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STATEMENT OF THE REPRESENTATIVE OF INDIA ON THE QUESTION
OF IMPLEMENTATION OF THE INTERNATIONAL COVENANT
ON HUMAN RIGHTS MADE AT THE 168TH MEETING
OF THE COMMISSION ON HUMAN RIGHTS,
ON 25 APRIL 1950

This is the first time that the Commission will discuss the question of Implementation in all its entirety. Up till now we had refrained from discussing it, though several proposals were submitted for the solution of this very difficult problem. It is a pity that very few governments have replied to the questionnaire issued by us. The intricacy of the problem itself may be one of the reasons for this conspiracy of silence on the part of governments. We shall, however, have to find a solution in spite of the various difficulties that confront us. If we set out with a determination to find it, I am sure we shall succeed.

The problem of Implementation resolves itself into four or five definite questions which if answered satisfactorily will bring us to our goal. These questions are:

- (1) Whether an international machinery is necessary;
- (2) Whether the measures of implementation should form part of the covenant or form a separate instrument;
- (3) Whether this international machinery should be in the form of a permanent body or an Ad Hoc body;
- (4) How it should be set up, i.e., whether it should be appointed or elected and by whom, and lastly;
- (5) What should be its functions.

With regard to the first question my delegation is of opinion that an international machinery is necessary for the supervision of the observance of

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Human Rights. It has been argued that implementation on the international level will encroach on the national sovereignty of a state thus violating Article 2 (7) of the Charter. Those who take shelter behind this article forget that under the Charter the United Nations have undertaken to protect and promote human rights and fundamental freedoms. The assurance implied in the charter will have no meaning if the United Nations are not empowered to take measures against violation of human rights. An international machinery would therefore be necessary to see that human rights are implemented by the states and supervise their observance.

The second question is whether these measures of implementation should form part of the covenant which is a first step toward implementation or whether they should form a separate instrument. My delegation is in favor of their forming a separate instrument, though a reference will have to be made in the covenant of any machinery that is to be set up - our reasons are firstly because if there are to be more than one covenant, it would be desirable to have the measures of implementation separate as they will apply to all the covenants. Secondly and this is a more important reason, these measures are to be created for the supervision of the observance of human rights, of all individuals whether they belong to the covenanting state or not. Even if there is no covenant the United Nations will have to devise means for the protection of human rights under the Charter. By including the measures in the covenant we shall narrow down their scope and thus defeat the object for which they are to be created which is to supervise the observance of human rights of all the individuals who come within the jurisdiction of the United Nations. The question may be raised why then a Covenant? To my mind the covenant is an undertaking by the states to implement the human rights in the precise form as defined in the covenant. It is a treaty between the states and the United Nations and serves as a safeguard for the states themselves who define the terms in which they are prepared to carry out their obligations. The machinery to be set up for the supervision of the observance of these obligations must be outside the scope of the covenant.

The next question is whether this machinery should be permanent or should be in the nature of an Ad Hoc body. If the machinery to be set up is to serve as a watch dog and keep vigilance over the observance of human rights, it cannot be in the nature of an Ad Hoc committee. If however, the idea is that
/the machinery should

the machinery should come into existence only when a dispute arises and serve as an investigating or fact finding body, then it need not be a permanent body. The underlying presumption in supporting an Ad Hoc body is that there will be few complaints for the protagonists of an Ad Hoc body desire that only the states should have a right to complain. If the right to complain is restricted to states perhaps there will be no complaints as the states will find it difficult to complain against one another. The question then will arise as to who will supervise the observance of human rights on behalf of the United Nations if there is no permanent machinery to do so? Will the state members undertake the work and keep an eye on each other? Instead of ensuring peace this will lead to political intrigues and even to war. A permanent body is therefore, absolutely necessary and will afford a better protection of human rights.

The next question will be how this permanent body will be set up. Whether it should be appointed or elected. My delegation is in favor of its being elected and elected by the General Assembly by a definite majority so that it can command the confidence of as many states as possible. I have no desire to enter into any details at this stage with regard to its composition and election. Once the question of having a permanent body is settled we can work out these details without any difficulty.

The last question will be the nature of its function. If we wish to give it a judicial function then it will have to be an International Court, and we shall have to decide if we desire to have a separate court of Human Rights or extend the scope of the present International Court of Justice. If an International Court is to be created its decisions will have to be binding on the parties concerned and the question of enforcement will also arise. My delegation, therefore, feel that at this stage the international machinery to be set up should not be in the nature of a judiciary. It should be more of a conciliation committee, whose main task will be to supervise the observance of human rights. If any violation of these rights is brought to its notice it will investigate the matter and through negotiations try to remove the complaint. If it fails to do so it will report its failure to the General Assembly through the Human Rights Commission or the Economic and Social Council.

/I have no desire

I have no desire to go further into the question at this stage. My proposal is that instead of launching on the examination of the various proposals before us we should take decision on the issues I have raised - a small committee can be appointed later which will work out the details once these decisions are taken. These issues I repeat again are:

- (1) Whether an international machinery is necessary;
- (2) Whether it should form part of the covenant or should form a separate instrument;
- (3) Whether it should be a permanent body or an Ad Hoc body;
- (4) Whether it should be elected and if so by whom, and lastly,
- (5) The nature of its function.
