the Council of Europe’s 1995 Framework Convention for the Protection of National Minorities refers in its preamble to “the commitments concerning the protection of national minorities in United Nations conventions and declarations”, and the preamble is openly inspired by article 1 of the 1992 Declaration. Regional jurisprudence quotes the 1992 Declaration, for example in judgements by the European Court of Human Rights (*Gorzelik and Others v. Poland*), the Inter-American Court of Human Rights (*Xákmok Kásek Indigenous Community v. Paraguay*) and the African Court on Human and Peoples’ Rights (*African Commission on Human and Peoples’ Rights v. Republic of Kenya*). In the context of the Organization for Security and Cooperation in Europe (OSCE), the High Commissioner on National Minorities also uses the 1992 Declaration, for example in the Ljubljana Guidelines on Integration of Diverse Societies as well as in the Tallinn Guidelines on National Minorities and the Media in the Digital Age.

Furthermore, the 1992 Declaration has filled some substantive gaps in other UN General Assembly resolutions, such as the neglect of mentioning religious or belief minorities in the 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (A/RES/36/55). However, there are also some glaring omissions in the 1992 Declaration itself, which had to be remedied through subsequent soft law standards. For example, the 1992 Declaration does not explicitly address hate speech, even though the Rabat Plan of Action flags that minorities and other vulnerable groups constitute the majority of victims of incitement to hatred, while members of minorities are also persecuted through the abuse of vague domestic legislation, jurisprudence and policies on hate speech (A/HRC/22/17/Add.4). Furthermore, the Beirut Declaration and its 18 commitments on “Faith for Rights” expand on article 2 of the 1992 Declaration by adding the specific

pledge of faith-based actors to denounce any advocacy of hatred that incites to violence, discrimination or hostility, and by stressing their commitment to defend the rights of all persons belonging to minorities to participate equally and effectively in cultural, religious, social, economic and public life (A/HRC/40/58). In the context of conflict prevention, the 2021 Forum on Minority Issues encouraged States, the United Nations, international and regional organizations and civil society to work closely in supporting the positive contributions of faith-based actors, including through promoting the Beirut Declaration and the “Faith for Rights” Toolkit (A/HRC/49/81). The Council of Europe also notes that the “Faith for Rights” Framework and Toolkit, with its peer-to-peer learning methodology, are a useful tool for addressing hate speech (Explanatory Memorandum to Recommendation CM/Rec(2022)16 of the Committee of Ministers to member States on combating hate speech).

In conclusion, the 1992 Declaration has received quite diverse critical appraisals from diplomats, UN independent experts, civil society and academics. For example, the President of the 77th session of the General Assembly, Csaba Kőrösi, noted at the 2022 high-level meeting to commemorate the thirtieth anniversary of the 1992 Declaration that it was more relevant today than ever before. Furthermore, the former Special Rapporteur on minority issues (2011-2017), Rita Izsák, concluded that the 1992 Declaration “is an important international document on minority rights that not only forms an essential part of the vital catalogue of human rights standards that has informed nations and the international human rights regime, but has further contributed towards moving the world, in many respects, in the right direction towards rights, equality and justice for all” (R. Izsák, “Foreword”, in U. Caruso and R. Hoffmann (eds.): *The United Nations Declaration on Minorities: An Academic Account on the Occasion of its 20th Anniversary (1992-2012)*, Brill, Leiden). However, Joshua Castellino and Elvira Domínguez-Redondo noted that South Asian participation in the drafting of the 1992 Declaration was negligible and they highlighted that no reference to it was made during or in the aftermath of mass atrocities committed against minorities in several South Asian States (J. Castellino and E. Domínguez-Redondo, “The Declaration and Its Guidance: A View from South Asia”, in U. Caruso and R. Hoffmann (eds.), *The United Nations Declaration on Minorities: An Academic Account on the Occasion of its 20th Anniversary (1992-2012)*, Brill, Leiden, 2015). Furthermore, Gudmundur Alfredsson called the 1992 Declaration “disappointingly incomplete” since it did not address “minority schools, autonomy and self-government, relations with so-called kin-States, early warning, prevention of violent conflict”, among other relevant issues (G. Alfredsson, “Minority Rights and the United Nations”, in U. Caruso and R. Hoffmann (eds.), *The United Nations Declaration on Minorities: An Academic Account on the Occasion of its 20th Anniversary (1992-2012)*, Brill, Leiden, 2015).

In addition, since the drafting efforts of a specific United Nations instrument on minority rights took a long time until the adoption of the 1992 Declaration, Nazila Ghanea pointed out that discrimination of religious minorities or their persecution as a group usually “is addressed under the ‘freedom of religion or belief’ umbrella in international human rights and not under minority rights” (N. Ghanea, “The Enigma of Human Rights Responsibilities: Religious Minorities and the UN Declaration on Minorities”, in U. Caruso and R. Hoffmann (eds.), *The United Nations Declaration on Minorities: An Academic Account on the Occasion of its 20th Anniversary (1992-2012)*, Brill, Leiden, 2015). Moreover, the 1992 Declaration does not address advocacy against national, racial or religious hatred, even though minorities are particularly targeted by hate speech both online and offline. Yet, as explained above, the Rabat Plan of Action and the Beirut Declaration on “Faith for Rights” have filled this historic lacuna of the 1992 Declaration through subsequent soft law standards.

This Introductory Note was written in September 2022.

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