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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS  
IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND  
OTHER DEPENDENT COUNTRIES AND TERRITORIES

Report on the human rights situation in the Islamic Republic of Iran by  
the Special Representative of the Commission, Mr. Reynaldo Galindo Pohl,  
pursuant to resolution 1987/55

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## I. INTRODUCTION

1. By its resolution 1987/55 of 11 March 1987 the Commission on Human Rights decided to extend the mandate of its Special Representative, as contained in Commission resolution 1984/54 of 14 March 1984, for a further year, and requested the Special Representative to present an interim report on the situation of human rights in the Islamic Republic of Iran to the General Assembly at its forty second session, and a final report to the Commission at its forty-fourth session.

2. In compliance with the above mentioned resolution, the Special Representative presented an interim report to the General Assembly (A/42/648), and submits herewith his final report to the Commission.

3. The interim report concentrated on items and issues appropriate to give the General Assembly an overview of the evolution of human rights and fundamental freedoms in the Islamic Republic of Iran during the period from September 1986 to October 1987. The final report updates the situation to January 1988 and considers some issues that were purposely not discussed in the interim report. The two reports may thus be considered as two parts of a whole, with the interim report being the first part of the final report and its indispensable frame of reference.

4. The final report contains five sections: Introduction, Action taken by the Special Representative, Recent information, both oral and written, on alleged violations of human rights in the Islamic Republic of Iran, Examination of contentions presented by the Government of the Islamic Republic of Iran on several important issues, and General considerations and conclusions.

## II. ACTION TAKEN BY THE SPECIAL REPRESENTATIVE

5. On 4 November 1987, after being informed of the appointment of Mr. Sirous Nasseri as Ambassador and Permanent Representative of the Islamic Republic of Iran to the United Nations Office at Geneva the Special Representative addressed to him a letter which read as follows:

"I have just been informed of Your Excellency's appointment as Ambassador and Permanent Representative to the United Nations at Geneva. While transmitting to you my sincere congratulations, may I also express the hope that we shall now be in a position to enhance our contacts and further develop the constructive dialogue upon which we embarked in Geneva last July.

As you may know, I plan to visit New York between 16 and 27 November 1987 in order to present my interim report to the General Assembly. I also plan to visit Geneva between 11 and 15 January 1988, in connection with the preparation of my report to the Commission on Human Rights. I do hope that, on the occasion of these visits a meeting may be arranged between us in order to further clarify our respective views."

6. On 20 January 1988, after having conducted a series of informal hearings in the course of which 11 persons who claimed to have first-hand knowledge and experience of various aspects of the human rights situation in the Islamic Republic of Iran described to him their experience, the Special Representative addressed a letter to the Ambassador of the Islamic Republic of Iran communicating to him the summary of oral and written information reflected in Chapter III below and in the annex to this report. The letter read as follows:

"As you may know, during my visit to Geneva from 11 to 15 January 1988 I conducted, in the framework of my mandate under Commission on Human Rights resolution 1987/55 a series of informal hearings with eleven persons who claimed to have firsthand knowledge and experience of various aspects of the human rights situation in the Islamic Republic of Iran. A summary of the allegations made in the course of these hearings is enclosed herewith for your information.

A summary of allegations which were contained in documents provided to me in recent months by various organizations and bodies concerned, is also enclosed herewith. I would greatly appreciate receiving any information or comments that Your Excellency's Government may wish to provide with regard to these allegations.

I would like to seize this opportunity to express my sincere hope that the constructive dialogue upon which we embarked last year will continue and further develop in the future."

III. INFORMATION RECEIVED BY THE SPECIAL REPRESENTATIVE

1. Oral information

7. On 12, 14 and 15 January 1988, the Special Representative conducted a series of informal hearings in the course of which 11 persons who claimed to have first-hand knowledge and experience of various aspects of the human rights situation in the Islamic Republic of Iran described their experience. Ten of the persons received by the Special Representative were followers of the Baha'i faith and one person described himself as not affiliated with any political or religious movement, but a supporter of the "National Council of Resistance of Iran". Of the followers of the Baha'i faith, three indicated that their name could be mentioned in the report. They were Mr. Etemadi, Mr. Fereydoun Somali and Mr. Abdul Shoghi Tebyani. The person who described himself as not-affiliated to any movement was Mr. Fereydoun Guilani.

8. Mr. Guilani worked in the editorial board of the Persian language newspaper Keyhan until three months after the coming to power of the Islamic Government and is also a poet and author. He spent two years, from 1981 until 1983, in the Evin prison in Teheran for alleged anti-Islamic activity and for publishing articles and poems hostile to the Government. He described in detail conditions prevailing in that prison: overcrowding, insufficiency of food, inadequacy of hygienic conditions and medical treatment, and, above all, torture and ill-treatment of detainees. According to Mr. Guilani guards in the Evin prison tortured him for three months, under the guise of inflicting religious punishment, or "Taazir". He described in detail the torture to which he was subjected. While he was blindfolded up to seven persons beat him with bars and cables, kicked him on all parts of his body, tied him to a "Taazir bench" and beat the soles of his feet - resulting in extremely painful and swollen feet. Mr. Guilani described his trial. It took place before a religious judge, named Haji Mohasheni, with a prosecutor and a guard also attending. It lasted for only a few minutes, during which 36 charges were read out. He had no attorney and had only a few minutes to defend himself. The verdict was not announced immediately, and he found out later that he had been sentenced to three years' imprisonment. After his release from prison he resumed his writing activity and was consequently rearrested for six months, for having written articles describing the conditions in the Evin prison. The publication of books he wrote after his second release was prevented by censorship.

9. The followers of the Baha'i faith who appeared before the Special Representative described their experience and that of their family members and friends. Most of them spent periods of various durations in prison and some had members of their families executed. All of them had allegedly been subjected to harassment and discriminatory measures, such as denial of education, dismissal from jobs, confiscation of property, extreme economic hardship and brutal searches and arrests. Those of them who had been imprisoned invariably described the conditions in prison as extremely harsh. They also described the physical and psychological torture to which they were subjected. The latter sort of torture included threats of execution and of sexual abuse.

10. One person described the case of an elderly woman, Mrs. Sharghieh Imanian, with whom she shared a cell, who had allegedly been whipped a hundred times on her feet and, as a result, had deep cuts and was bleeding. The prison authorities nevertheless denied that woman permission to see a doctor and put her into solitary confinement for three months without giving her any treatment. The same person was also shown the body of Mr. Markazi, a member of the Baha'i Council of Iran who was executed on 23 September 1984. His ribs and most of his bones were allegedly broken and his body was severely wounded.

11. Mr. Fereydoun Somali described an incident at the end of 1984, in which a fire broke in a factory in which he and 30 other Baha'is were employed. The fire was allegedly started deliberately, as the doors of the factory were locked from the outside. Consequently, Mr. Somali was severely burnt and had one eye seriously injured. Several months later, following six months of hospitalization and surgical operations, his eye condition required an urgent operation for a cornea transplant. But on the eve of the operation the hospital informed him that the office of the Islamic Committee had not authorized his surgery, stating that an eye of a Moslem could not be given to a Baha'i, and that he had to find an eye from another Baha'i for his transplant. Mr. Somali presented a photocopy of a document originally written in Persian, with its English translation, signed by an Islamic Committee, stating that "following our telephone conversation, since Mr. Fereydoun Shomali has personally confessed his connection with the Zionist Bahai faction, the cornea graft is not to be performed for religious reasons".

2. Written information

12. Subsequently to the completion of his interim report to the General Assembly (A/42/648) the Special Representative received written information contained in various documents, reports and letters, which referred in particular to alleged violations of the right to life, the right to freedom from torture or cruel, inhuman or degrading treatment or punishment and the right to liberty and security of person, as well as information concerning the economic situation of followers of the Baha'i faith and the treatment of Kurdish civilians.

Information concerning the right to life

13. In November 1987 the Special Representative received a list published by the People's Mojahedin Organization of Iran containing names and particulars of 14,028 persons who were allegedly killed by Iranian government agents during the years 1981-1987. The list contained 2,000 names of persons that had not been previously published. Out of that list the Special Representative submitted to the Government of the Islamic Republic of Iran 60 names of persons who were allegedly executed or tortured to death during the years 1986-1987. The Special Representative requested the Government to provide him with any information or comments regarding those alleged cases of execution and death. The names and particulars included in that list are reproduced in the annex to this report.

14. In addition, it was alleged that a prisoner named Hossein Sabbaqi, was tortured to death in the prison of Babolsar, north of Iran, in September 1987.

15. The People's Mojahedin Organization alleged on 27 November 1987 that 36 persons, described as political prisoners, had been secretly executed in recent months. According to that source a group of 26 persons were executed in the Evin prison, Teheran. The names of the alleged victims were reported as follows: Khalil Ramezani, Cyrus Abbasvand, Fereydoun Aqdoust, Farchild Nemati, Seyed Mohammad Heydari Ghahi, Soulmaz Chahidi Affan, Mohammad Ali Abranki, Ardechir Abtari Rad, Amir Hossein Naderi, Qassem Khalidi, Mahmoud Zakipour, Anouchirvan Ebrahimi, Alizadeh, Moloud Rahmani, Hassan-Moradi, Alireza Djahani, Massoud Ansari, Alireza Chahraki Farahani, Madjid Pazira, Omid Reza Qomachi, Massoumeh Seddiq, Karim Haj Ali Mohammadi, Mohammad Firouzi, Rahmat Tchaman Ara, Mansour Qomachi Langueroudi, Qolamreza Separqami, Ali Taher Djouyan, Sheyla Mokhtarzadeh, Madjid Safai, Hossein Moafi, Seyed Djalal Chafii, Baqer Chekofteh Gohari, Alireza Djamali, Kioumars Chahi, Maziar Lotfi and Fereydoun Hassan-Dolat.

16. It was further alleged that two followers of the Baha'i faith, Ardishihr Akhtari and Amir Husayn Nadiri, were executed on 28 September 1987 in Teheran.

Information concerning the right to freedom from torture or cruel, inhuman or degrading treatment or punishment

17. Allegations regarding the conditions prevailing in Iranian prisons continued to be communicated to the Special Representative. Several communications were received from families of political prisoners in Iran, alleging ill-treatment and torture of such prisoners as well as extremely poor conditions in prisons in which they are held. According to a communication from several mothers and wives of Iranian political prisoners, received in October 1987, Iranian Government agents harrassed, ill-treated and detained political prisoners' relatives who demonstrated in front of the United Nations Office in Teheran on 10 September 1987, on the eve of the visit to Teheran by the United Nations Secretary-General. Many of the participants in that demonstration were allegedly sent to three prisons and were ill-treated. Some were released after several days while the whereabouts of others were still unknown.

Information concerning the right to liberty and security of person

18. In October 1987 the Baha'i International Community transmitted two lists of persons detained in Iranian prisons and believed to be in danger of execution. The first list contained 12 names of Baha'is, most of whom had already spent periods of one to five years in prison. They were the following: Ihsanu'llah A'yadi; Faraju'llah Sa'adati; Suhrab Dustdar; Ramidan-Ali Amu'i; Bihnam Pasha'i; Muhammad Dihqani; Izzatu'llah Khurram; Mihran Tashakkur; Farid Dhakiri; Vahid Qydrat; Shahrukh Huvayda'i and Mrs. Parvin Fana'iyani-Idilkhani.

19. The second list contained five names of prominent Baha'is who were arrested on 21 October 1987 and were reported to be held in Evin prison, Teheran. Two of them, Jamalu'd-Din Khanjani and Hasan Mahbubi were reportedly former members of the National Baha'i Council of Iran, and were said to be in danger of execution. The other three Baha'is arrested on that date were named as Changiz Fana'iyani, Suhrab Hajiyan and Bahman Samandari. The Special Representative was subsequently informed that these five persons had been released without any conditions.

20. It was further alleged in October 1987 that a prisoner named Seyed Ali Taherdjouyan, described as a member of the People's Mojahedin Organization, burned himself to death in the prison of Gohar-Dasht, in Karaj, Western Iran, allegedly in protest over the torture and poor conditions suffered by political prisoners in Iranian prisons.

Information concerning the economic situation of followers of the Baha'i faith

21. According to information received in January 1988 the Iranian Government has, in recent months, increased its economic pressure on followers of the Baha'i faith. This pressure allegedly manifested itself in various manners, such as the cancellation of business licenses, the confiscation of shops, farms and other Baha'i-owned properties and the denial of membership in co-operatives to Baha'i farmers. By way of illustration of such pressure the Special Representative received the English translation of a letter originally written in Persian, dated 5 July 1987, by which the Islamic Revolutionary Committee of Abbas-Abad, Tunukabun, informed a Baha'i tailor that "because of your membership in the misguided Baha'i sect, your business licence is hereby revoked and declared null and void". The Special Representative also received a photocopy of a communication originally written in Persian, and its English translation, dated 9 June 1987, which contained a guide-line signed by Ali Samadi, Commander of the Iranian Revolutionary Committee of Abbas-Abad, stating that "according to the decision made by the high authorities for the security and order, it is forbidden to hire or to give any licences for work to the members of the aberrant Baha'i group. It is recommended to cancel all the previous authorizations and licenses previously issued to them".

22. It was further alleged that thousands of Baha'is who had been dismissed from their positions in education and government in the early 1980's, continued to be denied their jobs and pensions, and that they had been instructed to repay all salaries received during their period of government employment.

Information concerning treatment of Kurdish civilians

23. The Democratic Party of Iranian Kurdistan alleged, in a communication dated October 1987, that the Iranian authorities had ordered the evacuation and resettling of 23 Kurdish villages, with a population of 3,680 people, located in the Bolfat region, south-east of Sardasht (Iranian Kurdistan). The villages affected by that measure were reported as follows: Dolatou, Dawdawe, Halesha, Sawan, Mam Kaweh, Mazra, Darmakon, Pashghabran, Spidareh, Siramerg, Baizamara, Ayshadina, Bardassour, Kodaleh, Mamandawe, Zaleh, Newtchwan, Souraban, Ahmad Briw, Guerdena, Doli Khanwan, Guilkank and Wardeh.



#### IV. CONSIDERATION OF VIEWS OF THE IRANIAN GOVERNMENT

24. The Special Representative has taken into account the views expressed, both orally and in writing, by the Iranian Government. Some of those views were extensively quoted in the Interim Report, whenever appropriate, in accordance with the international practice and the terms of the mandate. Other views have provided material for the considerations concerning general substantive parts of the reports, and a few have been considered as contrasting points for the clarification of the approaches and the actions taken by the Special Representative in the discharge of his duties.

25. In his Interim Report the Special Representative indicated the points with respect to which he was unable to agree with the positions adopted by the Iranian Government. Differences on the interpretation of pertinent provisions and on the accepted international practice have added obstacles, doubts or incertitudes to the discrepancies based on disparate original perceptions regarding international law and Islamic law. The discussion of those points may therefore play a paramount role in the process leading to the satisfactory operation of the system of human rights in Iran.

26. It therefore seems timely and necessary to clarify the reasons supporting the opinions expressed by the Special Representative in his reports and the motivations of his actions in the discharge of his duties. It may be for the benefit of all concerned to explain why and how the Special Representative, though using flexible approaches and criteria and willing to take into account the peculiarities of the Iranian situation, was directed and guided by international instruments and by his mandate to adopt those actions and positions. The peculiarities of the Iranian situation present problems of application that are, to some extent, new, and, as such, enrich the practice in this field and involve novel views and arguments regarding the protection of human rights at worldwide level.

##### 1. Compatibility of international law with Islamic law

27. After scrutinizing the explanations and the arguments presented by the Iranian Government, it may be stated that the main source of divergence in the interpretation of international instruments concerning human rights derives from the question of compatibility between international law and Islamic law. This issue concerns the social, legal and historic role of religion in general and the peculiar place of religion in the Islamic Republic of Iran in particular. This seems to be one of the most important questions or even the fundamental one regarding some of the difficulties the Iranian Government encounters with respect to the international instruments on human rights. This has been apparent in various official statements quoted in previous reports and in particular, in "The Viewpoints of the Government of the Islamic Republic of Iran on Commission on Human Rights resolution 1987/55 and on the issues contained in document E/CN.4/1987/23", (E/CN.4/1988/12 - E/CN.4/Sub.2/1987/35), hereafter referred to as "The Viewpoints".

28. The radical difference results from two significantly distant approaches: whereas the General Assembly of the United Nations and the Commission on Human Rights, and therefore the Special Representative, regard treaties and solemn declarations of the United Nations as the fundamental framework to examine the prevailing situation in respect to human rights, the Iranian Government regards Islamic law as paramount, and international law as merely supplementary to, or corroborative of Islamic law.

29. "Islamic law is founded on the very original concept that divinity reigns supreme and divine law is pre-eminent to human law. The Declaration (that is, the Universal Declaration on Human Rights) is genuinely secular in its theme and essence and, as such, differs from Islamic law in its origin. There may be similarities or even perfect compatibility on some provisions, in particular, those that meet the condition of jus cogens, but the original perceptions remain widely apart" ("The Viewpoints", p. 7, para. 6). The Universal Declaration on Human Rights discards any distinction with respect to religion, and calls for freedom to manifest religion in all its realms. In contrast, "in the case of Islam, manifestation of religion is inclusive of operation of the State apparatus. It also constitutes the origin of law" ("The Viewpoints", p. 7, para. 7).

30. This conception has practical implications, as it has been stated by Iranian representatives. It is pertinent to refer to the official statement of the Iranian representative at the 673rd meeting of the Human Rights Committee on 10 April 1986: "... relevant human rights instruments such as the Covenants and the Universal Declaration on Human Rights contained provisions whose implementation would be contradictory in a country where Islamic law is observed". "... for example, the right to religious freedom in an Islamic society where persons could not embrace any other religious creed. The same would apply to the Covenant's prohibition of corporal punishment which would be contradictory to justice under Islamic law" (CCPR/C/SR. 673, p. 13).

(a) Absence of religious and philosophical foundations in the Universal Declaration on Human Rights

31. Those crucial statements deserve some comments. It is true that the Universal Declaration on Human Rights is a secular document. This assertion should be understood with some qualifications in order to put the Declaration within a frame corresponding to the history of its preparation and adoption. It is secular in the sense that it does not contain or reflect, at least in a direct way, religious standpoints. This omission was intentional and responded to the definite objective to get support from all quarters of beliefs, philosophies and cultures. For instance, the foundation of human rights and freedoms on the doctrine of natural law, consistent with the Christian teaching, was deliberately avoided, although some of the authors of the Declaration firmly adhered to the theory of natural law.

32. Jacques Maritain, the respected scholar who wrote the introduction to the texts by eminent persons consulted by UNESCO in 1947 and who synthesized the common denominator of the enlightened replies, advised to avoid speculative

and theoretical thinking as the only way to get wide support for the Declaration on the making. He stated that justifications though indispensable, were unable to lead to general agreement (Autour de la Nouvelle Déclaration Universelle des Droits de l'Homme, textes réunis par l'UNESCO, Paris, Editions du Sagittaire, 1949). Maritain was a proclaimed and practising Christian and a follower and innovator of the old natural law tradition.

33. The delegations that discussed and finally adopted the Universal Declaration in the General Assembly of the United Nations followed Maritain's advice. They thus avoided the questions of ultimate origin, remote causes and philosophical foundation of human rights and fundamental freedoms, either religious or secular, rational or empirical, idealist or materialist, and concentrated on rules for action, that is, adopted a pragmatic approach. Professor René Cassin, one of the most influential contributors to the Universal Declaration remembered circumstances under which the question of religion was dealt with (R. Cassin, "Les Droits de l'Homme", Academie de Droit International, Recueil des Cours, 1951, vol. II, pp. 284 et al).

34. States from all continents and geographical groups agreed on the norms for action embodied in the Universal Declaration, in spite of disparate cultural backgrounds and antagonistic socioeconomic structures and ideologies. A universal consensus was thus created on the meaning and scope of the human rights to be protected at worldwide level, as direct effect of the obligations acquired through the Charter of the United Nations. Consequently an authoritative interpretation of the pertinent provisions of the Charter emerged. Membership of the United Nations necessarily carried obligations on human rights as defined by the Universal Declaration; and some of the provisions of this instrument may be said to be applicable to non-members of that Organization.

35. There is no legal challenge or obstacle of principle to the operation that would reintegrate to the Universal Declaration the ultimate supporting elements that were discarded in order to avoid the wreckage of the goal to get unqualified backing to a universal system of human rights. This operation, that could be undertaken from a religious and philosophical perspective, could not provide a universal foundation, and certainly would not get the unqualified adherence of all States and peoples. But such limited result will not belittle in any way the significance and the necessity of that exercise for certain cultures and countries. Surely it will have to be coherent with the current system of international protection of human rights, and consequently would not be permitted to jeopardize, alter, supersede or derogate from existing norms of international law on human rights.

(b) Adherence of Islamic Countries to the Covenants and the Universal Declaration of Human Rights

36. The Iranian Government contended that the two Covenants on Human Rights and the Universal Declaration were ratified during the ruling of a secular régime by legislators who did not have the competence and knowledge nor the will to examine them against the tenets of Islamic law, and that the Iranian Parliament would have to take up this task in the future. "Meanwhile we continue to adhere to the provisions of the Declaration and the two Covenants which are consistent with, or at least not contradictory to Islamic law" ("The Viewpoints", p. 8, para. 10).

37. The selective adherence to certain international norms concerning human rights may be consistent with the Iranian legal system but is incompatible with international law. Even if legislators did not have knowledge of the tenets of Islamic law, duly acquired State obligations remain unaffected and unchallenged. International legal obligations are acquired by States, and Governments act as their representatives. International obligations of States do not break down with the change of government or régime. This is a fundamental principle derived from the absolute necessity to provide security to international relations.

38. Iranian representatives as well as representatives of other Islamic States accepted those instruments. The views expressed by representatives of other Islamic countries at the time of the adoption of the Universal Declaration make it possible to state that there are different views on the question of compatibility between international law on human rights and Islamic law. It is indeed difficult to accept that all Islamic States did not pay attention to those instruments. The more consistent explanation of the fact of generalized acceptance of those instruments would be that there are different understandings of the problem and its resolution.

39. At the meeting of approval of the Universal Declaration of Human Rights by the General Assembly of the United Nations, the representative of Egypt, Mr. Raafat, made reservations regarding articles 17 and 19, on account of limitations Islamic countries put to the contract of marriage of Muslim women with persons belonging to another faith, and the proclamation of man's right to change his religion or belief (art. 19). In his opinion the Declaration could be understood as "encouraging, even though it might not be intentional, the machinations of certain missions, well known in the Orient, which relentlessly pursued their efforts to convert to their own beliefs the masses of the population of the Orient" (United Nations, General Assembly, third session, first part, 1948 Plenary meetings, Official Records, V. 6, p. 913).

40. The delegate of Pakistan, the well known diplomat Sir Zafrullah Khan stated full support of his country to article 19: "Pakistan was an ardent defender of freedom of thought and belief and of all the freedoms listed in article 19". Afterwards he voiced reservations with respect to this article, not in regard to the rights it consacrated but to a possible abusive use of them. Sir Zafrullah quoted the Koran as saying: "Let he who choses to believe, believe, and he who choses to disbelieve, disbelieve". He added that Moslem religion was missionary because "it strove to persuade men to change their faith and alter their way of living, so as to follow the faith and way of living it preached, but it recognized the same right of conversion for other religions as for itself".

41. Sir Zafrullah expressed anxiety at the possible abusive use of article 19 of the Universal Declaration on grounds of the actions of certain other religions (obviously Christian), whose activities had sometimes assumed a political character and had given rise to objections (United Nations, General Assembly, Ibidem).

42. Those reservations resulted from possible misuse of some provisions of the Declaration but they did not criticize the recognition of the rights listed in article 19. The delegations of Egypt and Pakistan did not oppose the Universal Declaration and voted for its adoption. So the reservations were not sufficiently important to separate those countries from the consensus that had been built through the reduction of the instrument to rules for action. Other Islamic countries that were at the time members of the United Nations voted in favour of the Declaration: Afghanistan, Iraq, Iran, Lebanon (a country with strong Moslem influence), and Syria. Saudi Arabia abstained, and Yemen did not participate in the vote.

43. The Universal Declaration emerged as the authoritative understanding and the agreed interpretation on the meaning and scope of the human rights and fundamental freedoms whose protection was provided for by the Charter of the United Nations. From then on the international protection of human rights from excess or misuse of power entered international law and complemented and strengthened national protection. The Universal Declaration was acclaimed and accepted by countries of all cultural, religious, and economic and social systems.

(c) Absence of Islamic scholars in the Elaboration of the Universal Declaration of Human Rights

44. The Iranian Government stated that "no Islamic scholar or Muslim jurispudent had a chance to participate (in the preparation of the Universal Declaration). Therefore Islamic States do have the right to reserve their views on the validity or applicability of those provisions. Many Islamic States have ratified the Declaration and this does give rise to responsibility, but ratification is not synonymous with satisfaction" ("The Viewpoints", pp. 7, 8, para. 8).

45. The participation of Islamic scholars in the preparation of the Universal Declaration was indeed limited, and may even be considered extremely limited considering the extent and importance of Islamic culture. Nonetheless it was not entirely absent. At least one Muslim scholar was consulted by UNESCO: Mr. Humayun Kabir. (Textes réunis par l'UNESCO, "Les droits de l'homme, la tradition de l'Islam et les problèmes du monde actuel", pp. 158-161). Mr. Kabir favoured a universal system of human rights under a world authority. Furthermore it may be assumed that representatives of Islamic countries at the United Nations were conversant with Islamic teaching and were professed Moslems.

46. The argument and criticism referred to above may be considered of political character. In 1948 Islamic countries did not have the influence they exert today in international relations. From a strictly legal point of view the case must be viewed under a different light. As a matter of fact official representatives of Islamic member States of the United Nations in 1948 did participate in the proceedings. The crucial point in regard to the legal capacity to oblige the State consists of authorization and accreditation through full power to act on behalf of the State (Convention on the Law of Treaties, arts. 7 and 8). The professional qualifications of the

delegates who express the official position of a State or group of States is not an element of the will to consent. The selection of delegates with suitable specializations to deal with the subject matters under debate in international fora is left to the discretion and wisdom of each Government.

47. Certainly it would be possible that national representatives become liable under municipal law but this would be an internal affair. Responsibility under municipal law does not affect international obligations acquired by duly authorized and accredited representatives. The Convention on the Law of Treaties (Art. 27) prescribes that States parties can not invoke municipal law in order to justify the non compliance with a treaty. The legality of the consent to be bound by international instruments does not impede in any way the accountability of national officers who did not follow instructions or exceeded powers. Conversely the accountability mentioned before does not affect international obligations.

(d) An Islamic Declaration of Human Rights

48. The Iranian Government referred to an Islamic Declaration of Human Rights that could redress the flaws of international instruments adopted under the aegis of the United Nations. "The Islamic Declaration, once finalized, will make the most notable achievement of co-operation among Islamic States on this issue and they shall undoubtedly find it more pertinent to their concerns regarding human rights and fundamental freedoms" ("The Viewpoints", p. 8, para. 9).

49. An Islamic Declaration of Human Rights would certainly contribute to the consolidation of human rights around the world. The regional declarations adopted so far, as those of the European Community and the Organization of American States have not departed from the structure of international protection of human rights of the United Nations. They have increased the protection of human rights through special commissions of surveillance and even ad hoc courts of justice. That is, regional declarations have gone beyond the system sponsored by the United Nations.

50. An Islamic Declaration of Human Rights might express particular viewpoints, including religious and philosophical foundations, but it may be expected that, the same as previous regional declarations, it will be consistent with the universal system of the United Nations and will increase the protection of human rights with a special commission and a court of justice.

51. Judgement may be deferred in order to examine the final product, but in the meantime, on account of the rich cultural heritage and the humanitarian content of Islamic teaching and tenets, the formulation of a declaration consistent with international law may be expected.

52. The Universal Declaration has acquired the status of customary international law. Consequently it binds all States, including those that were not members of the United Nations at the time of its adoption. Furthermore new members implicitly accept previous decisions of the competent organs of international organizations. It is commanded by reason and sanctioned by custom that new members accept the transactions that have been performed within the terms of the constitutive treaties.

(e) Municipal Law and International Law

53. The departure of municipal law from international law has been the subject of careful study by eminent scholars and judges and has produced extensive legal literature. A dominant consensus has emerged in the sense that municipal law has to be integrated within international law and consequently any departure leaves international law in full force. International law must not be bent by deviate municipal norms.

54. Accordingly international law preserves its features, contents and functions in spite of contradictory municipal law. International jurisprudence has proclaimed the dictum that as far as international law is concerned, municipal law operates as a fact and no more than that. The admission of unilateral departures from existing international law would threaten the security and stability of the entire fabric of international relations. The values, motives and ends behind those departures, as pertaining to the domestic jurisdiction of the State, remain unchallenged.

(f) Selective Adherence to International Instruments

55. In the case of Iran the main effect of the alleged incompatibility of international law with Islamic law regarding certain provisions of the two Covenants and the Universal Declaration of Human Rights has been the selective adherence to a number of provisions and the refusal to accept the validity and applicability of others, as indicated by the quotations mentioned at the beginning of this section.

56. The legal, political and moral nature of the instruments concerning human rights does not admit selective acceptance and rejection. Each instrument constitutes an indivisible body, and once a State is bound, it is bound by the entire instrument. Termination and suspension of international obligations are ruled out with respect to human rights. Nonetheless there are a few ways open to countries which encounter difficulties of application of or are displeased with existing norms.

57. The International Covenant on Civil and Political Rights permits that in case of public emergency which threatens the national life, a State party may take measures derogating from its obligations regarding a number of provisions, "to the extent strictly required by the exigences of the situation". Though the Iranian situation appears to meet the condition indicated in that provision, the Iranian Government has not taken advantage of the authorization under the Covenant.

58. Claims and criticism against existing norms may constitute the first stage of a process leading to the establishment of new norms. In principle all norms of international law are susceptible to change, even those of jus cogens, as stipulated in the Convention on the Law of Treaties (arts. 53 and 64), and no rule or human institution is immune to change. But in so far as the process of change has not culminated in the establishment of new norms, the existing law has to be respected and applied. International relations would become untenable and, in extreme situations, chaotic, if unilateral positions of States would suffice to introduce exceptions to existing law, even where those positions or actions are well enshrined in the cultural heritage of the States concerned.

59. Furthermore, it may happen that certain specific ways of application of general rules to particular cases might be adapted in order to take into account the peculiarities of each concrete case or situation. Thinking in a speculative way, a working arrangement of action and inaction, formal authorization and mere toleration could be conceived. This expedient would have to be carefully studied and worked out with respect to concrete situations and cases only. It could not be ruled out a priori, but to transform it into a means of disregarding, putting aside, getting rid of or introducing unilateral modifications to binding international instruments would be inconsistent with the existing system of human rights. This would be another example of application of the ancient adage saying that whereas justice is good equity is even better.

## 2. Replies to Alleged Violations of Human Rights

60. The Iranian Government has refused to provide detailed replies to the allegations of violations of human rights presented to its consideration: on four grounds: the terms of the resolution of the Commission on Human Rights creating the mandate, the method of conveying the allegations to the attention of the Government, the qualifications of the witnesses interviewed by the Special Representative, and the use of a certain terminology in official resolutions and documents. The question regarding the terms of the mandate will not be discussed in this report.

### (a) The method of conveying allegations

61. With respect to the method of conveying allegations to the attention of the Government, the Iranian Government stated that the groups that had provided such information were disqualified as valid interlocutors and that they had "the only common denominator ... that they all follow the same objective of undermining the sovereignty of the Islamic Republic of Iran. It is quite questionable, therefore, that these groups have been the only sources of information for the so called detailed and specific allegations. Nevertheless the Commission should be informed that to respond to these so called "allegations" in the present format creates a legal problem. None of these groups have registered themselves or are qualified to be registered as a political party or a minority in the Islamic Republic of Iran. To respond to these specific sections of the Report would implicitly imply recognition of the status the Special Representative has granted them. A situation that would run contrary to Iranian law" ("The Viewpoints", pp. 10-11, para. 23).

62. It is necessary to clarify that the Special Representative has not granted any recognition to any of the groups which have served as channels of communication of alleged violations of human rights. The mention of the groups that have acted as vehicles for the presentation of concrete cases can not and should not be construed as intended to grant or recognize them any particular status. The mention of those groups has no other purpose than to provide the Iranian Government with a complete picture of the allegations. The granting of recognition or status would go beyond the mandate of the Special Representative and would not correspond to his intention.



63. All the allegations concern individuals and many of them were made by individuals in their individual capacity. The political affiliations of those persons are not under discussion. They may or may not be members, sympathizers or simply acquaintances of any of the groups referred to by the Iranian Government. They are human beings entitled to the enjoyment of protection of human rights. International law on human rights gravitates on the generic and most common dimensions of human beings, without consideration of particular features such as race, nationality, sex, religion, culture or economic or social position. Natural persons are recognized in their inherent dignity and worth.

64. The study of the situation of human rights prevailing in a given country requires the collection of all available information. It would be unwise to reject a priori certain sources and to accept others. Indeed all information is debatable and subject to scrutiny. It is precisely for that reason that the circumstantiated views of the Government concerned have an important role. After a controversial examination of the cases it would be possible to have a more accurate view of the situation regarding human rights. Judgement would follow the examination of facts and vehicles of information.

65. The Iranian Government suggested, as an alternative, that the Special Representative may receive information from certain political groups informally and convey it to the Government in the same manner, in order to get the official consent to publish the names of such groups in official documents. The Government objects to the publication of the names of such groups alleging that it provides them with "publicity, exposure and clout" ("The Viewpoints", pp. 11, 12, 15, paras. 28, 40(g)). If public documents of the United Nations are used for propaganda purposes, that fact goes beyond the intention and the capacity of control of the competent organs. The suggested procedure might be adopted by the Commission on Human Rights, but according to the present formulation of the mandate the Special Representative has to present to the Commission, through his reports, all the available information, without any restrictive procedure. To further clarify this suggested procedure, it is convenient to have in mind the distinction between information provided by groups as such and information provided by individuals. The suggestion mentioned above concerns only information emanating from and concerning groups.

(b) The qualifications of witnesses

66. With respect to the qualifications of the witnesses interviewed by the Special Representative, the latter has received communications and examined witnesses in accordance with the well established practice of international organs dealing with human rights. The Inter-American Commission on Human Rights started this practice in 1962, and from then on this procedure has been extensively applied. Witnesses are indispensable to collect firsthand information and to assess the prevalent situation of human rights.

67. The Iranian Government would like the Special Representative to apply the restrictive rule of the International Covenant on Civil and Political Rights (art. 41) ("The Viewpoints", p. 11, para. 24). This rule applies to the Human Rights Committee and has not been adopted as practice by other international organs entrusted with the protection of human rights.

68. The mandate of the Commission on Human Rights empowers the Special Representative "to make a thorough study of the human rights situation based on such information as he may deem relevant, including comments and material provided by the Government" (resolution 1984/54, para. 4). The mandate therefore leaves it to the discretion of the Special Representative to determine the relevant information. Certainly discretion can not be equated to arbitrariness. The Special Representative has used that authorization within the terms of the international practice on human rights and in accordance with duly and widely recognized international standards.

(c) The question of the term "Minority"

69. The Iranian Government has objected to the use of the term "minority" as applied to the members of the Baha'i faith. The adduced motivation is the absence of a standard definition at the United Nations. And, indeed, the Sub-Commission on the Prevention of Discrimination and Protection of Minorities is far from reaching an agreed definition of this term.

70. The term "minority" has been consistently used by the Commission on Human Rights in its resolutions in reference to the Baha'is. The Special Representative has sometimes referred to this group in the same manner, within the terms of reference of his mandate.

71. The term "minority" has been studied by sociologists and has entered and has been incorporated by the international lexicon for a long time. Sociologists generally define "minority" as a group of people differentiated from others of the same society by race, nationality, religion or language. The application of that term to the Baha'is would not add or diminish characterizations to their entity. They are what they are irrespective of the words used to refer to them. The Special Representative deals with the Baha'is as individuals, and is interested in groups as formed by individuals and as providers of information on individuals. The view of the Iranian Government denying the condition of minority to the Baha'is has been duly reflected in the Special Representative's previous reports.

V. GENERAL CONSIDERATIONS AND CONCLUSIONS

72. The presentation by the Iranian Government of a document ("The Viewpoints") containing its views on several issues and its opinions on the binding force of international instruments on human rights, has helped to clarify controversial points and provided material which makes it possible to have an insight into the intricate situation of that country. Clarification of conflicting approaches and interpretations may sometimes constitute the first stage of a process leading to some kind of common understanding and to the eventual solution of the outstanding problems. The Iranian document has in particular permitted the Special Representative to elucidate his own approaches and views on conflicting points.

73. The Special Representative welcomes the statement of the Iranian Government that some provisions of the International Covenant on Civil and Political Rights, particularly those which may be considered as jus cogens, are compatible with Islamic Law. This statement clears the normative basis for the examination of the concrete allegations of violations of human rights submitted to the attention of the Iranian Government. Disparate official statements on this subject have been registered, but it seems that, with regard to the situation of human rights, the position officially communicated to the Special Representative should prevail. The Special Representative expresses the hope that the Iranian Government will increase the normative area of agreed application of norms concerning human rights in order to cover the entire international instruments by which it is bound as a member of the United Nations and a party to the two Covenants. This final outcome would entail the abandonment of the selective adherence to some provisions of the international instruments.

74. The original perception from which the Iranian Government derives its initial positions and theses with respect to the international protection of human rights may be considered as deeply enshrined in its cultural life and its current national movement. The preliminary difficulties with respect to the full application of the instruments on human rights could thus be explicable. The statement on the compatibility of certain international provisions with Islamic law may be understood as an effort of accommodation to the international obligations and as the beginning of a sustained trend that may eventually reach the point of acceptance of the positions adopted by the General Assembly of the United Nations and the Commission on Human Rights in their successive resolutions. The discussion and the clarification of the question of compatibility of international law with Islamic law, and the hypothesis of a working arrangement at a concrete and factual level are therefore quite important. On the part of international organs of protection of human rights a parallel effort might be undertaken in order to take into account the peculiarities of the Iranian situation and to facilitate and help the full compliance of Iran with the provisions of the international instruments. Comments made and information provided by the Iranian Government have been extensively quoted and referred to in the reports prepared by the Special Representative previously, particularly in the Interim Report (A/42/648). Both the practice of international organs of protection of human rights and the terms of the mandate (resolution 1984/54, para. 4) determine that comments from the Iranian Government should be received, considered and included in the analysis of the prevalent situation.

75. The views of the Iranian Government concern a variety of subjects, from the qualifications of groups that have acted as medium for conveying information to the compatibility of international law with Islamic law. The Special Representative has been unable to agree on some of those views. There is no doubt that the original perception based on the system of international law on human rights differs from the original religious perception of the Iranian Government. Nonetheless in the course of the oral and written dialogue some points have been identified upon which a kind of working understanding may exist. The Special Representative has tried to take the Iranian views into account as much as possible, to the extent this was consistent with the structure and operation of international instruments on human rights. Thus, a possible way was indicated to give some consideration to the Iranian desire to apply particular rules to the use of information provided by organized groups (supra, p. 65). The present use of such information is consistent with the practice of international organizations but there is no legal obstacle for the Commission to adopting particular rules in handling such information. It has also been acknowledged that the participation of Islamic scholars in the preparation of the Universal Declaration of Human Rights was relatively minor, considering the importance and extension of Islamic culture, without attributing any legal effect to that fact. An hypothesis has also been outlined according to which a working arrangement with respect to concrete cases might be worked out in order to overcome obstacles of local character while ensuring the compliance with international norms (supra, p. 59).

76. In his introduction to the Interim Report (A/42/648) the Special Representative indicated, with respect to the enjoyment of human rights, the coexistence of two complementary but distinct elements with their respective levels of operation: the normative and legal level and the level of implementation. The normative level is important and is constituted by international instruments and municipal law. But despite its importance it may have scarce practical occurrence if the level of implementation is faulty. Governments therefore have to monitor carefully the level of implementation through the actions of both petty and high officers, in order to fully comply with international obligations.

77. With respect to the normative level, it has not yet been possible to obtain complete texts of the pertinent Iranian laws, such as the Penal Code. It has therefore not been possible to examine the compatibility of the laws with international instruments. Nonetheless, it has been possible to examine, to some extent, the level of implementation on the basis of oral and written information, and the Special Representative has expressed in the Interim Report his concern regarding the treatment given to prisoners during interrogation and before and after the final verdict, as well as at the extremely summary and informal proceedings, unawareness of defendants of specific accusations against them, lack of legal counsel and other irregularities.

78. The Iranian Government provided information quoting provisions of the Constitution and the Penal Code concerning the punishment of judicial officials and non judicial staff engaged in maltreatment and molestation of

prisoners (A/42/648, p. 16, para. 46). It is the considered view of the Special Representative that complaints regarding maltreatment and torture should not be discarded without a thorough examination of each case, since such practices are strictly forbidden by municipal law and international law.

79. The communication of allegations of violations of human rights has a positive aspect, as it gives information to the Government concerned on facts that may have escaped its knowledge and may orient the investigation and contribute to the possible redress of any weakness in the national system of protection of human rights. The communication of such allegations thus contributes to the fair functioning of national institutions. The furnishing of circumstantiated replies to such allegations also has a positive aspect for any Government. As a matter of fact the Government concerned may benefit from the inclusion of the replies in the reports, as both the General Assembly and the Commission on Human Rights would be aware of its views and would have additional information to formulate a balanced judgement on the current situation. The replies are part of a consistent practice on this subject matter. Furthermore they would not imply any recognition or granting of status to any of the groups involved in political strife or, in any other way, active in a given society. In the case of Iran the replies would be part of a dialogue between the Iranian Government and the Commission on Human Rights through the Special Representative, and nothing more. In the absence of concrete official replies to allegations of violations of human rights only one side voices its views, while the other side - the Government - remains silent.

80. It may be convenient to emphasize again that the international protection of human rights has a co-operative character which derives from the text of the Charter of the United Nations. It activates the co-operation promised among members of the United Nations. The objective of the exercise is to ensure compliance with international obligations on the basis of co-operation of each State and each Government. It is not a judicial procedure. It appeals to good will, to moral and political standards and to legal norms whose enforcement is, for the time being, imperfect. Its goal is not to condemn a Government but to redress a given situation.

81. The Centre for Human Rights has developed a programme of technical assistance which is based on the co-operative character of the action and surveillance by the competent organs of the United Nations, whose ultimate recourse is world public opinion. Governments wishing to be fully and thoroughly acquainted with the continuing and fast developments in the field of human rights and to know the intricacies of the application of international instruments may take advantage of this service (Commission on Human Rights, resolution 1987/37 and basic information provided by the Centre).

82. In the light of the foregoing analysis the Special Representative has reached the following conclusions (of which the chapter on "Observations" of the Interim Report may be considered as the introductory part):

(1) The Special Representative appreciates the co-operation of the Iranian Government and expresses his hope that this co-operation will reach the level of full co-operation in the near future, in compliance with the

reiterative resolutions of the General Assembly of the United Nations and the Commission on Human Rights. The Special Representative also expresses the hope that the Iranian Government will reconsider its position on some issues referred to in this report, in order to fully comply with the provisions of binding international instruments on human rights. The Special Representative believes that the development of coincidence of views and the actual implementation of the co-operative character of the international protection of human rights may lead to the gradual solution of the pending problems.

(2) The alleged incompatibility between some provisions of international law on human rights and Islamic law is a domestic problem that should be solved by the Government concerned, because it does not affect or change per se international obligations. From the point of view of international law the obligations acquired by the Islamic Republic of Iran as a member State of the United Nations and as a party to the two International Covenants are fully binding and do not admit exceptions on account of constitutional problems, rules and regulations of municipal law, or cultural or historic background—even if justified from a national point of view.

(3) Notwithstanding that assertion of principle and taking into account the co-operative character of the international protection of human rights it would be possible to make efforts in order to meet some of the misgivings and concerns of the Iranian Government at a very concrete level and without belittling the full force and the right application of agreed and binding provisions on human rights.

(4) Although the selective acceptance by the Iranian Government of important provisions of the International Covenant on Civil and Political Rights provides a normative basis for the five categories of complaints communicated to the Government, it is expected, as a matter of principle, that the Iranian Government may reach the point of complete recognition of all provisions of binding international instruments without discrimination of any kind.

(5) Allegations on violations of human rights have been communicated to the Iranian Government in accordance with international practice. These allegations refer to individuals. Whenever certain groups have played the role of intermediaries to convey information the individual character of such information has been kept. As human rights protect human beings in their most common and generic dimensions, their political or religious affiliations, their change of citizenship and other particular conditions or characteristics are of no relevance.

(6) The circumstantiated official replies to communications of alleged violations of human rights would certainly contribute to a better understanding and evaluation of the situation regarding human rights and would inform the international community of the concrete views of the Iranian Government as well as the result of the investigations on specific cases. Furthermore, these replies would be an important element of the full co-operation required by the Commission on Human Rights.

(7) The Special Representative expresses concern on account of communications referring to new cases of summary executions and of information according to which some prisoners were in danger of execution. Nevertheless, the Special Representative notes with satisfaction the information according to which five prominent members of the Baha'i faith who were arrested in Teheran in October 1987, including two former members of the National Baha'i Council of Iran who were alleged to be in danger of execution, were recently released from prison without any conditions. Information on growing economic pressure on Baha'is, such as cancellation of business licences, confiscation of property, dismissal from government jobs and loss of pensions, as well as denial of higher education, still continues to be received in a consistent manner.

(8) Information on maltreatment and torture in prisons continues to be received and was the subject of pathetic and moving declarations by witnesses who had direct experience of the conditions prevailing and the behaviour of officers in prisons. Some witnesses presented the physical effects of maltreatment that could be seen and interpreted by a layman. Medical doctors gave expert opinion linking those effects to torture. Moreover, information on irregularities of various kinds in the course of trials was abundant, consistent and convincing. Consequently the Government may wish to initiate an urgent investigation of those complaints in order to take measures of redress.

(9) The Special Representative continues to believe that acts still occur in the Islamic Republic of Iran which are inconsistent with international instruments on human rights, and that the situation in that country justifies continuing international concern, study and constant monitoring by the competent organs of the United Nations.