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COMMISSION ON HUMAN RIGHTS
Thirty-sixth session

QUESTION OF INTERNATIONAL LEGAL PROTECTION OF THE
HUMAN RIGHTS OF INDIVIDUALS WHO ARE NOT CITIZENS
OF THE COUNTRY IN WHICH THEY LIVE

Comments received from Governments pursuant to
Economic and Social Council decision 1979/36

CONTENTS

	Page
INTRODUCTION	2
COMMENTS RECEIVED FROM GOVERNMENTS	3
Austria	3
Cyprus	4
Dominican Republic	5
Kuwait	6
Mexico	9
Morocco	12
Netherlands	14
Norway	18
Panama	21
Senegal	22
Seychelles	23
Sudan	24
Syrian Arab Republic	25
United Kingdom of Great Britain and Northern Ireland	26

INTRODUCTION

1. At its first regular session of 1979, by decision 1979/36 of 10 May 1979, the Economic and Social Council decided to submit the draft declaration on the human rights of individuals who are not citizens of the country in which they live (E/CN.4/1336), prepared by Baroness Elles, Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, to Member States for their comments and to the Commission on Human Rights at its thirty-sixth session for consideration with the comments received, with a view to transmitting a report on the subject to the Council at its first regular session in 1980.
2. In implementing the Council's decision, the Secretary-General addressed, on 8 June 1979, a note verbale to the Governments of all Member States inviting them to forward to the Director of the Division of Human Rights, by 30 September 1979, any comments they might wish to make on the above-mentioned draft declaration.
3. The present report contains 14 replies received as of 31 October 1979 from the following Governments: Austria, Cyprus, Dominican Republic, Kuwait, Mexico, Morocco, Netherlands, Norway, Panama, Senegal, Seychelles, Sudan, Syrian Arab Republic and United Kingdom of Great Britain and Northern Ireland. Any additional replies will be reproduced in an addendum to this document.

COMMENTS RECEIVED FROM GOVERNMENTS

AUSTRIA

[Original: English]

[12 October 1979]

1. Austria attaches great importance to respecting and ensuring human rights to people who are not citizens of the country in which they live. In this sense, the present Declaration is regarded as a further step towards safeguarding these rights.

As was stated already in the Austrian comments (see E/CN.4/Sub.2/L.682/Add.1) on the first Draft of the Declaration in 1977, it must be noted also with respect to the revised Draft that the International Covenant on Civil and Political Rights ensures the rights enunciated in it to "everyone", a principle explicitly laid down in article 2(1) of the Covenant.

In view of this fact, the possible transformation of the present Declaration into a Convention does not appear to be an absolute necessity, the more so since this would involve the danger of creating two classes of human beings. Austria considers that in matters concerning fundamental and human rights aliens should in principle enjoy the same status as do a country's nationals, although certain exceptions to this principle may be justified.

The Austrian Government has noted with great satisfaction that the revised Draft reflects some of the suggestions made by Austria in her comments on the first Draft.

2. Even so, there are still further aspects on which the following points should be made:

To article 4, first sentence, and article 8, first sentence:

A clarification as to what distinction a State is entitled to make between its citizens and non-citizens is considered desirable by Austria.

To article 4(ii):

The wording "and to have the free assistance of an interpreter if he cannot understand or speak the language used in court" is modeled by the wording of article 14(3)(f) of the International Covenant on Civil and Political Rights, which is, however, applicable to criminal proceedings only. This wording is too wide for civil proceedings.

It is suggested in respect of civil proceedings to follow the principle laid down in the "Draft Resolution on Measures Facilitating Access to Justice" (in civil matters) prepared by the Council of Europe (CJ-AJ(78)Misc4), viz.: "11. Where one of the parties to the proceedings does not have sufficient knowledge of the language of the court, States should pay particular attention to the problems of interpretation and translation and ensure that persons in an economically weak position are not disadvantaged in relation to access to the court or in the course of any proceedings by their inability to speak or understand the language of the court."

To article 8(iv):

It is held by Austria that a non-citizen's right to "social service" cannot imply a title to public assistance if the respective State's citizens do not have such a legal title either.

CYPRUS

[Original: English]

[19 September 1979]

The Government of the Republic of Cyprus reiterates its views and comments (see E/CN.4/Sub.2/L.682/Add.1) on the draft declaration already submitted in March 1978.

In this respect it has been noted with satisfaction that the new draft declaration in the last part of its second preambular paragraph contains, inter alia, "religion" as a criterion of non-distinction.

DOMINICAN REPUBLIC

[Original: Spanish]

[11 August 1979]

In general, the Dominican Republic shares the opinion expressed by the countries which have approved the draft declaration in question.

It is not possible, however, to give clear and unqualified approval to the open regime envisaged in this context as we have reservations connected with the possibility of deportation, for the purpose of avoiding situations likely to disturb public order, under an instrument concluded between the parties concerning migration for purposes of industrial employment, and also in connexion with possible disputes concerning acquisition of nationality through such temporary migration by persons who enter a country without intending to settle there permanently.

Moreover, in the case of countries such as the Dominican Republic, which have land frontiers, clandestine migration may occur which the States concerned have to prevent in order to avoid situations that disturb public order and affect the security of the States.

KUWAIT

[Original: Arabic]

[17 September 1979]

Ministry of Labour and Social Affairs

Following our examination of the articles of the draft Declaration in the light of the laws and regulations in force in the State of Kuwait concerning individuals who do not have Kuwaiti citizenship, it was found that no contradiction exists between the rights set forth in the draft Declaration and the provisions actually applied in the State of Kuwait. For this reason we, in the Ministry, have no objection to endorsing each and every one of the provisions of the draft Declaration referred to above.

Ministry of Justice

The Ministry has no reservation to make in connexion with this draft Declaration. It wishes to point out that the Constitution and other Kuwaiti laws in force contain many provisions guaranteeing the human rights of individuals residing in Kuwait who are not Kuwaiti citizens. The draft Declaration is in harmony with the provisions in question.

Ministry of Education

The conditions and regulations applied to pupils entering State schools who do not have Kuwaiti citizenship are the same as those applicable to Kuwaiti pupils.

The Ministry offers those pupils who fail to meet the State school entrance requirements the opportunity to enter private schools coming under its supervision, which are given financial and technical assistance to enable them to fulfil their task, in the same way as the State schools.

Council of MinistersDepartment of Legal Affairs

Having studied the draft Declaration from a legal standpoint, we noted that:

First: The wording of article 2, paragraph 1 of the Declaration differs from that of article 2, paragraph 2 in a way that would result in needless inconsistency: paragraph 1 provides that "Non-citizens shall observe the laws in force in the State in which they live and refrain from illegal activities prejudicial to the State", whereas paragraph 2 provides that "Every State is entitled to expect that non-citizens will respect the customs and traditions of the people of the State". We therefore consider that paragraph 2 ought to be modified in such a way as to make it mandatory for non-citizens to respect customs and traditions. We suggest that the paragraph should be amended to read: "Non-citizens shall respect the customs and traditions of the people of the State."

Second: There are provisions in the Declaration which grant non-citizens certain rights that are inconsistent with the Kuwaiti laws in force. These include:

A. Subparagraph (vi) of article 4, concerning the right to own property. In Kuwait, enjoyment of this right is confined to Kuwaiti citizens. Non-Kuwaitis are permitted to own property in Kuwait only in exceptional cases and on special conditions and only with the authorization of the Government.

B. Subparagraph (ix) of the same article, concerning the right to freedom of peaceful assembly and association. The Kuwaiti laws (the laws on clubs, public-interest associations, and co-operative societies, and the provisions of the Employment Act relating to unions) do not permit individuals other than Kuwaiti citizens to form any kind of societies, associations or assemblies.

C. Article 8, subparagraph (i) of the draft provides for equal pay for equal work. There are regulations in force in Kuwait that are at variance with this principle.

D. Subparagraph (iii) of the same article provides for the right of non-citizens to join trade unions and participate in their activities. This is not permissible in Kuwait.

E. Subparagraph (iv) of the same article provides for the right of non-citizens to social security and social services. This is not observed in Kuwait.

Ministry of Public Health

The Ministry of Public Health suggests approval in principle of this draft Declaration, as it embodies basic principles relating to the rights of individuals who are not citizens of the country in which they live and the practices concerning them followed by the State, in an attempt to establish standards which would be universally acceptable and acknowledged, notwithstanding other universal instruments, such as the Universal Declaration of Human Rights of 1948 and the two International Covenants on Economic, Social and Cultural Rights, and on Civil and Political Rights of citizens and non-citizens.

The Ministry wishes to make the following remarks about the draft Declaration:

First: Article 2 of the Declaration provides that every State is entitled to expect that non-citizens will respect the customs and traditions of the people of the State. We consider that the article should, in addition to the foregoing contain a provision to the effect that non-citizens shall respect the religions practised by the people of the State and shall not disdain these religious beliefs.

E/CN.4/1554

page 6

Second: Article 8, subparagraph (iv) provides for the right of non-citizens to medical care, social security, social services and education, provided that the minimum requirements for participation in national schemes are met. Considering that the State of Kuwait is now providing non-citizens with free medical and social services as well as with partly free education and social security, it should be understood that the status quo does not constitute an acquired right for non-citizens; the general rule is that non-citizens can enjoy such services in return for financial contributions to the above-mentioned schemes, as stipulated by article 8, subparagraph (iv). The present practice of the State of Kuwait is the exception rather than the rule.

Third: It ought to be emphasized in the Declaration that, as a rule, non-citizens shall not be entitled to greater advantages than citizens in the matter of enjoyment of rights.

MEXICO

[Original: Spanish]

[25 September 1979]

1. The general aim of the declaration in question is to specify a number of rights which should be enjoyed by persons who are in a country of which they are not nationals, such as the right to own property, to freedom of opinion and expression, to work, to medical care, to social security, etc. However, the title of the declaration does not seem to correspond to the central idea of the instrument, since it makes the exercise of these rights dependent on citizenship, and not on nationality. 1/

Nationality, considered as a legal and political tie uniting the individual with the State, does not exist in the particular circumstances contemplated in the declaration, yet persons who are not nationals of the State concerned have or are granted under it specific rights.

For citizenship there are, in addition to nationality, other requirements such as majority age and, in some countries, evidence of an honest mode of life, etc. It is therefore suggested that in the title and body of the declaration the expression "who are not citizens" should be replaced by "who are not nationals"; this would be in conformity with the international instruments referred to in the preambular paragraphs, such as the Universal Declaration of Human Rights, the International Covenants on Human Rights, etc.

2. Article 1 of the declaration, in defining the term "non-citizen", states that it "shall apply to any individual who lawfully resides in a State of which he is not a national". 2/

In addition to the distinction already pointed out, between national and citizen, for a person to be able for instance to have the right to security of person or to equal access to and equal treatment before the tribunals, (under article 4, for example) he must be lawfully residing in the State, in other words, the exercise of these rights is conditional upon fulfilment of immigration requirements.

While it is true that all individuals must be required to obey the law - in this case, to comply with such requirements - immigration laws should not take complete precedence over all the human rights of individuals.

It is therefore suggested that the word "lawfully" should be deleted from article 1.

3. The wording of article 2, paragraph 1 is considered inappropriate since it provides that "Non-citizens shall observe the laws in force in the State in which they reside" but then adds "and refrain from illegal activities prejudicial to the State".

1/ Translator's note: the title of the Spanish version of the draft declaration refers to "ciudadanos".

2/ Translator's note: "del que no es ciudadano" in the Spanish version.

They must, of course, refrain from illegal activities; but the wording of the paragraph might be interpreted as meaning that they can engage in illegal activities if those activities are not in themselves prejudicial to the State. It would therefore be preferable to delete "and refrain from illegal activities prejudicial to the State".

4. Article 2, paragraph 2, is worded as follows:

"Every State is entitled to expect that non-citizens will respect the customs and traditions of the people of the State."

The paragraph could be reworded in such a way as to establish a genuine obligation for non-citizens, by providing, for example, that "non-citizens shall respect the customs and traditions of the people of the State in which they reside"; this could ensure observance of public order in the host State.

5. With regard to article 4, paragraph (1), it is felt that the right to security of person and protection by the State against violence or bodily harm could be strengthened by the addition of other rights such as the right not to be arbitrarily deprived of liberty.

6. Article 4, paragraph (vi), refers to certain civil rights which non-citizens of a State should enjoy, including the right to own property alone or in association with others.

In this connexion, account should be taken of the differences between the existing systems; the fact cannot be ignored that the State is always entitled to make ownership of property subject to such rules as the public interest may require; in Mexican law for instance, there is an absolute prohibition of the acquisition by non-nationals of direct ownership of land or waters in a strip extending 100 kilometres from the frontier or 50 kilometres from the coast.

There are other types of limitation placed on the acquisition of ownership of land or water or appurtenances thereto, designed to prevent non-nationals from obtaining mining or water concessions - which the State may grant to such persons on the condition that the latter agree to consider themselves nationals and therefore do not invoke the protection of their Government, under penalty, in the event of breach of the agreement, of losing to the Nation the properties acquired under the agreement.

7. Regarding the other rights proclaimed in the declaration, it must be borne in mind, in connexion for instance with the rights proclaimed in article 4, paragraphs (vii) and (viii) that the enjoyment of certain rights may be restricted in the same way as it is for nationals of the country; freedom of opinion and expression, for instance, cannot be considered absolute, without regard to their interference with the rights of others, public morality or the public good, and respect the privacy of others.

8. The right to freedom of peaceful assembly and association is proclaimed in paragraph (ix) of article 4; it must however be taken into account that persons in the territory of a State of which they are not nationals do not have rights of a political nature there and therefore will not be able to exercise this freedom if the purpose of the assembly or association is in fact participation in the political affairs of the country of which they are not nationals.

9. In article 7 of the draft, it is stated in paragraph 2 that a non-citizen may be expelled from the territory of a State only in pursuance of a decision reached in accordance with law; and, except where compelling reasons of national security otherwise require, shall be allowed to submit reasons against his expulsion and to have his case reviewed by the competent authority or a personal persons especially designated by the competent authority.

With respect to a decision on expulsion, it is provided, however, that the non-citizen must be allowed to submit reasons against his expulsion, and to have his case reviewed by the competent authority if necessary, unless there are compelling reasons of national security which make this inadvisable.

It is considered that the possibility of there being compelling reasons of national security should govern the whole of this paragraph, which might therefore be redrafted as follows:

"7.2. Except where compelling reasons of national security otherwise require, a non-citizen may be expelled from the territory of a State only in pursuance of a decision reached in accordance with law, and shall be allowed to submit reasons against his expulsion and to have his case reviewed by and be represented for the purpose before the competent authority or a person or persons especially designated by the competent authority."

10. Article 8 of the draft refers to certain economic and social rights which non-citizens should be entitled, as a minimum, to enjoy, including the right to just and favourable conditions of work and the right to join trade unions and participate in their activities.

In this connexion, it should be borne in mind that the great majority of countries, especially developing countries, because of the scarcity of employment opportunities and the great number of unemployed among their population, provide in their laws and regulations that, other things being equal, nationals of the country shall be employed in preference to non-nationals. With respect to the participation of aliens in trade unions, while this right is generally admitted, some States place restrictions on the holding by aliens of official positions in unions.

MOROCCO

[Original: French]

[3 September 1979]

Two principles are stated in article 2 of the draft:

"1. Non-citizens shall observe the laws in force in the State in which they reside and refrain from illegal activities prejudicial to the State."

The enunciation of this principle, which merely recognizes the application to all persons residing within the territory of a State of its "police and public safety laws", is supplemented by a second, more general, provision:

"2. Every State is entitled to expect that non-citizens will respect the customs and traditions of the people of the State", which seems, indeed, the least that can be demanded of such guests.

Article 3 requires every State to make public laws, regulations and administrative measures which make a distinction between nationals of the host country and non-nationals where they "affect the right of non-citizens", i.e., place limitations on the exercise of their rights in comparison with those of "citizens".

This requirement of non-secrecy concerning measures is reasonable.

Article 4 lists, subject to the principles set forth in article 2, the civil rights which "non-citizens" should enjoy as a minimum.

The list of rights includes the following: "(v) The right to marriage and choice of spouse". This requirement can obviously be associated with "respect" for "the customs and traditions" of the host country. In Morocco, however, it may be in conflict with the peremptory rules of Muslim law and personal status, which may preclude freedom of choice between persons of different religions.

With regard to the right to own property (paragraph vi), any restrictions which are applied can be covered by the formula "notwithstanding any distinction which a State is entitled to make between its citizens and non-citizens".

That restrictive provision might also cover (ix) "The right to freedom of peaceful assembly and association", particularly in connexion with participation in associations and the holding of office in such associations.

Article 7: There is no "deportation" procedure in Morocco. As for expulsion, this is an administrative measure the Authorities are allowed to take for the purpose of maintaining public order.

In Morocco, unlike in certain neighbouring countries, collective expulsions are not practised.

Article 8: This text does not lay down any obligation which the Moroccan State does not already assume, subject to distinctions between citizens and non-citizens, in respect of repatriation of savings, the holding of office in trade unions and the enjoyment of social security, which is, in principle, confined to nationals of countries which have concluded with Morocco an agreement providing for reciprocity.

Article 9: As regards expropriation, such cases are governed by the law and are subject to judicial control, and non-citizens are treated in the same way as citizens.

To sum up, therefore, apart from the probability of a reservation on the question of marriages, there is nothing to prevent Morocco's subscribing to this draft declaration.

NETHERLANDS

[Original: English]

[13 August 1979]

In its reply, the Government of the Kingdom of the Netherlands referred to its comments on the draft declaration submitted in 1978, which are reproduced below. */

[10 August 1978]

General

Ideally, all the rights and freedoms for which the Universal Declaration provides should, in view inter alia of article 2 of that Declaration, be enjoyed on an equal basis by citizens and non-citizens alike. However, practical considerations sometimes make it desirable and even necessary to make a distinction. The Government of the Netherlands presumes that the purpose of the present draft is to ensure that such differences in treatment are kept to a minimum and that they lead as little as possible to non-citizens being treated less favourably than citizens.

In the light of the foregoing, human rights could be divided into three categories, the first of which would include rights which both citizens and non-citizens must always be able to enjoy without any restriction. Articles 5 and 6 of the draft declaration relate to this category. The second category would contain those rights which, though subject to certain restrictions, should not be applied in a way that would disadvantage non-citizens compared to citizens. In the opinion of the Government of the Netherlands, the majority of the rights mentioned in articles 4 and 8 might fall into this category. The third category would consist of those rights in respect of which non-citizens could be subject to restrictions which go further than those which apply to citizens. Examples of such rights would be those referred to in article 4 (iii), (iv) and (vi). Finally, a fourth category could contain rights which are specifically connected to the position of non-citizens. Examples of these are to be found in article 4 (x), article 7 and article 8 (ii).

However, there is a danger that such a classification could have an undesirable side-effect on the legal position of a non-citizen, because States could use it as an excuse for not granting the non-citizen more rights than suggested in the classification. While it could not properly be maintained that a non-citizen cannot be entitled to rights not listed in articles 4 and 8 of the draft declaration (for both articles include the words "at least"), States could nonetheless use the articles to deny non-citizens a more liberal conferment of unlisted rights. The possibility could therefore be considered of including in a draft declaration a requirement that States make every effort to apply human rights as far as possible on an equal footing to citizens and non-citizens.

Re preamble

No comment.

Re article 1

No comment.

*/ The text of the draft declaration to which these comments refer appears in the annex of document E/CN.4/Sub.2/L.682.

Re article 2

It is not clear what is meant by the phrase "refrain from illegal activities prejudicial to the State", since observing "the laws in force" naturally entails refraining from illegal activities. Is it envisaged that an extra restriction should apply to non-citizens? On the other hand, the question may arise as to whether this ground for restriction can replace the specific grounds for restriction which appear in conventions on human rights, such as the protection of public order, public health and morals and the rights and freedoms of others.

Re article 3

The purpose of this article also requires clarification: is it directed against the existence of secret regulations, or does it require all regulations to be listed?

Re article 4

The Government of the Netherlands wonders if the purpose of this article is to ensure that non-citizens are not at a disadvantage compared to citizens as far as the rights listed in this article are concerned. Understood in that sense, the reference in the opening words of the article would mean that distinctions may be made between citizens and non-citizens, provided they do not result in discrimination. In the same way, the reference to the obligations of article 2, as far as the obligation to observe the laws in force is concerned, would mean that non-citizens, when enjoying those rights, would be subject to the same legal restrictions as citizens. In order to prevent any misunderstanding, the meaning of the words "notwithstanding any distinction" ought to be clarified. It would also be desirable to insert the words "on a non-discriminatory basis" before "at least the following rights".

In the draft article only the right to freedom of movement and residence mentioned in (iii) is made subject to a restrictive clause, whereas the other rights are not. This is striking since the majority of those other rights do not appear in human rights conventions without restrictions. In respect of the restrictions on the enjoyment of human rights, two approaches would seem possible. On the one hand it could be argued that in a declaration no restrictive clauses at all are needed (and certainly not in this case, in view of the provisions of article 2); alternatively, a general clause could be incorporated subjecting all the rights mentioned in the declaration to the restrictions deriving from the Human Rights Covenants of the United Nations. Consistency, however, would be needed in either approach.

The Government of the Netherlands wonders if the reason for the explicit inclusion of a restrictive clause with regard to the right referred to in (iii) is not that, as far as this right is concerned, there can be reasons for subjecting non-citizens to restrictions which cannot be imposed on citizens. If the purpose of article 4 is indeed to list precisely those rights which would not allow for any discrimination against non-citizens, the right in (iii) would have to be removed and transferred to a separate section concerning rights of the third category as described in the general comments above.

More in particular, the Government wishes to make the following observations with regard to the rights listed in this article.

Re article 4 (i)

The Government of the Netherlands interprets the declaration in this sense that the enjoyment of the rights to which resident non-citizens are entitled under the declaration does not affect the application of legal regulations concerning the admission and residence of non-citizens. With reference to article 4 (i), the Government is thinking in particular of the legal proceedings provided for in those regulations exclusively for non-citizens. Allowance should continue to be made for special features of appeal procedures under the legislation concerning non-citizens. The right mentioned in article 4 (i) cannot imply that with respect to such procedures no special rules would be admissible which do not occur in general, universally applicable regulations concerning the resolution of disputes.

Re article 4 (iii)

The proposed restriction on freedom of movement and residence does not accord with that set out in article 12 of the International Covenant on Civil and Political Rights. If it is necessary to include a restrictive clause, then in order to obviate any possible misunderstanding the wording should be the same as in article 12. It is also worth noting that "compelling reasons of public policy" are not included as grounds for restriction in other internationally accepted instruments and that this gives the impression of being wider in scope than the term "public order (ordre public)" which is used in the Covenant; in other respects, however, the restrictive clause in (iii) gives the impression of going less far than that in the Covenant (it uses the words "absolutely necessary" rather than "necessary").

Re article 4 (iv)

It should be noted that the right to return to one's own country (iv) can be only partly guaranteed by the host State, in that it can allow the non-citizen to leave: it cannot guarantee that the non-citizen will be admitted by his own country.

Re articles 5, 6 and 7

No comment.

Re article 8

The general comments made on article 4 apply equally, mutatis mutandis, to article 8. Here, too, the Government of the Netherlands wonders if the purpose of this article is to ensure that non-citizens are not at a disadvantage compared to citizens as far as the rights listed in this article are concerned, except for the condition mentioned in respect of the rights listed in (iv), namely that the minimum requirements for participation in national schemes are met and that undue strain is not placed on the resources of the State. In order to prevent misunderstandings here, too, the meaning of the words "notwithstanding any distinction" ought to be clarified. It would also be desirable to insert the words "on a non-discriminatory basis" before "at least the following rights".

In subparagraph (i) it would be better to speak of "equal remuneration for work of equal value" instead of "equal pay for equal work", in conformity with article 7 of the International Covenant on Economic, Social and Cultural Rights.

In respect of what is stated in (iv), the Government of the Netherlands assumes that it does not affect the possibility of denying non-citizens the enjoyment of the benefits referred to, should they abuse them.

Re article 9

There is some question as to the value of the right embodied in the second paragraph if a non-citizen's right to compensation following the expropriation of his goods can be exercised only "taking into account the international assistance and co-operation which may be necessary for the guarantee of such rights".

Re article 10

No comment.

NORWAY

[Original: English]

[29 October 1979]

The individual rights set forth in the draft declaration should be compared to the relevant provisions of existing international instruments. The most significant of these instruments are:

1. The Universal Declaration of Human Rights of 10 December 1948 (HR-Dec.) which aims at protecting all human beings.
2. The International Covenant on Civil and Political Rights of 19 December 1966 (CPR-Cov.) which aims at ensuring the rights recognized therein for all individuals within the territory and subject to the jurisdiction of a State Party to the Covenant (article 2). This applies also to:
3. The International Covenant on Economic, Social and Cultural Rights of 19 December 1966 (ESCR-Cov.). However, according to this Covenant (article 2) developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the Covenant to non-nationals.

Re: Draft Declaration:

- Article 4 (i) The right to security of person is protected by HR-Dec. Article 3 and CPR-Cov. Article 2, para. 3 (a).
- (ii) The right to equal treatment before the courts and tribunals is protected by HR-Dec. Article 10 and CPR-Cov. Article 14.
- (iii) The right to freedom of movement and residence is protected by HR-Dec. Article 13, para. 1 and CPR-Cov. Article 12, paras. 1 and 3.
- (iv) The right to leave any country and return to one's own country is protected by the HR-Dec. Article 13, para. 2 and the CPR-Cov. Article 12, paras. 2 and 4.
- (v) The right to marriage and choice of spouse is protected by the HR-Dec. Article 16, paras. 1 and 2 and the CPR-Cov. Article 23.
- (vi) The right to own property is protected by the HR-Dec. Article 17, para. 1.
- (vii) The right to freedom of thought, conscience and religion is protected by the HR-Dec. Article 18 and the CPR-Cov. Article 18.
- (viii) The right to freedom of opinion and expression is protected by the HR-Dec. Article 19 and the CPR-Cov. Article 19.

- (ix) The right to freedom of peaceful assembly and association is protected by HR-Dec. Article 20 and CPR-Cov. Articles 21 and 22.
- (x) The right to retain one's own language, culture and tradition is protected by CPR-Cov. Article 27.

Article 5 Protection against arbitrary arrest or detention is given by HR-Dec. Article 9 and CPR-Cov. Article 9.

Article 6 Protection against torture or cruel, inhuman or degrading treatment or punishment is given by HR-Dec. Article 5 and CPR-Cov. Article 7.

Article 7 Protection against arbitrary expulsion or deportation is given by CPR-Cov. Article 13.

Article 8 (i) The right to just and favourable conditions of work, to equal pay for equal work and to just and favourable remuneration is protected by HR-Dec. Article 23 and ESCR-Cov. Article 7.

(ii) See below.

(iii) The right to join trade unions is protected by HR-Dec. Article 23, para. 4, CPR-Cov. Article 22 and ESCR-Cov. Article 8.

(iv) The right to social services is protected by HR-Dec. Article 25 and ESCR-Cov. Articles 9, 12 and 13.

Article 9, para. 1 Protection against arbitrary confiscation is given by HR-Dec. Article 17, para. 2.

para. 2 See below.

Article 10 The right to communicate with one's consulate or diplomatic mission is protected by the Vienna Convention on Consular Relations of 24 April 1963, Article 36.

This brief comparison between the draft Declaration and existing international instruments, indicates that the new elements are particularly to be found in article 8 (ii) and article 9, paragraph 2 of the draft. Although these two elements are important, one conclusion that the Norwegian Government feels compelled to draw is that the draft hardly introduces any basic rights or fundamental freedoms not already protected by existing international instruments. In addition it can be argued that the draft Declaration does not offer further guidance as to the level of the rights in question. At least in one respect, the draft on the contrary seems to be more restrictive than the HR-Dec. and the CPR-Cov. Article 4 (iii) as it introduces the term "public policy" which is probably somewhat more ambiguous than the term "public order", and this might be invoked as a justification for granting less protection to non-nationals than what they are entitled to in accordance with the other instruments in question. Furthermore, the draft Declaration does not seem to offer sufficient safeguards for the individual in the case of conflicts between its articles 1 and 2 on the one hand and articles 4-10 on the other.

The Norwegian Government is therefore doubtful whether the draft Declaration in its present form will serve the purpose expressed in preambular paragraph 8, i.e. to supplement existing international instruments in order to protect the human rights of individuals who are residing and may be working in countries of which they are

not citizens. It is certainly true that stateless persons, refugees and migrant workers are in need of improved international legal protection. However, if the Declaration were to "supplement existing international instruments" for these categories of persons it would seem to be necessary to state so explicitly, and to broaden the scope of rights set out in the Declaration of Human Rights, the two Covenants and a number of ILO Conventions - all intended to be applicable to every human being irrespective of nationality and residence.

In addition to the viewpoints expressed above, the Norwegian Government would like to submit some comments regarding the terms used in some of the articles in the draft Declaration.

International instruments concerning the same subject-matter, should in our opinion employ the same language. This point of view is apparently shared by those who have formulated the changes in the draft Declaration, e.g. the second preambular paragraph (corresponding to article 2 of the Universal Declaration); the third preambular paragraph (corresponding to article 6 of the Universal Declaration), and article 4 (ii) which corresponds to article 14, paragraph 3, subparagraph f of the Covenant on Civil and Political Rights. Consequently, the fourth preambular paragraph should embrace all the issues covered by article 2, paragraph 2 in the Covenant on Economic, Social and Cultural Rights and article 2, paragraph 1 in the Covenant on Civil and Political Rights. In this context it should be pointed out that the second preambular paragraph of the draft Declaration does include all the matters taken up in article 2 of the Universal Declaration of Human Rights and not only some of them.

The Norwegian Government welcomes the explicit reference in the seventh preambular paragraph to the International Convention on the Elimination of All Forms of Racial Discrimination. The reference should, however, be formulated in accordance with article 1, paragraph 2 of that Convention, and the phrase "between their own citizens and the citizens of other countries" should be deleted and replaced with "between citizens and non-citizens". Such a change will also safeguard the interests of stateless persons.

PANAMA

[Original: Spanish]
[10 October 1979]

The Republic of Panama, aware of the importance of migrant workers and the contribution they have made to its economic and cultural development since it became a nation, especially in the construction of that great engineering work serving all mankind, the Panama Canal, recognizes that the provisions contained in this draft will help to ensure respect for the human rights and dignity of those who are not citizens of the country in which they reside.

The Constitution of Panama contains the following provisions, which enable us to accept and support the draft declaration in question:

Article 20. "Panamanians and aliens are equal before the law, but for reasons of work, health, morality, public security and the national economy, the law may subject to special conditions or deny the exercise of specific activities to aliens in general. Likewise, the law or the authorities may, as the case may be, take measures that affect exclusively the nationals of specific countries in the event of war or in accordance with public treaties."

Article 62. "An equal wage or salary shall always be paid for equal work under identical conditions, regardless of the person who performs it, without distinction as to sex, nationality, age, race, social class, or political or religious ideas."

SENEGAL

[Original: French]
[15 October 1979]

The text of the draft declaration does not call for any comment by Senegal.

Senegal considers that the text enunciates generally-recognized principles, to which only a few rare exceptions can be made in connexion with national interests.

SEYCHELLES

[Original: English]

[23 October 1979]

(i) Art.4: Our present law does give non-citizens the right to own property but this right is only exercisable after they have received the sanction of Cabinet and must be exercised subject to the conditions imposed by Cabinet.

This law has been in force since 1963 and it is our view that countries should have the right to impose such restrictions on acquisition of property by non-citizens.

(ii) Art.7: In most countries deportation is left to the discretion of the Minister or authority concerned and usually his decision cannot be challenged.

(iii) Art.9: Again our law provides for forfeiture of non-citizen's property acquired subject to sanction if the conditions imposed at the time of granting sanction are not complied with. We do not consider this "arbitrary confiscation" as the purchaser is fully aware of the implications of a breach of the conditions of purchase when deciding to purchase.

"Just compensation" non-citizens cannot be in any better position than citizens of Seychelles who receive compensation calculated as set out in the Second Schedule to the Lands Acquisition Act. Government policy is that compensation should be calculated in relation to the income being derived from the property.

SUDAN

[Original: English]

[18 September 1979]

The Sudanese competent authorities have studied the draft declaration and have no strong observations to make against it. However, paragraph 3 of article 7 should read as follows:

"Arbitrary collective expulsion of non-citizens is prohibited".

SYRIAN ARAB REPUBLIC

[Original: English]

[30 July 1979]

The Syrian Arab Republic has no comments to make at this stage on this draft declaration. However, the Syrian legislation in force is in conformity with the principles and provisions of that draft declaration.

UNITED KINGDOM OF GREAT BRITAIN
AND NORTHERN IRELAND

[Original: English]

[6 July 1979]

The Government of the United Kingdom indicated that it had no further comments additional to those already submitted in March 1978 (see E/CN.4/Sub.2/L.682/Add.1).