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REPORT OF THE COMMISSION ON HUMAN RIGHTS

MEANS BY WHICH THE PROPOSED HUMAN RIGHTS COMMITTEE MAY BE ABLE TO
OBTAIN ADVISORY OPINIONS FROM THE INTERNATIONAL COURT OF JUSTICE

Report by the Secretary-General

1. This report is submitted pursuant to the following resolution adopted
by the Human Rights Commission at its Sixth Session:

"The Commission on Human Rights considers that it is desirable that
the Human Rights Committee should be able to obtain from the International
Court of Justice advisory opinions on questions of law arising in the
course of its work; and

"Requests the Secretary-General of the United Nations to report to the
Economic and Social Council upon the means by which this can be secured in
conformity with the Charter of the United Nations." (E/1681, par. 45)

2. The present report is divided into the following sections:

- (a) Bodies authorized to request Advisory Opinions.
- (b) May the proposed Human Rights Committee be authorized to
request Advisory Opinions?
- (c) May the Human Rights Committee be given the right to request
Advisory Opinions through the intermediary of another organ?
- (d) Statement of Conclusions.

(a) Bodies authorized to request Advisory Opinions.

3. The right to request advisory opinions of the International Court of Justice is covered by Article 96 of the Charter⁽¹⁾. Paragraph 1 of this Article provides that advisory opinions may be requested of the Court by the General Assembly, or by the Security Council, on any legal question. Paragraph 2 of this Article adds that:

"Other organs of the United Nations and specialized agencies, which may at any time be so authorized by the General Assembly, may also request advisory opinions of the Court on legal questions arising within the scope of their activities."

4. Pursuant to Article 96(2), the General Assembly has already authorized the Economic and Social Council⁽²⁾, and the Trusteeship Council⁽³⁾, as principal organs of the United Nations, to request advisory opinions on all legal questions within their scope. In addition, the Interim Committee of the General Assembly has been authorized by the General Assembly⁽⁴⁾ to request advisory opinions of the Court on legal questions within the scope of the Committee's activities. With respect to the specialized agencies, the General Assembly has granted authorizations to request advisory opinions through the means of a special article in the agreements concluded between each organization and the United Nations⁽⁵⁾.

(b) May the proposed Human Rights Committee be authorized to request Advisory Opinions?

5. In order to determine whether the proposed Human Rights Committee could be authorized to request advisory opinions, it is necessary to consider

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- (1) Article 65 of the Statute of the Court empowers the Court to give Advisory Opinions on any legal question at the request of whatever body may be authorized by or in accordance with the Charter to make such a request.
 - (2) General Assembly Resolution 89(I)
 - (3) General Assembly Resolution 171 (II)
 - (4) General Assembly Resolution 196 (III)
 - (5) the following agencies have received such authorization: ILO, UNESCO, FAO, ICAO, International Bank, Monetary Fund, International Telecommunications Organization, WHO, IRO.

whether this Committee may be deemed an "organ" or "specialized agency" for the purpose of Article 96(2) of the Charter.

6. It is obvious that the proposed Committee cannot be considered as a principal organ of the United Nations, since such principal organs are expressly designated in Article 7(1) of the Charter. The question, therefore, is whether the proposed Committee may be considered a subsidiary organ within the meaning of Article 7(2) of the Charter. (As indicated above, the Interim Committee of the General Assembly, which is a subsidiary organ, has received authorization to request advisory opinions on questions within its scope).

7. It is most doubtful whether this Committee could be considered a subsidiary organ under the present text of the draft Covenant. It seems quite clear under Article 7(2) that a subsidiary organ would have to be a body established by a principal organ. This would not be the case in regard to the Human Rights Committee. That proposed body would be established by an international instrument, separate and distinct from the Charter. Its members would be elected by the States which are parties to the Covenant, and the terms of reference of the Committee would be laid down by the Covenant. In the performance of its functions it would not be subject to the authority of any principal organ of the United Nations⁽⁶⁾.

8. It also appears to be clear that the proposed Committee could not be considered as a specialized agency for the purpose of Article 96(2). The term "specialized agency" is defined by Article 57 of the Charter which indicates that such agencies are those established by inter-governmental agreement with "wide international responsibilities" and which have been brought into relationship with the United Nations in accordance with Article 63. In the practice hitherto followed the term specialized agency has been applied only to international organizations having wide administrative responsibilities in the economic, social and related fields. In contrast, the proposed Committee would consist of seven members serving in their individual capacity and entrusted with

(6) The election of the Committee would be covered by Articles...
and the functions of the Committee by Articles ... of the Covenant.

fact-finding, making available good offices and reporting facts and conclusions. The administrative tasks connected with the Committee would be entrusted to the Secretary-General and to officers appointed by him. There is no indication in the draft Covenant or in the records of the Human Rights Commission that it is contemplated that this Committee be brought into relationship with the Economic and Social Council in accordance with Article 63 of the Charter.

9. For these reasons, it must be concluded that the proposed Committee cannot be regarded as a specialized agency within the meaning of the Charter.

10. Since the Human Rights Committee would not be either an organ of the United Nations or a specialized agency, it could not itself be authorized by the General Assembly to request itself Advisory Opinions of the International Court.

(c) May the Human Rights Committee be given the right to request Advisory Opinions through the intermediary of another organ?

11. During the discussion of this subject in the Human Rights Commission consideration was given to the possibility of designating an organ through which the proposed Committee could transmit requests for advisory opinions on legal questions arising in the course of the Committee's work⁽⁷⁾.

12. The first question to consider is whether it is legally permissible under the Charter for an organ authorized under Article 96 to request advisory opinions to act merely as an intermediary for questions presented by the Human Rights Committee.

13. After careful consideration, it is our conclusion that it is not possible under the Charter to provide that an organ shall act solely as an intermediary in transmitting to the Court legal questions which the Human Rights Committee would request. The reasons for this conclusion can be stated briefly. If an organ were to act merely as a transmitting agent, it is evident that the Human Rights Committee would, in fact, be empowered to make the requests for

(7) A proposal to include an article to this effect was made by the United Kingdom representative (E/CN.4/487) at the 192nd meeting, but it was rejected by six votes to five, with four abstentions. However, following this, the Commission adopted the resolution requesting the present report.

advisory opinions. The organ would then be only performing a purely administrative or "ministerial" function, similar to that which the Secretary-General now performs in transmitting to the Court questions put by the General Assembly. It would, therefore, mean that a body which could not be authorized to request advisory opinions under the Charter was in fact being given that authority. This, in our view, would be contrary to Article 96.

14. We should also like to make it clear that this conclusion is not merely based on a technicality. The right to present requests for advisory opinions has been conferred by the Charter, or, in accordance with the Charter, by the General Assembly, only to certain organs which are expected to weigh the proposal in the light of the general interests of the United Nations as well as in regard to the particular question. During the drafting of the Charter at San Francisco, the policy was laid down that the right to make requests for advisory opinions should be restricted to public international organizations which are part of the United Nations or brought into relationship with it⁽⁸⁾. The language of Article 96(2) was carefully drawn up to express this policy. It would be defeating the object of the provision if the authorized organs were to act merely as conduits for transmitting requests of a body which could not be authorized directly.

15. However, there seems to be no reason why an organ properly authorized to request advisory opinions may not be instructed to take into account suggestions or recommendations of another organization. As a precedent one might note that in the Covenant of the League it was considered proper for the Council to give consideration to suggestions of the ILO in regard to requests for advisory

(8) The provision which became paragraph 2 of Article 96 appears to have been first introduced by the United Kingdom delegation (W.D.219) which explained that this draft contained a safeguard against abuse by adding the requirement that the international agency which may be authorized to request advisory opinions should be closely connected with the United Nations (see Summary Record of the 20th meeting of Committee IV(1), UNCIO, doc.864, page 3, English; see also Report of Rapporteur of Committee IV(1) at San Francisco, UNCIO doc. 875, part 2, paragraph 5, English). It is also noteworthy in this connection that the San Francisco Conference rejected a proposal to permit two or more States acting in agreement to request advisory opinions from the Court (Summary Record of 15th meeting of Committee IV(1), UNCIO doc. 701, page 3, English).

opinions concerning that organization, although it was not considered proper that the Council automatically transmit the requests of the ILO⁽⁹⁾. Consequently, it would be permissible to provide in the Covenant that the proposed Human Rights Committee may recommend or suggest to a competent organ of the United Nations that that organ request the Court to give an advisory opinion on a legal question arising out of the Committee's activities. It would be clearly understood that the responsibility would remain with the authorized organ and, therefore, that the organ would have discretion with respect to presenting the legal question and with respect to framing the language of the question. In short, the Human Rights Committee would be in a position to make suggestions but the final responsibility would be placed in a competent organ of the United Nations.

16. If this procedure is desired, the further question arises as to which organs of the United Nations would be appropriate to receive the suggestions of the Human Rights Committee and then to decide upon making the requests to the International Court. In response to this point, four possible organs may be suggested. First, there are the General Assembly and the Economic and Social Council, both of which have the authority to request advisory opinions on legal questions relating to human rights. It is sufficient that these bodies have a general competence in the field of human rights, pursuant to Article 55 of the Charter, in order to enable them to present questions relating to human rights even though such questions arise out of other international agreements⁽¹⁰⁾.

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- (9) League of Nations Official Journal, 1937, pp.184-185.
Another precedent in the League was a resolution of the Assembly in connection with the Manchurian situation in 1932, empowering a committee to propose to the Assembly, if necessary that it, the Assembly, make a request for an Advisory Opinion. See records of the 1932 Special Assembly of the League of Nations, p. 88 (cited in Hudson, Permanent Court of International Justice, 1943, p.487).
- (10) This point was expressly decided by the International Court of Justice in the advisory opinion regarding the interpretation of the Peace Treaties, I.C.J. Reports 1950, p.70.

17. A third possible organ would be the Commission on Human Rights. Although this Commission is not presently authorized to submit requests for advisory opinions, it is a subsidiary organ and, therefore, it would be possible for the General Assembly to authorize it to do so. Such an authorization could provide that the Commission on Human Rights, after giving consideration to suggestions made by the Human Rights Committee, should be empowered to request advisory opinions from the International Court of Justice on legal questions arising in the course of the work of the Human Rights Committee.

18. A fourth possibility would be the Secretariat, which can be authorized under Article 96 since it is a principal organ of the United Nations. In the case of the Secretariat, the question arises as to whether these questions may be considered to be within the scope of its activities, as required by Article 96(2). The answer to this may be found by reference to Article 98 which provides that the Secretary-General shall perform such other functions as are entrusted to him by the General Assembly and the Councils of the Organization. Accordingly, it would be necessary for the General Assembly to entrust the Secretary-General with the function of considering suggestions of the Human Rights Committee in regard to requests for advisory opinions on questions arising out of that Committee's work. Pursuant to this, the General Assembly could then extend an authorization to the Secretary-General under Article 96(2) in the same terms as those suggested in the preceding paragraph for the Commission on Human Rights.

(d) Statement of Conclusions.

19. The conclusions of this report may be summarized as follows:

(1) The proposed Human Rights Committee would not be an organ of the United Nations or a specialized agency and, therefore, it could not be authorized by the General Assembly to request advisory opinions under Article 96(2) of the Charter.

(2) It would be contrary to the intent and policy of Article 96 to provide that an organ shall act as a mere intermediary for transmitting to the Court requests for advisory opinions made by the proposed Human Rights Committee.

(3) It would, however, be legally permissible to provide that the proposed Human Rights Committee may make suggestions to a competent organ to the effect that that organ submit a request for an advisory opinion on a legal question arising out of the work of the Committee. The organ would in that case retain responsibility as to whether the question shall be presented and the manner of presenting it.

(4) If the proposal in the preceding paragraph is adopted, there would be several United Nations organs which might be empowered to receive the suggestions of the Human Rights Committee, and, after considering such suggestions, to submit requests for advisory opinions on legal questions arising out of the Committee's work.

(5) The General Assembly and the Economic and Social Council are two such organs, since they are already authorized to request advisory opinions and since they have competence in the field of human rights. In addition, the Commission on Human Rights, which is not presently authorized to request advisory opinions, could be so authorized along the lines indicated above. Finally, it would be possible for the General Assembly to entrust the Secretary-General, pursuant to Article 98, with the function of making requests for advisory opinions on questions arising out of the work of the proposed Human Rights Committee, after he takes into account considerations and suggestions made to him by the Committee with respect to such requests.