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GENERAL

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COMMISSION ON HUMAN RIGHTS

Sixth session

COMMENTS OF GOVERNMENTS ON THE DRAFT INTERNATIONAL COVENANT
ON HUMAN RIGHTS AND MEASURES OF IMPLEMENTATION

The Secretary-General has the honour to circulate the following comments:

10. India

Communication dated 6 March 1950 from the Minister for External Affairs
of the Government of India to the Secretary-General
of the United Nations, containing the views of that Government
on the draft International Covenant on Human Rights and transmitting
a reply to the questionnaire on the Measures of Implementation

I. The Views of the Government of India on the draft International Covenant
on Human Rights

To make the Covenant acceptable to a large number of States, the Government of India are of the opinion that the present Covenant should not include economic and social rights for which a separate Covenant or Covenants might be drawn up later.

Article 4

This article is necessary and important. While it gives latitude to States during an emergency, it also exercises a healthy check on their anti-democratic activities in normal times.

Article 5

The first paragraph should be amended to read 'No one shall be deprived of his life except according to procedure established by law'.

/Article 9

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Article 9

An illustrative list of exceptions under paragraph 2 of this article is not considered necessary as real safeguards are provided in other paragraphs of this article.

As the Government of India are in favour of the provision of socio-economic rights in a separate Covenant or Covenants, new articles, if necessary, will be proposed when the separate Covenant is taken up.

As regards the proposals on Implementation, the Government of India's views are in accord with those submitted by the Indian representative on the Human Rights Commission (page 77 of document E/1371).

II. The Reply of the Government of India to the Questionnaire
on Measures of Implementation

Part I

Preliminary Questions

- (1) International measures are necessary where national measures fail. Therefore, while the protection of human rights is the obligation of the State concerned, it is necessary to have some international body to supervise the observance of human rights.
- (2) Inclusion of the economic and social articles in the covenant should not make any difference as to the machinery to be provided for implementation.
- (3) Provisions relating to implementation should be included in a separate instrument in view of the possibility of there being more than one covenant. But provision should be made in the body of the covenant to the effect that the covenant shall be implemented and the machinery for implementation shall be set up.

Part II

Questions concerning the Initiation of Proceedings

Chapter I

Questions relating to the Right of Signatory States to enter complaints

- (1) The dispute in question would be over the violation of human rights. If
/any State

any State takes up the issue on behalf of individuals it should be the obligation of the State to enter into such negotiation in the first instance.

(2) If the dispute is not settled the State has a right to refer it to the United Nations either directly or through any machinery which may be set up for settling such disputes.

(3) The complaint can be made without any limitation.

(4) It should be subjected to preliminary examination, and should satisfy the rules framed for the purpose of determining the receivability of such complaints,

(5) Yes.

Chapter 2

Questions relating to the right of individuals, groups of individuals and of organizations to petition

A. Right to Petition

1. (a) Yes.

(b) Yes.

(c) Yes.

2. Receivability of such petitions should however be determined according to rules made in that behalf and such rules should contain adequate safeguards so as to prevent the right of petitioning from being abused.

B. Conditions for the exercise of the Right to Petition

(1) Not necessarily.

(2) Yes, because if any judicial proceeding or action is to be taken it can only be against the Signatory States for they will be the ones that will guarantee the observance of human rights and will, therefore, be legally bound to do so.

(3) Such petitions should not relate to mere personal grievances but must be against the policy or action of the State affecting a large number of individuals or communities.

(4) (a) Yes.

(b) Yes.

(5) There is no need for such a condition for it may not always be possible to fulfil it.

(6) Yes.

(7) Yes.

/(8) (a) If the

- (8) (a) If the organizations are approved by the implementing organ then there is no need to impose any other condition except what is mentioned in the question and in the rules regarding the receivability of Petitions.
- (b) Yes, provided these organizations are also approved by the implementing organ.

Part III

Questions concerning conciliation

Chapter 3

Question relating to the Establishment of Permanent and Ad Hoc Bodies

1. Permanent and Ad Hoc Bodies

A. Establishment

- (1) A permanent committee should be established by the Economic and Social Council, or by the General Assembly but not by the Signatory States.

B. Manner of Establishment

- (1) It should be elected.
- (2) It should be by a two-third majority of members present. The reason being that it should have the confidence of the largest number of members.

C. Composition

- (1) It should be composed of independent (non-government) persons.
- (2) Not necessary.
- (3) Not necessary.
- (4) The persons to be elected should be from a panel prepared by signatory States. Membership of the body should be distributed on a geographical basis.
- (5) No. The Chairman of the Human Rights Commission being a Government representative, with another member suggested by Governmental organizations, Government representation would be stronger. This is not desirable when we wish to set up an independent body.

D. Secretariat

In the beginning the Secretary-General of the United Nations can undertake the work specified in a, b, c, d, and e. But if the work increases a separate Secretary will be necessary.

/E. Functions

E. Functions

1. (a) (I) and (II) Yes.

(b) Yes.

(c) No.

2. Collection of information

1. Both (a) and (b).

2. Yes a, b, c, d, e and f.

3. Commencement of action

(a) Yes.

(b) Yes.

(c) Yes.

(d) Yes.

(e) Yes.

(f) Yes.

2. Yes.

3. If (a) is there then (b) is not necessary.

4. Yes, the organ will decide whether the petitions are to be considered by conciliators or whether they are to be considered in any other way.

4. Procedure

(1) Its headquarters should be either at Geneva or at Lake Success.

(2) It should generally meet at the headquarters but it should have a right to meet elsewhere.

(3) Yes, they should be established by the organ itself subject to the approval of the body to which it is responsible.

(4) Open or private meetings as it decides.

(5) (a) Yes.

(b) Yes.

(c) It should have the right to carry on investigations on the spot but with the consent of the State concerned. If however, the consent is withheld, it should report to that effect.

(d) Yes, it should have the right to appoint committees of enquiry where necessary.

5. Powers

(1) Yes.

(2) Yes.

/(3) Yes.

- (3) Yes.
- (4) There should be no obligation.
- (5) Yes (a).
- (6) If the parties concerned agree to an arbitrator the matter should be referred to an arbitrator. But where that is not possible then it should report to the Human Rights commission for further action. Where the dispute requires legal clarification on some point the matter should be referred to the International Court of Justice for opinion.

6. Advisory opinions

- 1. It should have a right to request the Economic and Social Council or the General Assembly to secure advisory opinion from the International Court of Justice.

As a permanent body is preferred to Ad Hoc bodies replies to II Ad Hoc Bodies are not given.

Chapter 4

Question relating to the Establishment of
Local Agencies of Implementation

- 1. Yes
- 2. Yes (a) and (b).
- 3. Ordinarily the Supreme Court of the State would be the guarantor of the observance of human rights. A permanent committee on the lines of the one envisaged in chapter 3 may be established locally to supervise the observance of human rights.

Part IV

Questions concerning judicial settlement

General

- 1. They have the right today and the right should remain.
- 2. (a) No.
(b) Yes.

Chapter 5

Questions relating to an International Court of Human Rights

- (1) It is not necessary to have a separate court if the present court can serve the purpose.
- (2) If such a court is established yes.
- (3) Yes.
- (4) The obligation must be there otherwise there is no meaning in having a court.
- (5) Yes (a) as well as (b) can have recourse to the General Assembly.
- (6) Yes, otherwise there would be no sanction behind the court decision.
- (7) Yes.
- (8) Yes.

B. Statute of the Court

- (1) General
 1. Yes.
- (2) Competence
 - (1) The proceedings should be initiated by an Attorney General of the United Nations who should take the brief on behalf of (a), (b), (c) or (d). If the Attorney General is unwilling to take the brief, the proceedings may be initiated in accordance with such rules as the General Assembly may prescribe.
 - (2) Yes, it should have the right.
 - (3) The jurisdiction of the court should comprise all disputes relating to (a) (i) and (ii) and to (b).
 - (4) Yes.
- (3) Advisory opinions
 - (1) Yes.

Part V

Questions concerning general provisions

General

The right of Signatory State to settle disputes by a procedure mutually agreed upon cannot be denied. But since the dispute would be about the /violation

violation of human rights, no settlement can be accepted as final unless it removes the grievance of the parties concerned i.e. the individuals on whose behalf a State has entered into a dispute with another State. The aggrieved party may in that case approach the United Nations for redress.

Chapter 6

Question relating to the Right of the Secretary-General of the United Nations to request information from Governments

- (1) Yes, ~~he~~ should have the right.
- (2) Yes.

A. Questions relating to the authority and powers of the United Nations under the Charter

- (1) Yes.
- (2) Yes, this is desirable.

B. Questions relating to the status of non-member States under the instrument

- (1) Yes, both to (a) and (b).
- (2) Yes.

C. Questions relating to notifications by Signatory States either at the time of ratification or subsequently, whether they adhere to the whole instrument or to a certain part thereof, and in the latter case enumerating the parts to which adherence is made

- (1) It is not desirable to have such provisions as they might lead to difficulties.

D. Questions relating to the status under the instrument of dependent non-self-governing and Trust Territories

- (1) Yes, it should be, for it is in these territories that human rights are most violated.
