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MEASURES TO IMPROVE THE SITUATION AND ENSURE THE HUMAN
RIGHTS AND DIGNITY OF ALL MIGRANT WORKERS

Survey of some international instruments in the field of
human rights concerning distinctions in the enjoyment of
certain rights as between nationals and individuals who
are not citizens of the States in which they live

Report by the Secretary-General

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INTRODUCTION

1. By its resolution 34/172 of 17 December 1979, the General Assembly, at its thirty-fifth session, decided to create a working group open to all Member States to elaborate an international convention on the protection of the rights of all migrant workers and their families. The Assembly requested the Secretary-General, in application of the provisions of Economic and Social Council resolution 1979/13, to give the working group all necessary support, with a view to facilitating the elaboration of the international convention on the protection of the rights of all migrant workers and their families. 1/ In order to facilitate the task of the working group, the Secretariat has prepared the present survey.
2. The survey is directed primarily at those provisions which appear to provide or to allow for "distinctions" between nationals and non-nationals. 2/ However, it has been considered necessary for understanding the over-all import of each instrument to mention briefly also the numerous provisions which seem to make no distinction whatever between these two categories of persons.
3. Part One, which follows the outline of the publication entitled Human Rights: A Compilation of International Instruments of the United Nations, 3/ deals with a number of provisions adopted by, or under the auspices of, the United Nations.
4. In Part Two, certain instruments of the specialized agencies have been given consideration, in particular, those included in the "compilation" mentioned above. Part Three refers to certain human rights instruments of regional intergovernmental organizations, while Part Four deals succinctly with the 1949 Geneva Conventions for the Protection of the Victims of War.

1/ Official Records of the General Assembly, Thirty-fourth Session, Supplement No. 46 (A/34/46), pp. 188-189.

2/ For the purpose of this survey, the words "national" and "citizen" and "nationality" and "citizenship" have been used interchangeably, in spite of the fact that this is not necessarily the case in the legal systems of some Member States.

3/ United Nations publication, Sales No. 73.XIV.2.

PART ONE. INSTRUMENTS IN THE FIELD OF HUMAN RIGHTS ADOPTED
BY THE UNITED NATIONS OR UNDER ITS AUSPICES

I. THE INTERNATIONAL BILL OF RIGHTS

A. The Universal Declaration of Human Rights

(Proclaimed by the General Assembly in resolution 217 A (III) of
10 December 1948)

(1) Provisions of general scope *ratione personae*

5. Article 2, paragraph 1, of the Declaration proclaims that "everyone is entitled to all the rights and freedoms set in this Declaration without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status". Though nationality or citizenship are not included in this provision, both the text of the article and the debates thereon in various bodies tend to show that the enumeration was not meant to be exhaustive and that article 2 was intended to have general application. ^{4/} With the few exceptions dealt with under section 2 below, most specific rights and freedoms proclaimed in the Declaration are recognized to "everyone" without qualification. The principle of applicability to non-citizens is specially recognized in article 16 which proclaims the right of men and women to marry and to found a family "without any limitation due to race, nationality or religion".

6. While the principle of general application is basically accepted in the Declaration, it may also be relevant to consider the possible relationship between this principle and the limitation clause in article 29, according to which any limitations on the rights and freedoms proclaimed in the Declaration must be determined by law and have as a purpose solely the protection of the rights and freedoms of others and the safeguard of "morality, public order and the general welfare in a democratic society". The scope of article 29 and of all other provisions of the Declaration is itself qualified by article 30 which forbids any acts or activity aimed at the destruction of any of the rights and freedoms set forth in the Declaration.

(2) Articles which appear to draw distinctions between citizens and non-citizens

(a) Rights which appear to be restricted to citizens

7. Article 13 (2) states that everyone has the right to return to "his" country. When an amendment to provide for this right was introduced in the Third Committee,

^{4/} See in particular the report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, first session, document E/CN.4/52 and summary records of the Sub-Commission contained in documents E/CN.4/Sub.2/SR.3-6.

it was said that though the ideal would be that any person should be able to "enter" any country of his choice, the minimum requirement was that any person should be able to "return" to "his" country. No definite indication can be found in the records of the discussion in the Third Committee as to whether the words "his country" also referred to the concept of permanent residence in addition to that of nationality. 4a/

8. Article 21 recognizes the right of everyone to take part in the Government of his country and to have equal access to public service in his country. The wording of the article as well as the "travaux préparatoires" show that the provisions of this article refer only to nationals or citizens of a particular State and were not intended to include aliens. 5/

(b) Provisicn essentially applicable to non-citizens

9. The right "to seek and to enjoy in other countries asylum from persecution" is recognized to "everyone" by article 14, except in the case of persecutions genuinely arising "from non-political crimes or from acts contrary to the purposes and principles of the United Nations". 5a/ The addition of the words "to enjoy" in the Third Committee was explained as being for the purpose of making it clear that an individual who had been granted asylum could not be arbitrarily expelled, though in the view of some members of the Committee he could be subjected to certain restrictions imposed by the receiving State for reasons of national security or public order. 6/

B. International Covenant on Economic, Social and Cultural Rights

(Adopted by General Assembly resolution 2200 A (XXI) of 16 December 1966: in force since 23 March 1976)

10. Article 2, paragraph 1, states that each Party shall strive to the maximum of its resources "with a view to achieving progressively the full realization of the

4a/ Official Records of the General Assembly, Third Session, Third Committee, 120th meeting. For a discussion of the corresponding provision in the International Covenant on Civil and Political Rights, see sect. C below.

5/ Official Records of the Economic and Social Council, 1947, document E/CN.4/SR.40, pp. 3 and 4; *ibid.*, 1948, documents E/CN.4/AC.1/SR.41 and E/CN.4/SR.61; Official Records of the General Assembly, Third Session, Third Committee, 133rd meeting.

5a/ For a discussion of this article in the Drafting Committee of the Human Rights Commission see document E/CN.4/AC.1/SR.36 and 37 and in the Commission see document E/CN.4/SR.56 and 57.

6/ Official Records of the General Assembly, Third Session, Third Committee, 121st and 122nd meetings. See also in this connexion article 13 of the International Covenant on Civil and Political Rights concerning the right of "everyone lawfully in the territory of a State party" not to be arbitrarily expelled therefrom. No parallel article exists in the Universal Declaration. On the other hand, the Covenants do not contain any provision on the right of asylum.

rights recognized in the present Covenant by all appropriate means ...". According to article 2, paragraph 2, "the States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status". Article 2, paragraph 3, provides that "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 present Covenant to non-nationals".

11. Paragraph 2 as originally proposed by the Human Rights Commission read as follows: "The States Parties hereto undertake to guarantee that the rights enunciated in this Covenant will be exercised without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." 7/ [emphasis added]. It will be noted that the two main changes effected in the text of paragraph 2 by the Third Committee were the replacement of the word "distinction" by "discrimination" and of the expression "such as" by "as to" immediately following the words "of any kind".

12. One of the questions that arises is whether the omission of the word "such" - "notamment" in the French text - was meant to give the enumeration of the types of discrimination prohibited under the paragraph an exhaustive rather than an illustrative character, and thereby to allow for "distinctions" between nationals and non-nationals. It will be recalled that the equivalent articles in both the Universal Declaration of Human Rights (art. 2, para. 1) in the Covenant on Civil and Political Rights (art. 2 (1)) use the words "such as" in the enumeration of the types of distinctions forbidden under them.

13. When the text adopted by the Human Rights Commission was discussed in the Third Committee, 8/ the majority of the representatives were of the opinion that it would be impracticable to extend the rights guaranteed under the Covenant on economic, social and cultural rights to everybody without any "distinction" whatsoever. Some of them felt, in particular, that their countries would be justified in continuing to restrict certain rights to their own nationals, provided that such differential treatment was not unjust or arbitrary. The majority welcomed therefore a three-Power amendment 9/ which, as revised by its authors, would replace the word "distinction" in paragraph 2 by "discrimination". In the view of those representatives supporting the amendment the use of the word "discrimination" in the text of the article would prevent "arbitrary action giving rise to privilege" while allowing States sufficient latitude to make legitimate distinctions between certain categories of individuals such as nationals and

7/ Official Records of the General Assembly, Seventeenth Session, Annexes, agenda item 43, report of the Third Committee, document A/5365.

8/ Ibid., paras. 36 to 82. See also summary records of the 1181st to 1185th meetings and of the 1202nd to 1207th meetings of the Third Committee.

9/ A/C.3/L.1028/Rev.1.

non-nationals. 10/ The amendment was eventually revised a second time after the sponsors had accepted a suggestion 11/ to use in the Spanish text the phrase "sin discriminación alguna por motivos de" which was translated into English to read "without discrimination of any kind as to". 12/ There is no record of the substitution of the words "as to" for "such as" having been the object of any substantive intervention prior to the adoption of the amendment. 13/

14. Concerning the words "other status" at the end of paragraph 2, no precise indication is to be found in the "travaux préparatoires" as to their exact meaning and, in particular, as to whether they might cover the case of non-nationals.

15. The reservation contained in paragraph 3 was introduced in the Third Committee by the representatives of two developing countries. During the debate, 14/ the majority of the speakers said, in support of the clause that it was necessary, in their view, to prevent non-nationals from monopolizing the economy of developing countries. Those opposed to this provision viewed the amendment either as discriminatory against aliens and a violation of article 2, paragraph 2, or as unnecessary in view of the provisions of article 2, paragraphs 1 and 2 of the Covenant. It will be noted that the provisions of paragraph 3 of article 2 are limited to developing countries and apply only to "economic rights" as distinct from "social" and "cultural" rights.

16. In connexion with the above-mentioned debate regarding the extent to which economic rights should be granted to foreigners in developing countries, a number of representatives referred to articles 1 (2) and 25 concerning the right of peoples to self-determination, and in particular to their free enjoyment and disposal of their natural wealth and resources. It was stressed, in particular, that according to article 1 (2) in no case may a people be deprived to its own means of subsistence. 15/

10/ Third Committee, 1204th meeting.

11/ Ibid., paras. 38 and 51.

12/ A/C.3/L.1028/Rev.2. The French translation as adopted by the Third Committee read sans discrimination aucune fondée notamment sur. However, when the article was finally adopted by the Assembly, the word notamment had disappeared from the French text.

13/ The vote on the amendment was 76 to 2 with 13 abstentions.

14/ A/5365.

15/ Third Committee, 1404th to 1406th meetings. See also Official Records of the General Assembly, Twenty-first Session, Annexes, agenda item 62, report of the Third Committee, document A/6546, paras. 95-101 and 553-556.

17. Still another question that might arise concerns the extent to which the limitation clause in article 4 16/ may affect the rights of non-citizens under the Covenant.

18. All the economic, social and cultural rights set forth in the substantive articles of the Covenant are recognized to "everyone", but this work has to be read in the context of the general provisions mentioned above. It will be noted also that article 7 (a) (i) stipulates the right of everyone to fair wages and equal recommendation for work of equal value "without distinction of any kind". During the discussion at the Commission reference was made by some members to the need to ensure equality between nationals and non-nationals. 17/

C. International Covenant on Civil and Political Rights and Optional Protocol
(Adopted by General Assembly resolution 2200 A (XXI) of 16 December 1966; in force since 3 January 1976)

(1) Provisions of general scope ratiōne personae

19. The scope ratiōne personae of the obligations imposed by the Covenant on Civil and Political Rights is defined in article 2, paragraph 1, under which each State party "undertakes to respect and ensure" the rights recognized in the Covenant to "all individuals within its territory and subject to its jurisdiction ... without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." In view of the illustrative character of this provision, it would seem that distinctions on grounds of nationality are implicitly precluded as a general rule under the Covenant.

20. Similarly, with the exceptions dealt with in sections 2 and 3 below, the specific substantive rights set forth in part III of the Covenant, are formulated in such a way as to be applicable to nationals and non-nationals alike.

21. However, certain other aspects of the Covenant may need to be considered in order to determine precisely to what extent the principle of universal application ratiōne personae has been embodied in that instrument. One question is whether the limitation clauses contained in many substantive articles, referring to such

16/ Article 4 provides that "States Parties to the present Covenant recognize that, in the enjoyment of those rights provided by the State in conformity with the present Covenant, the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society".

17/ A/2929, chap. VIII, para. 8. See also E/CN.4/SR.218 and 279-281. For the discussion in the Third Committee see also Official Records of the General Assembly, Eleventh Session, Annexes, agenda item 31, document A/3525, paras. 48-50.

/...

concepts as "national security", "public order (ordre public)", "public morals" etc. ... might not be invoked in support of a refusal to grant various rights to aliens. Another question concerns the effects of article 4, which authorizes the States parties to adopt measures derogating from their obligations under the Covenant in time of public emergency "to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with other obligations under international law and do not involve discrimination solely on the grounds of race, colour, sex, language, religion, or social origin". It will be noted that nationality as such is not one of the grounds listed in the non-discrimination clause, but that in accordance with article 4, paragraph 2, no derogation may be made from article 6 (right to life), article 7 (inhuman or degrading treatment), article 8, paragraphs 1 and 2 (slavery and servitude), article 11 (prison for inability to fulfil contractual obligations), article 15 (retroactive application of criminal law), article 16 (recognition as a person before the law) and article 18 (freedom of thought, conscience and religion).

22. Consideration may also be given to the provisions concerning the inherent right of all peoples to their natural wealth and resources contained in articles 1 (2) and 47 which correspond to articles 1 (2) and 25 of the Covenant on Economic, Social and Cultural Rights.

23. The provisions concerning remedies at the national and international levels appear also to be of general application. Thus article 2, paragraph 3, of the Covenant imposes the obligation on States Parties to ensure first that "any person", whose rights or freedoms recognized under the Covenant have been violated, shall have an effective remedy and secondly that "any person" claiming such a remedy shall have his right thereto determined by a competent authority.

24. Article 1 of the Optional Protocol to the International Covenant on Civil and Political Rights concerning the right of individual petition declares that States Parties to the Protocol recognize the competence of the Human Rights Committee to receive and consider communications "from individuals subject to /their/ jurisdiction" who claim to be victims of a violation by /any State Party to the Covenant and the Protocol/ of any of the rights guaranteed under the Covenant.

(2) Articles which appear to make distinctions between citizens and non-citizens

25. There was general agreement in the Commission on Human Rights that, notwithstanding the provisions of article 2, paragraph 1, the distinctions made between nationals and non-nationals in certain substantive articles of part II of the Covenant, such as article 25 on political rights which refers to "every citizen", would apply. 18/

18/ Official Records of the General Assembly, Tenth Session, Annexes, agenda item 28 (part II), document A/2929, chap. V, para. 6.

(a) Rights restricted to citizens

26. Article 25 concerning political rights recognizes the right of "every citizen" to take part in the conduct of public affairs and to have access to public service in "his" country.

(b) Rights which refer specifically to non-citizens

27. Under article 13, "an alien lawfully in the territory of a State Party has the right not to be arbitrarily expelled therefrom" and, "except where compelling reasons of national security otherwise require" to have his case reviewed by the competent authority. It may be observed that the wording of article 13 bears close resemblance to article 31, paragraph 2, of the Convention Relating to the Status of Stateless Persons and with article 32, paragraph 2, of the Convention Relating to the Status of Refugees.

(3) Articles in respect of which certain questions seem to arise concerning their applicability to non-citizens

(a) The right of everyone lawfully within the territory of a State to freedom of movement within it and the right of everyone to leave any country including one's own (article 12, paragraphs 1 to 3)

28. During the discussion in the Commission on Human Rights of the limitation clause contained in paragraph 3 of article 12 19/ several speakers felt that, among the restrictions that might be considered legitimate or necessary were those which might be imposed on immigrants as a temporary measure or on migrant workers under certain circumstances. 20/ On the other hand, in the course of the debate concerning the requirement that any restrictions should be "consistent with the other rights recognized in the present Covenant", attention was drawn to the importance of the general provisions on non-discrimination in article 2, paragraph 1, as applied to article 12. 21/

(b) The right to return to one's country (article 12, paragraph 4) 22/

29. Article 12 (4) states that "no one shall be arbitrarily deprived of the right to enter his own country". Early drafts of this paragraph discussed in the Commission on Human Rights dealt only with the right of "nationals" to enter their own countries. The present wording was eventually adopted in order to cover the

19/ Paragraph 3 states that "The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Covenant".

20/ Official Records of the General Assembly, Tenth Session, Annexes, agenda item 28 (part II), document A/2929, chap. VI, paras. 51-57.

21/ Ibid.

22/ Compare the wording of this provision with article 13 (2) of the Universal Declaration which speaks of the right of everyone to "return" to his country, in para. 7 above.

cases of States where the right of "return" was governed not only by a criterion based on nationality but also, or alternatively, by the fact of permanent residence. The word "enter" was preferred to "return", so as to include cases such as those of persons born abroad who had never been to the country of their nationality. 23/

(c) Rights relating to marriage (article 23)

30. In connexion with article 23 which covers the rights relating to marriage and in particular to the provision in paragraph 2 concerning "the right of men and women of marriageable age to marry and to found a family", it was proposed in the Commission on Human Rights to include a clause prohibiting discrimination on grounds of race, nationality or religion as in article 16 of the Universal Declaration. However, other speakers were of the opinion that in view of the comprehensive provisions of article 2, paragraph 1, which governed all articles in the Covenant, no specific non-discrimination clause was required and that any enumeration of the grounds of discrimination was dangerous since it risked omitting important elements. 24/

31. During the discussion of article 4 (2) at the eighteenth session of the General Assembly, it was argued that article 23 (then article 22) should not be subject to derogation in times of emergency, but those opposed pointed out that in many countries the marriage of a national to an alien bestowed on the alien the right to citizenship in the country of the spouse and that a State might feel obliged, for example, to bar in war time marriage between its nationals and enemy aliens. 25/

(d) Rights of children to special measures of protection (article 24, paragraph 1)

32. Article 24, paragraph 1, concerning the right of "every child" to such measures of protection as are required by his status as a minor contains a non-discrimination clause couched in the following terms "without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth". It will be noticed that the enumeration appears to be exhaustive and that nationality is not one of the grounds included in the clause. In reply to a question as to whether the words "national origin" referred to aliens, it was said on behalf of the sponsors of the draft that the words referred only to different ethnic groups within the same country. 26/

23/ Document A/2929, chap. VI, para. 60. For the discussions in the Third Committee see Official Records of the General Assembly, Fourteenth Session, Annexes, agenda item 34, document A/4299.

24/ Document A/2929, chap. VI, paras. 166-167.

25/ Official Records of the General Assembly, Eighteenth Session, Annexes, agenda item 48, document A/5655, paras. 51-53.

26/ Ibid., paras. 57-85.

(e) Equality before the law (article 26)

33. Article 26 recognizes the equality of all persons before the law and also imposes the obligation on States Parties to guarantee to "all persons" equal and effective protection "against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status". As can be seen, the non-discrimination clause is couched in the same illustrative terms as article 2 (1), and therefore discrimination against non-citizens would seem to be implicitly forbidden.

34. It should be added, however, that during the discussion of the article in the Commission on Human Rights and in the Third Committee, several representatives felt that neither the restriction of political rights to citizens nor various measures to control alien property would constitute discrimination under article 26. Article 1, paragraph 2, concerning the right of peoples to permanent sovereignty over their natural wealth and resources was mentioned in this regard. In the light of such statements, suggestions to replace the word "persons" by "citizens" and to delete the term "or other status" were not maintained. 27/

(f) Rights of minorities

35. Article 27 of the Covenant deals with the rights of "ethnic, religious or linguistic minorities". There appears to have been no formal agreement that minorities in the sense of article 27 should be composed only of nationals of the State in which they live. In the course of the debates, the term "national minorities" and "every person" were rejected; 28/ it was agreed that the article should cover only separate groups, well-defined and long-established on the territory of a State while in the Third Committee the view was repeatedly stressed by many representatives from countries of immigration that persons of similar backgrounds who enter their territories voluntarily, through a gradual process of immigration, could not be regarded as minorities, as this would endanger the national integrity of the receiving State. 29/

27/ Official Records of the General Assembly, Tenth Session, Annexes, agenda item 28 (part II), document A/2929, chap. VI, paras. 180-182, and Sixteenth Session, Annexes, agenda item 35, document A/5000, para. 113.

28/ A/2929, chap. VI, para. 184.

29/ Official Records of the General Assembly, Sixteenth Session, Annexes, agenda item 35, A/5000, paras. 119-124.

II. INSTRUMENTS AIMED AT THE ELIMINATION OF
RACIAL DISCRIMINATION

A. United Nations Declaration on the Elimination of All Forms of Racial Discrimination
(Proclaimed by the General Assembly in resolution 1904 (XVIII) of
20 November 1963)

36. The Declaration as a whole is couched in comprehensive terms. Thus, for example, article 2, paragraph 1, emphatically states that "no State, institution, group or individual shall make any discrimination whatsoever in matters of human rights and fundamental freedoms in the treatment of persons, groups of persons or institutions on the ground of race, colour or ethnic origin". It would seem therefore that discrimination between aliens and nationals on grounds of race is prohibited by this instrument. On the other hand there is nothing in the Declaration which would prohibit States to make distinctions between citizens and non-citizens, qua non-citizens.

37. Article 6 forbidding racial discrimination "in the enjoyment by any person of political and citizenship rights in his country" is clearly confined to citizens but discrimination on racial grounds as regards access to citizenship is specifically prohibited by article 3, paragraph 1.

B. International Convention on the Elimination of All Forms of Racial Discrimination
(Adopted by the General Assembly in resolution 2106 A (XX) of
21 December 1965; in force since 4 January 1969)

(1) General provisions

38. Article 1, paragraph 1, states that in the Convention the term "racial discrimination" shall apply to "any distinction, exclusion, restriction, or preference based on race, colour, descent or national or ethnic origin". From the text of the article it would seem that the enumeration therein is exhaustive, while the preparatory work tends to indicate that the term "national origin" was used in a historical and cultural sense distinct from the concepts of "nationality" or "citizenship". ^{30/} Such interpretation is further borne out by paragraphs 2 and 3 below.

39. Article 1, paragraph 2, lays down that the Convention "shall not apply to distinctions, exclusions, restrictions or preferences made by a State Party to this Convention between citizens and non-citizens. This provision does not exclude aliens from the protection of the Convention but its effect is to allow distinctions between citizens and aliens qua aliens. Paragraph 3 of article 1 further declares that laws concerning nationality, citizenship or naturalization are not affected by the Convention provided that they do not discriminate against any particular nationality.

^{30/} See for instance discussions at the Third Committee, Official Records of the General Assembly, Twentieth Session, 1304th meeting.

(2) Specific rights protected by the Convention

40. Article 5 guarantees "the right of everyone without distinction as to race, colour, or national or ethnic origin, to equality before the law" notably in the enjoyment of a series of civil and political rights spelled out in sections (a), (b), (c), (d) and (f) and of certain economic, social and cultural rights listed under section (e) of article 5. This provision must be read in conjunction with the reservation clauses in article 1, paragraphs 2 and 3.

(3) Remedies

41. Article 6 imposes the obligation on States Parties of assuring that "everyone within their jurisdiction" shall enjoy effective protection and remedies through the competent national tribunals and other State institutions, against any acts of racial discrimination contrary to the Convention. It would seem to follow therefore that a non-citizen is entitled to a remedy in the courts or other institutions of the State where the discriminatory act has taken place unless such act can be characterized as a distinction, exclusion or restriction imposed by a State, under article 1 (2) against aliens qua aliens.

42. Article 14 empowers the Committee on the Elimination of Racial Discrimination to entertain communications from individuals or groups of individuals "within the jurisdiction" of those States parties that have made a declaration recognizing the Committee's competence in this respect. 31/

C. International Convention on the Suppression and Punishment of the Crime of Apartheid 32/

(Adopted and opened for signature and ratification by General Assembly resolution 3068 (XXVIII) of 30 November 1973)

43. The provisions of the International Convention on the Suppression and Punishment of the Crime of Apartheid are applicable regardless of the nationality of the authors and victims of such a crime.

44. Article IV (b) imposes the obligation upon States Parties to adopt legislative, judicial and administrative measures to prosecute, bring to trial and punish in accordance with their jurisdiction persons responsible for, or accused of, the acts defined in article II of the Convention, whether or not such persons reside in the territory of the State in which the acts are committed or are nationals of that State or of some other State or are stateless persons.

31/ The provision of this article had not yet come into effect on 1 January 1980 since fewer than 10 States Parties had made such a declaration.

32/ The text of the International Convention on the Suppression and Punishment of the Crime of Apartheid is reproduced in Human Rights: A Compilation of International Instruments of the United Nations, pp. 30-32.

D. Charter of Rights for Migrant Workers in Southern Africa
(Adopted on 7 April 1978 by the Conference on Migratory Labour in Southern Africa and endorsed by General Assembly resolution 33/162 of 20 December 1978)

45. In this Charter the representatives of States and peoples of southern Africa, recognizing that the migratory labour system is one of the major instruments of apartheid, mindful of the gross indignities it inflicts on workers, who are denied many of their basic human rights, and noting that it undermines family life and disrupts agrarian economies, pledged to strive for the abolition of the migratory labour system practised in South Africa and, pending its elimination, agreed to the Charter of Rights for Migrant Workers in Southern Africa. Thus the scope of application of the provisions of the Charter seems to be limited to nationals of southern African States supplying labour to South Africa.

III. RESPECT FOR HUMAN RIGHTS IN ARMED CONFLICTS,
WAR CRIMES AND CRIMES AGAINST HUMANITY 33/

46. The Charter of the International Military Tribunal, Nürnberg, 34/ particularly its definition in article 6 of war crimes and crimes against humanity, 35/ the Convention on the Protection and Punishment of the Crime of Genocide, 36/ and the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, 37/ are applicable regardless of the nationality of the authors and victims of war crimes or crimes against humanity. Similarly, the resolutions adopted by the Teheran Conference and by the General Assembly concerning respect for human rights in armed conflicts had as their aim the protection of all the victims of armed conflicts everywhere. 38/

33/ See also the 1949 Geneva Convention Relative to the Protection of Civilian Persons in Time of War, infra, part four.

34/ The principles of international law contained in the Charter and judgement of the Nürnberg Tribunal have been confirmed by the General Assembly in resolution 95 (I) of 11 December 1946.

35/ Reproduced in document E/CN.4/906, para. 21.

36/ Adopted by the General Assembly in resolution 260 A (III) of 9 December 1948; entered into force on 12 January 1951.

37/ Adopted by the General Assembly in resolution 2391 (XXIII) of 26 November 1968; entered into force on 11 November 1970.

38/ See, in particular, resolution XXIII of the Teheran Conference and General Assembly resolution 2675 (XXV) affirming basic principles for the protection of civilian populations in armed conflicts.

IV. SLAVERY, SERVITUDE, FORCED LABOUR AND SIMILAR
INSTITUTIONS AND PRACTICES 39/

- A. Slavery Convention of 1926 and Amending Protocol
(In force since 7 December 1953);
Supplementary Convention on the Abolition of Slavery, the Slave Trade,
and Institutions and Practices Similar to Slavery
(In force since 30 April 1957)

47. These instruments appear to grant equal protection to citizens and non-citizens.

- B. Convention for the Suppression of the Traffic in Persons and of the
Exploitation of the Prostitution of Others
(Entered into force on 25 July 1951).

48. Various provisions, particularly articles 1 to 4 and 7 to 12, tend to indicate that the Convention as a whole is equally applicable to citizens and non-citizens of the States parties. Article 5 explicitly provides that domestic remedies for any of the offences referred to in the Convention shall be available to aliens on the same terms as nationals.

49. Articles 18 and 19 provide for a series of measures relating only to alien victims of prostitution, with a view to their repatriation and temporary care and maintenance.

V. INTERNATIONAL INSTRUMENTS CONCERNING NATIONALITY,
STATELESSNESS AND REFUGEES

- A. Conventions Relating to the Status of Stateless Persons and to the Status of
Refugees, and Protocol Relating to the Status of Refugees
(The Conventions entered into force on 6 June 1960 and on 22 April 1954
respectively; the Protocol on 4 October 1967)

(1) General provisions

50. Article 3 of both Conventions imposes the obligation upon States parties to apply the provisions of each Convention to stateless persons and refugees "without discrimination as to race, religion or country of origin".

51. Article 7 (1) of both Conventions provides that a Contracting State shall accord to stateless persons and to refugees the same treatment it accords to aliens generally, except where the two Conventions contain more favourable provisions. A summary of the latter provisions is contained in section (2) below.

39/ See also the Forced Labour Convention and the Abolition of Forced Labour Convention, adopted under the auspices of the International Labour Organisation below, Part Two, chap. I, sects. A and F.

52. Article 8 of both Conventions provides that stateless persons and refugees shall be exempt from exceptional measures which may be taken by a Contracting State against the nationals of a foreign State of which the stateless person or refugee was a former citizen.

53. However, according to article 9, in time of war or "other grave and exceptional circumstances", a State party may take provisional measures "which it considers to be essential to the national security in the case of a particular person - pending a determination by the Contracting State that the person is in fact a refugee (or a stateless person) and that the continuance of such measures is necessary in his case in the interests of national security".

(2) Specific provisions

(a) Provisions assimilating stateless persons and refugees to nationals

54. Article 4 of both Conventions dealing with freedom of religion and religious education goes, in fact, further than other articles in providing that the treatment accorded to refugees and stateless persons must "at least" be as favourable as that accorded to nationals.

55. The other provisions which assimilate refugees and stateless persons to nationals are as follows:

Artistic rights and industrial property	Article 14 of both Conventions
Access to courts	Article 16 " " "
Rationing	Article 20 " " "
Elementary education	Article 22 (1) " "
Right to public relief	Article 23 of " "
Labour legislation (remuneration, working conditions, compensation for death, etc.) and social security	Article 24 " " "
Fiscal charges	Article 29 (1) " "

(b) Provisions according refugees the most favourable treatment granted to nationals of a foreign country

56. These provisions are as follows:

Right of association (including freedom to join trade unions)	Article 15 of the Refugee Convention
Right to engage in wage-earning employment	Article 17 (1) of the Refugee Convention

57. Article 17 (2) of the Refugee Convention also provides for the exemption of refugees who fulfil certain conditions from some restrictive measures which may be imposed upon the employment of aliens.

(c) Provisions enjoining treatment as favourable as possible for stateless persons and refugees and, in any event, treatment not less favourable than that accorded to aliens

58. The rights so protected are:

Rights to movable and immovable property	Article 13 of both Conventions
Right of stateless persons to freedom of association (including right to join trade unions)	Article 15 of the Convention on Stateless Persons
Right of stateless persons to engage in wage-earning employment	Article 17 (1) of the Convention on Stateless Persons
Right to self-employment	Article 18 of both Conventions
Practice of liberal professions	Article 19 " " "
Right to housing	Article 21 " " "
Non-elementary public education	Article 22 (2) " "
Freedom of movement	Article 26 of " "
Changes in respect of administrative documents	Article 29 (2) " "

(d) Special provisions concerning stateless persons and refugees as such

59. These provisions concern the following matters:

Law governing the personal status of a stateless person or refugee	Article 12 of both Conventions
Administrative assistance (particularly concerning issue of certifications and documents)	Article 25 of both Conventions
Issue of identity papers	Article 27 " " "
Issue of travel documents	Article 28 " " "
Transfer of assets to country of resettlement	Article 30 " " "
Right of stateless persons and refugees lawfully in the territory of a Contracting Party not to be expelled save on grounds of national security or public order <u>40/</u>	Article 31 of Convention on stateless persons and article 32 of Convention on refugees
Provision to facilitate naturalization	Article 32 of Convention on stateless persons; article 34 of refugee Convention

40/ For a comparison with article 13 of Covenant on Civil and Political Rights, see para. 28 above.

(e) Special provisions concerning refugees only

60. These are as follows:

Provisions concerning refugees unlawfully in the country of refuge	Article 31 of refugee Convention
Prohibition of "refoulement"	Article 33 " " "

B. Declaration on Territorial Asylum
(Proclaimed by the General Assembly in resolution 2312 (XXII) of
14 December 1967)

61. The Declaration on Territorial Asylum reaffirms the provisions contained in articles 14 and 13 (2) of the Universal Declaration of Human Rights ^{41/} and provides a series of principles to guide States in their practices relating to territorial asylum. It seems clear that the Declaration specifically refers to non-citizens.

VI. INTERNATIONAL INSTRUMENTS CONCERNING THE STATUS OF WOMEN

A. Convention on the Political Rights of Women
(In force since 7 July 1954)

62. The second preambular paragraph of this Convention seems to indicate that the rights guaranteed under it do not extend to alien women.

B. Declaration on the Elimination of Discrimination against Women
(Proclaimed by the General Assembly in resolution 2263 (XXII)
of 11 December 1967)

63. The Declaration contains no explicit indication as to whether the rights proclaimed therein extend to women who are non-citizens of the country in which they live. However, the very purpose of the Declaration, which is to ensure the equality between sexes, seems to indicate that the rights and remedies which are available to male non-citizens under other international instruments and national laws should be available in equal conditions to alien women.

C. Convention on the Elimination of All Forms of Discrimination against Women
(Adopted by the General Assembly in resolution 34/180 of 18 December 1979)

64. The Convention prohibits any distinction, exclusion or restriction based on sex. It contains no specific clause indicating whether its provisions may extend to women who are not citizens of the country in which they live. However, in its preamble the Convention recalls some international instruments the provisions of which may be applicable to non-citizens, without distinction based on race, colour, sex, language, religious opinion, etc.

^{41/} See paras. 7 and 9 above.

VII. MARRIAGE, THE FAMILY AND CHILDREN

65. Neither the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, 42/ nor the General Assembly recommendation on the same subject contained in resolution 2018 (XX), 43/ nor the Declaration on the Rights of the Child 44/ provide for any distinction between citizens and non-citizens. The preamble of the Convention refers to article 16 of the Universal Declaration of Human Rights which prohibits all limitations to marriage on grounds, inter alia, of nationality, while article 1 of the Declaration proclaims that "every child without any exception whatsoever" shall enjoy "all" the rights set forth in the Declaration.

VIII. WELFARE, SOCIAL PROGRESS AND DEVELOPMENT

66. Heading the Declaration on Social Progress and Development (General Assembly resolution 2542 (XXIV) of 11 December 1969) is a general non-discrimination clause in article 1 which proclaims the right of all peoples and all human beings to live in dignity and freedom and to enjoy the fruits of social progress "without distinction as to ... nationality ...".

67. Articles 2 (b) and 18 (a) (concerning the recognition and implementation of civil and political rights and of economic, social and cultural rights), 11 (f) (on the need to ensure that all individuals are aware of their rights and obligations) and 12 (b) (on the elimination of all forms of discrimination) contain non-discrimination clauses which appear to exclude implicitly discrimination against aliens.

68. Several provisions of the Declaration are specifically proclaimed as extending to "all" and to "everyone" or to "the whole or entire population". Examples are articles 6 (on the right to work), 10 (a) (on the right to work to form trade unions), 10 (d) (provisions of health protection), 10 (f) (provision of adequate housing), 11 (a) (provision of social security and insurance schemes), 19 (a) (provision of free health service) and 20 (freedom of association for all workers).

42/ The Convention came into force on 9 December 1964.

43/ See also in this connexion article 16 of the Universal Declaration of Human Rights, article 23 (2) and (3) of the Covenant on Civil and Political Rights, article 5 (d) (iv) of the International Convention on the Elimination of All Forms of Racial Discrimination, article 1 (c) (i) of the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery, and article 6 (3) of the Declaration on the Elimination of Discrimination against Women.

44/ Proclaimed by the General Assembly in resolution 1386 (XIV) of 20 November 1959.

69. Article 19 (c) includes as a means of achieving the objectives of social progress set forth in the Declaration "the adoption of measures and the provision of social welfare services to migrant workers and their families in conformity with the provisions of ILO Convention No. 97 and other relevant international instruments". 45/

70. The Declaration on the Rights of Mentally Retarded Persons (General Assembly resolution 2856 (XXVI) of 20 December 1971) does not appear to make any distinctions either between citizens and non-citizens.

IX. PROCLAMATION OF TEHERAN

(Proclaimed by the International Conference on Human Rights
in Teheran on 13 May 1968)

71. Paragraph 1 proclaims as imperative that "the members of the international community fulfil their solemn obligations to promote and encourage respect for human rights and fundamental freedoms for all without distinctions of any kind such as race, colour, sex, language, religion, political or other opinions".

72. Paragraph 5 declares as the primary aim of the United Nations in the human rights field "the achievement by each individual of the maximum freedom and dignity". To this end "the laws of every country should grant each individual, irrespective of race, language, religion, or political belief, freedom of expression, of information, of conscience and of religion, as well as the right to participate in the political, economic, cultural and social life of his country".

73. It will be noted that the non-discrimination clause in paragraph 1 is formulated in non-exhaustive terms. On the other hand paragraph 5 refers to the right of each individual to participate without discrimination in the political, economic, cultural and social life of "his" country.

45/ For the relevant articles of ILO Convention No. 97, see paras. 77-81 below.

PART TWO: SOME HUMAN RIGHTS INSTRUMENTS ADOPTED BY THE
SPECIALIZED AGENCIES

I. SOME INSTRUMENTS ADOPTED BY OR UNDER THE AUSPICES
OF THE INTERNATIONAL LABOUR ORGANISATION

A. Forced Labour Convention (No. 29), 1930
(Entered into force on 1 May 1932)

74. Both from the definition of forced labour in article 2 and from the substantive provisions of the Convention it seems evident that the provisions of the Convention extend to citizens and non-citizens alike.

B. Freedom of Association and Protection of the Right to Organize
Convention (No. 87), 1948
(Entered into force on 4 July 1950)

75. The Convention guarantees in article 2 the right of workers and employers, "without distinction whatsoever" to establish and to join organizations of their own choosing without previous authorization.

C. Right to Organize and Collective Bargaining Convention (No. 98), 1949
(Entered into force on 18 July 1951)

76. The Convention in article 1 provides that "workers" shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment. No distinction between different categories of workers is made in the Convention, whether on grounds of nationality or on any other grounds.

D. Convention No. 97 concerning Migration for Employment, (Revised 1949) 46/
(Came into force on 22 January 1952)

77. The main provisions of the Convention for the purposes of this survey are

46/ The General Assembly in resolution 2920 (XXVII) of 15 November 1972 urged Governments which had not yet done so to give high priority to the ratification of this Convention in the context of their efforts to eliminate illicit trafficking in foreign labour. On the rights of migrant workers see also inter alia the following ILO resolutions: Recommendation No. 86 concerning Migration for Employment (Revised 1949); Recommendation No. 100 concerning the Protection of Migrant Workers in Under-developed Countries and Territories, 1955; Resolution V concerning Action by the International Labour Organisation for Migrant Workers, 1967; Resolution VIII concerning Trade Union Rights and their Relation to Civil Liberties, 1970 (particularly operative para. 8 inviting "the Governing Body to extend and expand its efforts to eliminate the discriminatory practices on the basis of race, colour, sex, religion, nationality, political and trade union opinion which still exist in several countries, including countries and territories under a colonial régime or foreign domination in any form"); Resolution III concerning ILO Action for Promoting the Equality of Migrant Workers in All Social and Labour Matters, 1971, and Resolution IV concerning Conditions and Equality of Treatment of Migrant Workers, 1972 (referred to also in General Assembly resolution 2920 (XXVII)).

spelled out in article 6 which provides that each Party to the Convention shall accord "without discrimination in respect of nationality, race, religion or sex, to immigrants lawfully within its territory treatment no less favourable than that which it applies to its own nationals in respect of the following matters":

- (a) Remuneration, allowances and conditions of work;
- (b) Membership of trade unions;
- (c) Accommodation;
- (d) Social security benefits subject to certain limitations;
- (e) Employment taxes, dues and contributions;
- (f) Legal proceedings relating to matters referred to in the Convention.

78. Article 8 imposes certain restrictions on the right of a State to return to his country of origin a migrant worker who has been admitted on a permanent basis on the grounds that he is unable to follow his occupation by reason of illness or injury contracted subsequent to entry, at least after a maximum of five years from the date of admission has elapsed.

79. Other articles deal with measures to facilitate the departure, and reception of migrants for employment, (art. 4) the provision of adequate medical services (art. 5) and the transfer of earnings (art. 9).

Annex II to the Convention No. 97 concerning Recruitment, Placing
and Conditions of Labour of Migrants for Employment recruited
under Government-sponsored Arrangements for Group Transfer

80. Article 10 provides that if the employment for which a migrant worker was recruited under article 3 of the annex has been found to be unsuitable, the competent authority of the territory of immigration shall take appropriate measures to assist him in finding alternative employment which does not prejudice national workers.

81. Article 11 provides that if the migrant for employment is a refugee and becomes redundant efforts will be made by the competent authority to obtain suitable employment which does not prejudice national workers and which will ensure his maintenance until he finds suitable employment or he is resettled elsewhere. ^{47/}

E. Equal Remuneration Convention (No. 100), 1951
(Entered into force on 23 May 1953)

82. The Convention is designed to give effect to the "principle of equal remuneration for men and women workers for work of equal value" (third preambular

^{47/} See also in this respect art. 17 of the Convention on the Status of Refugees.

paragraph) "without discrimination based on sex" (art. 1 (2)). According to article 2, States parties shall promote and, in so far as is consistent with the methods in operation for determining rates of remuneration, ensure the application to "all workers" of the above-mentioned principle. 48/

F. Abolition of Forced Labour Convention (No. 105), 1957
(Entered into force on 17 January 1959)

83. The Convention does not distinguish between citizens and non-citizens. Article 1 (e) specifically imposes upon States parties the obligation to suppress and not to make use of any form of forced or compulsory labour "as a means of racial, social, national or religious discrimination".

G. Discrimination (Employment and Occupation) Convention (No. 111), 1958
(Entered into force on 15 June 1960)

84. According to article 1 (a), for the purpose of the Convention discrimination "includes any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation". Article 1 (b) makes it optional for a State party to regard any other grounds of distinction as discriminatory under the Convention, "after consultation with representative employers' and workers' organisations, where such exist, and with other appropriate bodies".

H. Convention No. 110 concerning Conditions of Employment of Plantation Workers, 1958
(Entered into force on 22 January 1960)

85. The Convention requires in article 2 that States parties apply its provisions equally to all plantation workers without distinction as to, inter alia, nationality.

I. Equality of Treatment (Social Security) Convention (No. 118), 1962
(Entered into force on 25 April 1964)

86. This Convention provides for equality of treatment in matters concerning social security between nationals of States parties to the Convention (art. 3) without any condition of residence (art. 4) on the basis of reciprocity (arts. 3 and 7).

87. According to article 10, paragraph 1 "the provisions of the Convention apply to refugees and stateless persons without any condition of reciprocity".

48/ See in this context art. 7 (a) (i) of the Covenant on Economic, Social and Cultural Rights which recognizes the right of "everyone" to "equal remuneration for work of equal value without distinction of any kind" (para. 18 above).

J. Employment Policy Convention (No. 122), 1964
(Entered into force on 15 July 1966)

88. The Convention imposes upon States parties the obligation to adopt policies aimed at ensuring that there is work "for all who are available for and seeking work" (art. 1 (2) (a)). The right to free choice of employment is provided for in article 1 (2) (c) "irrespective of race, colour, sex, religion, political opinion, national extraction or social origin".

K. Workers' Representatives Convention (No. 135), 1971
(Entered into force on 30 June 1973)

89. The object of the Convention is to strengthen the protection of workers' representatives against any acts prejudicial to them based on their status or activities or participation in union activities (art. 1).

90. According to article 4, "national laws or regulations, collective agreements, arbitration awards or court decisions may determine the type or types of workers' representatives which shall be entitled to the protection and facilities provided for in this Convention".

L. Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)
(Entered into force on 9 December 1978)

91. The Convention comprises two parts respectively dealing with migrations due to abusive conditions and equality of opportunity and treatment.

92. As concerns the question of residence, article 8, part I, of the Convention provides that on the condition that a migrant worker has resided legally in a territory for the purpose of employment, he should not be regarded as in an illegal or irregular situation by the mere fact of the loss of his employment, which should not in itself imply the withdrawal of his authorization of residence, or, as the case may be, work permit. Accordingly, the migrant worker should enjoy equality of treatment with nationals in respect in particular of guarantees of security of employment, the provision of alternative employment, relief work and retraining.

93. Regarding the question of equality of opportunity and treatment, in part II of the Convention, States parties are required to pursue a national policy designed to promote and to guarantee, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, of social security, of trade union and cultural rights and of individual and collective freedoms for persons who as migrant workers or as members of their families are lawfully within its territory.

94. The provisions of part II of the Convention do not apply to

(a) Frontier workers;

(b) Artistes and members of the liberal professions who have entered the country on a short-term basis;

(c) Seamen;

(d) Persons coming specifically for purposes of training or education;

(e) Employees of organizations or undertakings operating within the territory of a country who have been admitted temporarily to that country at the request of their employer to undertake specific duties or assignments, for a limited and defined period of time, and who are required to leave that country on the completion of their duties or assignments.

M. Migrant Workers Recommendation, 1975 (No. 151)
(Adopted on 24 June 1975)

95. The Migrant Workers Recommendation, 1975, (No. 151), spells out the measures to be taken to ensure equality of opportunity and treatment for nationals and migrant workers. It lays down the principles of social policy to enable migrant workers and their families to share in advantages enjoyed by nationals. It recommends the adoption of provisions regarding reunification of families, protection of the health of migrant workers, and social services. It also recommends the adoption of certain minimum standards on questions relating to residence and loss of employment, which may be applicable to migrant workers as they are to nationals.

II. INSTRUMENT ADOPTED BY THE UNITED NATIONS EDUCATIONAL,
SCIENTIFIC AND CULTURAL ORGANIZATION

Convention Against Discrimination in Education, 1960
(In force since 22 May 1962)

96. According to article 1 (1) "for the purposes of this Convention 'discrimination' includes any distinction, exclusion, limitation or preference which, being based on race, colour, sex, language, religion, political or other opinion, national or social origin, economic condition or birth, has the purpose or effect of nullifying or impairing equality of treatment in education ...".

97. Article 3 specifically provides in paragraph (e) that, in order to eliminate and prevent discrimination, States parties undertake "to give foreign nationals resident within their territory the same access to education as that given to their own nationals". This clause may be read in conjunction with paragraph (c) which imposes on States parties the obligation "not to allow any differences of treatment by the public authorities between nationals, except on the basis of merit or need, in the matter of school fees and the grant of scholarships or other forms of assistance to pupils and necessary permits and facilities for the pursuit of studies in foreign countries".

98. Article 5 (c) recognizes the right of members of "national minorities" under certain conditions to carry on their own educational activities.

PART THREE: SOME HUMAN RIGHTS INSTRUMENTS ADOPTED BY REGIONAL ORGANIZATIONS

I. SOME HUMAN RIGHTS INSTRUMENTS ADOPTED UNDER THE AUSPICES OF
THE COUNCIL OF EUROPE

A. The European Convention on Human Rights
(Entered into force on 3 September 1953)

(1) Relevant provisions concerning the scope and applicability of the
Convention

99. Article 1 enacts that States parties "shall secure to everyone within their jurisdiction the rights and freedoms defined in section 1 of this Convention".

100. Article 14 contains a non-discrimination clause to the effect that the enjoyment of the rights and freedoms set forth in the Convention "shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status".

101. Article 15 lays down a general derogation clause "in time of war or other public emergency threatening the life of the nation". According to paragraph 2, the clause does not apply, however, to the rights guaranteed in articles 2, (right to life), 3 (inhuman or degrading treatment), 4 (1) (slavery or servitude) and 7 (provision against retroactivity).

102. Article 16 authorizes States parties to impose restrictions on "the political activity of aliens".

(2) Remedies

103. Article 13 establishes that "everyone whose rights and freedoms under the Convention have been violated shall have an effective remedy before a national authority ...".

104. The right of individual petition to the European Commission of Human Rights is available, under the optional clause in article 25, to "any person, non-governmental organization or group of individuals" against a State party which has declared that it recognizes the competence of the Commission to receive such petitions.

105. According to article 48 (b), a High Contracting Party has the right to bring a case before the Court of Human Rights inter alia in those cases where one of its nationals is alleged to be a victim, provided that the High Contracting Parties concerned have accepted the Court's compulsory jurisdiction under article 46 (1).

B. Protocol No. 4 to the European Convention Protecting Certain Additional Rights
(Entered into force on 2 May 1968)

106. Subject to the restrictions laid down in paragraphs 3 and 4, ^{49/} article 2, paragraph 1 guarantees the right to liberty of movement and freedom to choose his residence to "everyone lawfully within the territory of a State", while paragraph 2 provides that "everyone shall be free to leave any country including his own".

107. Article 3 guarantees the right of everyone to enter and not to be expelled from the territory of the State of which he is a national.

108. The collective expulsion of aliens is prohibited by article 4.

C. European Social Charter, 1961
(Came into force on 26 February 1965)

109. The appendix to the charter provides that without prejudice to articles 12 (4) and 13 (4), the persons covered by articles 1 to 17 (which lay down the specific rights recognized by the charter) "include foreigners only in so far as they are nationals of other Contracting Parties lawfully resident or working regularly within the territory of the Contracting Party concerned, subject to the understanding that these articles are to be interpreted in the light of the provisions of articles 18 and 19. This interpretation would not prejudice the extension of similar facilities to other persons by any of the Contracting Parties".

110. Articles 12 (4) and 13 (4) impose concrete obligations on States parties to extend to the nationals of the other Contracting Parties certain social security benefits and social and medical assistance in case of want.

111. Under articles 18 and 19 States parties undertake to take a series of specific measures in order to ensure the effective exercise of the right to engage in a gainful occupation in the territory of any other Contracting Party (art. 18) and of the right of migrant workers and their families to protection and assistance in the territory of any other Contracting Party (art. 19).

112. The appendix also provides that in the case of refugees lawfully staying in their territory, States parties will grant to them "treatment as favourable as possible, and in any case not less favourable than under the obligations accepted by the Contracting Party under the said Convention on the Status of Refugees and under any other existing international instruments applicable to those refugees".

113. Article 30 contains a derogation clause in time of war or other public emergency threatening the life of the nation.

^{49/} According to para. 3 "no restrictions shall be placed on the exercise of these rights (i.e. those provided under paras. 1 and 2) other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of 'ordre public', for the prevention of crime, for the protection of health and morals or for the protection of the rights and freedom of others". Para. 4 lays down that "the rights set forth in paragraph 1 may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society".

D. The European Convention on the Legal Status of Migrant Workers
(Adopted on 24 November 1977)

114. The provisions of this Convention appear to be only applicable to migrant workers who are nationals of the member States of the Council of Europe.

115. Article 1 states that in the Convention, the term "migrant worker" shall mean a national of a Contracting Party who has been authorized by another Contracting Party to reside in its territory in order to take up paid employment. This article implicitly seems to refer to Contracting Parties of the Council of Europe.

116. While providing for the territorial scope of application of this Convention, article 35 (D) of the Convention specifies that the application of any State may extend the application of the Convention to all or any of the territories for whose international relations it is responsible or on whose behalf it is authorized to give undertakings.

E. Charter of Rights for Migrant Workers in Southern Africa
(Adopted on 7 April 1978 by the Conference on Migratory Labour in Southern Africa and endorsed by General Assembly resolution 33/162 of 20 December 1978) 50/

II. SOME HUMAN RIGHTS INSTRUMENTS ADOPTED UNDER THE AUSPICES
OF THE ORGANIZATION OF AMERICAN STATES

A. American Declaration on the Rights and Duties of Man
(Adopted by the Ninth International Conference of American States, in Bogotá, Colombia, held in 1948)

117. The Declaration contains 28 articles covering the rights to which "every person" is entitled. Article II proclaims that "all persons ... have the rights and duties established in this Declaration without discrimination as to race, sex, language, creed or any other factor".

118. None of the articles of the Declaration make any distinction between citizens and non-citizens with the exception of articles VIII and XX. Article VIII restricts the right to freedom of residence and of movement within the territory of a State and the right not to leave it except by his own will to nationals, while article XX recognizes the right of "every person" to participate in elections and in the Government of "his" country.

119. The right of "every person" to "seek and receive asylum in foreign territory in case of pursuit not resulting from ordinary crimes" is set forth in article XXVII.

50/ For consideration of the instrument mentioned here, see para. 45 above.

B. American Convention on Human Rights, 1969
(Signed at San José, Costa Rica on 22 November 1969)

120. The second paragraph in the Preamble to the Convention recognizes that "the essential rights of men are not derived from one's being a national of a certain State, but are based upon attributes of the human personality and that they therefore justify international protection ...".

(1) General provision concerning non-discrimination

121. Article 1 provides that States parties must ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms (recognized in the Convention) without any discrimination for reasons of race, colour, sex, language, religion, political or other opinion, national or social origin, economic status, birth or any other social condition".

(2) Specific provisions

122. Most of the specific provisions contained in chapter II which spell out the various rights guaranteed by the Convention do not distinguish explicitly between citizens and non-citizens. These articles have to be read in conjunction with the general non-discrimination clause in article 1 quoted above. The following specific provisions do distinguish between citizens and non-citizens:

(a) Provisions extending only to citizens:

- (i) Article 22, paragraph 5, concerning the right of everyone to stay and to enter the country "of which he is a national";
- (ii) Article 23 dealing with the right of "every citizen" to participate in Government and to have access to the public service of his country.

(b) Provisions concerning non-citizens only:

- (i) Article 22 restricting the right of a State to expel or deport aliens (paras. 6 and 8) and altogether prohibiting the collective expulsion of aliens (para. 9).
- (ii) Article 22, paragraph 7, concerning the right of asylum.

(3) Derogation clause

123. Article 27 allows, with some exceptions and under certain conditions, a State party to take measures derogating from its obligations under the Convention "in time of war, public danger or other emergency that threatens its independence or security".

(4) Remedies

124. Article 25 recognizes to "everyone" the right to an effective recourse to a competent court or tribunal against any acts that violate his fundamental rights recognized inter alia by this Convention.

125. Article 44 establishes the right of individual petition to the Inter-American Commission on Human Rights by "any person or group of persons" without any qualifications.

PART FOUR: THE GENEVA CONVENTIONS FOR THE PROTECTION
OF VICTIMS OF WAR, 1949

126. One of the elements common to the definitions of Protected Persons in Geneva Conventions I, II and III is that members of resistance movements in international armed conflicts, in order to benefit from these conventions, should "belong to a party to the conflict". A nationality link with a party to the conflict does not seem to be required, nor a formal recognition by such a party. Evidence of a factual relationship between resistance movements and the Government which they claim to support is, however, necessary.

127. Article 4 of Geneva Convention IV, on the Protection of Civilian Persons in Time of War, defines Protected Persons as "those who, at a given moment and in any manner whatsoever find themselves, in case of conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals. Nationals of a State which is not bound by the Convention are not protected by it. Nationals of a neutral State who find themselves in the territory of a belligerent State and nationals of a co-belligerent State, shall not be regarded as protected persons while the State of which they are nationals has normal diplomatic representation in the State in whose hands they are".

128. However, article 13 provides that the provisions of part II of Convention IV "cover the whole of the populations of the countries in conflict without any adverse distinction", based, inter alia, upon nationality.

129. The status of aliens in the territory of a Party to the conflict is dealt with in part III, section II (arts. 35-46) of Geneva Convention IV.

130. Article 48 in section III concerning Occupied Territories deals with the right to leave of those persons who are not nationals of the Power whose territory is occupied.

131. Article 3, common to the four Conventions, lays down the minimum provisions which States parties shall be bound to apply in conflicts not of an international character. There is, in this provision, no explicit distinction between nationals and non-nationals.

A. Protocol I Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts
(Adopted on 8 June 1977, entered into force on 8 December 1978)

132. As provided in its article 1 (3), this Protocol supplements the Geneva Conventions of 12 August 1949 for the protection of war victims and applies in the situations referred to in article 2 common to those Conventions.

133. Article 9 (1) stipulates that the provisions of Part II of this Protocol with respect to the wounded, sick and shipwrecked shall apply to all those affected by a situation referred to in article 1 of this Protocol, without any adverse distinction founded on race, colour, sex, language, religion or belief, political or other opinion, national or social origin, wealth, birth or other status, or on any other similar criteria.

134. The definition given in article 50 of this Protocol of the terms "civilians and civilian population in armed conflicts" seems to be broad enough to eliminate any possible distinction between nationals and non-nationals in case of armed conflicts.

135. Regarding the treatment of persons in the power of a Party to the conflict, article 75 (1) of this Protocol provides that persons who are in the power of a Party to the conflict and who do not benefit from more favourable treatment under the Conventions or under this Protocol shall be treated humanely in all circumstances and shall enjoy, as a minimum, the protection provided by this article without any adverse distinction based upon race, colour, sex, language, religion or belief, political or other opinion, national or social origin, wealth, birth or other status, or on any other similar criteria. It also provides that each Party shall respect the person, honour, convictions and religious practices of all such persons.

B. Protocol II Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims in Armed Conflicts
(Adopted on 8 August 1977, it entered into force on 8 December 1978)

136. In accordance with the provisions of its first article, this Protocol, which develops and supplements article 3 common to the Geneva Conventions of 12 August 1949 without modifying its existing conditions of application, shall apply to all armed conflicts which are not covered by article 1 of Protocol I. However, this Protocol does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature, as not being armed conflicts.

137. Article 2 of this Protocol stipulates that this Protocol applies without any adverse distinction founded on race, colour, sex, language, religion or belief, political or other opinion, national or social origin, wealth, birth, or other status, or on any other similar criteria to all persons affected by an armed conflict, as defined in article 1 of this Protocol.
