

ENGLISH ONLY

Thirty-fifth session
Agenda item 12

UN LIBRARY

CONFILATION - 8 November
1980

REPORT OF THE ECONOMIC AND SOCIAL COUNCIL

Question of international legal protection of the human
rights of individuals who are not citizens of the
country in which they live

Note by the Secretary-General

1. By its resolution 1980/29 of 2 May 1980, the Economic and Social Council decided to transmit to the General Assembly at its thirty-fifth session the text of the draft declaration on the human rights of individuals who are not citizens of the country in which they live, prepared by the Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities and amended by the Sub-Commission (E/CN.4/1336), together with the comments on the text received from Member States in response to the request of the Council in its decision 1979/36 (E/CN.4/1354 and Add.1-6). The Council recommended that the Assembly should consider the adoption of a declaration on the human rights of individuals who are not citizens of the country in which they live, taking appropriate account of the above-mentioned comments.

2. The revised draft declaration, which was before the Commission on Human Rights at its thirty-sixth session (E/CN.4/1336) and the Economic and Social Council at its first regular session for 1980, is reproduced below. The attention of the General Assembly is drawn to documents E/CN.4/1354 and Add.1-6, containing the comments of Governments on the text of the revised draft declaration, which are being made available to the Assembly.

3. These comments are reproduced, Article by Article, in the following pages.

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ANNEX

Revised draft declaration on the human rights of individuals
who are not citizens of the country in which they live

The General Assembly,

Considering that the Charter of the United Nations encourages the promotion of universal respect for and observance of the human rights and fundamental freedoms of all human beings,

Considering that the Universal Declaration of Human Rights proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth in the 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,

Considering that the Universal Declaration of Human Rights proclaims further that everyone has the right to recognition everywhere as a person before the law and aims at ensuring that all are equal before the law and are entitled without any discrimination to equal protection of the law, and that all are entitled to equal protection against any discrimination in violation of the Declaration and against any incitement to such discrimination,

Being aware that the States parties to the International Covenants on Human Rights now in force undertake to guarantee that the rights enunciated in these covenants will be exercised without discrimination of any kind as to race, colour, sex, or language,

Conscious that, with improving communications and the development of peaceful contacts and friendly relations between countries, individuals increasingly reside and work in countries of which they are not citizens,

Reaffirming the principle of the sovereign equality of States,

Noting that the International Convention on the Elimination of All Forms of Racial Discrimination provides that States may make certain distinctions, exclusions, restrictions or preferences between their own citizens and the citizens of other countries,

Noting further that existing international instruments need to be supplemented in order to protect the human rights of individuals who are residing and may be working in countries of which they are not citizens,

Proclaims this Declaration:

AUSTRIA

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

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

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

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

Byelorussian SSR

In the comments of the Byelorussian SSR on the original draft declaration on the human rights of individuals who are not citizens of the country in which they live it was pointed out that, under the legislation in force in the Byelorussian SSR, citizens of other countries and stateless persons in the Republic's territory are granted extensive rights in various spheres of public life. Article 35 of the Constitution of the Byelorussian SSR states that: "Citizens of other countries and stateless persons in the Byelorussian SSR 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".

Important instruments of international law have been adopted in the United Nations in recent years, and in particular, the International Covenants on human rights, which cover in sufficient breadth and detail the most important aspects of the human rights of individuals who are not citizens of the country in which they live. The strict observance by all States of the provisions of instruments of international law would obviate the need to prepare a separate document on this matter.

Specific comments on the revised draft declaration may be presented by representatives of the Byelorussian SSR when the draft is examined at the thirty-sixth session of the United Nations Commission on Human Rights.

(4)

Cyprus

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

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

Dominican Republic

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

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

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

Germany, F. R. of

(18 Feb. 1980)

1. The rights mentioned in article 8 (IV) of the draft declaration on the human rights of individuals who are not citizens of the country in which they live have been guaranteed in the Federal Republic of Germany by virtue of article 12 (right to health and medical attention), article 9 (right to social security), article 11 (right to an adequate standard of living, social assistance) and article 10 (1) (education of children) in conjunction with article 2 (2) of the International Covenant on Economic, Social and Cultural Rights of 19 December 1966 (law of 23 November 1973, Federal Law Gazette II, p. 1569) to all individuals irrespective of their national origin since the said Covenant came into force on 3 January 1976.

2. If the draft declaration is intended to concretize these social rights with regard to individuals who are not citizens of the country in which they live, its terminology should adhere to that of the International Covenant on Economic, Social and Cultural Rights. At present there are such discrepancies as "physical and mental health"/"public health", "medical service" and "medical attention"/"medical care", "adequate standard of living"/"social services", and "care and education"/"education".

(5)

3. Furthermore, the terms "minimum requirements" and "undue strain ... on the resources of the State" in article 8 are too general in character.
4. The national realization of the aforementioned social rights is, as far as social assistance is concerned, already guaranteed in the Federal Republic of Germany.
5. Pursuant to article 120 of the Federal Social Services Law (Bundessozialhilfegesetz), as published on 13 February 1976 (Federal Law Gazette I, p. 289), non-Germans requiring assistance must be granted support, medical aid and the like.
6. Homeless aliens as defined in the Law of 25 April 1951 relating to the Status of Homeless Aliens in the Federal Republic of Germany (Gesetz über die Rechtsstellung heimatloser Ausländer im Bundesgebiet, Federal Law Gazette I, p. 269) are entitled under article 19 of the said law to the same public relief benefits as German citizens.
7. In accordance with article 23 of the Convention relating to the Status of Refugees of 28 July 1951 (law of 1 September 1953, Federal Law Gazette II, p. 559), refugees lawfully staying in the territory of a contracting State are accorded the same treatment with respect to public relief and assistance as is accorded to the nationals of that State.
8. Pursuant to article 1 of the Law of 12 April 1976 on the Convention of relating to the Status of Stateless Persons, 28 September 1954 (Federal Law Gazette II, p. 473) in conjunction with article 23 of the Convention, stateless persons who are simultaneously refugees and are lawfully staying in the territory of a contracting State are accorded the same treatment with respect to public relief and assistance as is accorded to nationals of that State. Stateless persons requiring assistance are entitled to social assistance under Article 120 of the Federal Social Services Law.
9. In accordance with article 1 of the European Convention on Social and Medical Assistance of 11 December 1953 (law of 15 May 1956, Federal Law Gazette II, p. 563), each of the contracting parties undertakes to ensure that nationals of the other contracting parties who are lawfully present in its territory are entitled to the same treatment as nationals with respect to social and medical assistance.
10. Anyone who is unlawfully present in the territory may - until he is expelled - also receive social assistance under article 120 of the Federal Social Services Law. In addition, bilateral agreements have been concluded with Switzerland and Austria which provide for reciprocity in the granting of social assistance.
11. The revised Youth Welfare Law (Gesetz für Jugendwohlfahrt), as published on 25 April 1977 (Federal Law Gazette I, pp. 633, 795), does not expressly guarantee to children who are not citizens of the country in which they live the right to education for their physical, mental and social benefit. However, certain assistance granted to nationals can be extended to alien and stateless children. Positive obligations to provide educational assistance are contained in certain international agreements. Pursuant to article 16 of the draft revised Youth Services Law (Jugendhilfegesetz) as of 31 October 1977, the only case in which aliens are not entitled to assistance is when they move into the area covered by the said law specifically to take advantage of such assistance.
12. German law does not expressly provide for the right to health. However, aliens in need of assistance are guaranteed medical attention under article 120 of the Federal Social Services Law in the form of medical aid (article 37 of the said law) and aid against tuberculosis (article 48 ff).

⑥

German Democratic Republic

1. The German Democratic Republic already informed the Secretary-General of the United Nations about its fundamental position concerning the draft declaration on the human rights of individuals who are not citizens of the country in which they live. 1/ The German Democratic Republic still adheres to this position and reconfirms it. In this connexion, it emphasizes again that the German Democratic Republic, as a party to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, grants individuals who are not citizens of the GDR more extensive rights under its legislation and in societal life than the above Covenants provide for.

The German Democratic Republic affirms its view that numerous international conventions in force on human rights issues, in particular the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Political Rights of Women, contain the relevant provisions for the protection of the legal status of individuals who are not citizens of the country in which they live.

With this being so, the present draft declaration contains less than the minimum standards set by the provisions of international legal documents already in force. It does not cover, for instance, the right to work, the promotion of the equality of men and women, the right to education, and the right to the protection of the family, of motherhood, children and young people.

This, again, raises the question as to the usefulness and necessity of such a document, the more so since compared with the international conventions, it would be non-binding. The intention to draw up such a declaration should, therefore, be reconsidered.

In the interest of achieving the desired purpose, i.e., the protection against discrimination of individuals who are not citizens of the country in which they live, the German Democratic Republic suggests that the United Nations concentrate its efforts on getting more countries to accede to or ratify the above conventions and to apply their provisions in practical life. In so doing, they would make an effective contribution to safeguarding the human rights of aliens and stateless persons.

2. Should work on the draft declaration be continued, the German Democratic Republic believes, on the basis of its fundamental position on the present document, that further thorough revision is essential.

The principle of the sovereign equality of States as a basic principle of international law laid down in the United Nations Charter, which is presently included at the end of the fifth paragraph, should be moved to the first paragraph of the preamble.

The preamble should refer above all to the Covenants mentioned as exemplary under 1. of these comments, because they are international legal documents which already contain explicit and concrete provisions on the rights of non-citizens and, consequently, are of importance to the purpose of this Declaration as well. The last paragraph but one of the preamble should be deleted, since the way in which sovereign

States organize their legal systems is their internal affair so that any enunciation of possible exceptions in connexion with the granting of certain rights is unnecessary. As has been said above, the Convention on the Elimination of All Forms of Racial Discrimination should be referred to in a different place, in connexion with other fundamental conventions. In accordance with the opinion set out at the beginning of this paper, that the regulations for non-citizens laid down in relevant international documents are viewed as sufficient, it is suggested that the last preambular paragraph be deleted and States be called upon instead to accede to the conventions mentioned.

Greece

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".

⑧

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

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.

Italy

The Italian Government has no comment to make on the draft declaration of the human rights of individuals who are not citizens of the country in which they live. It holds the view that the principles which underlie the declaration in question and the protection of foreigners living in Italy are reflected in the Italian Constitution and in Italian legislation.

9

KUWAIT

[Original: Arabic]

[17 September 1979]

Ministry of Labour and Social Affairs

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

Ministry of Justice

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

Ministry of Education

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

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

Council of Ministers

Department of Legal Affairs

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

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

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

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

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

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

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

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

Ministry of Public Health

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

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

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



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

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

Liberia

The Government of Liberia has thoroughly studied and scrutinized the document, and has found it to be legally appropriate and acceptable, except for paragraph 4 of the Preamble, where Government would recommend that the word "creed" be inserted after the word "sex".

Mexico

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

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

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

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

Nether lands

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

[10 August 1978]

General

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

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

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

Re preamble

No comment.

Re article 1

No comment.

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

Norway

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

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

Re: Draft Declaration:

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

- (ix) The right to freedom of peaceful assembly and association is protected by HR-Dec. Article 20 and CPR-Cov. Articles 21 and 22.
 - (x) The right to retain one's own language, culture and tradition is protected by CPR-Cov. Article 27.
- Article 5 Protection against arbitrary arrest or detention is given by HR-Dec. Article 9 and CPR-Cov. Article 9.
- Article 6 Protection against torture or cruel, inhuman or degrading treatment or punishment is given by HR-Dec. Article 5 and CPR-Cov. Article 7.
- Article 7 Protection against arbitrary expulsion or deportation is given by CPR-Cov. Article 13.
- Article 8 (i) The right to just and favourable conditions of work, to equal pay for equal work and to just and favourable remuneration is protected by HR-Dec. Article 23 and ESCR-Cov. Article 7.
- (ii) See below.
- (iii) The right to join trade unions is protected by HR-Dec. Article 23, para. 4, CPR-Cov. Article 22 and ESCR-Cov. Article 8.
- (iv) The right to social services is protected by HR-Dec. Article 25 and ESCR-Cov. Articles 9, 12 and 13.
- Article 9, para. 1 Protection against arbitrary confiscation is given by HR-Dec. Article 17, para. 2.
- para. 2 See below.
- Article 10 The right to communicate with one's consulate or diplomatic mission is protected by the Vienna Convention on Consular Relations of 24 April 1963, Article 36.

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

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

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

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

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

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

Panama

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

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

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

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

Qatar

After consideration of the draft declaration by the competent authorities, the Government of the State of Qatar has no comments to submit on the subject-matter.

Rwanda

1. In the opinion of the Government of Rwanda, the draft declaration should emphasize the causes of the constant increase in the number of migrant workers. In the preamble of the draft declaration it is stated that the problem of persons known as "non-citizens" is caused by the improvement in communications between States and by the development of friendly relations. This may be perfectly true but for its part the Rwandese Government finds that this social problem originates from socio-political and economic factors, which may include a change of political régime, a new political trend in a particular country, racial segregation, tribalism, regionalism, the level of economic activity of a particular country, the consequences of the colonial yoke, etc.

Senegal

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

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

Sierra Leone

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

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,".

Syrian Arab Rep.

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

United Kingdom

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

USSR

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.

20

Article 1

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

Finland

As first regards the definition of the term "non-citizen", contained in article 1 of the Draft Declaration, the meaning of the drafters of the text is clear. However, some confusion may be caused by the ambiguity of the term "national". Obviously, national is not a synonym to citizen. In a given country, people may belong to different nationalities and, yet, they are citizens of the country. On the other hand, a person who does not belong to any of the nationalities of a country may be its citizen. This confusion arises also in some other international instruments.

Mexico

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

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

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

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

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

(21)

Rwanda

2. The Rwandese Government finds that some articles are somewhat vague and imprecise. This is the case, in particular, with article 1 of the draft declaration, which reads: "For the purposes of this Declaration, the term 'non-citizen' shall apply to any individual who lawfully resides in a State of which he is not a national". In the opinion of the Rwandese Government, this is tantamount to saying that the provisions of this draft declaration apply to diplomatic or consular agents, including chancellery officials, whereas in fact the provisions governing such personnel are set out in the 1961 Vienna Convention on the functions and immunities

of diplomatic representatives. The Rwandese Government therefore considers that the most appropriate definition would be the following: "The term 'non-citizen' within the meaning of the present Declaration shall apply to any individual who resides in a State of which he is not a national, with the exception of members of the diplomatic corps and their families".

Spain

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".

Article 2

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

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

Federal Rep. of Germany

1. With respect to article 2 and in view of the close relationship between human rights and the community, the Government of the Federal Republic of Germany deems it useful to include a reference to the general duties incumbent on non-citizens in the host country, similar to that in article 29 of the Universal Declaration of Human Rights. The guarantee of human rights should not, however, be made subject to fulfilment of these duties. In order to obviate misunderstandings in this respect, the provision should, like article 29 of the Universal Declaration of Human Rights, be placed at the end of the Declaration. It should in particular incorporate the idea embodied in article 16 of the European Convention for the Protection of Human Rights and Fundamental Freedoms that States shall not be prevented from imposing restrictions on the political activity of aliens.

Ivory Coast

1. The object of article 2 is to lay down the general obligations by which non-citizens are bound. Paragraph 1 certainly complies with this object, since it refers to the obligations incumbent on non-citizens, but we do not understand paragraph 2 which, as drafted, refers first to a duty on the part of the State. In the view of the Ivory Coast, it would be better to say: "They shall respect the customs ...", which necessarily implies that the State has the right to require them to have such respect. But, in any event, this wording, which expresses the same idea as that used in the draft, seems ambiguous. To say that the citizens and non-citizens of a State must respect the laws of that State conveys the idea that they must abide by them. To say that non-citizens must respect the customs of the people of that State could be construed in the same way. Such an interpretation does not seem to reflect the intent of the draft. Consequently, to avoid any ambiguity, it would be advisable to insert the following proviso in this paragraph: "... they shall not be required to abide by them".

Kuwait

Council of Ministers
Department of Legal Affairs

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

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

Ministry of Public Health

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

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

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

Mexico

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

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

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

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

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

Morocco

Two principles are stated in article 2 of the draft:

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

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

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

Netherlands

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

Spain (Art. 2-3)

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.

25

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.

Article 3

Every State shall make public any laws, regulations or administrative measures which distinguish between citizens and non-citizens or affect the rights of non-citizens.

Belgium

With regard to article 3 of the draft declaration of the human rights of individuals who are not citizens of the country in which they live, the obligation to make public laws and regulations can stand. It cannot, however, give rise to a general obligation to make public administrative measures which are purely individual in scope. Such publication is impossible for obvious practical reasons.

Germany, Fed. Rep.

2. This provision of article 3, as it stands, is not clear. It appears that its purpose is to ensure and demonstrate the rule of law: Specific rules of aliens law should only be applied to non-citizens if they have been published and thus made accessible to the persons concerned and their attorneys. If this is the meaning, the provision should perhaps read as follows:

"No distinctions shall be made between citizens and non-citizens nor shall the rights of non-citizens be affected except by virtue of laws, regulations or administrative instructions that have been published."

3. In this context the term "administrative measures" which appears to include administrative acts in individual cases should be reconsidered and replaced by a more precise term, the publication of individual administrative acts being impracticable. With this being its purport the provision should be placed at the end of the Declaration.

Finland

The provision of article 3 of the Draft Declaration is perhaps too far-reaching unless the concept "administrative measures" can be understood as referring to stipulations of a general nature supplementing the laws and regulations pertaining to the rights and obligations of non-citizens.

Morocco

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

This requirement of non-secrecy concerning measures is reasonable.

Netherlands

(27)

Re article 3

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

Spain

see Art. 2

Sudan

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

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

Article 4

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, always respecting the obligations imposed upon a non-citizen by article 2, and subject to the limitations provided for in article 29 of the Universal Declaration of Human Rights:

- (i) The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual, group or institution;
- (ii) The right to equal access to and equal treatment before the tribunals and all other organs administering justice, and to have the free assistance of an interpreter if he cannot understand or speak the language used in court;
- (iii) The right to freedom of movement and to choice of residence within the borders of the State, subject to such restrictions as are provided by law and are absolutely necessary for compelling reasons of public policy, public order, national security, or public health or morals;
- (iv) The right to leave the country and return to his own country;
- (v) The right to marriage and choice of spouse;
- (vi) The right to own property alone as well as in association with others;
- (vii) The right to freedom of thought, conscience and religion;
- (viii) The right to freedom of opinion and expression;
- (ix) The right to freedom of peaceful assembly and association;
- (x) The right to retain his own language, culture, and traditions.

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Austria

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

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

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

To article 4(ii):

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

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

Germany, Fed. Rep.

4. The list of minimum rights to be enjoyed by non-citizens should be placed at the beginning of article 4 of the Declaration. There should be no explicit reference to the obligations imposed on non-citizens ("always respecting ...") since this could be construed as meaning that the existence of individual rights directly depends on the fulfilment of individual obligations. The reference to the limitation clause of article 29 of the Universal Declaration of Human Rights should also be dropped if only for the reason that it is of recommendatory character and hence lacks the law-establishing quality which could enable it to limit rights of aliens issuing from rules of national constitutional or ordinary law. Instead, article 4 should also embody the idea that the rights listed shall be granted to non-citizens on the same conditions as to citizens. From the editorial point of view, this would have the advantage that the catalogue of protected rights could be confined to a brief description of the rights listed whilst their content and scope would be implied in, and could in each case be taken from, the relevant international and national rules applicable to citizens. This would also apply to the limitations to which these rights are subjected.

5. The Government of the Federal Republic of Germany makes no reservations regarding sub-paragraph (i) of article 4, although the said right to protection against bodily harm is not among the international human rights protected by the international Covenant on Civil and Political Rights or the European Human Rights Convention. In any case this right is protected in the Federal Republic of Germany as a national basic right under article 2 (2) of the Basic Law and can also be invoked by non-Germans.

6. With regard to the rights to equal access to and equal treatment before the tribunals and all other organs administering justice, it should be noted that German procedural law is not in line with this principle in so far as a foreign national, if appearing as plaintiff before a national civil court, is in principle required under article 110 (1) of the Code of Civil Procedure to furnish security at the request of the defendant with regard to the costs of the proceedings; this obligation does not obtain, however, if "the laws of the State of which the plaintiff is a citizen do not require a German to furnish security in a similar case" (article 110 (2) (1) Code of Civil Procedure). Under article 114 (2), first sentence, Code of Civil Procedure, a foreign national can only apply for legal aid if there is a guarantee of reciprocity. This applies analogously to

labour, administrative, fiscal and in some cases also social court proceedings by reference to the said provisions of the Code of Civil Procedure.

7. The Government of the Federal Republic of Germany assumes that the right to equal access to and equal treatment before the tribunals does not preclude the possibility of making exemption from the obligation to furnish security for the costs of the proceedings and the granting of legal aid in the cases of aliens subject to a guarantee of reciprocity. A limitation of this kind exists in the procedural legislation of many countries; it is conducive to ensuring the actual implementation of the Declaration.

8. As regards the right to the free assistance of an interpreter referred to in sub-paragraph (ii) it must be pointed out that article 14 (3) (f) of the International Covenant on Civil and Political Rights and article 6 (3) (e) of the European Human Rights Convention do not grant such a right except in the case of criminal proceedings. The Government of the Federal Republic of Germany cannot accept a more extensive obligation. The second half sentence of sub-paragraph (ii) would therefore have to be confined to criminal proceedings. This alteration might be superfluous, however, if the first sentence of article 4 were to be reworded so as to grant the rights listed in the catalogue to non-citizens on the same conditions as to citizens.

9. The right of a non-citizen to freedom of movement and to choice of residence in the country in which he lives, is, in the case of aliens, subject to specific limitations under the aliens law. This right is therefore not suitable for inclusion in a catalogue of human rights in respect of which the aim is equal treatment of citizens and non-citizens. This also appears to be the reason why only sub-paragraph (iii) explicitly specifies possible sources of restrictions, although, obviously, the other rights listed in the catalogue cannot simply be taken as absolute guarantees either.

10. To avoid false converse conclusions, sub-paragraph (iii) should therefore be taken out of the article and dealt with in a separate article as a specific right of the category of persons protected; this could appropriately be done along the lines of article 12 of the International Covenant on Civil and Political Rights, paragraphs 2 and 4 of which also include a person's right to leave the country and return to his own country.

11. For the foregoing reasons, the right of a non-citizen to leave the country and return to his own country referred to in sub-paragraph (iv) should be dealt with together with the points treated in sub-paragraph (iii). By the same token, the words "absolutely" and "compelling" should be deleted.

12. The right to marriage and choice of spouse mentioned in sub-paragraph (v) must apply to non-citizens in the same way as to citizens. It is suggested, however, that the term "choice of spouse" be avoided and the term "right to marry and to found a family" along the lines of article 23 (2) of the Covenant on Civil and Political Rights used instead.

13. The Government of the Federal Republic of Germany welcomes the wording of sub-paragraph (vi). It also welcomes the wording of sub-paragraph (vii). Under article 9 of the European Human Rights Convention, the right to freedom of thought, conscience and religion applies without qualification to non-citizens also.

14. As regards sub-paragraphs (viii) and (ix), the Government of the Federal Republic of Germany refers to article 16 of the European Human Rights Convention, according to which the limitations specific to the right to freedom of opinion, assembly and coalition do not militate against the political activity

of aliens. It is suggested, therefore, that either an appropriate general restriction be included in the draft or, failing this, that sub-paragraphs (viii) and (ix) be subjected to a specific one.

15. The right mentioned in sub-paragraph (x) is very similar to the guarantee embodied in article 27 of the Covenant on Civil and Political Rights.

Finland

Certain restrictions to the rights enumerated in article 4 of the Draft Declaration, in addition to those mentioned in subparagraph (iii), are necessary particularly for reasons of public policy and national security. Thus, in Finland the right of a non-citizen to acquire real property is depending on a permission by the Council of State. Similarly, the right of a non-citizen to acquire shares of a Finnish corporation is restricted and depending on certain conditions provided for by law.

Furthermore, the right of a non-citizen to freedom of peaceful assembly and association is restricted by law in Finland to the effect that a public meeting can be arranged only by a Finnish citizen and that only Finnish citizens may join an association, the purpose of which is to influence on State affairs. If more than one third of the membership of an association to be founded will be non-citizens, a permission by the Council of State is required.

German Dem. Rep.

Article 4 should unmistakably state that the listed rights of non-citizens shall be granted under the laws of the State in which they live and that such rights may be restricted if this is necessary in the interest of national security, public order and security, the health, morals or rights for other persons.

Article 4.1 should lay down that also non-citizens have the right to have the dignity and freedom of their personality and their security respected and their rights protected by the State.

Paragraph 3 should be worded in such a way that any entry, stay and exit have to be in accordance with the laws of the State in which non-citizens live. This is what is said under paragraph 4 which can be deleted therefore.

If that is not done Article 4 should make it clear that this right shall be granted in agreement with the legislation of the country of residence.

India

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.

(32)

Japan

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.

Kuwait

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

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

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

*/ 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.

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

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

Mexico

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

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

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

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

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

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

(34)

Morocco

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

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

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

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

Netherlands

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

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

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

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

Re article 4 (i)

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

Re article 4 (iii)

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

Re article 4 (iv)

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

Rwanda

3. In relation to article 4 (iv), which enunciates the right of a non-citizen to leave the country and return to his own country, the Rwandese Government considers that for the sake of State security this right should be accompanied by preventive provisions, since non-citizens who have left their country of origin after having caused or sown the seeds of serious disturbances there may abuse this right and return to that country after any upheavals that may take place.

Seychelles

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

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

(36)

Spain

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".

USSR

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).

(37)

Article 5

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

Germany, Fed. Rep.

16. With respect to articles 5 and 6, there is no indication that the rights of non-citizens mentioned in articles 5 and 6, viz, not to be subjected to arbitrary arrest or detention, or to torture or cruel, inhuman or degrading treatment or punishment, would be a specific concern of the category of persons protected. These rights should therefore not be included in the catalogue of article 4.

Spain

See Art. 4

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".

(38)

Article 6

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

Germany, Fed. Rep.

see, Art. 5

Spain

see, Art. 4 and 5

39

Article 7

1. No non-citizen shall be subjected to arbitrary expulsion or deportation.

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

3. Collective expulsion of non-citizens is prohibited.

Belgium

In article 7, paragraph 2, the word "expelled" could with advantage be replaced by the word "removed", which is broader in scope than the legal concept of "expelled". The same may be said of the words "expulsion" and "removal". The words "expelled" and "expulsion" can, however, be retained if their precise meaning is made clear in the draft resolution or in the course of the preparatory work.

Article 7, paragraph 3 prohibits the collective expulsion of non-citizens. While there can be no question as to the validity of this principle, it would none the less be well to stipulate that it should be applied in accordance with the rules of public international law.

Germany, Fed. Rep.

17. As regards article 7, analogous guarantees are already in force under article 13 of the Covenant on Civil and Political Rights and under articles 2 and 4 of Protocol No. 4 to the European Human Rights Convention. To that extent article 7 is deemed appropriate.

Finland

As for the provision contained in article 7, paragraph 2, of the Draft Declaration, the present regulation of this matter in Finland deviates to some extent from the procedure envisaged in the said paragraph. Thus, the Aliens' Bureau of the Ministry of the Interior is empowered to order a non-citizen to be deported from the country if he by his behaviour has shown that his sojourn in Finland is not desirable. Moreover, the Ministry may expel a non-citizen when the security of the State or another important reason so requires. For the time being, there is no right of

appeal against such decisions. The Ministry has been considered to be a sufficiently high authority to make a final decision on these matters which often require prompt measures. However, a revision of this regulation is under preparation so as to conform with article 13 of the International Covenant on Civil and Political Rights. The new regulation would then be compatible also with article 7 of the Draft Declaration.

India

In respect of Article 7 (2) also the Government of India has reserved its right to apply its laws relating to foreigners.

Mexico

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

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

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

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

Morocco

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

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

(41)

Rwanda

4. In connexion with article 7, paragraph 3, which provides that collective expulsion of non-citizens is prohibited, the Rwandese Government considers that this provision would seem to limit State sovereignty. By this it means that for political reasons brought about by non-citizens the State authorities might not be able to order the collective expulsion of those non-citizens. Since this provision is not entirely clear, the Rwandese Government feels that it would be desirable to specify or spell out in detail the circumstances in which collective expulsion would be permitted or prohibited.

Seychelles

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

Spain

Article 7

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

USSR

2. Bearing in mind that article 7, paragraph (ii), of the draft reproduces article 15 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.

(42)

Article 8

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 economic and social rights, always respecting the obligations imposed on a non-citizen by article 2:

- (i) The right to just and favourable conditions of work, to equal pay for equal work, and to just and fair remuneration;
- (ii) The right to repatriate earnings and savings, in accordance with national laws in force;
- (iii) The right to join trade unions and participate in their activities, subject to national laws in force;
- (iv) The right to public health, medical care, social security, social service and education, provided that the minimum requirements for participation in national schemes are met and that undue strain is not placed on the resources of the State.

Austria

To article 8(iv): (see, Also, Art. 4)

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

Germany, Fed. Rep.

13. As concerns article 8, in the Federal Republic of Germany no distinction is made between citizens and non-citizens regarding access to the social security scheme and entitlements acquired thereunder. As regards the payment of pensions to non-citizens living in a country with which no social agreement exists, certain distinctions are made between citizens and non-citizens which are at present being reviewed in the light of decisions of the Federal Constitutional Court. In so far as article 8 concerns the repatriation of social security benefits it cannot, therefore, be approved without qualification.

German Dem. Rep

In the view of the German Democratic Republic Article 8 needs further work, especially to the effect that the right to work should be added as a basic human right and that the inclusion of other related rights appears necessary, e.g. those contained in Articles 6 and 7 of the International Covenant on Economic, Social and Cultural Rights.

(43)

Tromy Coast

2. As regards article 8, it would seem preferable to delete from this article the references to the various rights listed therein save for the right to receive equal pay for equal work. The references to all the other rights do not seem warranted since, under the terms of the article, they can be abolished or restricted by the law of the country concerned. In the circumstances, it would be advisable to say:

"Notwithstanding any distinction which a State is entitled to make between its citizens and non-citizens

(a) A non-citizen shall have the right to just and favourable conditions of work, to equal pay for equal work, and to just and fair remuneration;

(b) He shall also enjoy all such economic and social rights granted to citizens as are not restricted to the latter by law."

Kuwait

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

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

Mexico

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



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

Morocco

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

Netherlands

Re article 3

The general comments made on article 4 apply equally, mutatis mutandis, to article 3. Here, too, the Government of the Netherlands wonders if the purpose of this article is to ensure that non-citizens are not at a disadvantage compared to citizens as far as the rights listed in this article are concerned, except for the condition mentioned in respect of the rights listed in (iv), namely that the minimum requirements for participation in national schemes are met and that undue strain is not placed on the resources of the State. In order to prevent misunderstandings here, too, the meaning of the words "notwithstanding any distinction" ought to be clarified. It would also be desirable to insert the words "on a non-discriminatory basis" before "at least the following rights".

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

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

Spain

3. Article 3 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 3 will then follow.

See also, Art. 4

Article 9

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

2. Any non-citizen whose assets are expropriated in whole or in part in accordance with national laws in force shall have the right to just compensation.

Germany, Fed. Rep.

19. With respect to article 9, protection against arbitrary confiscation and expropriation without compensation is very important and should be guaranteed even where such protection is not provided for, or is abolished with respect to citizens. An independent guarantee as provided for in article 9 takes account of this. It should make reference to the international law in force and for this purpose, instead of the words "just compensation" contain the phrase "compensation in accordance with the acknowledged principles of international law".

German Dem. Rep

Article 9 should clearly state that any seizure of a non-citizen's property and any payment of compensation for expropriated property should be carried out in accordance with national laws in force.

India

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.

Ivory Coast

3. It would be preferable to refer to the right of non-citizens to repatriate their earnings and savings under article 9, which governs the way in which such assets are dealt with. In fact, many countries do not generally grant the right to export monies even to citizens. Article 8 specifies which of the rights granted to citizens may be granted to non-citizens. Since the right to "repatriate savings" is not granted to citizens, it is difficult to see how it can be ascribed to non-citizens in this article.

Morocco

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

NetherlandsRe article 9

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

Rwanda

5. Since, for reasons of general interest and under national laws in force, those developing countries which are struggling to achieve economic independence may be prompted to nationalize assets with or without expropriation, the Rwandese Government considers that paragraphs 1 and 2 of article 9 should be brought into line with each other. Paragraph 1 provides that "No non-citizen shall be subjected to arbitrary confiscation of his lawful acquired assets"; in our opinion, the article should simply read: "Any non-citizen whose assets are expropriated in whole or in part in accordance with national laws in force shall have the right to just compensation".

Spain

See Art. 4

Seychelles

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

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

(47)

Article 10

Any non-citizen shall be free to communicate with the consulate or diplomatic mission of his country or, in their absence, with the consulate or diplomatic mission of any other State entrusted with the protection of his own country's interests in the State where he resides.

Germany, Fed. Rep

20. Regarding article 10, the right of non-citizens to communicate freely with the diplomatic and consular authorities of their country constitutes a valuable supplement to the rights to be granted to them.

Spain

Article 10

This article would become article 7.

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

Final Remarks

Kuwait

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

Morocco

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

Rwanda

6. Lastly, the Rwandese Government wishes to point out that Economic and Social Council has passed over in silence one of the most fundamental human rights, namely, the right of every non-citizen to work, and the means of guaranteeing this right.