

A/C.3/40/WG.2/CRP.2
9 October 1985

ORIGINAL: ENGLISH

Fortieth session
THIRD COMMITTEE
Working Group 2
Agenda item 12

REPORT OF THE ECONOMIC AND SOCIAL COUNCIL

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

Chairman/Rapporteur: Mrs. Halima Embarek WARZAZI (Morocco)

Working paper submitted by the Chairman

Proposals concerning article 1 of the draft declaration

The proposals made concerning article 1 of the draft declaration during the session of the Working Group or in replies to notes verbales from the Secretary-General inviting comments from Governments are arranged below in alphabetical order by country. Proposals of each country are arranged chronologically. In cases where more than one proposal has been submitted, the most recent one is quoted first.

Australia

"For the purposes of this declaration, the term 'alien' shall apply to any individual who is present in a State of which he is neither a national nor a citizen. The term 'resident alien' shall apply to any individual who lawfully resides in a State of which he is neither a national nor a citizen."
(A/C.3/37/8, para. 13)

Central African Republic

"... the words 'resides' and/or 'is present' should be replaced by the word 'lives'." (A/C.3/37/8, para. 13)

Federal Republic of Germany

"The phrase 'who lawfully resides in a State' proposed for article 1 should be adopted as worded. A second paragraph (or a separate article), however, could state that persons who reside in a State unlawfully should be granted all rights due to them under the International Covenant on Civil and Political Rights. These include in particular:

The right to life;

The right not to be tortured;

The right not to be arbitrarily arrested or detained;

The right, if deprived of their liberty, to be treated with humanity and with respect for the inherent dignity of the human person;

The right to leave the country of residence;

The right to equal treatment before the law;

The right to equal treatment before the courts;

The right to recognition as a person before the law;

The right to freedom of thought, conscience and religion;

The right to hold opinions." (A/40/638, para. 5)

"To ensure uniformity with equivalent provisions in the European Convention on Human Rights and in the International Covenant on Civil and Political Rights, the word 'lawfully' should be retained. Moreover, for the sake of legal conciseness, the word 'resides' is to be preferred, since article 1 of the draft seventh supplementary protocol to the European Convention on Human Rights refers to the place of residence and not simply to the place of sojourn." (A/38/147/Add.1, para. 14)

Ghana

"For the purposes of this declaration, the term 'alien' shall apply, except where the contrary is indicated, to any individual who is present in a State of which he is neither a national nor a citizen". (A/C.3/37/8, para. 13)

Italy

"Should [article 1] be adopted with the inclusion of the words 'legally' and 'resides', then a separate sentence will be necessary to clearly indicate which of the subsequent articles and rights shall apply to all individuals, irrespective of their status and in conformity with existing international instruments." (A/40/638/Add.1)

/...

Proposal for a second sentence of article 1:

"However, articles _____ of this declaration should apply to all individuals present in a State, irrespective of the legality of their status."
(A/C.3/38/11, para. 29)

Jamaica

"For the purposes of this declaration, the term 'non-national' shall apply to any individual who is present in a State of which he is neither a citizen nor a national. However, articles _____ shall not apply to an individual who is not lawfully in a State of which he is neither a citizen nor a national".
(A/C.3/38/11, para. 27)

Kenya

"... the words 'resides' and 'is present' should both be included in article 1." (A/C.3/37/8, para. 13)

Netherlands

"... any individual present in a State of which he is neither a national nor a citizen". (A/40/638, Netherlands' reply, para. 2)

Swaziland

"For the purposes of this declaration, the term 'alien' shall apply to any individual who lawfully resides in a State of which he is neither a national nor a citizen. However, for the purposes of article ___ of this declaration, the term 'alien' should apply to all individuals resident in a State irrespective of the legality of their status." (A/38/147/Add.1, para. 29)

Sweden

"For the purposes of this declaration, the term 'alien' shall apply to any individual who is present in a State of which he is neither a national nor a citizen. Articles _____ shall only apply to aliens who lawfully reside in a State of which they are neither nationals nor citizens." (A/C.3/37/8, para. 13)

Union of Soviet Socialist Republics

"For the purpose of this declaration, the term 'alien' shall apply to a person who lawfully resides in a State of which he is neither a citizen nor a national." (A/C.3/38/11, para. 29)

/...

"For the purposes of this declaration, the term 'alien' shall apply to a person who lawfully resides or is present in a State of which he is not a citizen." (A/C.3/38/11, para. 26 and A/38/147/Add.1, para. 42)

United Kingdom

Amended proposal for a second sentence of article 1:

"However for the purposes of articles _____ of this declaration, the term 'alien' shall apply to all individuals resident in a State irrespective of the legality of their status." (A/C.3/38/11, para. 29)

"For the purposes of this declaration, the term 'alien' shall apply to any individual who lawfully resides in a State of which he is neither a national nor a citizen. However, for the purposes of articles _____ of this declaration, the term 'alien' should apply to all individuals so resident in a State, irrespective of the legality of their status." (A/C.3/38/11, para. 25 and A/C.3/37/8, para. 13)

United States of America

Proposal for a second sentence of article 1:

"However, all individuals present within a State of which they are neither nationals nor citizens shall enjoy all those human rights and fundamental freedoms ensured under relevant existing international instruments, customary international law or applicable domestic law." (A/C.3/38/11, para. 29)

Compromise text

The text for article 1, which was prepared as a compromise by the representatives of Ghana and Sweden in consultation with the Chairman, reads as follows:

"(a) For the purposes of articles _____ of this Declaration the term alien shall apply to any individual present in a State of which he is neither a national nor a citizen.

"(b) For the purposes of articles _____ the term alien applies to any individual who lawfully resides in a State of which he is neither a national nor a citizen." (A/C.3/37/8, para. 19)
