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DRAFT PRINCIPLES ON FREEDOM AND NON-DISCRIMINATION
IN THE MATTER OF POLITICAL RIGHTS

Note by the Secretary-General

As requested in the second operative paragraph of resolution 4 (XVIII), which the Commission adopted at its eighteenth session, the Secretary-General transmitted to non-governmental organizations in consultative status the text of the draft principles on freedom and non-discrimination in the matter of political rights drawn up by the Sub-Commission on Prevention of Discrimination and Protection of Minorities (E/CN.4/Sub.2/213, para. 370), as well as the suggestions made by the Commission on the Status of Women (E/CN.6/L.336), so that they could submit their comments on the substance of the draft principles and the form in which such principles should be embodied.

The Secretary-General has received comments from the following non-governmental organizations in consultative status:

Category A

World Federation of United Nations Associations

Category B

All-India Women's Conference

Anti-Slavery Society

Consultative Council of Jewish Organizations

Co-ordinating Board of Jewish Organizations

International Abolitionist Federation

International Alliance of Women

International Council of Women

International Federation of Business and Professional Women

International Federation of University Women

Society of Comparative Legislation

World Confederation of Organizations of the Teaching Profession

World Union of Catholic Women's Organizations

Register

Institute of International Law

International Humanist and Ethical Union

St. Joan's International Alliance

Category A

WORLD FEDERATION OF UNITED NATIONS ASSOCIATIONS

Introductory

The comments which follow have been formulated with three main considerations in mind. Firstly, it is desirable that these "General Principles" should be adopted with the shortest possible delay by the largest possible number of those States which, having regard to their political philosophy and past historical record, can be seriously expected not only to ratify but also to enforce a convention giving effect to these "General Principles"; this consideration has prompted us to question the necessity of including in a set of principles of this kind the highly controversial principle of immediate self-determination for all peoples. Secondly, we regard it as vitally important that the freedoms to be guaranteed should not be capable of being abused by political or other groupings which aim at the destruction of these same freedoms. And thirdly, it has seemed to us eminently desirable that a document of such basic importance as the "General Principles" should, in its text, be as free from ambiguity as a statement of general principles ever can be. In keeping with these principal considerations we have refrained from commenting on those passages of the Preamble and those Articles of the main text with which we find ourselves in general agreement.

Preamble

There is more than one reason why we think that the penultimate paragraph could be dispensed with. Firstly, the "General Principles" as a whole represent a charter for the protection of the political rights of individual citizens; accordingly we see no logical necessity for including, in the Preamble to such a charter, principles applicable not to individual citizens but to peoples - such as self-determination and independence. Secondly, while we agree that ultimately all peoples which are still under colonial rule should gain their independence, we do not agree that colonial rule per se rules out the effective operation of those individual freedoms which the "General Principles" set out to protect. Thirdly, insistence, at this stage, on the immediate grant of independence

and self-determination to all peoples under colonial rule would militate against the acceptance of the "General Principles" by a certain number of important States which might otherwise be prepared to set an example to others by adopting the "General Principles" and devising institutions genuinely suitable for their enforcement.

Article 1

For the reasons stated above we do not regard this Article as indispensable or, at this stage at any rate, desirable. We are well aware of course, that the Article reproduces, verbatim, Article 1 of the draft Covenant on Civil and Political Rights already adopted by the Third Committee of the United Nations General Assembly.

Article II

Concerning paragraph (a)

We would, with great respect, dissent from the view taken by the Commission on the Status of Women that this paragraph requires the addition of a passage specifically prohibiting "distinction based on marital status". It seems to us that the phrase "or other status" appearing at the end of the present text of the paragraph is wide enough to include married status. On the other hand, it occurs to us that infancy is a "status" in most legal systems and lunacy in some of them. Quaere therefore whether provision for these two cases of status ought not to be made in paragraph (a). No doubt, it is intended that both infancy and lunacy should be dealt with under sub-paragraphs (a) and (b) of Article XI; but it may well be argued that disability arising from status should be dealt with under the heading of "status" and not under the heading of "requirements" or "qualifications".

Concerning paragraph (b)

We have some doubts as to the appropriateness of the phrase "as a means of" in the context of this paragraph. Denial of nationality or deprivation of nationality will, by their very nature, always operate against the exercise by

the person concerned of political rights; and yet it would go too far, and make it extremely difficult for many important States to adopt the "General Principles" if denial of nationality or deprivation of nationality were ruled out altogether. What is required is a prohibition operating against the denial of nationality or deprivation of nationality for the purpose of denying political rights to a person or depriving him of political rights that he had previously exercised. We regard the correct formulation of this paragraph as extremely important.

Article III

This Article raises the old question whether the exercise of democratic freedoms should be guaranteed to those whose political aims include the destruction of those same freedoms. It may be thought that this dilemma is sufficiently catered for in Article XIII, by its reference to permissible "limitations ... determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others". It is, however, open to doubt whether a limitation of this kind is sufficient to deal satisfactorily with the problem. Suppose that a public assembly is held by a political party which does not advocate the immediate denial of the political rights and freedoms of a certain group of the national community, but proclaims that if brought into power it will legislate for the abolition or curtailment of the rights and freedoms of the group or groups in question. This is, precisely, how Hitler climbed into power; and we suggest that great care ought to be taken lest the precedent should be repeated. We submit therefore that consideration should be given to the question whether Article III ought not to make it abundantly clear that the freedoms therein proclaimed and the access to the facilities and means for their exercise shall be ensured at all times to such persons (and only to such persons) as do not advocate a policy which involves the destruction of the freedoms enshrined in the "General Principles" or any of them.

Article V

Concerning paragraph (b)

It seems to us that in its present formulation the paragraph is somewhat self-contradictory. If what is intended is a system wherein the results of the voting "most accurately and completely reflect the will of all the voters", in that case this system ought not to be described as "an equitable" one; it should be called by its proper name which is proportional representation. If on the other hand it is not intended to impose proportional representation upon all the signatories of the proposed convention (and we can well imagine that such a rigid requirement would make the convention unacceptable to many countries - including the United Kingdom), in that case it might be preferable not to use the unduly flexible phrase "equitable basis" but speak of a system that would make the results reflect the will of all the voters "fairly and with reasonable accuracy".

Article VI

Concerning paragraph (b)

We think that public opinion polls and the scientific analysis of the result of elections are not only compatible with but can play a useful part in any democratic system. Accordingly, we see no reason why the "General Principles" should include an express prohibition against attempts (no matter how fair and reasonable they may be) to obtain from voters information as to how they have voted. What requires to be prohibited is any attempt to obtain such information from voters by applying pressure of any kind.

Article VII

We can think of no electoral system that will ensure that the will of the people shall "at all times" be the basis of the authority of government; we submit that the phrase "at all times" would tend to lend an air of unreality to this Article, and accordingly that it should be deleted.

On the other hand, we think that the phrase "at reasonable intervals" is unduly vague when applied to elections. We suggest therefore that the phrase

"at reasonable intervals" should be amplified by adding to it the words "not exceeding ... years"; and we are thinking in terms of a maximum interval of five years.

Article VIII

Concerning paragraph (d)

In regard to the "free functioning of political parties", we repeat what we said in the context of Article III.

Article IX

Concerning paragraph (b)

In our view nobody's eligibility to an elective public office should be barred by the possibility that if and when he is elected a conflict, such as this paragraph contemplates, might arise; a power given to the State to restrict eligibility as such is tantamount to a power which can be used for the purpose of discriminating against certain groups within the national community. In our view, every national should have the right to offer himself for election, on equal terms with others, to any elective public office; but we see no objection to laws having this effect: that when somebody has been elected to public office and a definite conflict does arise between his duties or personal interests on the one hand and the interests of the community on the other, he should be required either to resign his public office or to rid himself of these duties or personal interests which are incompatible with the public good. Insofar as in any given country the enforcement of this kind of law is entrusted to the executive branch of government, we think that the exercise of these executive powers should be subject to judicial review.

Article X

Concerning paragraph (b)

The apprehensions we expressed in regard to paragraph (b) of Article IX do not apply in the case of appointments to non-elective public offices; but

even here any executive discretion granted under municipal law should, in our view, be subject to judicial review.

Concerning paragraph (c)

It appears to us that the guarantees envisaged by this paragraph are already implicit in the provisions of paragraph (a). In any event, the adjectives "objective" and "impartial" would be somewhat meaningless without close and careful definitions.

Article XI

Preamble

It should be made clear that "regulation" means "regulation authorized by law" - i.e. delegated legislation.

Concerning paragraph (a)

Just as in the case of non-elective public offices, requirements for the right of access to elective public office must stem from the nature of the duties attached to the office.

Concerning paragraph (c)

We can see no reason why naturalized persons should be discriminated against, even for a limited period; it is of the essence of the concept of naturalization that naturalized persons must enjoy, from the moment of naturalization, the same rights as natural-born citizens. The reference, in the present text, to a "liberal naturalization policy" obscures rather than illuminates the position. What are the standards by reference to which the liberal character of a naturalization policy is expected to be determined? We submit that the whole of paragraph (c) should be deleted.

Concerning paragraph (d)

As regards sub-paragraph (i), we would advocate its deletion in toto. The "General Principles" ought not to sanction, not even for a limited period, a de facto situation which is contrary to the whole purpose of the proposed convention.

As regards sub-paragraph (ii), our comments are as follows:

Firstly, the present text does not define the area within which the "balanced representation" is supposed to operate. We should regard it as intolerable if the area which is here envisaged comprised such fields as, for instance, education. The proper field, in our view, is that of the political rights which the "General Principles" purport to regulate.

Secondly, we would much prefer to call a spade a spade and speak of minorities instead of "different elements of the population of a country".

Thirdly, it should be made abundantly clear in the text that "balanced representation" means a guaranteed minimum representation of minorities, and not a ceiling. To give an illustration: in the case of a Protestant minority living in a Catholic country, "balanced representation" should mean a representation corresponding to the relative size of the Protestant population, but it should not mean that the Protestant minority is not eligible for public office in numbers exceeding the ratio of Protestants to Catholics.

Concerning the proviso to the Article

If the Article were amended by the deletion of paragraph (c) and by reducing paragraph (d) to its sub-paragraph (ii) in the modified sense suggested by us, the proviso could be safely deleted.

Article XII

"A democratic society" means different things to different people. It would be safer to refer to a society based on respect for, and determined to enforce, the rights and freedoms enshrined in these "General Principles".

As for "just requirements of public order, morality and the general welfare", we regard it as essential that insofar as municipal law leaves the assessment of these requirements to the executive branch of government, its decisions on these matters should be subject to judicial review.

Article XIII

This Article is, in essence, advice tendered to governments rather than a general principle; and to this extent we would regard it as being somewhat redundant. In any event, the proposition that constitutions or other fundamental

laws are the best guarantee of rights and freedoms is controversial. Great Britain has neither a constitution nor any other fundamental laws; and yet it is hardly open to doubt that the rights and freedoms of her citizens are adequately protected.

Article XIV

"Independent and impartial tribunals" include also administrative tribunals. We think that in certain cases aggrieved persons should be able to have recourse to judicial courts. We have indicated these cases in our comments on the several Articles of the "General Principles".

Article XV

The phrase "countries which are under alien domination" has a strongly propagandistic flavour. We would prefer the phrase: "all countries which are not yet fully sovereign".

Category B

ALL-INDIA WOMEN'S CONFERENCE

Preamble: We agree with the Status of Women Commission that after the first three paragraphs a new paragraph should be included as stated therein.

Principle II: We agree to the addition of the sentence as suggested by the Commission of Women.

Principle VI: We would like to add another paragraph (c) as under:

"(c) No voting paper shall bear any number or sign whatsoever."

Principle IX and X: In our opinion the words "duties or personal interests" are stronger and have wider connotation than the words "financial or professional interests" proposed by Status of Women Commission. We would prefer to keep the original wordings in both the Principles - IX and X.

Principle XI: We agree to the suggestions made by the Commission on the Status of Women to reword the principles as stated.

ANTI-SLAVERY SOCIETY

The disqualification of candidates and voters because of criminal convictions has not been a problem which has attracted a good deal of attention ... The problem is not one of uniform magnitude; it is hardly a major issue in Great Britain at the present time but on the other hand it provoked crises in other countries...

Even if we were justified in thinking that convicted persons should not be able to stand for public office, it is submitted that the difficulties of drafting appropriate legislation are considerable. We shall consider only a few of the problems that arise - first what courts are to be recognized as competent to pass a criminal sentence that would disqualify. If we limit these to the domestic ones, it is possible that we will allow moral delinquents to stand because they have committed criminal offences abroad. On the other hand, if we define our "territory of disqualification" too widely, equally anomalous and unjust results follow. Suppose territory X provides that anyone convicted by a commonwealth court shall be disqualified for elections. In some countries, it is a crime to drink alcohol. Thus people who had been convicted under these sections of the penal code could legally be disqualified...

The argument that if we disqualified all but "political" offenders, all would be well, is less convincing than appears at first sight. First of all, applied as a test in the last few years, it would have disqualified several prominent political leaders.

Secondly, what are political offences? Consider the following cases:

X is convicted of arson, having burnt down a government school as an act of protest against a reactionary education policy, and Y who has led out some workers on strike in a key government industry because of disagreement with the government economic policy and is convicted therefor. In these cases only people like lawyers would try to separate "political" from other motives. The fact is that the division between politics and economics does not exist in the real world; it is a distinction of our own creation and one which should be avoided wherever possible...

Precisely the same arguments as put forward above apply to the problem of disqualification of voters though this is a less serious problem than the removal of candidates. Unlike the candidature problem however, where practice is sometimes more liberal than the letter of the law would suggest, the reverse applies in this area... It is very doubtful if prisoners serving short-term sentences get the right to vote. The police forces are extended to their limit in order to ensure the maintenance of law and order at polling stations and it is very unlikely that special arrangements will be made for prisoners to be taken to polling stations at the risk of dislocating security arrangements generally.

It is submitted, therefore, that provisions providing for the disqualification of candidates from holding political office should not be enacted. They are either superfluous or, though enacted with the intention of making democracy function more smoothly, they may easily be subverted into the means for destroying democracy.

CONSULTATIVE COUNCIL OF JEWISH ORGANIZATIONS

The Consultative Council of Jewish Organizations hesitates to comment on a text whose structures and content necessarily depend upon the final form that may be given to it. Obviously, the formulation of the draft principles at hand will be different if they are embodied in a convention or in a declaration or recommendation. The difference is inherent in the construction placed on the draft principles as an interpretation of Article 21 of the Universal Declaration of Human Rights, or as an extension of it; as a standard of achievement, or as a practical guide to the policies and actions of governments.

In view of the above, the CCJO wishes to confine its present observations to pointing out a major inconsistency which appears to exist between the provisions in Articles IV and V and the provisions in Article XI (d) i and ii. Whereas Articles IV and V seek to ensure universality and equality of suffrage, Article XI (d) i and ii introduce certain qualifications which, ostensibly designed to promote the interests of specific elements of a country's population, may afford governments an opportunity of derogating from the principle of universality and equality.

The CCJO is not unmindful of the concrete situations which obtain in many parts of the world and which Article XI (d) seeks to remedy. But although there may be certain instances in which elements of the population may require special privileges to achieve equality with the rest of the population, the CCJO respectfully suggests that these must in no way be construed as derogating from the principle of universality and equality of suffrage. Reference is made to Clause (ii) concerning special measures which may be taken to ensure the "balanced representation of the different elements of the population of a country". Adequate safeguards must be provided against possible manipulation of elections in a manner which would contravene the purposes of Articles IV and V.

The CCJO desires to take this opportunity to refer to the views it has consistently maintained through the years and articulated in the statements

submitted to the Sub-Commission on Prevention of Discrimination and Protection of Minorities during 1948-52, to the effect that the human rights of minorities, including their group rights, can multilaterally best be protected by preventing discrimination against them and enforcing the principle of universality and equality.

CO-ORDINATING BOARD OF JEWISH ORGANIZATIONS

1. With reference to the matter of form in which the Principles should be embodied, as a general rule we favour the adoption of Conventions on human rights matters because they legally bind the States adhering to them, and, therefore, the certainty of their practical implementation is greater. Other international instruments, whether Declaration, Recommendation or Resolution, having no legal force will more likely be effective in the moral sphere rather than the practical sphere. For this reason we recommended the Convention of the International Labour Organisation barring discrimination in respect of employment and occupation and the Convention adopted by UNESCO barring discrimination in education, both of which grew out of studies initiated or suggested by the Sub-Commission on Prevention of Discrimination and Protection of Minorities. We would have preferred the adoption of a similar Convention in the matter of political rights if it were likely that such a Convention would be adhered to by a substantial number of States. However, after studying the debates in the fourteenth session of the Sub-Commission dealing with the General Principles on Political Rights, we have concluded that it is most unlikely that sufficient agreement between States could be reached in the near future to provide for the adoption of a convention which effectively guarantees basic democratic rights without discrimination. The traditions of democratic States in such matters as the electoral system, the role of the opposition, the rights of the judiciary - to mention but a few essential points - were so far apart that the Sub-Commission, for the sake of unanimity, drafted the Principles in the most general terms. Such terms lack the concrete and specific legal language required for a binding Convention. Were the language of the Convention made more concrete, it is most unlikely that a significant number of States would adhere to it. A Convention adhered to by only a few States would hardly be a step forward in the development of human rights and might even be hurtful in the sense of widening the split that exists in the world today. On the other hand, a Convention not cast in strict legal terminology would make little contribution to human rights advancement since it could be observed in the breach.

2. In consequence, we recommend that the Principles of Political Rights be adopted in the form of a Declaration. This form would contribute to maximizing the number of States which would adhere to the Principles. At the same time, the Declaration could act as a powerful moral force stimulating the advancement of human rights in the political field generally. In this connexion, we prefer the form of a Declaration to that of a Recommendation even when the difference between the two is formally considered by the Office of Legal Affairs of the Secretariat as virtually non-existent. Since a Declaration is admittedly a more solemn instrument "suitable for rare occasions when principles of great and lasting importance are being enunciated" - as the Office of Legal Affairs noted - it would be appropriate that the Principles on Political Rights be cast in the form of a Declaration. Were it to take the form of a Recommendation or a Resolution, the impression would be left that it is of less importance than, for example, the Declaration on the Rights of the Child or the Declaration on the Right of Asylum which is now before the General Assembly. Since the contrary is the case, it is essential that Principles on Political Rights not be demeaned or lessened in their significance.

3. As a whole we consider the construction of the text of the Principles to have outstanding merit. Were its spirit accepted by all countries it could contribute to the significant reduction of international tensions. We particularly welcome the addition of the second part of the sentence in Principle VIII (d), which fills a gap in the original draft prepared by the Special Rapporteur (in his Principle VI (e)). However, some modifications are appropriate so that the text could be improved and its implementation made more effective. For example, one modification which we suggest is that of the incorporation in the Preamble of a specific reference to Article XXI of the Universal Declaration of Human Rights which was the basis of the study by the Sub-Commission and which, therefore, forms the basis of the Principles. Reference to Article XXI could be made in either paragraph III of the Preamble or in a separate paragraph.

4. To avoid difficulties in the interpretation of Principle I dealing with the right to self-determination, a definition of "people" might be appropriate.

In the absence of such a definition some areas can claim with little justification that they are independent entities and, therefore, are entitled to self-determination. One such area in the present world has aggravated international tensions and has required the United Nations to devote a considerable amount of its energy and finances to solving the problem that it has generated by its insistence upon being a separate independent entity.

5. With reference to Principle III, cognizance is, unfortunately, in our judgement, not taken of that kind of speech and expression which is an incitement to violence. All too often fomenters of racial and religious hatred have shielded themselves behind the freedom of expression in order to incite violence against one or another racial or religious minority. Just as freedom of expression cannot be extended to include libel and slanderous statements against individuals, so too can it not be extended to mean incitement to violence. Reference to this limiting aspect should in some manner be incorporated in the Principle. In this connexion, it is well to note that the word "peaceful" is used to qualify freedom of assembly and association. A similar qualification would not be inappropriate with reference to freedom of expression.

6. The drafting of Principle VI (b) needs improvement. As presently formulated it could, in certain circumstances, frustrate Principle XIV providing recourse to independent tribunals. In cases of fraudulent voting practices, a tribunal might need to scrutinize the votes cast to ascertain how people, in fact, voted. Perhaps this problem could be avoided if the word "publicly" were added after the phrase "to state".

Again with reference to the same Principle, as presently worded it would ban the use of opinion polls before an election since it prohibits the obtaining, by anyone, of information as to how a person "has voted or intends to vote". This difficulty could be avoided by the insertion of the words "by compulsion or pressure" after the words "attempt to obtain from any voter".

7. Paragraph D of Principle XI carries a potentially harmful thrust against political rights by virtually authorizing a numerus clausus system of government. Even the addition of the proviso that such measures are to be continued only

so long as there is need for them hardly serves to make the authorization of a numerus clausus palatable and less violatory of the concept of equality of status.

8. Principle XIV does not specify the locus of the independent and impartial tribunal to which individuals can have recourse. Lest this Principle stimulate an unnecessary irritant involving the sovereignty of States, the word "domestic" could be inserted before the words "independent and impartial tribunals".

INTERNATIONAL ABOLITIONIST FEDERATION

In accordance with its articles of association, the International Abolitionist Federation possesses no competence in political matters. But its articles of association declare that the State should not submit the person of prostitutes to any discriminatory treatment.

Under the Fascist rule in Italy women living in brothels were expressly deprived of the right to vote (sono escluse dal voto le donne abitanti in locali di meretricio). This discrimination was abolished in 1947.

To our knowledge it does not exist anywhere else at present. Nevertheless, in view of the precedent to which we have just referred, we should like it to be clearly stated, if not in the text itself of the "Principles", at least in the commentary, that in paragraph (a) of Principle II "POLITICAL RIGHTS OF NATIONALS" the vague expression "any other situation" includes the prohibition of any forfeiture of political rights "on moral grounds". Loss of these rights as an administrative measure is inadmissible.

Our remark obviously does not apply to any forfeiture of civic rights ordered by a court for criminal offences connected with prostitution provided the forfeiture of rights is not specially imposed on prostitutes but ordered under the general provisions of the criminal law of the country. The laws of the great majority of countries do not regard prostitution as an offence, and consequently any loss of rights due to prostitution is arbitrary.

On the other hand, we have naturally no objection to a sentence involving loss of political rights, even if prescribed by special provisions of the criminal law, imposed on those who exploit the prostitution of others as defined in the 1950 International Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (Text adopted by the General Assembly of the United Nations on 2 December 1949).

INTERNATIONAL ALLIANCE OF WOMEN

Our comments are in regard to items IV and VIII (a) of the Draft Principles.
IV - It is quite obvious that freedom in the matter of political rights does not exist in fact if a citizen lacks any schooling and an indispensable elementary civic education.

If it must be stated, the under-developed countries whose illiterate population constitutes half the world population, should not subordinate the right to vote to the ability to read and write. Therefore, provision must be made for these countries obliging governments to give their entire population, without discrimination of sex, the minimum civic education which is indispensable to making a citizen or a valid (good) citizen.

VIII (a) - It is quite clear that illiteracy or the absence of any civic education could render the statement of this principle valueless.

The impediments of the ignorant voter are manifested in various ways and this statement of principle is incapable of overcoming them.

.....

We do not agree with the third and fourth amendments asked by the Commission on the Status of Women.

Actually, we prefer the text of the draft principles which use the words "personal interests", to those proposed by the Commission using "financial and professional interests". It is always preferable in legislative matters to make the text as general as possible. The words "personal interests" obviously cover financial and professional interests and include others which would be excluded if the suggestion of the Commission is adopted.

INTERNATIONAL COUNCIL OF WOMEN

The International Council of Women endorses unreservedly the decisions of the Commission on the Status of Women and wishes to give particular emphasis to paragraphs 4 and 5 relating to non-elective public offices. Our Organization has made an exhaustive study of the obstacles that are still placed in many countries in the way of women who wish to hold administrative posts.

With regard to the principles mentioned in paragraph 2, which undoubtedly refer to the discrimination from which married women civil servants suffer in many cases, the ICW considers that such obstacles are a contradiction of article 16 and of article 23 of the Universal Declaration of Human Rights.

INTERNATIONAL FEDERATION OF BUSINESS AND PROFESSIONAL WOMEN

The International Federation of Business and Professional Women, an organization in consultative status, Category B, submits the following comments on Freedom and Non-Discrimination draft principles in the matter of Political Rights.

1. The International Federation has supported the drafting and implementing of the Convention for Political Rights for Women. Therefore, it is recommended that reference to the Convention be placed in the Preamble in a separate paragraph. Since the Convention is an instrument signed by forty-two States and thirty-seven have acceded to the Convention and since it deals with phases of the problem, it should be noted as basic to the principles.

2. The International Federation has consistently worked to eliminate discrimination against married women. Principle II. It is recommended that discrimination as the basis of marital status be included to read:

"discrimination of any kind, such as race, colour, sex, marital status, etc.".

3. The International Federation has supported the principle of equal access for women to the right to vote and to be elected or to be appointed to public office. Principle XI.

It is recommended that in providing for reasonable requirements it be specifically noted that such requirements that are established for the exercise of the right to vote or the right of access to elective or appointed public office apply equally to men and women without distinction of any kind whatsoever.

4. The Board of Directors in 1958, meeting in Mannheim, stated:

"Considering that it is essential that women be granted equality not only in the right to vote but also in the access to or in the exercise of all political functions, urged National Federations to work for full implementation particularly in respect of the appointment of women for diplomatic service."

Article X

It is recommended that in stating that every national shall be eligible on equal terms to hold any elective public office at the end of the sentence to add

"And exercise all political functions."

In a questionnaire to member Federations last year concerning political rights it was found that discriminations against women in their exercise of political rights continue to exist, however, more from custom and prejudice than in law. There are some public offices in some countries not available to women and appointed offices are subject to competitive examinations not open to women. Judgeships and magistrates are not available to women in some countries and by legislation it is impossible for a married woman to hold a position on the permanent staff of the Public Service. There seems to be unequal opportunity in participating in the diplomatic service, while women are excluded by law in some countries from holding positions in the church. While all positions may be open to all nationals by law, in most countries the highest public positions, both elective and appointive, have not been held by women. In some countries nationals because of race are prevented from exercising political rights.

Information received from twenty-one countries indicates the need for wide dissemination of the draft principles as an international standard toward which to strive. The Draft Principles should take the form of a declaration which could be placed in a simple inexpensive leaflet for distribution through governments and international organizations so that all people within countries may be aware of action taken by the United Nations in setting international standards.

INTERNATIONAL FEDERATION OF UNIVERSITY WOMEN

This Federation is convinced that freedom and non-discrimination in the matter of political rights is the fundamental principle from which all other freedoms stem. It is also aware of the handicaps which women have suffered, and continue to suffer, in this respect.

We would therefore support the general principles in both form and substance, but would request that full consideration be given to the suggestions made by the Commission on the Status of Women at its sixteenth session, in order that as far as possible clauses which might allow of discrimination, albeit unintentionally, against women are amended, or additions made in the text, so that the principles truly reflect the intention of the Sub-Commission to provide for an instrument which embodies the spirit of the Universal Declaration of Human Rights, as regards the position of women as with all other nationals, without the possibility of doubt.

SOCIETY OF COMPARATIVE LEGISLATION

The United Nations has invited our society, as a non-governmental organization, to present its observations on the draft Principles on freedom and non-discrimination in the matter of political rights (E/CN.4/830), which were drafted by the Sub-Commission on Prevention of Discrimination and Protection of Minorities and are explained in the report of Mr. Hernán Santa Cruz (E/CN.4/Sub.2/213).

I. - The value of the proposed Principles

The members of our society would be the last to delude themselves with the thought that a document of the nature of the proposed Principles can be immediately and completely effective. They are well aware of the weakness of law in general and above all of the law concerning authority, which seeks to restrain political power, whether by means of constitutional law or international law; this applies all the more to international constitutional law, of which the proposed Principles are to be a part. They are also aware that this branch of law must contend with the further difficulty that political institutions and "character" vary from country to country. Finally, they are aware of the conditions that must be met if democratic, liberal rules and arrangements like those embodied in the proposed Principles are to prove practicable and yield the satisfactory results expected of them. It is however, precisely because this highly desirable ideal is so difficult to achieve that all efforts and all available means must be directed towards that end. No effort is too small; whatever action is taken furthers the desired end. Our society, therefore, whose work is directed towards giving law a broad international character, cannot but express its approval of the underlying ideas and general presentation of the draft Principles and recognize that they are completely in keeping with the loftiest and the most universally and permanently valid principles of the United Nations Charter. Although they are necessarily couched in rather general terms and therefore tend to lack precision, the draft Principles should prove of great value - particularly as a means

of educating leaders and peoples, but also, perhaps, as a set of enforceable rules.

II. - The form to be given to the proposed Principles

If the proposed Principles are to perform all the functions of which they are capable, it would seem that they should assume the form both of a Declaration by the United Nations General Assembly, so that they could be proclaimed as soon as possible without being subject to the hazards of ratification, and of a Convention under which States would assume obligations.

III. - The drafting of the proposed Principles

A. Since the draft Principles represent a new and detailed presentation of certain ideas of political freedom and equality which have been set forth more briefly in other documents, since their purpose is to state explicitly what to any democratic mind is self-evident, and since they are designed, inter alia, to take the place of the "Covenant on civil and political rights" now in preparation until such time as the latter has been completed and is everywhere in force (cf. the above-mentioned report of Hernán Santa Cruz), it could only be helpful if they were made even more specific than they now are. Although the Principles forbid discrimination or unjustified restrictions in the matter of political rights and, for example, state that everyone shall have the right to vote, rules of that kind are of real value only to the extent that a country's Government and laws are guided by the results of elections and are dependent on the exercise of political rights by the people. For that reason, it would seem desirable to state that the laws and government of every people must emanate from the people and be in conformity with its will and that the political rights of citizens must enable them, either directly or through their elected representatives, to enact laws and determine the main lines of policy. That idea is not made sufficiently explicit in the present text of Principle I, "The right of all peoples to self-determination". Those words can be interpreted as condemning only foreign rule over a people. There is no question, however, that the idea of the right of peoples to self-determination, which was originally directed towards the liberation of peoples from foreign

rule, must be extended to include the necessity of setting up genuinely democratic institutions. That notion is, to be sure, implied in the draft Principles, but it would be well to make it explicit by adding to Principle I a phrase couched as follows: "The laws and Government of every country must emanate from the people or its elected representatives and must be in conformity with its will, as freely determined and expressed."

B. In Principle II, it would be more logical to say "sex, race, colour, language", etc. than, as in the existing text, "race, sex, colour, language", etc.

C. With the exception of No. 3 and No. 4, which relate to the two Principles dealt with in the following paragraph, the changes suggested by the Commission on the Status of Women (E/CN.6/L.336) should be approved.

D. Principles IX and X, raise the possibility that a person's election, appointment or assignment to a public office might result in a conflict between his personal ties and the interests of the community as a whole, and it is indicated that the law can and should seek to avoid such conflicts, if necessary by limiting the application to certain persons of the principle that every person should be eligible for public office on equal terms. The intention is quite comprehensible. The ties which are to be prevented from conflicting with the interests of the community should be made quite clear. The present draft speaks of "duties or personal interests", but the Commission on the Status of Women would substitute "financial or professional interests". We do not find the second formula any better than the first; a possible alternative would be "personal or corporate interests". It must be acknowledged, however, that no wording will prove fully satisfactory. The reason may well be that any restrictions imposed on the principle of universal eligibility for public office might prove inadequate to prevent the abuse of such office and might go too far and dangerously undermine the principle. Nor is it a sufficient safeguard to provide, as do Principles IX and X, that such restrictions shall be "determined by law", since legislators are fallible beings and may be the instruments or authors of the very discrimination which the proposed Principles are designed to prevent. The soundest course is unquestionably to avoid legislative restrictions on the principle of equal eligibility. It should be left to the electorate or to the electing or appointing body to select only those

whose designation will not harm the office they are to occupy; at the same time, the penal provisions in force in various countries for dealing with those who do in fact use public office for personal gain should be retained or strengthened. These two corrective factors should prove sufficient to obviate the need for prior restrictions of a possibly undemocratic nature. Consequently we propose that paragraph (b) of Principles IX and X should be deleted.

We endorse the rest of the proposed text.

WORLD CONFEDERATION OF ORGANIZATIONS OF THE TEACHING PROFESSION

WCOTP takes note of the fact that there is no mention in the Draft Principles of education as part of the political freedoms. In fact, education and political liberties are explicitly separated in Declaration No. IV which asserts that "the right to vote shall not be dependent upon literacy or any other educational qualifications".

WCOTP believes that an educated electorate is a necessary requirement for an effective, responsive, and responsible government. In its Declaration on the Teacher's Role in Education of 1959, the Assembly of Delegates stated: "Education is every man's birthright. Education is of prime importance in the success of any democracy. In an age when all nations claim to be governed for and by the people, individual citizens must not only be allowed to play a part in their country's affairs, but must be enabled to do so effectively. Without education no one can participate constructively in the civic or material life of his community, whatever other political rights and freedoms he may possess."

Then again, in 1961, Resolution A 1 states:

"The teacher should recognize the importance of: ...

"the development of a critical attitude so that the individual retains the right to object to and/or amend the law: and

"the encouragement of an enquiring mind to help the individual make sound judgements;

"action in accordance with the principles underlying the Declaration of human rights."

WORLD UNION OF CATHOLIC WOMEN'S ORGANIZATIONS

In accordance with the wish expressed by the Commission on Human Rights at its eighteenth session, WUCWO has examined the draft principles on "Freedom and non-discrimination in the matter of political rights", adopted by the Sub-Commission on Prevention of Discrimination and Protection of Minorities at its fourteenth session. This examination was made in the light of the study by Mr. H. Santa Cruz (document E/CN.4/Sub.2/213) on "Discrimination in the matter of political rights", which laid the foundation for the draft principles...

The principles chosen seem to be realistic and cover all foreseeable aspects of discrimination in the matter of political rights. Their application will require from Governments to begin with a sincere desire to adhere to the spirit and letter of the principles and we have no doubt about the intentions of most Governments. Nevertheless we must bear in mind the serious reservation made in the report immediately before the statement of the principles.

A very important fact should, however, be recalled: even the fullest respect for the principles stated above does not automatically guarantee that the power of the State is based on the will of the people. For example, even in countries where elections by universal equal suffrage and by secret ballot are held at reasonable intervals, it is found that the reins of government are actually held not by the people or the representatives they have chosen but by a strong executive, a political party or organization or a minority group. In such cases, it may even happen that the public authorities place too much emphasis on the forms and procedures of democracy in order to conceal the fact that democracy has been bereft of substance and that all real power is exercised by individuals who have never been freely elected by the majority of the population.

WUCWO, for its part, welcomes:

- the acknowledgement and mention of the link between the enjoyment of political rights and the enjoyment of other human rights including economic, social and cultural rights (fourth preambular paragraph).

- the stress on the close link existing between the exercise of political rights and respect for freedom of opinion and expression, on the one hand, and the exercise of political rights and freedom of assembly and association on the other.
- that this principle as set forth in the Preamble (fifth paragraph) should be repeated and linked to specific conditions in a special section (Principle III - Freedom of opinion and expression).

The wording used here could be expanded and it could be said without exaggeration that "freedom of opinion and expression and freedom of peaceful assembly and association are essential to the enjoyment of political rights" and to the enjoyment of economic, social and cultural rights (in the widest sense of the term).

WUCWO thinks it specially essential to make this reference to the political aspects of articles 19 and 20 of the Universal Declaration of Human Rights, since several Catholic women's organizations affiliated to it have been subjected to serious discrimination, have been officially disbanded or practically abolished, and, at all events, have been prevented from communicating with their international headquarters.

Thus, there has been an infringement not only of their political rights but also of fundamental freedoms and of the general law. In this connexion, we agree with the Rapporteur that there is a close link between the enjoyment of all human rights.

With regard to the instrument in which these principles will be incorporated when they have been adopted, we think that an international convention, although most desirable, would be premature because the position in Member States differs considerably; unless, as the Rapporteur himself suggests, only purely regional instruments are adopted at first and a single, truly international instrument is considered later.

We are therefore left with two general solutions: a declaration or a recommendation, the former being more solemn and formal, although not strictly binding (document E/CN.4/L.610).

WUCWO would therefore favour a declaration, provided that the instrument chosen was supplemented by practical measures that would show the progress achieved

in the application of these principles. This is all the more important since it is unlikely that the Covenant on civil and political rights will be generally implemented in the near future...

With regard to the suggestions adopted by the Commission on the Status of Women at its sixteenth session, WUCWO makes the following proposals:

- that Principle II, "Political rights of nationals", paragraph (a) should be reworded taking into account the observations of the Commission on the Status of Women, possibly as follows:

"Every national of a country is entitled within that country to full and equal political rights without distinction of any kind, including distinction on the basis of race, sex, colour, language, religion, political or other opinion, national or social origin, civil status, property, birth or other conditions."

- that Principle IX, "Access to elective public office", paragraph (b) should be replaced by the following text:

"Cases of partial or complete incompatibility between the holding of public and elective office and personal activities of a financial or professional nature shall be determined by law."

The same amendment is proposed for paragraph (b) of Principle X, "Access to non-elective public office".

Register

INSTITUTE OF INTERNATIONAL LAW

Opinion of a group of members and associates of the Institute consulted individually by the President of the Institute 1/

The undersigned^{2/} having exchanged observations in writing or orally regarding the draft declaration entitled "General principles on freedom and non-discrimination in the matter of political rights", prepared by a sub-Commission of the Commission on Human Rights of the United Nations, have reached agreement on the following conclusions:

They wish, first of all, to express their deep appreciation for the Commission's endeavours to supplement the important Universal Declaration of 1948, and their high regard for the document drawn up for that purpose by the Sub-Commission.

They have restricted themselves in the observations set out below to technical legal considerations and have not lost sight of the fact that the draft "general principles" transmitted to them are not intended to constitute a

1/ This statement is submitted by the President of the Institute, but the Institute cannot be considered as in any way bound by it.

2/ Lord MacNair, Q.C., former President of the International Court of Justice, President of the European Court of Human Rights; Baron van Asbeck, Professor Emeritus at the University of Leyden, member of the Permanent Court of Arbitration, Judge of the European Court of Human Rights; Sir Humphrey Waldock, Professor at Oxford, former President of the European Court of Human Rights, member of the International Law Commission of the United Nations; Mr. Alf Ross, Professor at the University of Copenhagen, Judge of the European Court of Human Rights; Mr. Fernand Dehousse, Professor at the University of Liège, former member of the United Nations International Law Commission, member of the Permanent Court of Arbitration; Mr. Hermann Mosler, Professor at the University of Heidelberg, Judge of the European Court of Human Rights, member of the Permanent Court of Arbitration; Mr. Paul de la Pradelle, Director of the Institut des études politiques d'Aix-en-Provence; Mr. Jean Salmon, Reader at the Université libre de Bruxelles, former legal counsel of UNRWA at Beirut; Mr. H. Rolin, Professor Emeritus at the Université libre de Bruxelles, former Chairman of the First Committee of the San Francisco Conference, Judge of the European Court of Human Rights, member of the Permanent Court of Arbitration and President of the Institute of International Law.

convention entailing formal obligations, but rather a "proclamation", following the term used in the preamble. It was consequently unnecessary for its wording to have all the precision required by the provisions of conventions.

Comments on the title

The title of the draft principles seemed to the undersigned not to be completely consistent with their content. The principles do not deal with all liberties but only with public liberties. Furthermore, political rights are affirmed in the text in a more positive way than merely from the point of view of non-discrimination; the latter is doubtless an essential aspect of the protection of rights, but it is a negative one, and the draft rightly postulates that the notion of political rights should be implemented in the various countries with a minimum of positive content. It would therefore seem desirable to broaden the title, using, for example, the following form of words:

"General principles relating to the protection of public liberties and of political rights".

The preamble

(a) The undersigned have no objection to the insertion after the third paragraph of the new paragraph suggested by the Commission on the Status of Women:

"Whereas the Convention on Political Rights of Women proclaims equality of rights of men and women with regard to the right to vote, to be elected and to hold all public offices".

(b) Fourth paragraph

The French text of this paragraph speaks of "Le droit de chacun de prendre part à la direction des affaires publiques de son pays". The word "direction" sounds imperious or presumptuous. A more moderate expression would seem preferable. Participation by everyone in the "direction of public affairs" might seem an unattainable goal. It is suggested that the expression "prendre part aux affaires publiques" (to take part in public affairs) or "prendre part à la gestion des affaires publiques" (to take part in the management of public affairs) should be used.

Fifth paragraph

"Whereas the exercise of political rights is directly linked to the existence of freedom of opinion and expression and freedom of peaceful assembly and association".

The exercise of political rights does not depend solely on the factors mentioned in this paragraph. For example, the right of petition could also be cited. A more accurate text would be obtained by the insertion of the words "inter alia", between the word "linked" and the words "to the existence".

Seventh paragraph

The same observation applies as in the fourth paragraph.

Principle I. The right of all peoples to self-determination

The importance of this principle both in practice and in positive law is indisputable.

Not only has it played an important part in the evolution of various areas towards independence, but, after being given the place of honour in the United Nations Charter, it was included in the Pacific Charter signed at Manila and invoked as the basis for the recognition of several new States (as in the Anglo-Egyptian Treaty of 1953 concerning the Sudan, and numerous General Assembly resolutions).

After that, the undersigned feel in duty bound to draw the attention of the Commission on Human Rights to the difficulty of clearly defining the exact scope of the principle. For example, what is meant by the term "peoples"? It is generally agreed that not every group of individuals claiming this label can be recognized as such. For that reason it has sometimes been proposed to replace the term "people" by the term "nation" ("nation") (a community united by traditions and aspirations), an expression more established in French terminology, although this interpretation has not received universal acceptance, in fact to such a degree that it has been thought possible to speak of "a right without a specific holder".

The French expression "droit à disposer d'eux-memes" is also controversial inasmuch as it seems necessarily to imply a change of sovereignty by succession

and accession to independence or by a merger with another State. In this respect the term "autodétermination" seems broader from a scientific point of view, and also seems to correspond better to the English expression "the right of self-determination".

A revision of principle I would therefore seem desirable. Also, since this is the only provision in the draft which concerns the rights of groups and not of individuals, it might seem better either to detach this article from the present set of principles or, if it is retained there, to try to express it in more precise legal terms after a separate and detailed study, perhaps in relation to the question of minority rights.

Principle II. Political rights of nationals

In reality, this principle deals simply with non-discrimination in the enjoyment of the political rights set out in principles IV to IX. It would therefore be desirable to change its position, placing it after the principles in question. Its scope could also be broadened, in such a way that the title would become:

"Non-discrimination in the enjoyment of public liberties and political rights".

Apart from the drafting changes which would follow from the change in the title suggested above, it may also be remarked that, in French terminology, one usually speaks of "ressortissants d'un Etat" ("nationals of a State"), rather than of "ressortissants d'un pays" ("nationals of a country"); however, the reference here is presumably not only to the situation of nationals of unitary States but also to the relationship of individuals to confederated or federated States, or even to territories which have not yet acceded to independence or which have a special status. It is perhaps therefore best to retain this term, for which it is possible to plead the precedent of article 2 of the Universal Declaration of Human Rights.

The words "such as" render the words "or other status" redundant. Alternatively, the purely illustrative enumeration of forms of discrimination forbidden might be deleted altogether as superfluous.

If it is considered that the present enumeration is of value, it would be desirable to accept the suggestion of the Commission on the Status of Women that the list of forms of discrimination prohibited should include distinctions based on marital status.

The notion of association with a national minority likewise deserves to be added. In that connexion, the Commission's attention is drawn to article 14 of the European Convention on Human Rights, in which the enumeration is slightly more complete than in the present draft, itself reproduced from article 2 of the Universal Declaration.

Paragraph (b)

"No one shall be denied nationality, or deprived of nationality, as a means of denying him or depriving him of political rights".

This paragraph contains two ideas:

- (1) No person shall be denied nationality as a means of denying him political rights: this relates to naturalization;
- (2) No person shall be deprived of his nationality as a means of depriving him of political rights: here it is loss of nationality which is referred to.

With regard to naturalization, it is doubtless not the intention of the authors of the draft to proclaim the right of any person to naturalization, ruling out examination by the competent authorities of his individual merits and, in particular, as to whether he is a man of honourable character. The provision is apparently directed against the exclusion in fact and in law of the categories enumerated in the first paragraph. It would therefore be desirable for the first part of the provision to be drafted in a negative way, i.e. ruling out discrimination by categories.

The present draft raises another objection in that it ignores existing practice in various countries where there are several stages of naturalization, the lowest of which does not include the enjoyment of political rights; the imposition of the limitation in question might also lessen the chances of being accepted and of immigrating in certain countries.

As to loss of nationality, the principle seems to constitute a step backwards in this subject; it implicitly allows deprivation of nationality for other motives than that of depriving a person of political rights: it thus favours statelessness.

Proposed wording:

"No person shall be deprived of his nationality and no person shall be refused naturalization if the motive for that refusal is one of the considerations enumerated in the preceding paragraph or the desire to hinder the exercise by the person in question of public liberties or of political rights".

Paragraph (c)

The expression "inhabitants of a political unit" is not clear. It is doubtless intended to cover the case of the various States making up a federal State, which may have varying legislation (States of the United States of America, Cantons in Switzerland).

The following wording would remove the ambiguity:

"(c) The age, length of residence and other conditions prescribed for the exercise of any particular political right shall be the same for all, whether it is exercised within the scope of institutions common to the whole country or within a territorial sub-division of a political or administrative nature".

Principle III. Freedom of opinion and association

As it stands, this Principle, which is stated in general terms and not qualified in any way, does not seem to be in conformity with the practice of States, which is less liberal. Article 11, paragraph 2 (freedom of assembly and association), of the European Convention on Human Rights gives a more faithful account of the practice of States in that respect.

Since the question of limitations on rights and freedoms is dealt with separately however in Principle XII, it seems advisable to discuss that question in connexion with Principle XII.

At all events, the second part of Principle III should be revised in so far as relates to the obligation of States to ensure that all persons have access to the means of exercising freedom of opinion and assembly.

What must be prevented is unequal access to or use of the facilities and means in question (television, radio, meeting halls, etc.) by those holding different opinions. It is therefore suggested that the second sentence in the Principle should read as follows:

"These freedoms, and the access to the facilities and means for their exercise, shall be ensured to all persons at all times on equal terms".

Principles IV and V

Inasmuch as Principles IV and V appear to overlap in part, or even to repeat each other, it might be advisable to combine them.

In Principle V, paragraph (a), which is essentially a restatement of Principle IV, it is suggested that the words "in which he is qualified to participate" should be substituted for the words "for which he is eligible".

It would be useful to standardize the references in various Principles in the annex (Principles IV, V and VIII) to the occasions on which persons are called upon to vote. We would suggest the formula "elections, referenda or public consultations". Plebiscites are covered by the term "public consultations". Referenda, on the other hand, must be distinguished from public consultations, since, strictly speaking, a consultation has only advisory force, whereas a referendum may, depending on the particular case, have either advisory or binding force.

Finally, the statement that "each vote shall have the same weight" gives rise to certain objections in that the notion of the "weight" of a vote is an ambiguous one. It could be said, for example, that the weight of a vote in a district with a few voters is greater than that of a vote in a district with many voters. It might be more in keeping with the Commission's intention to say that "every voter is entitled to one vote" (or "to the same number of votes").

Principle V, paragraph (b)

The term "electoral district" used in this paragraph seems infinitely preferable to the term "political or administrative unit" employed in Principle IV.

However, it may well be asked why districts must be drawn in such a way that the results of elections reflect the will of all the voters. Surely the essential

consideration is that the demarcation into districts should ensure the largest possible measure of genuine representation for the various segments and opinion groups of the electorate.

In the light of what has been said above, it is suggested that Principles IV and V should be combined as follows:

"IV. Universality and equality of suffrage

"(a) Every national is entitled to vote on equal terms in any election, referendum or public consultation in which he is qualified to participate and which is conducted on a national basis or in the political or administrative district in which he resides. Every voter is entitled to one vote.

"(b) The qualifications for voting shall not include literacy or any other educational requirement.

"(c) When voting is conducted on the basis of electoral districts, the said districts shall be established or delimited in such a way as to ensure that the electorate is represented as accurately as possible.

"(d) For any election, referendum or public consultation held by secret vote there shall be one general election roll, and every national who is qualified to vote shall be included in that roll".

Principle VI. Secrecy of the vote

Paragraph (a)

It would seem advisable to provide not only that the right to secrecy of the vote exists but also that it cannot be waived. That idea could be expressed by deleting the words "be able to".

It would seem best not to impose any restraints on disclosure of a voter's intentions, which are, by definition, secret and cannot be controlled.

Thus, paragraph (a) would read as follows:

"(a) Every voter shall vote in such a manner as not to involve disclosure of how he has voted".

Paragraph (b)

The foregoing observation also applies to this paragraph. In addition, it might be useful, for the sake of clarity, to replace the words "de dire comment il a exprimé son suffrage" ("to state ... how he voted") in the French text by the words "d'indiquer comment il a voté".

The question also arises whether the latter part of the paragraph does not go too far. There seems no reason to forbid a person to try to find out how a friend or relative has voted. What is important is that no one should be compelled, in any legal proceeding or otherwise, to make such a disclosure. Hence, paragraph (b) might be worded as follows:

"(b) No voter shall be compelled to state, in any legal proceeding or otherwise, how he voted or intends to vote".

Principle VII

The only observations to be made here is that, in the French text of this Principle, the term "fonctions publiques" is given a broad application which is not customary in French usage. It would be more correct to speak of elections "à des mandats représentatifs ou à des fonctions publiques électives". The same applies to Principles VIII and IX.

Principle VIII. Genuine character of elections and other public consultations

Subject to the suggestion made above with regard to the enumeration of the various forms of voting, it should be pointed out that the words "and shall not be compelled to vote for any specified candidate or list of candidates" in paragraph (a) obviously add nothing to the preceding statement that "every voter shall be free to vote for the candidate or list of candidates he prefers in any election to public office". It is suggested that the second part of the paragraph should be deleted and that paragraphs (a) and (b) should be combined as follows:

"(a) Every voter shall be free to vote for the candidate or list of candidates he prefers in any election to public office [à des mandats représentatifs ou à des fonctions publiques]/. Every voter shall be free to vote for or against any proposal submitted to a referendum or public consultation".

Principle IX. Access to elective public office

Paragraph (a)

Purely from the standpoint of drafting, it is suggested that this paragraph should be worded as follows so as to take account of a number of observations made above:

"(a) Every national shall be eligible on equal terms for election to any elective public office / "à tout mandat représentatif ou à toute fonction publique électorale" / at the national level or at the level of a political or administrative district".

Paragraph (b)

As it now stands, this paragraph is not clearly worded. The issue involved would appear to be that of establishing rules governing incompatibility; hence, a more explicit text such as the following would be advisable: "Rules governing professional incompatibility, designed to prevent, in the interest of the community, possible conflicts between a Government official's duties and his personal interests, shall be established by law".

Principle X. Access to non-elective public office

Paragraph (b)

Cf., mutatis mutandis, the observations made above with regard to Principle IX, paragraph (b). The text suggested for that paragraph could be used here as well: "Rules governing professional incompatibility, designed to prevent, in the interest of the community, possible conflicts between a Government official's duties and his personal interests, shall be established by law".

Paragraph (c)

This paragraph appears to be unnecessary and repetitious, inasmuch as paragraph (a) provides for eligibility on equal terms.

Principle XI. Measures which shall not be considered discriminatory

The Principle should include the idea of equality with respect to these requirements and qualifications as suggested by the Commission on the Status of Women. Requirements may be imposed and qualifications demanded but they may not be of a kind that would be discriminatory. This idea might be expressed more briefly by inserting the words "and generally applicable" after the word "regulation". In the French text, the verb "déterminer" is more appropriate than the verb "viser".

The word "reasonable" in paragraphs (a) and (b) may have been included in keeping with Anglo-American legal style but it is odd, if not downright confusing, in French and its omission would do no harm.

Paragraph (d) appears to be either grammatically faulty or unnecessarily laboured, in that it speaks of measures prescribed by law or regulation which, at the same time, are "special measures taken to ensure the adequate representation of an element of the population ...". Moreover, sub-paragraph (i) is going too far when it accepts special representation for elements of the population which because of "political" or "religious" conditions are prevented from enjoying equality with the rest of the population in the matter of political rights. There is not very much here that is compatible with Principle II.

On the other hand, the word "representation" is too narrow, since this provision should also apply to other political rights.

Finally, in order to avoid abuses, it should be indicated that such measures are only acceptable if they are aimed at ensuring the best possible exercise of their political rights by the elements concerned.

The following wording is therefore suggested:

"(d) In addition, special measures shall not be considered discriminatory if taken to ensure:

(i) The best exercise of their political rights to elements of the population whose members are in fact prevented by economic, social, historical, or cultural conditions from enjoying equality with the rest of the population;

(ii) The balanced representation of the different elements of the population of a country;

provided that such measures are continued only so long as there is need for them, and only to the extent that they meet that need".

Principle XII. Limitations

With a view to greater clarity and in order to bring out the distinction between the exercise of rights and limitations of rights, it would appear useful to divide this principle into two parts drafted along similar lines:

"(a) The rights and freedoms proclaimed above shall in no case be exercised contrary to the Purposes and Principles of the United Nations.

(b) They shall be subject only to such limitations as are determined by law solely ..." etc.

As to substance, this principle raises some delicate questions. It lays down that the rights and freedoms proclaimed above may be limited by law in order to meet the requirements of public policy (ordre public), morality, etc. Is it intended to permit suspension of the right to vote by invoking public policy or of elections on grounds of morality? This provision appears to be justified, first, only with respect to certain rights and freedoms, and secondly, only in certain exceptional circumstances (such as martial law). In its present general form, this principle can only be dangerous.

Another and perhaps more satisfactory approach would be to give up the idea of a general saving-clause in favour of special clauses included in each principle. That is what has been done in the European Convention for the Protection of Human Rights. Such a method would permit a more precise formulation of the conditions under which each public freedom or right may be limited.

Principle XIII. Constitutional guarantee

This principle is welcome.

It must be noted, however, that the text has no application to States which have no written constitution. In England, for example, the institutions are based essentially on the common law. So far as there is written law, it is not formally distinguishable from the other law. The distinction between a constitution and ordinary legislation is unknown.

It would therefore seem advisable to redraft the beginning of this principle as follows:

"In States where the system of law so permits, the rights and freedoms proclaimed above can best be guaranteed, etc."

Principle XIV. No observations

Principle XV. Application of Principles

It seems regrettable that neither this nor any principle makes any provision for verifying the application - or observance - of the draft principles.

It is therefore hoped that the Commission will examine the possibility of repairing this omission. Without proposing at this time the establishment, on a world scale, of bodies similar to the European Human Rights Commission and Court, it is suggested that the measures of verification which the United Nations Commission has agreed, or will in future agree, to exercise with respect to the Universal Declaration should be extended to the present declaration.
