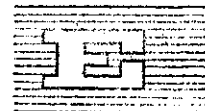


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QUESTION OF INTERNATIONAL LEGAL PROTECTION OF THE  
HUMAN RIGHTS OF INDIVIDUALS WHO ARE NOT CITIZENS  
OF THE COUNTRY IN WHICH THEY LIVE

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

Addendum

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COMMENTS RECEIVED FROM GOVERNMENTS

GREECE

[Original: French]

[5 November 1979]

The subject-matter of the draft Declaration on the Human Rights of Individuals who are not Citizens of the Country in which they live is, in principle, covered by the provisions of the Greek Constitution and Greek legislation in general.

More specifically, article 5, paragraph 2, of the Constitution now in force provides as follows:

"All persons living within the Greek territory shall enjoy full protection of their life, honour and freedom, irrespective of nationality, race or language and of religious or political beliefs. Exceptions shall be permitted only in cases provided by international law. The extradition of aliens prosecuted for their action as freedom-fighters shall be prohibited".

Article 28, paragraph 1, of the Constitution recognizes the generally acknowledged written and customary rules of international law that are concerned with the protection of aliens. The text of article 28, paragraph 1, is as follows:

"The generally acknowledged rules of international law, as well as international conventions as of the time they are sanctioned by law and become operative according to the conditions therein, shall be an integral part of domestic Greek law and shall prevail over any contrary provision of the law. The rules of international law and of international conventions shall be applicable to aliens only under the condition of reciprocity".

Furthermore, article 4 of the Civil Code gives aliens rights equal to those accorded to Greek citizens. The text of the article is as follows:

"An alien shall enjoy the same civil rights as a Greek citizen".

The penal code and the code of criminal procedure, as well as other special laws, contain no features discriminating against aliens resident in Greece except in cases relating to matters of national security and this, incidentally, does not conflict with the provisions in the text of the draft Declaration under consideration.

For your information, we refer below to some specific regulations that have been issued to safeguard these matters of national security.

1. An alien wishing to take up residence in Greece must obtain a special permit and will be subject to certain restrictions as to his place of residence. These restrictions are established by legislative decree or special regulations adopted for security reasons. Limitations of a similar kind are provided for in the draft Declaration.

2. For reasons of national security, there are certain prohibitions regarding the purchase by an alien of real estate in the border areas. However, if an alien has legally acquired landed property, he is free to do as he wishes with it.

3. With regard to the right to work, aliens are excluded in principle from posts in the public service under article 4, paragraph 4, of the Constitution, which stipulates that "only Greek citizens shall be eligible for public service, except as otherwise provided by special laws". To do any other kind of work, however, an alien living in Greece merely needs a special permit that is periodically renewable. Otherwise, aliens working in Greece enjoy all the rights laid down in article 8 of the draft Declaration.

In conclusion, the contents of the draft Declaration as a whole do not conflict with the relevant constitutional provisions and other provisions of Greek law.

Non-citizens living in Greece are fully protected in accordance with the spirit of the Declaration.

INDIA

[Original: English]

[15 November 1979]

Articles 1, 2, 3, 5, 6, 8 and 10 are acceptable to the Government of India.

The Government of India have certain difficulty in accepting parts of Article 4, 7 and 9. The Constitution of India provides for reasonable restrictions on specified grounds on freedom guaranteed to the citizens of India under article 19, not all of which are provided for in relation to corresponding rights enumerated in clause (iii) and clauses (vi) to (ix) of article 4 of the Draft Declaration, and a Declaration to this effect has been made in our instrument of Accession to the International Covenants on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. In respect of Article 7 (2) also the Government of India has reserved its right to apply its laws relating to foreigners. Similarly, in respect of article 9 (2) it is difficult to guarantee "just compensation" to non-citizens for the expropriation of properties as even the citizens of India do not enjoy a fundamental right to claim a "just compensation" after the amendment of the Constitution by the 44th Amendment Act, 1978.

JAPAN

[Original: English]

[20 November 1979]

1. Draft Article 4, para. (ii) should be revised, as indicated below, along the lines of Article 14, para. 3 (f) of the International Covenant on Civil and Political Rights since the right to have the free assistance of an interpreter is to be guaranteed particularly in criminal proceedings. \*/

Article 4 (ii)

The right to equal access to and equal treatment before the tribunals and all other organs administering justice and, in criminal proceedings, to have the free assistance of an interpreter, if he cannot understand or speak the language used in court.

2. No special comments to offer on other draft Articles.

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\*/ It is considered not always necessary to guarantee under the law the right to have the free assistance of an interpreter in cases of disputes between private parties who can afford such expenses. In fact, in Japan, Articles 11 and 12 of the Law No. 40 of 1971 concerning the expenses for civil and other proceedings stipulate that the parties to a dispute in the proceedings before the Civil, Administrative or Family Courts should pay in advance the anticipated expenses incidental to the proceedings, including, where applicable, the expenses for the travel, subsistence allowance, lodging and service fee of an interpreter.

SIERRA LEONE

[Original: English]

[24 October 1979]

The Draft Declaration seems to be fairly consistent with the broad outlines of Sierra Leone Laws, particularly the Constitution of 1978 (Act No. 12 of 1978). But some of the rights listed under Article 4 are very extensive unlike the provisions of the Sierra Leone Constitution which impose major restrictions on such rights. Particular attention could be drawn to Chapter 2 of the Constitution, Sections 5 and 20 which deal with the Protection of Fundamental Rights and Freedoms of the Individual. For example the rights to own property by non-citizens, to freedoms of thought, conscience, opinion and peaceful assembly and association are not as unfettered as contained in the Draft Declaration. Some of the provisions of the Draft Declaration therefore are incompatible with the provisions of some of our Laws.

The operative provisions of the Declaration are subject to Article 2 which states, inter alia, that "non-citizens shall observe the laws in force in the State in which they reside ....." It is doubtful whether such a provision would extend to provisions in our laws which are contrary to the spirit and the letter of the Declaration. The draft declaration cannot be accepted in its entirety because of the above comments.

SPAIN

[Original: Spanish]

[12 November 1979]

I

1. An examination of either the preamble or the articles of the draft Declaration raises the basic question of whether the Declaration serves the intended purpose of achieving better protection for the rights of non-citizens, which have been proclaimed in a general fashion not only in the Universal Declaration of Human Rights but also in the international covenants on human rights and more particularly in the International Convention on the Elimination of All Forms of Racial Discrimination.

The Universal Declaration of Human Rights recognizes the entitlement of "all"; "everyone" (art.6), "men and women" and "the family" to fundamental rights and general freedoms. Nevertheless, it also recognizes the historic reality of the existence of the State and of specific links between people and the political society to which they belong. Consequently, it establishes certain special rights for the subjects of a State while imposing limitations on some of the general rights in the case of persons who do not qualify as subjects of the State concerned or, in other words, persons who are not its "citizens" or, in common parlance, are "aliens". For instance, article 13 on freedom of movement states (para. 2) that "Everyone has the right to leave any country, including his own, and to return to his country; while article 21 on the right to participate in the res publica, recognizes that "1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives." and that "2. Everyone has the right of equal access to public service in his country."

The effect of these limitations is to make an exception to the principle of the equality of rights among human beings, based on the distinction between nationals and aliens, with respect to freedom of movement, thus permitting the expulsion of aliens in certain cases, and the right of participation, which is fully recognized only in the case of nationals or "citizens".

2. Similarly, the International Covenant on Civil and Political Rights, after proclaiming that each State Party undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant without distinction of national origin, devotes article 13 exclusively to "an alien lawfully in the territory of a State Party", establishing that he or she may be expelled therefrom only in pursuance of a decision reached in accordance with law, while article 12, paragraph 4, recognizes that "no one shall be arbitrarily deprived of the right to enter his own country". With regard to the right to take part in public affairs, article 25 limits this to "every citizen" thus in principle excluding aliens or non-citizens from the "right and the opportunity" to take part in the conduct of public affairs, to vote and to be elected and to have access, on general terms of equality, to public service.

3. More specifically, the International Convention on the Elimination of All Forms of Racial Discrimination - which is, as will be shown, the model for the draft Declaration under consideration - states categorically in article 1, paragraph 2, that "This Convention shall not apply to distinctions, exclusions, restrictions or preferences made by a State Party to this Convention between citizens and non-citizens". This derogation corresponds to that in article 4 of the draft Declaration, which begins with the words "Notwithstanding any distinction which a State is entitled to make between its citizens and non-citizens, every non-citizen shall enjoy at least the

following rights ...", and goes on to enumerate a number of rights which have already been laid down in the International Covenant and in article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination.

4. The draft Declaration is thus proclaiming some of the rights which have already been fully recognized in the Universal Declaration of Human Rights, in the international covenants on human rights and in the Convention on Racial Discrimination, with one or two exceptions such as the prohibition of the collective expulsion of non-citizens (art. 7, para. 3 of the draft), which could form the subject of an additional protocol to the Covenant on Civil Rights, by analogy with the action taken by the Council of Europe, in relation to the European Convention for the Protection of Human Rights and Fundamental Freedoms. As this prohibition was not included in the Convention, it was made the subject of a Fourth Protocol "securing certain rights and freedoms other than those already included in the Convention and in the first Protocol thereto".

## II

### Comments on the draft preamble

1. An addition might be made to the three preambular paragraphs, which are basically similar to the first three preambular paragraphs of the International Convention on the Elimination of All Forms of Racial Discrimination (General Assembly resolution 2106-A (XX) of 21 December 1965), of a fourth paragraph, which might read as follows:

"Considering that the Universal Declaration of Human Rights nevertheless acknowledges (arts. 13, 15 and 21) the existence of differences in the legal treatment of individuals according to whether they are or are not citizens of a United Nations Member State by conferring full entitlement to the rights it proclaims on persons enjoying the status of citizens while allowing the rights of non-citizens to be restricted in certain respects,".

2. Before the word "Proclaims", a statement might be included of the purpose of the Declaration. The following wording is proposed:

"Resolved to prevent, prohibit or remove any limitation on the fundamental rights and freedoms to which all human beings are entitled, irrespective of their national origin, in that such rights and freedoms are inherent in human dignity and equality,".

3. Comments on the draft articles

#### Article 1

The Spanish version of the text is defective in that the concept it is supposed to define forms part of the definition. The following text is proposed in its place:

"Article 1. For the purposes of this Declaration, the term 'non-citizen' shall apply to any individual who is not a national of the State in which he lawfully resides".

#### Articles 2 and 3

These two articles should be transferred to the end of the Declaration. It is paradoxical that a declaration of rights should begin by enumerating the obligations of individuals and of the State.



In any case, the phrase "illegal activities prejudicial to the State" in article 2, paragraph 1, should be replaced by a more precise expression, since it may be deduced a sensu contrario from the present wording that there are permissible illegal activities, i.e. all those that do not affect the State as an institution.

In paragraph 2 of the same article, it should be made clear that respect for "the customs and traditions of the people of the State" is a definite obligation for non-citizens and not just a moral duty.

Articles 4, 5, 6 and 8

1. In order to avoid the repetition of ideas in articles 4 and 8, it would be advisable to draft a general article, which would then become article 2, on the following lines:

"Article 2. Notwithstanding any distinction which a State may make, in accordance with the law, between its citizens and non-citizens, every non-citizen shall enjoy at least the civil, economic and social rights that are recognized in this Declaration, with the limitations provided for in article 29 of the Universal Declaration of Human Rights, and with the obligations expressly imposed upon a non-citizen by this Declaration".

2. The substance of articles 4, 5, 6 and 9 of the draft which refer to fundamental civil rights, should be amalgamated into a single article. This would become article 3 of the Declaration, while article 8 would then become article 4. This article 3 might be worded as follows:

"Article 3. 1. Every non-citizen shall have the right to life on the same terms as those accorded to citizens of the country in which he lawfully resides.

2. No non-citizen shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

3. No non-citizen shall be subjected to arbitrary arrest or detention.

4. Every non-citizen shall enjoy at least the following rights: ...".

An enumeration will then be given of the substance of subparagraphs (ii) to (x) (of article 4 of the draft Declaration). However, in connexion with subparagraph (i) of article 4, the scope of the right to "protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual, group or institution" is not clear, since article 6 affords sufficient protection against possible abuses by officials, and if the protection relates to an individual or a specific corporate body, the subparagraph is a pointless one since the State's duty to give protection is of a generic and not of an individualized nature.

"5. No non-citizen shall be subjected to arbitrary confiscation of his lawfully acquired assets.

6. Any non-citizen whose assets are expropriated in whole or in part shall have the right to compensation".

3. Article 8 would become article 4, and read as follows:

"Article 4. Every non-citizen shall enjoy at least the following economic and social rights: ...".

(i) to (iv) of article 8 will then follow.

Article 7

This article, in the same form, will become article 5.

After article 5, it is proposed that a new article, which would become article 6, should be included with the following wording:

"Article 6. Every non-citizen shall have the right to effective recourse to the courts of the State in which he lawfully resides, which shall protect him against acts violating his fundamental rights as recognized by the Constitution and the law".

Article 10

This article would become article 7.

Articles 2 and 3 would become articles 8 and 9 of the Declaration respectively.

UNION OF SOVIET SOCIALIST REPUBLICS

[Original: Russian]

[28 November 1979]

As already stated in the comments on the initial draft of the Declaration on the human rights of individuals who are not citizens of the country in which they live, Soviet legislation grants extensive rights in the most varied spheres of public life to aliens and stateless persons living in the territory of the USSR. Article 37 of the USSR Constitution states: "Citizens of other countries and stateless persons in the USSR are guaranteed the rights and freedoms provided by law, including the right to apply to a court and other State bodies for the protection of their personal, property, family, and other rights".

In the comments referred to above it was also pointed out that the Soviet Union has ratified and is strictly observing a number of international agreements which provide, in varying degrees, for the protection of human rights of persons who are not citizens of the country in which they live (International Covenant on Economic, Social and Cultural Rights; International Covenant on Civil and Political Rights; International Convention on the Elimination of all Forms of Racial Discrimination; Convention on the Political Rights of Women; Convention on the Nationality of Married Women, etc.). In that connexion, the view was expressed that observance by all States of the provisions of these international instruments would make it unnecessary to prepare a special document in the form of a declaration in this field.

A study of the revised draft Declaration shows that the specific suggestions on the text previously made by the Soviet Union have, in the main, been taken into account. However, in article 4, paragraph (iii), the word "absolutely" preceding the word "necessary", whose deletion was proposed in order not to introduce an undesirable element of subjective judgement, has been retained.

In addition to that proposal, which should be taken into consideration, the Russian text of the revised draft calls for the following comments:

1. In article 4, paragraph (i), the word "учреждение" (institution) should be replaced by the word "организация" (organization).
  2. Bearing in mind that article 7, paragraph (ii), of the draft reproduces article 13 of the International Covenant on Civil and Political Rights almost word for word, the Russian translation of this paragraph should also be brought into line with the wording of the Covenant.
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