

United Nations

Nations Unies

UNRESTRICTED

**ECONOMIC
AND
SOCIAL COUNCIL**

**CONSEIL
ECONOMIQUE
ET SOCIAL**

E/CN.4/89
12 May 1948

ORIGINAL: ENGLISH

COMMISSION ON HUMAN RIGHTS

THIRD SESSION

INTERNATIONAL LAW ASSOCIATION

BRUSSELS CONFERENCE, 1948

HUMAN RIGHTS COMMITTEE

HUMAN RIGHTS, THE CHARTER OF THE UNITED NATIONS, AND
THE INTERNATIONAL BILL OF THE RIGHTS OF MAN

PRELIMINARY REPORT

by

PROFESSOR H. LAUTERPACHT

Table of Contents

Chapter	<u>Page</u>
I INTRODUCTION.	1
II THE CHARTER OF THE UNITED NATIONS AND HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS.	3
III THE IMPLEMENTATION OF THE CHARTER. THE POWERS AND DUTIES OF THE ECONOMIC AND SOCIAL COUNCIL AND OF THE COMMISSION ON HUMAN RIGHTS.	14
IV THE INTERNATIONAL BILL OF HUMAN RIGHTS.	25
V THE DECLARATION AND CONVENTION PROPOSED BY THE COMMISSION ON HUMAN RIGHTS.	30
VI THE RAPPORTEUR'S DRAFT OF AN INTERNATIONAL BILL OF THE RIGHTS OF MAN	35
Annex COMMISSION ON HUMAN RIGHTS.	53
I Draft Declaration on Human Rights	53
II Draft Convention on Human Rights.	57

CHAPTER I

INTRODUCTION

1. The Charter of the United Nations constitutes a landmark in the recognition of the status of the individual and his protection by international society. The provisions of the Charter in the matter of human rights and fundamental freedoms express legal obligations binding upon the Members of the United Nations. They are a source of legal authority for the United Nations and its organs charged with the task of ensuring the realization of the purpose of the Organization in one of its principal aspects. Unlike the Minorities Treaties concluded after the First World War, the scope of the Charter is in this respect doubly universal. It is not confined to a particular group of States nor to limited categories of rights. The moral and political authority of the United Nations - the future of the United Nations itself - will be determined to a large extent by the manner in which effect will be given to these provisions of the Charter. Yet while, in turn, the effectiveness of these obligations of the Charter will depend upon the moral and political standing of the United Nations, there are other factors which will add substantially to their reality. These factors are public opinion and the scientific effort of international lawyers bent on extracting from the Charter all its inherent effectiveness and on resisting any tendency to a pessimistic interpretation of its provisions.

2. For these reasons it is necessary to draw attention to the danger of the progress achieved in the Charter being impaired as the result of exclusive concentration on projects aiming at an extension of the obligations of the Charter in the matter of the international protection of human rights. Of these projects the most important is that of an International Bill of the Rights of Man, which has constituted the main pre-occupation of the Commission on Human Rights since the inception of its activities. Undoubtedly, the adoption by the Members of the United Nations of an effective International Bill of Human Rights would constitute a significant advance upon the Charter. It would amount to an achievement comparable to - and perhaps exceeding - the significance of the Charter itself in the matter of human rights. For this reason, enlightened public opinion and the science of international law ought to lend full and sustained support to the preparation of an International Bill of Rights worthy of that name. On the other hand, we must bear in mind the possibility that the Bill may not materialize, or, worse still, that it may be adopted as a bare declaration which will add little to or, conceivably, reduce the stature of the Charter on the subject. Should
/that happen,

that happen, the cause of human rights will have suffered a double reverse. The effort which could have been expended on bringing to its full growth the achievement of the Charter will have become dissipated upon a purely nominal and controversial declaration of abstract rights. There are some who apprehend that, to some extent, there are indications of that danger materializing in relation to the principal organs of the United Nations for the implementation of the Charter in this respect, namely, the Economic and Social Council and the Commission on Human Rights. That latter body has devoted its main effort to the task of framing an International Bill of Rights with the result that it has not yet been able to approach constructively the other, no less substantial, aspects of its function. In fact, the Commission has taken certain decisions setting a limit, which may appear to some as unwarranted by the Charter or its own terms of reference, to its jurisdiction in the matter of the protection of human rights. These decisions have been confirmed by the Economic and Social Council.

3. In view of this it seems that the scientific effort of the International Law Association ought to be directed towards the study and elucidation of the following three problems:

(a) The interpretation of the Articles of the Charter of the United Nations relating to human rights and fundamental freedoms, as well as the construction of the limiting clause of Article 2, paragraph 7 - the clause of domestic jurisdiction - in so far as it bears upon the effectiveness of the relevant provisions of the Charter. To what extent do these provisions constitute legal obligations of the Members of the United Nations? How far do they provide a legal authorization for the United Nations to give reality to this purpose of the Charter? In what way is that authorization circumscribed by Article 2, paragraph 7, which lays down that "nothing in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any State"?

(b) The function and the powers of the Commission on Human Rights. The Charter does not confer upon any organ of the United Nations exclusive jurisdiction in the matter of human rights. Both the General Assembly and the Economic and Social Council are entrusted with certain functions in the matter. The Security Council would seem to be competent to act in extreme cases, whenever the violation of human rights is on such a scale as to constitute a threat to international peace and security. However, in addition to these organs, the Charter has made specific provision for a Commission

/on Human

on Human Rights, to be established under the aegis of the Economic and Social Council. It is a legitimate and urgent object of legal study to enquire into the scope of the functions of that body. Is the Commission on Human Rights a purely advisory and deliberative body, or is it competent, within the limits of the Charter, to act as an instrument for the protection of human rights? If the Commission on Human Rights as at present constituted is a mere consultative organ, is the notion of implementation so much an essential part of these provisions of the Charter as to make the creation of another instrument imperative? These questions cannot be exhaustively answered by reference to the work of the Human Rights Commission in the first experimental two years of its existence or its own pronouncements on the subject.

(c) The International Bill of Human Rights. While it is imperative to exercise caution in estimating the prospects of an International Bill of Human Rights conceived as an effective contribution to the advancement of the international protection of the rights of man, there is no doubt that an effective contribution of this nature is a desirable object of political endeavour. So long as we do not allow the progress already achieved in the Charter to be prejudiced or relegated to the background by exclusive pre-occupation with the Bill of Rights, it is incumbent upon the legal profession and public opinion in general to study carefully the questions involved in it and to give it their support. Such study cannot, in the long run, be simplified by dividing it into two separate problems, namely, the substance of the Bill of Rights and its enforcement. These two questions are interconnected. For the enforceability of the Bill must depend on the kind of human interests which it is made to protect. On the other hand, the nature and scope of the rights which we decide to include in it must be determined by the degree of enforcement which we decide to adopt in order to make it a reality.

CHAPTER II

THE CHARTER OF THE UNITED NATIONS AND HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

4. A cursory reading of the Charter of the United Nations and of the preparatory work of the San Francisco Conference create the impression that its provisions in the matter of human rights and fundamental freedoms are no more than a declaration of principles and an appeal to the
/conscience

conscience of the Members of the United Nations. The Preamble to the Charter merely expresses the determination of the peoples of the United Nations "to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small." The statement of the purposes of the United Nations, in Article 1, includes that of achieving "international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion." The statement, it would appear, does not go beyond "co-operation", "promotion" and "encouragement" of respect for human rights. The same, it seems, applies to Article 13, which lays down that the General Assembly shall initiate studies and make recommendations for the purpose, inter alia, of "assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion." In defining the objects of the Organization in the field of international economic and social co-operation the Charter lays down, in Article 55(3), that the United Nations shall "promote universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion". Article 62 of the Charter, which defines the functions of the Economic and Social Council, lays down that the Council "may" make "recommendations" for the purpose of "promoting" respect for, and observance of, human rights and fundamental freedoms for all.

5. To the restraint exhibited in the wording of the Charter there must be added the circumstance that this absence of express authority for active and fully effective protection of human rights is not due to a mere oversight. No agreement could be secured at the Conference at San Francisco for the proposal that the Charter should ensure not only "the promotion" but also "the protection" of human rights and fundamental freedoms. The proposal was opposed for the reason that, if accepted, it might be interpreted as giving the United Nations the right to impose actively upon the Members the observance of human rights and freedoms.*

* Thus France proposed that it should be declared as one of the purposes of the Organization "to see to it that the essential liberties of all are respected without distinction of race, language or creed": Documents of the Conference, document 215, I/1/10, page 13. And see ibid., page 7, for similar proposals of other States.

6. However, while these considerations have a bearing upon the interpretation of the Charter, they must not be allowed to obscure the overriding fact that its provisions in the matter of human rights and fundamental freedoms are a source of legal obligations both for the Members of the United Nations and for the United Nations as a whole. In the first instance, Members of the United Nations are under a legal - and not merely a moral - obligation to respect human rights and fundamental freedoms as repeatedly reaffirmed in the Charter. There is no rule or principle of interpretation which would justify the treatment of these provisions of the Charter as a verbal and nominal declaration. They were adopted, as a constant theme of the Charter, in pursuance of solemn pronouncements made in the course of the Second World War and after careful deliberation by the Conference at San Francisco. The authors of the Charter did not go to the length of agreeing that the United Nations shall ensure fully the respect of human rights and fundamental freedoms, but they did agree that Members of the United Nations shall respect these rights and freedoms. That obligation results not only from the undertaking, expressed in Article 56, in which "all Members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes" the promotion of which is, in conformity with Article 55, a legal duty of the Organization. It is an obligation which follows from the fact that the recognition of human rights and fundamental freedoms is a constant and dominant feature of the Charter. The legal character of these obligations is not decisively affected by the circumstance that the Charter makes no provision for their full implementation (some measure of implementation is, as will be suggested, both inherent in and expressly provided for by the Charter). For the Charter has not adopted machinery for the full enforcement of its other legal obligations, save in so far as their disregard constitutes a threat to international peace and security. Complete enforceability is not, especially in the sphere of international law, the hall-mark of a legal duty.

7. Secondly, the provisions of the Charter on the subject impose legal obligations upon the United Nations as a whole. They not only authorize the various organs of the United Nations to take steps for encouraging and promoting the realization of this crucial purpose of the Charter. They lay down that the Assembly shall promote "universal respect for, and observance of, human rights and fundamental freedoms" (Article 55). There is laid down here a clear duty of collective action. Moreover, that duty exists irrespective of any explicit pronouncement of the Charter to that effect. It is an inescapable principle of interpretation that

/whenever

whenever an international instrument defines, in its constitution, the purposes of its being, the right and obligation to give effect to these purposes are inherent in it and nothing short of an express derogation from that implicit authority can legitimately restrict the powers and obligations in question.

8. What, in addition to the pessimistic temper of the turbulent period of transition, have been the reasons which have given strength to the tendency to question or ignore the binding character, in the legal sphere, of the provisions of the Charter in the matter of human rights and fundamental freedoms? The main source of that tendency has been the somewhat alarmist interpretation given to paragraph 7 of Article 2 of the Charter in the matter of the clause of domestic jurisdiction. It has been widely maintained that the treatment by a State of its own nationals is a typical example of a question which is "essentially within the domestic jurisdiction of the State", and that, by depriving the United Nations of the power to intervene in matters of this nature, the Charter has reduced to a mere form of words its provisions relating to human rights and fundamental freedoms. This is particularly so, it has been argued, seeing that, according to the Charter, every Member possesses the right to determine for itself whether a matter is or is not essentially within its domestic jurisdiction.* There is no warrant for the interpretation of the Charter on these lines.

9. In the first instance, it is not certain that, according to the Charter, the question of respect for and observance of human rights and fundamental freedoms is one which is "essentially within the domestic jurisdiction of States". On the contrary, there is room for the view that by having been

* There is no substance in the view which has occasionally been put forward that, as the draftsmen of the Charter rejected the proposals put forward by some States (see document, volume VI, page 433; volume XII, pages 190-192) that the International Court of Justice should be given the power to determine whether a matter is essentially within the domestic jurisdiction of a State, that power must be deemed to be vested in the member of the United Nations concerned. The Conference equally refused to accept the suggestion that the Court should generally be given the power to interpret disputed provisions of the Charter. It does not follow that that power has been retained by individual members of the United Nations. This is a competence belonging, with regard to any particular case, to the organ of the United Nations applying the provision in question.

included among the principal purposes of the United Nations and by having become a persistent theme of the Charter, that question has become one which, far from being essentially within the domestic jurisdiction of States, is essentially of international concern. It is generally admitted that any systematic and flagrant violation of human rights on a scale likely to affect international peace and security - such as the racial, religious and political persecutions in National-Socialist Germany - would remove the question of the treatment of the State's own nationals from the orbit of matters essentially within its jurisdiction and subject it to the competence not only of the General Assembly and the Economic and Social Council but also of the Security Council, with all the possibilities of enforcement action which that latter jurisdiction implies. But there is impressive authority in support of the view that even apart from cases of a flagrant violation of human rights, the observance of these provisions of the Charter has become a matter of international concern removed from the orbit of questions solely within the domestic jurisdiction of States. The action of the two-thirds of the General Assembly in 1946 in the dispute between India and South Africa concerning the treatment of Indians in the latter country was based on that interpretation of the Charter. Notwithstanding the insistence of South Africa and some other States, the First General Assembly adopted a resolution in which it formally asserted jurisdiction in the matter. The General Assembly put on record its view that because of the treatment of Indians in South Africa the "friendly relations between the two Member States have been impaired and, unless a satisfactory settlement is reached, these relations are likely to be further impaired," it expressed the opinion that "the treatment of Indians in the Union shall be in conformity with international obligations under the agreements concluded between the two Governments and the relevant provisions of the Charter"; and requested the two Governments to report to the next Session of the General Assembly the measures adopted to this effect".* In accepting that resolution the First General Assembly acted on the view, repeatedly given expression in debate, that questions relating to human rights and fundamental freedoms are not among those covered by the reservation of Article 2, paragraph 7, of the Charter. In so far as the resolution referred to the impairment of the friendly relations between South Africa and India - and to the danger of their

* First General Assembly, Second Part, No. 75, page 831. In the Second General Assembly a resolution re-affirming the resolution of the First Assembly on the subject did not secure the requisite majority of two-thirds.

further deterioration in case of the continuation of the dispute - it gave expression to the view that violations of human rights, even if not on a scale calling for the more drastic intervention of the Security Council, may affect international relations in a manner sufficient to sanction the competence of the General Assembly.

10. Similar considerations apply to the attitude of the Security Council and of the First General Assembly in the matter of the political regime in Spain. Although the Security Council declined to find that the matter constituted such direct threat to international peace and security as to bring about its jurisdiction under Chapter VII of the Charter, relating to enforcement action, it dealt fully with the matter under Chapter VI, as coming under its general jurisdiction in matters affecting international peace. The General Assembly, after a full discussion, adopted a resolution in which it found that the "Franco Fascist Government of Spain does not represent the Spanish people" and recommended that it be debarred from participation in conferences convened under the aegis of the United Nations and from specialized agencies established by it or brought into relationship with it. It also recommended that all Members of the United Nations should immediately recall from Madrid their Ambassadors and Ministers Plenipotentiary.* It is significant that during the discussions before the General Assembly and the Security Council the States which in the course of the drafting of the Charter were specially insistent on the insertion of the clause safeguarding the domestic jurisdiction of States - such as Australia, the United States of America, and Soviet Russia - dissociated themselves, in comprehensive terms of considerable generality, from an interpretation of the Charter which would exclude the jurisdiction of the General Assembly or the Security Council in the matter before them.**

* First General Assembly, Second Part, Journal No. 75, page 827.

** As to Soviet Russia see Journal of the Security Council, First Year, No.29, page 570 (25 April 1946). The representative of the United States dissociated himself from the view that the Security Council was precluded by the terms of article 2, paragraph 7, from adopting a resolution recommending to the General Assembly the passing of a resolution recommending to its members the severance of diplomatic relations with Spain: ibid., No. 40, page 732 (25 June 1946). The Australian representative was even more emphatic. He quoted the following passage from the Memorandum presented by the Australian delegation to the relevant Committee of the San Francisco Conference: "Once a matter is recognized as one of legitimate international concern, no exception to the general rule is needed to bring it within the powers of the Organization. The general rule itself ceases to apply as soon as a matter ceases to be one of domestic jurisdiction": ibid., No.37, page 728 (12 June 1946).

11. The right of intervention of the United Nations in questions relating to human rights and fundamental freedoms can thus be predicated upon the proposition, for which there appears to be substantial authority of principle and practice alike, that these are no longer questions which are essentially within the domestic jurisdiction of States for the reason either that by virtue of the dominant place which they occupy in the Charter they have become matters of international concern, or that they affect international peace and security. However, a limited though most substantial jurisdiction of the United Nations in the matter of human rights and fundamental freedoms is based on the fact that - irrespective of what has been said above - the Charter, while withholding the right of intervention, does not prohibit or withhold the right of action falling short of intervention. Intervention is a technical term of international law. It refers to action of a coercive nature - i.e., action accompanied by force or threat of force - and to peremptory requests or authoritative legislative measures non-compliance with which would normally bring about the application of a sanction or at least a clear imputation of illegality against the non-complying State. Thus a legally binding decision of the United Nations calling in a peremptory manner upon a Member State to adopt or desist from a certain course of action would constitute intervention. For instance, if the pronouncement of the General Assembly in the matter of the political regime in Spain had been a legally binding decision and not, as it was in fact, a mere recommendation, it would have constituted intervention, accompanied as it was by a threat of action endangering the intercourse of Spain with other States.

12. It is clear that the Charter does not withhold authorization of action falling short of intervention. Such action includes discussion, study, investigation not inconsistent with the territorial sovereignty of the State concerned, and, in particular, recommendation either general or specifically addressed to a Member of the United Nations. Thus the action of the General Assembly in the dispute between South Africa and India was held to be fully compatible with the terms of Article 2, paragraph 7, of the Charter not only on the ground that the subject matter of the dispute was not one essentially within the domestic jurisdiction of South Africa, but on the ground that the recommendation did not amount to intervention. It did not impose upon South Africa a legal duty of compliance. It was on this ground that a number of States voting for the recommendation based their action.* If this interpretation of the

* See, for instance, the observation of the delegate of Mexico on 9 December 1946: Journal of the United Nations, No.54, Suppl. A.-PV/51.

Charter represents the accurate legal position - and it is believed that it does - then the right and duty of the United Nations to take all requisite action, falling short of intervention as understood in international law, for the promotion of the observance of and respect for human rights and fundamental freedoms is not affected by the withholding of the right of intervention as expressed in paragraph 7 of Article 2. Such action falling short of intervention may not be as fully effective as intervention itself. This does not mean that it must remain without any efficacy whatsoever. On the contrary, it provides an adequate legal basis for a comprehensive authority and machinery of implementing the obligations of the Charter in the matter of human rights and fundamental freedoms.

13. There is, with regard to the obligations which the provisions of the Charter in the matter of human rights and fundamental freedoms impose upon the Members of the United Nations, one set of obligations which has not as yet received sufficient attention. The obligations of the Members of the United Nations include probably that to promote and to ensure the respect of human rights and fundamental freedoms not only as against legislative and administrative action by the authorities of the State conceived as an international person, but also against the local autonomous sub-divisions of the State and against private bodies and individuals. Discrimination and segregation, in denial of elementary human rights, on account of race, creed, colour or national origin, may occur not only as the result of acts or omissions of the central authority of the State. In the economic and social sphere the denial of or attack upon elementary human rights may take place through actions of autonomous subordinate bodies, of private organizations and institutions and even of private persons. Historically, Bills of Rights were enacted as a measure of protection against the arbitrariness or the injustice of governments. In modern times, this is not the only source of oppression or denial of human rights. When large bodies of citizens are segregated in crowded and unhealthy areas when they are refused admission to non-governmental educational institutions enjoying a virtual monopoly of status such as schools and universities, when, through a policy of segregation, they are refused the benefits of public services, amenities, and means of transportation - in all these cases there takes place a denial of human rights and fundamental freedoms. There are weighty and persuasive reasons for asserting that the protection of the rights of man by the State against acts other than those perpetrated by its own authorities follows from the obligations of

/the Charter

the Charter of the United Nations. In refusing to enforce restrictive covenants on account of racial origin, the Supreme Court of Ontario relied upon the provisions of the Charter, to which Canada is a party.* In these and similar matters the denial of human rights is not the mere result of private malice. In the words of a Dissenting Opinion in a case involving restrictive covenants which came before the United States Court of Appeals for the District of Columbia, "The question in these cases is not whether the law should punish racial discrimination, or even whether the law shall try to prevent racial discrimination, or whether the law should interfere with it in any way. The question is whether the law should affirmatively support and enforce racial discrimination."** Moreover, there is room for the view that, because of the Charter of the United Nations, the State is under a duty to prevent the denial of human rights through private action taken on such a scale as to assume the complexion of public mischief. Various States of the American Union, such as New York, New Jersey, Indiana, Wisconsin, and Massachusetts, and various local authorities, such as the municipalities of Chicago and Minneapolis, have recently enacted and enforced legislation making it an offence to deny employment on account of discrimination because of race, creed, or national origin.

14. It must therefore be a matter for serious consideration whether the provisions of the Charter of the United Nations do not impose upon its Members the obligation to protect human rights and fundamental freedoms against a denial of these rights and freedoms through discriminatory action emanating from quarters other than the State authority directly accountable under international law. It was on the Charter of the United Nations, in particular on Article 55, that reliance was placed in this respect by the Committee appointed in December 1946 by the President of the United States to enquire into the civil liberties. The Committee suggested in its Report - one of the most significant documents of all time bearing upon human rights - that the decision given in 1920 by the Supreme Court of the United States in Missouri v. Holland*** could be made the starting point for the enforcement of the Charter by Congressional action. In that case

* In re Drummond Wren, 4 Ontario Reports (1945), pages 778, 781. The Court said: "Under Articles 1 and 55 of this Charter, Canada is pledged to promote universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion."

** As quoted in the Report of the President's Committee on Civil Rights (1947), page 70.

*** (1920) 252 U.S. 416.

the Supreme Court affirmed the right of Congress to enact legislation calculated to give effect to treaty obligations in cases in which, in the absence of a treaty, it had no power to pass statutes encroaching upon the jurisdiction of the States. In the view of the Committee the decision in Missouri v. Holland was of "obvious importance" as a possible basis for legislation in the matter of civil rights.* However, it is probable that no recourse to a particular constitutional precedent is necessary in order to make it possible for States to fulfil their obligation under the Charter to protect human rights against violations from any quarter whatsoever. In most countries the Charter of the United Nations has become part of the law of the land. Moreover, its provisions in the matter of human rights and fundamental freedoms may fairly be deemed to have now been included among those generally recognized principles of international law which most States consider to be an integral part of their law enforceable by their courts. But these are essentially questions of machinery. As a matter of wider principle, it is probably legitimate to assert that the duty of the State to promote the observance of and respect for human rights extends to the obligation to prevent such denial, from whomsoever emanating, of human rights and fundamental freedoms.

15. Finally, one of the results of the provisions of the Charter in the matter of human rights and fundamental freedoms is to effect a far-reaching change in the position of the individual in international law. If these provisions of the Charter are part of the law, then they signify the recognition, in an international treaty of great generality, of rights of the individual as such. They transfer the inalienable and natural rights of the individual from the venerable but controversial orbit of the law of nature to the province of positive law, of international law. They thus mark a significant step towards the recognition of the individual as a subject of the law of nations. They are not accompanied by a parallel conferment of international procedural capacity upon the individual to enable him to enforce, in his own right, the legal benefits of the status thus acquired. But they do not deny him such capacity. On the contrary, the latter will be determined not by any preconceived notions on the question whether the individual can under international law derive rights under treaties and enforce them in his own name, but by the degree to which the United Nations and its organs will assume the function of translating into reality the provisions of the Charter. In proportion as they do that, the procedural

* At page 110.

capacity of the individual petitioning the United Nations will be joined to his new status in international law. In turn, the full realization of the significance of his new status, brought about by the recognition of his fundamental rights and freedoms, as a subject of international law will smooth the path of enabling him to assert them in the international sphere. There is henceforth no substance in the curtailing or keeping in check his right of effective petition by dint of the obsolete doctrine that he is not a subject of the law of nations.

16. The legal position with regard to the interpretation of the provisions of the Charter of the United Nations in the matter of human rights and fundamental freedoms would therefore appear to be as follows:

- (1) The provisions of the Charter in the matter of human rights and fundamental freedoms are legal obligations binding upon the Members of the United Nations.
- (2) The provisions of the Charter of the United Nations in the matter of human rights and fundamental freedoms constitute a source both of legal authority and of legal obligations for the United Nations as a whole to implement these purposes of the Charter.
- (3) The legal character of such authority and obligations is not decisively affected by the limiting clause of Article 2, paragraph 7, of the Charter relating to matters which are essentially within the domestic jurisdiction of any State. In particular:
 - (a) It is probable that questions bearing upon the respect for and observance of human rights and fundamental freedoms are not "solely within the domestic jurisdiction of any State" inasmuch as, by virtue of the Charter, they have become matters essentially of international concern. This applies, in particular, to situations in which the treatment by a State of its own nationals is or may be productive of situations affecting international peace and security;
 - (b) The limiting clause of Article 2, paragraph 7, does not in any case affect the right and the obligation of the United Nations to implement the provisions of the Charter in the matter of human rights and fundamental freedoms by means falling short of intervention as understood in international law. These means include study, enquiry, investigation, and recommendation either of a general character or addressed specifically to individual Members of the United Nations.
- (4) The legal duty of the Members of the United Nations to promote and observe the human rights and fundamental freedoms may include the

/duty

duty to prevent a denial of these rights and freedoms resulting from discrimination on account of race, colour, creed, or national origin, in cases in which such conduct emanates from bodies other than the State member of the United Nations.

(5) In the recognition, in the Charter of the United Nations, of human rights and fundamental freedoms there is implicit the recognition of the individual as a subject of international law. Such recognition may be legitimately expected to enhance the international procedural capacity of the individual for the purposes of effective petition to the organs of the United Nations in vindication of his human rights and fundamental freedoms thus recognized.

CHAPTER III

THE IMPLEMENTATION OF THE CHARTER

THE POWERS AND DUTIES OF THE ECONOMIC AND SOCIAL COUNCIL AND OF THE COMMISSION ON HUMAN RIGHTS

17. The question whether the provisions of the Charter in the matter of human rights and fundamental freedoms constitute a source of legal rights and obligations is not one of mere legal theory. For decisive practical consequences follow from the answer to that question. If, as submitted above in the present Report, these provisions signify legal rights and obligations, then they are a source of the legal power and the legal duty not only of the Members of the United Nations but also of the United Nations as a whole to implement the purpose of the Charter. That obligation would exist even if the Charter did not contain the clear mandatory provision of Article 55 to that effect. It is inherent in the Charter. In this part of the present Report we are concerned with the powers and obligations of the United Nations as a whole. By virtue of the Charter the organs of the United Nations are not only empowered, within the limits of the Charter, to adopt measures and create machinery for realizing its objects in the matter of human rights and fundamental freedoms. By virtue of the Charter they are under a legal duty to act in that way.

18. This cogent conclusion from the letter and the spirit of the Charter was recognized by the Commission on Human Rights at an early stage of its activity. In May 1946 the Commission adopted a Report to the Economic and Social Council in which it put on record its views on the vital question of implementation of the Charter. It stressed "the need for an international agency of implementation entrusted with the task of watching over the general observance of human rights".* It recommended that "it

* Journal of the Economic and Social Council, First Year, No. 14 (24 May 1946), page 164.

shall be considered that the purpose of the United Nations with regard to the promotion and observance of human rights, as defined in the Charter of the United Nations, could only be fulfilled if provisions were made for the implementation of the observance of human rights and of an international bill of rights".* Finally, it recommended that "pending the eventual establishment of an agency of implementation the Commission on Human Rights might be recognized as qualified to aid the appropriate organs of the United Nations in the task defined for the General Assembly and the Economic and Social Council in Articles 13, 15, and 62 of the Charter concerning the promotion and observance of human rights and fundamental freedoms for all, and to aid the Security Council in the task entrusted to it by Article 39 of the Charter, by pointing to cases where violation of human rights committed in one country may, by its gravity, its frequency, or its systematic nature, constitute a threat to peace".** The Economic and Social Council, without going to the length of identifying itself with all the recommendations of the Commission, adopted the substance of its proposals. In a resolution adopted on 21 June 1946, it laid down as follows:

"Considering that the purpose of the United Nations with regard to the promotion and observance of human rights as defined in the Charter of the United Nations, can only be fulfilled if provisions are made for the implementation of human rights and of an international bill of rights, the Council requests the Commission on Human Rights to submit at an early date suggestions regarding the ways and means for the effective implementation of human rights and freedoms, with a view to assisting the Economic and Social Council in working out arrangements for such implementation with other appropriate organs of the United Nations."***

19. In February 1947 the Commission on Human Rights adopted a Report on the subject of implementation which amounted to a reversal of its previous attitude. It laid down the general rule to the effect that "the Commission recognizes that it has no power to take any action in regard to any complaints concerning human rights." It also recommended regulations governing the procedure concerning petitions brought before it in the matter of violation of human rights. It is suggested in the present Report

* Ibid.

** Ibid.

*** Journal of the Economic and Social Council, First Year, No.29, (13 July 1946), page 522.

that the procedure thus adopted amounts, probably, to a denial of the effective right of petition and to an abdication of the crucial function of the United Nations in this respect. In August 1947 the Economic and Social Council approved both the general principle adopted by the Commission in the matter of its right to take action upon the petitions brought before it and the procedure recommended by it for dealing with petitions. It is convenient to set forth the terms of the resolution adopted by the Council:

"THE ECONOMIC AND SOCIAL COUNCIL

REQUESTS the Secretary-General:

- (a) to compile a confidential list of communications received concerning human rights before each session of the Commission, with a brief indication of the substance of each;
- (b) to furnish this confidential list to the Commission, in private meeting, without divulging the identity of the authors of the communications;
- (c) to enable the members of the Commission, upon request, to consult the originals of communications dealing with the principles involved in the promotion of universal respect for and observance of human rights;
- (d) to inform the writers of all communications concerning human rights, however addressed, that their communications have been received and duly noted for consideration in accordance with the procedure laid down by the United Nations. Where necessary, the Secretary-General should indicate that the Commission has no power to take any action in regard to any complaint concerning human rights;
- (e) to furnish each member State not represented on the Commission with a brief indication of the substance of any communication concerning human rights which refers explicitly to that State or to territories under its jurisdiction without divulging the identity of the author;

SUGGESTS to the Commission on Human Rights that it should at each session appoint an ad hoc committee to meet shortly before the next session of the Commission for the purpose of reviewing the confidential list of communications prepared by the Secretary-General under paragraph (a) above and of recommending which of these communications, in original, should, in accordance with paragraph (c) above, be made available to members of the Commission on request."

20. The principal organs of the United Nations competent to implement the provisions of the Charter in the matter of human rights are the General Assembly and the Economic and Social Council acting either by itself or /through

through the Commission on Human Rights. The functions of the General Assembly on the subject, while - as shown in the Indian-South African dispute - of great importance, are of a residuary character. The General Assembly is competent to deal with the question of human rights in all its aspects, but is not specifically charged with that particular task. On the other hand, the Economic and Social Council and, in particular, the Commission on Human Rights, which is its organ, are the instruments of the Charter for giving effect to the principles of the Charter in the matter of human rights. The responsibility of the Economic and Social Council is of a general character. It co-ordinates, it supervises, it provides the requisite authority. But human rights do not constitute the exclusive domain of its jurisdiction. Thus the Council has established a number of Commissions covering a wide range of matters of economic and social interest. These include Commissions on employment and economic questions generally, transport and communications, statistics, social questions, status of women, narcotic drugs, fiscal matters, and population. There are also regional economic commissions for Europe and for Asia and the Far East. The object of these Commissions is almost exclusively advisory and deliberative. Thus the Economic and Employment Commission advises the Council on economic questions in order to promote higher standards of living and on the prevention of wide fluctuations in economic activity and promotion of full employment by co-ordination of national employment policies and by international action. But there is nothing in the terms of the Charter or in the constitution of the Economic and Social Council which confines its part - or that of its commissions - to a purely deliberative function of advice, study, and initiation of policy through drafting conventions and otherwise. In the field of international control of drugs the Council and the Commission on Narcotic Drugs have assumed supervisory and, in part, executive functions previously exercised, under the aegis of the League of Nations, by the Permanent Central Opium Board and the Supervisory Body. Unlike in the field of statistics, fiscal matters, employment, and similar matters, in the sphere of human rights the function of the United Nations and its organs must be one of active assistance in the fulfilment of this purpose of the Charter. Ample authority for such assistance is to be found in the original terms of reference for the Commission on Human Rights as laid down by the Economic and Social Council. These included not only proposals but also recommendations and reports on the protection of minorities, the prevention of discrimination on grounds of race, sex, language, and religion, and "on any matter concerning human rights" not covered by the other terms of reference".* These wide terms of reference are implicit in the general terms of Articles 55 and 68 of the Charter.

* Journal of the Economic and Social Council, First Year, No.29, page 520.

21. While the purely deliberative and advisory character of the various Commissions of the Economic and Social Council may be in accordance with the character of the task which they have been called upon to perform, this is not the case in relation to the Commission on Human Rights. The purpose of the United Nations requires that full effect be given, within the limits of the Charter, to its provisions requiring the United Nations to "promote human rights" and to make recommendations for that purpose. The organs of the United Nations are entitled and bound by the Charter to take cognizance of violations of human rights and to initiate such action upon them as is not expressly excluded by the Charter. They are under a duty to receive petitions alleging violations of human rights, and to provide themselves with independent sources of information in this respect. The United Nations will fail in a crucial - perhaps the crucial - aspect of its purpose unless it becomes axiomatic that it must take active interest in any violation of human rights with a view to remedying situations the continuation of which is contrary to the Charter. There is no legal justification for the view, formally recorded in the Report of the Commission and confirmed by the Economic and Social Council, that it has no power to take action in the matter of violations of human rights brought before it. These bodies, and in particular the Commission on Human Rights, are not only entitled to take such action. By the express and implicit terms of the Charter they are bound to do so.

22. What is the nature of the action which the Commission on Human Rights - or, if need be, the Economic and Social Council - is bound and entitled to take in the matter of the violation of human rights? Such action may consist in an enquiry, i.e., a request for information addressed to the State concerned; in an investigation following the enquiry; in the publication of the results of the enquiry; and in a recommendation. Such recommendation may be either of a general character or addressed to the State concerned. It may be a recommendation addressed to the Economic and Social Council. Of the power of both these bodies to make recommendations there ought to be no doubt. It is expressly provided for in the Charter. The power of enquiry and investigation is implicit in the power to make recommendations. The practice of the General Assembly in this respect is fully instructive.

23. For these reasons it is not clear what was the intention of the Commission on Human Rights and the Economic and Social Council in laying down that the Commission had no power to take "any action" in the matter of petitions brought before it. If the intention was to emphasize that the Commission was not entitled to "intervene", i.e., to attempt to impose authoritatively a definite and binding line of conduct upon a Member of the

/United Nations,

United Nations, then the statement was probably redundant. There is no suggestion that the Commission on Human Rights - or the Economic and Social Council - have the right of intervention in the above sense. But the Commission is entitled - and bound - to take any other action short of intervention, such action including, in successive stages, examination, enquiry, investigation, report (including publication thereof), and recommendation. In the same way as the encouragement and promotion of respect for human rights are a fundamental purpose of the Charter so action, thus conceived, upon violations of human rights is a fundamental aspect of that function of the United Nations. This is believed to be the accurate legal position. It is within the legitimate province of scientific bodies, such as the International Law Association, to draw attention to this crucial aspect of the Charter and to reduce to its true proportions the proposition that the main organs charged by the Charter with the implementation of its provisions in the matter of human rights and fundamental freedoms have no power to take any action in the matter of petitions alleging the violation of these rights and freedoms. The issue is one of the utmost gravity for the cause of human rights and for the United Nations. The effective right of petition must be deemed to be an irreducible right of the individual not only in relation to his own nation but also in relation to the United Nations. There is no effective right of petition if the petitioned authority has no power "to take any action" on the subject matter of the complaint.

24. It is in the light of the legal position as outlined above that we must consider the procedure adopted by the Commission on Human Rights in the matter of the treatment of complaints concerning human rights. That procedure is characterized not only by a refusal to recognize the power to take any action in the matter of complaints concerning human rights. Apparently the expression "any action" inaccurately expresses the intention of the Commission and of the Council for the procedure adopted contemplates some action. That, admittedly nominal, action consists in the first instance in the compilation by the Secretariat, i.e., by the Division of Human Rights, of a confidential list of communications received and in furnishing that list, at a private meeting, to the members of the Commission without divulging the identity of the authors of the communications. There is a provision enabling members of the Commission, if they so desire, to consult the originals of the communications. But, apparently, this refers only to "communications dealing with the principles involved in the promotion of universal respect for and observance of human rights." The authors of the communications are to be informed that the latter will be dealt with in accordance with the normal procedure outlined above and that

/in any

in any case the Commission has no power to take any action in regard to any complaint concerning human rights. In view of this it is difficult to see what is the purpose of the suggestion that an ad hoc committee of the Commission should meet shortly before each session to review the confidential list of communications prepared by the Secretariat. Even that suggestion is qualified by the clause which apparently limits these communications to those "dealing with the principles involved in the promotion" of human rights and which makes such availability dependent upon the request of the members of the Commission.

25. It is submitted that this procedure adopted by the States represented on the Economic and Social Council and by the Commission on Human Rights for dealing with communications alleging or concerning violations of human rights and fundamental freedoms amounts to a renunciation by these bodies of a power and an obligation grounded in the Charter, and that it constitutes a denial of the effective right of petition inherent in the Charter. In view of this it is not necessary to indicate here in detail the drawbacks of such rudimentary procedure as has been adopted. These drawbacks include the stringent prescriptions of secrecy and the reliance upon the initiative of the members of the Commission in asking for detailed information. The objections to the principle of secrecy are obvious, unless secrecy is imperatively required for the protection of the authors of petitions - though even in this respect the efforts of the United Nations must be directed towards devising means of protection other than secrecy. To render the receipt of more detailed information conditional upon the special request of members of the Commission is to open the door to a system which experience has proved to be questionable to a high degree. It exposes the authors of communications to the necessity of obtaining the support or enlisting the interest of a member of the Commission or of his Government. Such steps may be difficult, costly, and open to abuse. The system throws upon Governments - for the members of the Commission represents Governments - a responsibility the exercise of which may be open to suspicion. It is a responsibility which States may be unwilling - or too eager - to exercise on grounds alien to the merits of the issue. Finally, no provision whatsoever is made for the publication of petitions or for machinery for selecting those calling for or meriting publication.

26. Undoubtedly, under a system of effective petition the United Nations and its organs may be burdened and embarrassed by communications which are malevolent, clearly unfounded, uninformed, or, while well-founded in law, essentially petty and insignificant. Many of the petitions may imply an unjust affront to the dignity and good name of States. Yet it must become

/axiomatic

axiomatic that the sanctity of human rights and an effective system of petitions on their behalf is entitled to no less consideration than the dignity of sovereign States. A reconciliation of these two opposing considerations - assuming that there exists an inherent opposition between them - cannot be effected by a renunciation of the function of the United Nations in relation to a vital aspect of its purpose. The deliberations of the Commission on Human Rights and of the Economic and Social Council have abounded in allusions to the necessity of not creating vain hopes among the authors of petitions. But these are not hopes of persons ignorant of their rights and placing their faith in a non-existent law. These hopes are grounded in the fundamental Charter of the international community and in the resulting changes in the status of the individual in the international sphere. The fact that the Charter of the United Nations has gone a long way towards recognizing the status of the individual as a subject of international law cannot be altogether without influence upon his procedural capacity. Such hopes will not be in vain if the United Nations and its organs adhere to the letter and the spirit of the Charter with regard to the promotion of respect for and observance of human rights and fundamental freedoms. By the end of 1947 the United Nations not only had not achieved any approximation to providing itself with adequate instruments for fulfilling its purpose in this most significant sphere. Its organs had reached a state of self-effacement which public opinion in general and legal opinion in particular must prevent from crystallizing. It is completely out of keeping with the paramount importance of the principle of effective petition in the scheme of the international protection of human rights that this task should be entrusted to a small body of men, an ad hoc committee of the Commission on Human Rights, meeting hurriedly "shortly before the next Session" for the purpose of reviewing a confidential list of petitions, not the petitions themselves, with a view to recommending what petitions should, provided that they deal with principles involved in the promotion of human rights, be communicated to those members of the Commission who desire to receive them - such communication apparently bringing to an end the function of the Commission on the subject.

27. It is necessary in this connection to anticipate a possible explanation of the conservative estimate so far adopted by the Economic and Social Council and the Commission on Human Rights of the scope of their functions in this respect. The possible explanation is that the composition and the machinery at the disposal of these bodies are not such as to enable them to fulfil the task of effective action, within the limits of the Charter, upon petitions alleging violations of human rights. The

/Social

Social and Economic Council is a body meeting for brief periods for the purpose of creating, co-ordinating the activities of, and receiving reports from various organs and laying down lines of policy on subjects the multiplicity of which is only imperfectly indicated by the enumeration, given above, of its various Commissions. The Commission on Human Rights, a body composed of eighteen representatives of governments, meets three or four times yearly for periods of two to four weeks. The Division on Human Rights is a relatively small department of the Secretariat devoted largely to research and to the preparation of meetings and memoranda. To cope adequately with a mass of petitions coming from all corners of the world would require a numerous body of persons of the highest qualifications and impartiality aided by competent subordinate staff. It would necessitate a Commission on Human Rights able to sit in permanent session and exclusively devoted to reaching decisions on the information collected and on findings arrived at by the expert staff. It would also require a sub-division of the Economic and Social Council, or a similar body, devoted exclusively to formulating executive conclusions on a higher level of policy. There is no such machinery in existence.

28. The answer to that particular explanation is that the existence or otherwise of the requisite machinery is a function of the will of Governments and not of any inherent limitations of the Charter. If the States composing the Economic and Social Council and the Commission on Human Rights act on the view that these bodies "have no power to take any action" upon petitions alleging violations of human rights, then there will be no inducement to create the machinery which alone is commensurate with the purposes of the Charter. Such machinery must, in the long run, include a Human Rights Council co-ordinated with the Security Council, the Economic and Social Council, and the Trusteeship Council, and aided by fact finding and quasi-judicial instrumentalities of its own.

29. The final question which requires consideration in this connection is that of the composition of the Commission on Human Rights. Is the Commission on Human Rights to be composed of representatives of States or of independent persons? The Economic and Social Council decided, in June 1946, for the first of these alternatives.* It gave its support to the view that unless the Commission like any other of its Commissions is composed of representatives of Governments, its work may tend to become academic and unreal. This view was adopted in disregard of the opinion of the Nuclear Commission on Human Rights. It is doubtful whether the

* Journal of the Economic and Social Council, First Year, No. 14, page 161.

Economic and Social Council, in reaching its decision, took into account the essential difference between the Commission on Human Rights and other Commissions. In the case of the latter, the securing of co-operation among Governments is of the essence of the function of the United Nations. In the matter of promotion of human rights, the achievement of co-operation among States is no less essential. At the same time, the very idea of protection, under the shelter of international society, of human rights and fundamental freedoms, implies that these rights must be protected, if need be, against the State by all means left open by the Charter of the United Nations. There is therefore a distinct, and perturbing, element of incongruity in the arrangement according to which one of the main instruments for the promotion of human rights under the aegis of the United Nations is composed exclusively of representatives of Governments. Such is the appeal and the urgency involved in the issue of human rights that the representatives of Governments on the Human Rights Commission have contrived to bring to the fulfilment of their task an earnest sense of responsibility and devotion transcending the attitude of any partisan defence of national interests. But there are limits, which cannot be disregarded, to the freedom and initiative displayed by representatives of Governments. It is significant that while the Nuclear Commission on Human Rights, in which the element of governmental representation was neither formal nor pronounced, laid down guiding principles based emphatically on the question of implementation, the Commission formally composed of representatives of Governments receded in 1947 from the position previously adopted and, in reducing the principle of effective petition to a fiction, laid down the rule that it had no power to take any action on complaints of violations of human rights brought before it. The system of protection of human rights under the Charter is still in its formative stage, and it is therefore proper to consider the question of the revision of the decision of the Economic and Social Council in the matter of the composition of the Commission on Human Rights. It is submitted that that Commission is unlikely to attain the full stature of moral authority and practical effectiveness unless, in addition to any representatives of Governments, it includes private individuals chosen irrespective of their nationality through a selective process which in itself would provide a guarantee of the impartiality and the requisite qualifications of its members.

30. The legal position in the matter of the implementation, by the organs of the United Nations, of the provisions of the Charter in the matter of human rights and fundamental freedoms is, therefore, as follows:

- (1) By virtue of the Charter the United Nations and its organs are entitled and bound to adopt measures and to set up machinery for giving effect to the provisions of the Charter in the matter of human rights and fundamental freedoms.

(2) The functions of the special organs of the United Nations created for that purpose are both of an advisory and, within the limits of the Charter, of an executive character.

(3) The organs of the United Nations, and in particular the Commission on Human Rights, are entitled and bound to receive petitions and communications bearing upon violations of human rights.

(4) The right of petition, on the part of individuals and organizations, is inherent in the Charter, and there is therefore no warrant for the view that the Commission on Human Rights has no power to take any action upon petitions brought before it.

(5) Assuming that the question of the observance and promotions of human rights comes within the terms of the limiting clause of Article 2, paragraph 7, the Commission on Human Rights and the Economic and Social Council are entitled and bound to take, in the matter of petitions, any requisite action falling short of intervention as understood in international law. Such action may cover investigation, report and publication thereof, as well recommendations addressed either to the organs of the United Nations or to its Members. It is within the province of the Commission on Human Rights and the Economic and Social Council to formulate rules and to set in motion procedures calculated to render such action effective within the limits of the Charter.

(6) The significance, in the scheme of the Charter, of the function of the Commission on Human Rights calls for a consideration of the question of its eventual transformation into a Human Rights Council co-ordinated with the Security Council, the Economic and Social Council, and the Trusteeship Council.

(7) The character and the purpose of the functions of the Commission on Human Rights require that, unlike in the case of the other Commissions of the Economic and Social Council, it should include a substantial proportion of members appointed in their private capacity.

CHAPTER IV

THE INTERNATIONAL BILL OF HUMAN RIGHTS

31. The eventual adoption of an International Bill of Human Rights has been generally considered as inherent in the promotion and protection of human rights and fundamental freedoms under the aegis of the United Nations. The Preparatory Commission charged with setting in motion the work of the United Nations and with arranging the programme of the First General Assembly considered the preparation of the Bill of Rights as one of the first tasks of the Commission on Human Rights. The First General Assembly endorsed that view. When, in February 1946, the Economic and Social Council decided to set up the Commission on Human Rights, the question of an International Bill of Rights figured first among the terms of reference of the Commission. In June 1946 the Council put on record its view that the purpose of the United Nations in the matter of the promotion and observance of human rights "can only be fulfilled if provisions are made for the implementation of human rights and of an international bill of rights".* The Commission on Human Rights has interpreted its task of preparing a Bill of Rights for submission to the Council as implying that the Bill must be drafted by the members of the Commission, and has devoted its main energies to that task. In January 1947 it appointed a drafting Committee composed of twelve of its members. The Committee, which sat in June 1947, proposed tentative drafts of a Declaration and of a Convention for consideration by the full Commission on Human Rights in December 1947. The Commission sat in Geneva between 1 - 18 December. It adopted for submission to the members of the United Nations a Declaration of Human Rights and a Convention. These documents as well as the proposals for implementation, are commented upon in Chapter V of the present Draft Report. In accordance with a Resolution of the Economic and Social Council, the Commission, after having received the observations of the Governments of the United Nations, intends to submit the revised drafts of all or some of these instruments for approval by the Economic and Social Council which would then lay them before the General Assembly in September 1948.

32. The two main problems connected with an International Bill of Human Rights are those of its contents and its enforcement. Both these problems are intimately connected one with the other. For the machinery of implementation and the willingness of States to agree to a system of implementation must depend upon the substantive provisions of the Bill.

* See above S. 18.

Governments may agree to a measure of enforcement if the substantive obligations of the Bill are few in number, limited in their scope, and in keeping with their national requirements and policies. Thus Soviet Russia has shown a desire to see stringent international safeguards for the implementation of the principle of equality and non-discrimination while rejecting proposals for international supervision of the observance of rights of personal freedom in its various manifestations. States may acquiesce in a Bill of Rights covering vast categories of subjects provided that it is not cast in the form of a binding and enforceable legal obligation. For this reason a Declaration of Rights is likely to secure the general approval often reserved for those international pronouncements in which a solemn formula covers disagreement on matters of substance. Moreover, various categories of human rights require and admit of various degrees and methods of enforcement. For these reasons the deliberations of the Commissions have abounded in inconclusive discussions as to whether the considerations of the implementation of the Bill must precede the consideration of its substance or whether the proper procedure ought to be in the reverse order. It is probable that such consideration must be simultaneous and conducted by the same body.

33. The question of the substance of the Bill of Rights raises doubly controversial issues. There is, in the first instance, the question as to the categories of rights to be included in the Bill. There is general agreement that the Bill must comprise and be based upon the effective recognition of personal rights of freedom such as the right to life and the liberty of the person, freedom from arbitrary arrest and detention, adequate safeguards in criminal trials, freedom of religion, opinion, information, association and assembly, equality before the law, freedom from discrimination, and the like. But there is no such agreement as to political rights of freedom, namely, the right to government by consent - the right to freedom from tyranny, the right to make the rulers of the State accountable to and replaceable by an electorate voting in free, periodic, and secret elections. Yet there are many who consider the guarantee of the rights of freedom so conceived as being of the very essence of a Bill of Rights - a guarantee without which personal freedom and equality before the law must be at best precarious and at worst meaningless. Similarly, there has been a wide and growing acceptance of the view that personal and political freedom is impaired - if not rendered purely nominal - unless it is made effective by a reasonable guarantee of social and economic freedom. According to that view, which is fully entitled to respect, the precious rights of personal liberty and political freedom may become a hollow formula for those whom the existing social and economic order leaves starving, destitute, illiterate and deprived of their just share in the

/progress

progress and well-being of the society as a whole. There might be no difficulty in inducing governments to accept all these categories of freedoms as part of the Bill of Rights conceived as a mere declaration of principle. There is no such agreement in relation to proposals to make these freedoms a binding and enforceable part of the law of mankind.

34. The same practical distinction must be made with regard to the formulation of the contents of each of the principal categories of rights as outlined above. These have given - and must give - rise to considerable controversy which includes such questions as whether the Bill ought to stress not only the rights but also the duties of the individual to the state, whether it ought to acknowledge the right to nationality and expatriation, to what extent it ought to emphasize the independence of courts under the rule of law, what ought to be the measure of the discretion of the State in decreeing and maintaining the suspension of fundamental rights and freedoms. These and similar questions do not present an insurmountable difficulty when the issue is one of a mere Declaration. The elasticity of language is such that it may render possible formulas of great generality, equally acceptable to all, within the framework of a Declaration. No such solution is feasible in relations intended to become a source of substantive obligations.

35. Finally, the question of enforcement is one which applies in different ways to various classes of rights. Thus, for instance, while the securing of personal rights of freedom - such as freedom from arbitrary arrest - can take place through the application of legal rules through judicial processes, national and international, this does not necessarily apply to the obligations of the State in the sphere of social and economic policy. The nature of international supervision with regard to that field of the obligations of the State cannot be the same as in the matter of a direct violation of a specific individual right.

36. The question of implementation thus reveals itself as the crucial aspect of the problem of an International Bill of Human Rights. Upon reflection it is not merely the crucial aspect of the problem; it is the problem. Weighty considerations can be adduced in support of the view that a mere Declaration would not be altogether without value. As the Charter of the United Nations incorporates substantial, though not clearly defined, obligations in the matter of human rights and fundamental freedoms, it is arguable that a Declaration would serve an useful purpose by supplying a clear definition of the general purpose of the Charter and that it would provide a standard and a guide for the protection of human rights thus authoritatively declared as an expression of deep historic experience and of the moral sense of mankind.

/37. It is

37. It is submitted that any advantages, such as those outlined above, of a mere declaration of rights are decisively outweighed by the attendant disadvantages. There are decisive reasons for assuming that a mere Declaration would be in the nature of a retrogression in relation to the Charter, which already contains a measure of legal obligation and implementation, and that it would therefore weaken the achievement of the Charter. It would foster the spirit of disillusionment and, among many, of cynicism. The urgent need of mankind is not the recognition and declaration of fundamental human rights but their effective protection by international society. No Declaration, necessarily couched in general terms, can usefully illuminate the meaning of these essential human rights which have behind them the accumulated weight of the best aspirations of mankind. The experience of the immediate past has added to their already overwhelming urgency. No general Declaration can remove - though it can obscure or ignore - existing differences of opinion and practice. The temper of mankind, still under the impact of the loss of that faith in progress which was the glory of the past generation, cannot withstand, without further serious injury, the corrosive action of ineffectual pronouncements, ostensibly adopted as a substitute for more substantial obligations, in the sphere of most urgent and fundamental aspirations of humanity and of one of the primary purposes of the United Nations.

38. The drawbacks of reducing the enactment of human rights and fundamental freedoms to the stature of a diplomatic formula are so serious that they cannot be reduced - they can be aggravated - by mere devices. One of such devices is to throw open for adoption, in addition to the Declaration, a Convention embodying legal obligations and subject to acceptance by States so minded through the ordinary processes of ratification and accession. Any such procedure would be purely nominal unless: (1) the Convention contains effective provisions for its implementation; (2) it is in fact ratified by a considerable number of States and enters into force under the aegis of the United Nations. There must also be taken into account the disadvantage of reducing the stature of the fundamental enactment of human rights to the form of a convention or conventions, dealing piecemeal with fundamental human rights and exposed to the vicissitudes and precariousness of ratification and denunciation.

39. While the problem of implementation is the crucial problem of an International Bill of Human Rights, the question of its substance is of paramount importance. The legal, political, and philosophical complexities of a Bill of Rights within the State make an instrument of that nature one of exceptional difficulty. In the international sphere these difficulties

/are

are multiplied manifold. Their solution requires a combination courageous and creative statesmanship with the art of constitutional draftsmanship. An International Bill of Rights must be one of the outstanding legal instruments of all time. The solemnity and adequacy of its language and the philosophical breadth of its Articles must give expression to its paramount place in history. It must be the product of prolonged, careful, and expert study and drafting fortified by the collaboration of all who are likely to be of assistance. Above all it must be the result of the realization on the part of Governments that its purpose cannot be achieved unless there is effective disposition to make the necessary concessions and adjustments in the national legislation and practices of the States concerned. Such disposition must be the result of patient preparation and initiative, at a high political level, on the part of the organs of the United Nations and of Governments of those States which deem it their particular duty and privilege to assist actively in bringing to fruition the International Bill of the Rights of Man. It is by reference to these considerations that it is proposed to consider in this Preliminary Report the instruments which the Commission on Human Rights accepted at its meeting in December 1947 for submission to the fifty-seven States Members of the United Nations.

40. The following conclusions seem to follow from this Chapter of the Report:

- (1) The eventual acceptance of an effective International Bill of Human Rights must be regarded as inherent in the notion of the protection of human rights under the aegis of the United Nations.
- (2) An International Bill of Rights of Man must make provision, of differing degrees and methods of enforceability, not only for the rights of personal liberty in its various manifestations, but also for the rights of political freedom and social and economic security and development.
- (3) While the substantive provisions of an International Bill of Human Rights present questions of considerable complexity, the question of enforcement constitutes the crucial problem of a Bill of Rights.

CHAPTER V

THE DECLARATION AND CONVENTION PROPOSED BY THE COMMISSION ON HUMAN RIGHTS

41. The discussions of the Commission of Human Rights which met at Geneva in December 1947 were based on various drafts and proposals which are reproduced in the Report - attached to the present Preliminary Report for the convenience of the members of the Committee - presented on 1 July 1947 by the Drafting Committee to the Commission on Human Rights (document E/CN.4/21). These included: (1) Draft Outline of an International Bill of Human Rights prepared by the Division of Human Rights of the Secretariat of the United Nations (pages 9-24); (2) A draft of an International Bill of Rights submitted by the representative of Great Britain (pages 29-40); (3) A draft of a Bill of Rights submitted by the representative of France (pages 50-68); (4) A draft Declaration and a draft Convention on Human Rights suggested by the Drafting Committee of the Commission (pages 73-87); (5) A memorandum on implementation prepared by the Division on Human Rights (pages 89-97). In addition, there were laid before the Commission drafts of a Human Rights Convention and a Declaration on Human Rights submitted by the representative of the United States. Finally the Commission had before it a number of detailed statements by various governmental and non-governmental organizations such as the International Refugee Organization, the Inter-Parliamentary Union, the International Federation of Christian Trade Unions, the World Jewish Congress and others.

42. The work of the Commission in the matter of the Bill of Rights resulted in a Draft Declaration on Human Rights adopted unanimously, subject to the abstention of the Russian representative, and in a Draft Convention on Human Rights adopted by a substantial majority of the members of the Commission. For the convenience of the Committee these two drafts are here reproduced as an Appendix.* In addition the final meeting of the Commission had before it a detailed report of the Working Group on Implementation - a report which the Commission did not adopt but of which it took note for the purpose of further consideration and observation on the part of Governments. It is proposed to comment here briefly on these documents which terminate the first stage of an arduous and complicated aspect of the work of the Commission.

* It was not possible at the time of the conclusion of the meeting of the Commission to produce a final text making clear the numbering of the Articles and it is therefore possible that the numbers of the Articles as reproduced in the Appendix may differ slightly from those in the document as finally circularized.

43. The Declaration on Human Rights is an instrument intended to be without binding legal force and without provisions for implementation. No suggestion was made that it should or could be considered at least as a legally authoritative interpretation of that general term "human rights and fundamental freedoms" which is one of the key-notes of the Charter. This was perhaps natural in the circumstances. For such interpretative legal authority would invest the Declaration with a binding force which by common consent is to be denied to it. For this reason no importance need be attached to the somewhat vague suggestions made in the course of the deliberations of the Commission to the effect that a Declaration may somehow be of assistance as showing what, in the phraseology of Article 38 of the Statute of the International Court of Justice, are "the general principles of law as recognized by the civilized nations" in relation to "human rights and fundamental freedoms" as appearing in the Charter. A general pronouncement which is not intended to have legal consequences cannot have juridical effects - especially in relation to an instrument which is not intended to be made the subject matter of binding interpretation and implementation in the international sphere. While the Declaration is thus devoid of legal significance, its moral authority must be gauged by the fact that, if adopted, it will be accepted as a substitute for the assumption of actual obligations. From this point of view there is probably more moral authority and more precision in the general phrase "human rights and fundamental freedoms" as it appears in the Charter than in the Articles of the Declaration readily consented to - though not with the expected unanimity - owing to the fact that they imply no obligation. It is explained elsewhere in this Report (see above, Section 37 and below, Chapter VI) why the adoption of a mere Declaration which does not form part of an effective Bill of Rights must, in the condition of the world after the Second World War and having regard to the actual achievement of the Charter, be regarded as a retrogressive step in the historic process of the international protection of the rights of man.

44. In view of this it is neither necessary nor in keeping with the scope of the present Report to comment in detail on the individual Articles of the Declaration. However, as the preparation of an International Bill of Human Rights is still in its preliminary stages, it is necessary to draw attention to some problems of method involved in the drafting of a fundamental international enactment of this nature. While its general outline and the substance of its individual provisions must be determined by a political and legislative decision of bodies such as the Commission on Human Rights, the Economic and Social Council, and the General Assembly, it

/is clear

is clear that, having regard to the complexity of the task, the actual drafting of its clauses cannot be the product of collective deliberation. Any attempt to draft them in the hurried atmosphere of conferences, through a procedure of voting and rapid adoption or elimination of proposals made there, must result in instruments the clauses of which are often deficient in form and substance and which are lacking in organic unity. The task of drafting an International Bill of Rights is confronted with all the difficulties which beset the formulation of the most intricate clauses of the constitution of a State, namely, those in the sphere of determining the fundamental rights and duties of the individual and his relation to the State. On the international plane these difficulties are considerably greater. They exceed those involved in the codification of any specific subject of international law such as that undertaken, in 1924, by the Committee for the Progressive Codification of International Law in preparation for the Hague Conference of 1930. Yet the comparative lack of success of the Hague Conference was attributed by some to the absence of sufficient preparation. It is probable that the lessons both of the codification of international law and of the experience of the Commission on Human Rights will suggest more emphatically than has been the case hitherto the necessity of combining the guiding work of the Commission on Human Rights with the task of expert and individual study and drafting.

45. For the reasons stated above it is not considered necessary to comment in this Report on the second principal document adopted by the Commission, namely, the Draft Convention on Human Rights. That document differs from the Declaration inasmuch as it is clearly intended to constitute a legal obligation binding upon the signatories in the national and international spheres. It does not differ to any substantial extent from the Declaration inasmuch as it does not adopt the principle of international implementation. The only suggestion of such implementation is contained in Article 3 of the Draft which lays down that on receipt of a request from the Secretary-General of the United Nations, made under the authority of a resolution of the General Assembly, the Government of any State which is a party to the Bill of Rights "shall supply an explanation as to the manner in which the law of that State gives effect to any of the said provisions of the Bill of Rights". It is also provided in Article 4 that a State which in time of war or national emergency finds it necessary to suspend the operation of the provisions of the Bill of Rights shall inform the Secretary-General of the United Nations of such suspension and of its cessation. These rudimentary provisions emphasize the fact that on the crucial aspect of implementation the proposed Convention abdicates in advance any attempt to

/provide

provide for obligations and for machinery without which, in the words of the Resolution of the Economic and Social Council of June 1946, the purpose of the Charter of the United Nations in the matter of human rights and fundamental freedoms cannot be fulfilled. In the Draft Convention proposed by the United States provision was made for a modest measure of international implementation by means of investigation of petitions through a Committee of the Human Rights Commission and, if necessary, for such action by the United Nations as may be appropriate under the Charter. The Commission did not adopt that proposal. But it did adopt the proposal of the United States - commented upon below in Chapter VI - which reduces most substantially the obligations of Federal States in relation to what must be the principal obligations of the Bill of Rights. The Draft Convention omits the clause, which is customary in general treaties of a legislative character, for referring to judicial determination any disputes arising out of controversies concerning the interpretation or application of its provisions.

It would thus appear that inasmuch as the Charter of the United Nations already provides - as suggested above in Chapter III of the present Report - for substantial legal powers of the United Nations to implement its purpose in the matter of human rights and fundamental freedoms, the proposed Draft Conventions, by limiting such powers to purely nominal dimensions, would, if accepted, constitute a recession from the progress achieved in the Charter. It clearly fails to give effect to the terms of reference of the Commission on Human Rights as formulated by the Economic and Social Council which has expressly coupled the idea of an International Bill of Rights with the notion of implementation.

46. Brief reference may be made to the Draft Report of the Working Group on Implementation set up by the Commission on Human Rights in the course of its meeting at Geneva in December 1947 in addition to the Working Groups on the Draft Declaration and the Draft Convention. The Working Group on Implementation produced a detailed and instructive report which contains in part definite proposals and in part merely statements of problems awaiting solution - both with regard to the proposed Bill or Convention. The Commission did not adopt the Report, but decided to submit it to Governments for their observations. As these proposals and statements of problems were made in relation to a Convention which was not before the Group and as the Draft Convention which was actually accepted by the Commission rejected the notion of implementation, it is not necessary to comment in this connection on the Report of the Group.

47. There is no compelling reason for viewing with despondency the apparently negative results of the work of the Commission in relation to
/the drafting

the drafting of an effective International Bill of Human Rights. Even if the product of its activity in the first phase of its effort is no more than to show the profound difference between the nature of the instruments which it has proposed and those which it was empowered to produce by virtue of its terms of reference and of the terms and purposes of the Charter, it must still be considered as a useful contribution to the subject. This negative result must of necessity be helpful in demonstrating to the organs of the United Nations (including the Commission itself), to Governments and to public opinion that the work of the Commission on Human Rights, in the matter of the International Bill of the Rights of Man, is only in its initial stages from the legal, political and educational point of view. The results reached by December 1947 will be harmful only if they are considered as marking the penultimate stage of the task of the Commission in this respect. Moreover, the impossibility, thus demonstrated, of achieving a Bill of Rights rapidly and by devices of transparent artificiality such as the separation of the Bill into a Declaration which is not binding and a Convention which is not enforceable, must recall to the Commission and to the United Nations the urgency and the reality of other parallel tasks within the purview of the jurisdiction of the Commission. Thus it is significant that the Commission, in December 1947 showed a tendency to revise the attitude which it had previously assumed in the matter of its powers in respect of petitions and which, it has been submitted in the present Report, is legally untenable (see Sections 21-26). In particular the Commission proposed to discard the system of secrecy in the matter of petitions unless such secrecy is requested by the authors of the Communications addressed to the Commission.*

48. The conclusions of this Chapter may now be briefly summarized:

- (1) The task of framing and adopting an effective International Bill of the Rights of Man cannot be solved or brought nearer to solution by means of a Declaration which is not binding or of a Convention which though binding, is not internationally enforceable.

* On the other hand, the fact that the Commission did not see its way to adopt the proposals of the Working Group on Implementation is an indication of its conservative views as to its powers under the Charter. For the proposals of the Working Group on Implementation, though made with reference to a Convention on Human Rights, did not in fact go substantially beyond what, in most respects, the Commission is entitled to do under the terms of the Charter.

(2) Attempts to solve the problem of the International Bill of Rights on these lines are inconsistent with the principle, authoritatively proclaimed, that the notion of implementation is inherent in the purposes of the Charter and of a Bill of Rights.

(3) A Declaration of Rights which is not legally binding is legally ineffective as a standard of interpretation. Its efficacy and authority in other respects must be decisively influenced by the fact that, in essence, an instrument of that nature is the outcome of the determination to avoid the assumption of obligations limiting the freedom of the State in relation to the rights of man.

CHAPTER VI

THE RAPPORTEUR'S DRAFT OF AN INTERNATIONAL BILL OF THE RIGHTS OF MAN

49. The present Preliminary Report would not adequately fulfil its purpose if it were limited to an analysis and a criticism of the instruments drafted by the Commission on Human Rights and the official proposals of Governments on which it is based. It may be useful for the members of the Committee to have before them a Draft which embodies the ideas of an International Bill of Rights in a single document and which formulates the principles on which this Report is based. For these reasons I venture to incorporate, in this last Chapter of the Report, my own draft of a Bill of Rights in the hope that it may be of assistance to the International Law Association and to the Brussels Conference in making their own contribution to the subject. The present draft is based on that circulated at the Prague Conference and taken from my book entitled "An International Bill of the Rights of Man". That book, published early in 1945, was written two years before the setting up of the United Nations, and various parts of the Bill of Rights as then suggested have now been revised in the light of the establishment of the United Nations and of the discussions which have since taken place on the subject. Thus the Chapter on international supervision and implementation has been rewritten and considerably amplified.

The following is the text of the Bill as proposed:

THE INTERNATIONAL BILL OF THE RIGHTS OF MAN

THE RAPPORTEUR'S DRAFT

(January 1948)

PREAMBLE

Whereas the enthronement of the rights of man was proclaimed to be a major purpose of the struggle out of which the United Nation was born;

Whereas the promotion of human rights and fundamental freedoms is among the primary purposes of the United Nations;

Whereas the respect of the natural rights of man to freedom and equality before the law is the primary and abiding condition of all lawful government;

Whereas the denial of these rights is and has proved to be a danger to the peace of the world;

Whereas the natural right of man to freedom comprises the right of self-government through persons chosen by and accountable to him;

Whereas, for that reason, the observance of the principles of democracy must, irrespective of the form of government and of the economic system, be placed under the protection and the guarantee of international society;

Whereas the principle of equality of man demands an equal opportunity of self-government and cultural development;

Whereas the dignity of man, the dictates of justice, and the principles of social solidarity in modern society require that no person shall suffer undeserved want and that the State shall safeguard effectively the right to work under proper conditions of employment, to education, to social security, and to a just share in social progress;

Whereas the sanctity of human personality and its right to develop to all attainable perfection and to fulfil, in freedom, its duty to man and society must be protected by the universal law of mankind through international enactment, supervision and enforcement:

This Special General Assembly of the United Nations now solemnly adopts the International Bill of the Rights of Man as part of the fundamental constitution of International Society and of the Signatory Members of the United Nations.

/PART I

PART I

CHAPTER I

Article 1

The life and liberty of the person shall be inviolate within the limits of the law.

No person shall be deprived of liberty save by a judgment of a court of law or pending trial in accordance with the law. Detention by purely executive order shall be unlawful in time of peace.

There shall be protection from and compensation for arbitrary and unauthorized arrest and detention.

The law shall provide against prolonged detention preceding trial, against excessive bail or unreasonable refusal thereof, against denial of just safeguards of evidence and procedure in criminal cases, against the refusal of protection in the nature of the writ of habeas corpus, against the retroactive operation of criminal laws, and against punishment which is cruel, inhuman, or offensive to the dignity of man.

Article 2

No State shall permit slavery, or traffic in slaves, or compulsory labour in any form other than public service, equally incumbent upon all, or as part of punishment pronounced by a court of law.

Article 3

There shall be full freedom of religious belief and practice.

Article 4

The freedom of speech, of expression of opinion, and of imparting and receiving information in writing and by other means shall not be denied or impaired.

Article 5

There shall be full freedom of association and assembly.

Article 6

The sanctity of the home and the secrecy of correspondence shall be respected.

Article 7

All nationals of the State shall enjoy full equality before the law and equal treatment in all respects by the authorities of the State. In particular, there shall be no discrimination on account of religion, race, sex, colour, language, national origin, or political creed.

Aliens shall not be denied the full and equal preceding Articles of this Bill of Rights and of other rights granted to them by the law of the State in which they reside. No alien legally admitted may be expelled except in pursuance of a judicial decision or recommendation as a punishment for offences laid down by law as warranting expulsion.

Article 8

There shall be full freedom of petition to the national authorities and to the United Nations.

Article 9

Every person shall be entitled to the nationality of the State where he is born unless and until on attaining majority he declares for the nationality open to him by virtue of descent.

No person shall be deprived of his nationality by way of punishment or deemed to have lost his nationality except concurrently with the acquisition of a new nationality.

The right of emigration and expatriation shall not be denied.

CHAPTER II

Article 10

No State shall deprive its citizens of the effective right to choose their governments and legislators on a footing of equality, in accordance with the law of the State, in free, secret, and periodic elections.

Article 11

Whenever the political condition or the stage of development of communities which have not yet obtained full political independence or which constitute a colony or a trust territory require the continued application of trusteeship or tutelage, such modification of the right of self-government shall be subject to the supervision of the United Nations and to the effective recognition of the principle of the eventual independence of these communities in accordance with their development and the wishes of their populations.

CHAPTER III

Article 12

In States inhabited by a substantial number of persons of a race, language or religion other than those of the majority of the population, persons belonging to such ethnic, linguistic or religious minorities shall have the right to establish and maintain, out of an equitable proportion

/of the

of the available public funds, their schools and cultural and religious institutions and to use their own language before the courts and other authorities and organs of the State.

Article 13

States shall, within the limits of their economic capacity and development, make provision for securing effectively the right to work to education, and to public assistance in case of unemployment, old age, sickness, disablement, and other cases of undeserved want.

Article 14

States shall, through national legislation and international co-operation, endeavour to secure just and humane conditions of work.

PART II

CHAPTER I

Article 15

Every State shall, by appropriate constitutional means, adopt Chapter I of Part I of this International Bill of the Rights of Man as part of its domestic law and constitution. The effect of such adoption shall be to abrogate any existing statute or any other rule of law inconsistent with these Articles of the International Bill of the Rights of Man. Nothing in the constitution of any Federal State shall relieve that State of the obligations of Chapter I of Part I of this Bill of Rights. They shall not be abrogated or modified, by legislative action or otherwise, save in pursuance of international agreement or authorization.

Article 16

The enforcement of any law safeguarding the legal rights of others or providing for the safety, public order, good morals and welfare of the community shall not be deemed to be inconsistent with the observance of the fundamental rights proclaimed in Part I of this International Bill of the Rights of Man.

Article 17

In every State the highest judicial tribunal of the State or any other tribunal endowed with requisite jurisdiction shall have the power to pronounce judgment upon the conformity of legislative, judicial or executive action with the provisions of Chapter I of Part I of this International Bill of the Rights of Man.

CHAPTER II

Article 18

This International Bill of the Rights of Man is hereby placed under the guarantee of the United Nations. Its observance shall be a matter of concern to all the United Nations.

Article 19

There shall be established a Human Rights Council which shall be responsible to the General Assembly for the promotion of the purposes of this Bill of Rights and for the supervision of the observance of its Articles.

The Council shall, through appropriate organs, collect information and receive petitions and representations bearing on the observance of this Bill of Rights. It shall present an annual report to the General Assembly.

Article 20

The Council shall set up Commissions and other organs to assist it in the fulfilment of its functions.

The Council shall formulate for approval by the General Assembly Rules of Procedure for the investigation of petitions. These Rules shall be based on the recognition of the right of any State, organization, body or individual to petition the United Nations.

Article 21

The Council shall, subject to its Rules of Procedure, fully investigate petitions brought before it by any State, organization, body or individual. It shall, in proper cases, communicate such petitions to the State concerned and receive its observations thereon. The Council shall, by a concurring vote of seven of its members, be entitled to conduct an enquiry within the territory of the State concerned, which shall afford full facilities necessary for the efficient conduct of the investigation.

Article 22

At any stage of the procedure the Council, acting on its own initiative or on the request of the State the action of which is the subject of an investigation, shall be entitled to ask the International Court of Justice for an Advisory Opinion on any legal issue involved in the interpretation or the application of this Bill of Rights. The present Article shall be considered, for this purpose, as implying the authorization by the General Assembly as provided for in Article 96

/of the

of the Charter of the United Nations. The State concerned shall be entitled to appeal to the Chamber for Summary Procedure of the International Court of Justice, or any other sub-division thereof, on any question of fact on which the finding of the Council is based.

The General Assembly may at any time entrust to an International Court of Human rights the functions to be exercised under this Bill of Rights by the International Court of Justice.

Article 23

Unless otherwise decided by the concurring vote of any seven of its members, the Council shall publish the results of its investigation. In all cases in which the results of the investigation disclose an infraction of this Bill of Rights the Council shall make appropriate recommendations to the State concerned.

If the State concerned fails to comply with the recommendations of the Council, the latter may bring the matter before the General Assembly which, after any further investigation and after calling upon the State concerned to comply with the recommendations, shall, in case of continued non-compliance, take such action as may be appropriate in the circumstances. The Parties to this Bill of Rights agree that the recommendations of the General Assembly shall be legally binding upon them. The General Assembly may call upon the Security Council to recommend the expulsion of the State concerned. Where the infraction of this Bill of Rights is such as to constitute a threat to international peace and security, the General Assembly shall transmit the case to the Security Council for such further political, economic, or military action as may be deemed necessary to ensure compliance with the Bill of Rights.

Article 24

The Human Rights Council shall be composed of nine persons possessing the highest qualifications and not representing any Government. The members of the Council shall be selected by an electoral body consisting of the Secretary-General of the United Nations, the Director of the Division of Human Rights, four representatives of States appointed by the General Assembly, two permanent members of the Security Council designated by it, and four Judges of the International Court of Justice appointed by the President with the approval of the Court. The Council shall include no less than three persons of judicial experience.

The members of the Council shall devote their time to the fulfilment of their functions. They shall not engage in any other profession or occupation. They shall receive salaries commensurate with the importance and the dignity of their office.

/They

They shall hold office for a period of six years, subject to the first election taking place in such a manner as to ensure the annual election of three members of the Council.

Article 25

Nothing in this Bill of Rights shall be deemed to impair the powers and functions of the General Assembly, the Economic and Social Council, or its Commission, as set out in the Charter of the United Nations.

PART III

Article 26

The International Bill of the Rights of Man shall enter into force after having received the assent of two-thirds of the Members of the United Nations. It shall become binding, without any necessity of ratification, upon Members of the United Nations whose duly accredited and authorized representatives present at this Special General Assembly cast their vote in favour of the Bill or who at any future Session of the General Assembly make a solemn declaration accepting its Articles as binding upon their State.

Article 27

The Articles of this Bill of Rights may be amended by a vote of the General Assembly provided that such vote receives the concurrence of two-thirds of the United Nations bound by the Bill of Rights. States which do not concur in the amendment shall remain obligated by the Bill as hitherto binding upon them. They may at any time accept the obligations of all or some amendments by a declaration deposited with the Secretary-General of the United Nations.

50. The proposed Bill of Rights gives expression to the view that it is desirable and feasible to incorporate in one single instrument the three principal functions of an International Bill of Rights: (i) that of formulating the juridical, philosophical and political bases, as embodied in the Preamble, of a fundamental international enactment of this nature; (ii) that, embodied in the three Chapters of Part I of the Bill, of providing a statement of the human rights to be protected by the Bill; (iii) that, expressed in Part II of the Bill, which is concerned with the national and international implementation of its provisions.

51. An International Bill of the Rights of Man is not a proper occasion for formulating - or, even less so, for answering - the principal problems of the political and social philosophy in an age of transition of unprecedented complexity and intensity of experience. Yet it is feasible - and desirable - to give in it expression to the fundamental ideas which

/give

give full meaning to an international enactment of revolutionary significance. These ideas are the indissoluble connection between the international guarantee of the rights of man and international peace; the insistence on the view that the State can find a justification only in a true acknowledgment of the ultimate sovereignty of the individual soul; that, while a Bill of Rights is constitutive of a new chapter in the recognition by positive law of human rights and of the obligations of the State, it is declaratory of the inalienable rights of man; that, although a Bill of Human Rights ought not to attempt the task of proclaiming the duties of man to the State, it is legitimate and useful to re-affirm that the transcending object of freedom thus to be secured is to safeguard man's right to do his duty to man and society; and that human freedoms - personal, political, and social - are in the long run illusory one without the other. The purpose of the Preamble is to give expression to these basic ideas of the Bill of Rights.

52. What may for the sake of convenience be described as personal rights of freedom covered by Chapter I of the first Part of the Draft Bill comprise a variety of interests such as the right to life and freedom from unlawful interference with the liberty of the person through arbitrary arrest and abuse of criminal law; the right to freedom of religion, speech, opinion, information, association and assembly; the right to equality before the law; the right to emigration; and the like. While these rights are enumerated in the Draft, no attempt is - or, it is believed, should be made - in an enactment of this nature to provide for the detailed application of the principles involved. No such regulation in detail can be effected without attempting a codification of a uniform world law on the subject. Whether life shall be protected not only after but also before birth; whether the State shall be entitled to make freedom of emigration conditional upon the fulfilment of the obligation of military service or the continued maintenance of dependents; what shall be the period within which the arrested person shall be informed of the charge brought against him; whether freedom of speech can be invoked by those whose principles deny it to their opponents; to what extent the right of political asylum shall become part of the Bill of Rights; whether the latter shall include details of the law relating to freedom of association in relation to trade unions - these and similar questions can not be regulated in detail in a Bill of Rights though it may be possible and desirable to clarify and define them gradually in subsequent international enactments and declarations in the same way as undefined controversial and general rules of international law may become the subject

of codification and restatement. No precise limits can be set in a necessarily general enactment to the power of the State to make the personal rights of freedom dependent upon the protection of the just rights of other members of the community and upon considerations of public morality and welfare and the vital interests of the State. To some extent these limits must be determined pragmatically by reference to particular situations. This applies, for instance, to the power of the State to suspend the operation of the normal law and of constitutional guarantees through a proclamation of a state of siege or of national emergency. The safeguards against any abuse of this and similar powers must be found in the watchfulness, the efficacy and the authority of the international organ entrusted with the supervision of the observance of the Bill of Rights.

53. The same considerations apply to the safeguards, envisaged in Chapter II of the Bill, of the political rights of freedom. While full recognition must be given to the right to government by consent, it is clear that, unless the Bill of Rights is to furnish an occasion for the rigid exclusion of certain States, such as Soviet Russia, it is to be so framed as to provide against further encroachments upon the principles of democracy as generally conceived rather than for immediate remedial action in relation to States in which a form of totalitarian government has already become an established fact. This explains the phrasing of Article 10 which lays down that "no State shall deprive its citizens of the effective right to choose their governments and legislators on a footing of equality, in accordance with the law of the State, in free, secret and periodic elections". These are also the reasons which explain the phraseology of Article 11 relating to self-government and eventual independence of communities under trusteeship or tutelage as well as the general language of Chapter III of Part I on the subject of social, economic and cultural rights.

54. It will be noted that Part II of the Bill of Rights, which is devoted to the implementation of its substantive clauses, is as long as Part I. This is in accordance with the principle, on which the present Preliminary Report is based, that the problem of enforcement is the crucial problem of the Bill of Rights. There is some disposition, in this connection, to think of the question of enforcement in terms of "sanctions" and various forms of physical enforcement. To do so is to simplify the issue unduly. It is not necessary to think of implementation primarily in drastic terms of enforcement through military or economic pressure.

55. In the first instance, the implementation of the Bill of Rights must take place through the normal channels of the remedies already available in municipal law or to be created in pursuance of the adoption of the Bill as part of the law of the land. The terms of Article 15 of the Bill, in providing for such adoption "by appropriate constitutional means" take into account the peculiarities of countries such as Great Britain, which do not possess a written constitution. But it is clear that in some respects the Constitution and the institutions of States which became parties to the Bill must accommodate themselves to its obligations and purposes. Its legal meaning and its moral authority must depend upon the willingness of States to make such necessary adjustments. In particular, as proposed in Article 17, they must be prepared to confer upon their highest judicial tribunal or any specially constituted Court the power to pronounce judgment upon the conformity of any legislative, judicial or executive action with the provisions of Chapter I of Part I of the Bill, namely, those bearing upon the personal rights of freedom. No such obligation is contemplated with regard to the political and social rights which form the subject-matter of Chapters II and III. These are not rights suitable for enforcement through judicial action.

56. Attention may be drawn in this connection to the passage in Article 15 which lays down that "nothing in the constitution of any Federal State shall relieve that State of the obligations of Chapter I of Part I of this Bill of Rights". The contrary principle has been suggested in the Draft of Convention put forward by the United States before the Commission on Human Rights. It is proposed there that with regard to the Articles of the Convention which the Federal Government considers, under its constitutional system, to be wholly or in part within the jurisdiction of the constituent states, its duty shall go no further than to bring the relevant provisions of the Bill to the notice of the states. This is a question of paramount significance in the matter of enforcement. Some of the largest States - such as the United States of America, Argentina, Brazil, Mexico, Soviet Russia, Canada, Australia, the Union of South Africa - are Federal States. At the same time many of the crucial provisions of an International Bill of Rights relate to matters usually reserved to the jurisdiction of the constituent units of the Federal States. To lay down, therefore, that there shall be, in effect, no international responsibility and no obligation of Federal implementation with regard to matters within this category, is to reduce in advance the effectiveness of the Bill of Rights. Any such provision would amount to an acceptance

of the view that the Federal structure of States can justifiably constitute a decisive impediment in the way of international co-operation and government. There is no sufficient warrant for any such assertion. On the contrary, recent developments suggest the tendency to make the capacity to act upon and to fulfil international obligations a decisive factor in the constitution and the practice of Federal States. Of that tendency the United States itself provides an instructive example. The decision of the Supreme Court in the case of Missouri v. Holland has been referred to above (Section 14). More recently the same Court, in a number of cases, has held that the necessities of international intercourse and of the fulfilment of the international obligations of the United States override, in various spheres, constitutional limitations and the powers and laws of individual States.* Australian Courts - but not the Judicial Committee of the Privy Council in the matter of Canada - have followed the same trend. It would seem therefore that the desirable course is not to make the Bill of Rights subordinate to the constitutional limitations of the Federal State, but, as already suggested by the President's Committee on Civil Liberties, to use the fact and the machinery of an international instrument as a vehicle for the more effective protection of human rights.

57. While implementation through the processes of municipal law must constitute the normal means of enforcement, international implementation is of the essence of an International Bill of Human Rights. Accordingly, the present Draft contains somewhat detailed proposals in this respect.

* See e.g., United States of America v. Curtiss-Wright Export Corporation (1937) 229 U.S. 304 (on the delegation of legislative powers to the executive in matters relating to foreign petitions); United States v. Pink (1942) 315 U.S. 203 (in the matter of the overriding effect of international instruments in relation to the law of the States); Hines v. Davidowitz (1941) 312 U.S. 52 (in the matter of the power of the State to register aliens). The Constitution of the International Labour Organization makes allowance for the Federal structure of states. However, matters regulated in the various labour Conventions are not of the same fundamental character as those forming the subject matter of the Bill of Rights.

/In particular,

In particular, importance is attached to the suggested principal international organ of implementation, namely, the Human Rights Council. This, it is proposed, ought to be an authoritative body, semi-judicial in composition, fully and permanently devoted to giving effect to one of the most essential purposes of the United Nations. For this reason the Draft Bill of Rights formulates an elaborate procedure for the election of the Council.

58. The second principal feature of this Part of the Bill of Rights is the central place which the right of petition occupies in the scheme of implementation. It is a right - a legal right - conferred not only upon States, but also upon organizations, bodies and individuals. The Bill provides expressly for the adoption of a procedure, to be approved by the General Assembly, for giving effect to that right. The Council is under an obligation to take action upon petitions by way of investigation, report, and, if necessary, recommendation to the States concerned and the General Assembly. That obligation will not preclude the early elimination of petitions which, on the face of it do not require further action. But it must be of the essence of a true international protection of human rights that there should exist adequate machinery for giving the requisite attention to every petition. Such machinery must be based on the principle that no petition should be discarded by the ordinary examining organs of the United Nations without the concurrence of a member of the Human Rights Council. The examination of petitions would take place in a number of sections or chambers, all of which would have the constant co-operation of a member of the Council. The Council as a whole would be concerned with petitions of a serious nature which have not been disposed of through the efforts of the subordinate section or chamber.

59. Provision is made in the proposed Bill of Rights for the judicial determination, by the International Court of Justice or its Chambers, of disputed legal issues. Such determination may take place at the instance either of the Human Rights Council or of the State the conduct of which has become the subject of a petition or investigation. Moreover, in view of the significance of the issues involved, there must be provision for a judicial determination, at the instance of the State concerned, of disputed findings as to facts arrived at by the Council. The Council as such is to include a substantial number of members of judicial experience. Thus the suggested scheme approximates to some extent the proposals put forward by Australia and supported by some States,

/for the

for the establishment of an International Court of Human Rights. The present Draft Bill of Rights does not fully adopt these proposals largely for the reasons: (a) that the object of most petitions can be better met by a procedure which is not purely judicial, and (b) that a Court is not in a position to cope with a vast number of petitions. The jurisdiction of an international court, in this matter, must be of residuary nature. That residuary jurisdiction is, in the present Draft Bill, entrusted to the International Court of Justice and its sub-divisions. But provision is made for the eventual establishment, by the General Assembly, of an International Court of Human Rights should experience demonstrate the desirability of some such development.

60. As already suggested, the question of the international enforcement of an International Bill of Rights has been somewhat obscured as the result of undue concentration on the ultimate and drastic phase of enforcement through physical measures of a military or economic nature. The implementation as contemplated in the present Draft envisages primarily the impartial ascertainment of the violation of the Bill of Rights followed, if necessary, by a recommendation for redressing the illegal situation which has arisen. Such recommendation, in an ascending order of authority, may be made by the investigating organs of the Human Rights Council, by the Council itself and by the General Assembly. The recommendations of the latter are to be accepted as legally binding. Thus the great and, frequently, irresistible weight of public opinion of the world will be brought to bear upon the State responsible for the violation of the Bill of Rights. However, the potency of that sanction depends upon, and will gain an accession of strength from, the legal availability of the more drastic means of enforcement as provided, in the last resort, by Article 23 of the Bill of Rights. In grave and flagrant cases affecting international peace and security that sanction will coincide with the jurisdiction of the Security Council as determined by the existing provisions of the Charter.

61. The provisions of the present Draft Bill of Rights in the matter of the procedure of its adoption are self-explanatory and require no comment. But it is clear that the form of the adoption of the International Bill of Human Rights must be commensurate with the paramount significance of that enactment. In the first instance, it ought to be adopted by a Special General Assembly which would be made to precede or to follow upon one of its ordinary Sessions. Secondly, the instrument of its adoption must be cast in the solemn form of an enactment expressive

/of its

of its fundamental purpose and stature. This cannot take place in the stereotyped forms of a declaration, recommendation, resolution or convention. An International Bill of the Rights of Man is and must be viewed as an unprecedented and august instrument sui generis in which, under the aegis of international society, the sovereignty of the State acknowledges the transcending sovereignty of man. There is nothing in the Charter which prevents the General Assembly from giving an adequate expression to the will of the nations of the world in this matter.

62. It is desirable, in a proposal for a single International Bill of Human Rights conceived as a binding legal obligation and based on the affirmation of enforcement in the national and international spheres, to attempt an assessment of the prospects of its acceptance by the members of the United Nations. Even if the immediate prospects of its acceptance were insignificant, it does not follow that we would be justified in adopting solutions - such as a general and abstract Declaration of Rights devoid equally of binding force and of means of implementation - which are nominal, injurious to public faith in the sincerity of international pronouncements, and likely to delay the realization of true progress. Undoubtedly after months of arduous work, such as the Commission on Human Rights has devoted to the subject, there is a tendency, natural in the circumstances, to adopt an instrument showing some results of the prolonged effort. Any such tendency, which may be the product not of conviction but of fatigue, must be resisted. This is a case in which delay may be preferable to fostering the illusion of achievement. Such delay may be beneficial not only as rendering possible further education of public opinion in the vital matter of enforcement but as promoting thorough study of and agreement upon the substance of the Bill of Rights. In the meantime, we ought not to under-estimate the measure of agreement already reached or discernible in the matter of enforcement. A substantial number of States represented on the Commission of Human Rights have expressed themselves in favour of a legally binding Bill of Rights provided with means of international implementation. These States include India, Australia, Belgium, Great Britain and France. But it is clear that the assessment of the prospects of the acceptance of a Bill of Rights so conceived must be incomplete without a consideration of the position of the United States of America and of Soviet Russia.

63. For reasons which the scope of this Report does not permit to elaborate, the original attitude of the United States towards the question of implementation was a negative one. The United States was to a large extent

/responsible

responsible for the idea of a Declaration which is neither binding nor enforceable and which is to be accompanied or followed by a binding Convention - provided there is a sufficient number of States ready to accept it. However, there are reasons to believe that the original attitude of the United States has undergone a considerable modification. The proposal for a Human Rights Convention submitted in November 1947 by the representative of the United States to the Commission on Human Rights includes detailed provisions for implementation. Although the proposal stops short of conferring upon individuals the right of petition, it contemplates, on the part of the United Nations, "any action appropriate under the Charter" following upon a report of a Committee of the Commission on Human Rights alleging a violation of the Convention. The historic part which the United States, since the Declaration of Independence and its own Bill of Rights, has played in promoting human freedoms, as well as its rapidly increasing part in international co-operation, permit the expectation that that country may yet make a decisive contribution to an effective international protection of the rights of man.

64. In assessing the prospects of the contribution of Soviet Russia to the International Bill of the Rights of Man it is necessary to bear in mind that the present opposition of that country to a binding and effective Bill of Rights represents only one aspect of a wider and more complex picture. While some States have stressed the libertarian aspect of the Bill of Rights, Soviet Russia has insisted on its purposes in relation to the principles of equality and social welfare. There ought to be no disposition to deny or to minimize the great contribution of the Soviet Russian State in these spheres of the effective recognition of human brotherhood. Russian legislation has been prominent not only in the abolition of discrimination on racial, religious and other grounds, but also in the prohibition of such discrimination and of incitement to it by and from quarters other than the State itself. So pronounced is the attitude of Soviet Russia with regard to this segment of human rights that in the statements of her representatives on the Commission on Human Rights there is to be found an occasional advocacy of the international implementation of the principle of non-discrimination. In the field of the full and unqualified provision of equality of cultural opportunity for the national and ethnic minorities Soviet Russian practice has opened a new and significant chapter. The contribution of the Russian Constitution of 1936 and of Russian practice generally to the recognition of the right of the individual to work, to social security, to medical care, to adequate leisure, and to education constitutes a lasting and beneficent influence.

/This

This vindication of the dignity of man through the full acknowledgment of his rights in these spheres has not been accompanied by a parallel recognition of his personal and political freedoms. But there is no compelling necessity for assuming any indefinite permanency of this feature of the Soviet Russian State. On the contrary, it is permissible to hope, that the fundamental ideas of a comprehensive Bill of Rights - to which Russian doctrine and practice have made a notable contribution - may yet prove a bridge to wider international co-operation. In the meantime, although the refusal of Soviet Russia to consent to the principle of international enforceability of a Bill of Rights may for the time being render impossible her participation in this great venture of international society, such abstention need not, in the circumstances, be considered as synonymous with a negative and actively obstructive attitude to the initiation, under the aegis of the United Nations, of an international machinery for the implementation of the International Bill of the Rights of Man.

65. This latter submission leads, as the final consideration, to the question of the acceptance and implementation, as part of the activities of the United Nations, of an International Bill of Rights to which some of its members decline to give their adherence. So long as the Bill of Rights has the support of the bulk of its members in a manner rendering possible valid recommendations of the General Assembly for the establishment of the required organs and machinery, the abstention of some States need not affect decisively the fortunes and the operation of the Bill of Rights. On the contrary, it may be assumed that, with the passage of time, its moral and political attraction will prove such as to point the way to a growing measure of universality. The paramount danger, which must be avoided, is to attempt, in the deceptive pursuit of immediate universality, to adopt a Bill of Rights which is acceptable to all for the reason that it imposes obligations upon none. If, in determined disregard of the temptations of rapid success, that peril is successfully overcome, a Bill of Rights may evolve which will be both an achievement and a promise of a fuller transformation of the law of nations from a law of States to a law of international society with the individual human being at the very centre of the constitution of the world.

66. The conclusions of this final Chapter may be summed up as follows:

- (1) A properly conceived and executed Bill of the Rights of Man must, in one instrument, state the legal, moral, and philosophical foundations of the Bill of Rights and make provision for the recognition and national and international implementation of all

three essential freedoms of man -- personal, political and social.

(2) The means of enforcement of these fundamental human rights must be adapted to the character of each of the three categories of rights.

(3) While, as a rule, implementation through the municipal law of States must constitute the normal means of enforcement, implementation through international agencies is the essence of an International Bill of Human Rights.

(4) The full recognition of the effective right of petition must constitute the main feature of the scheme of international implementation of the Bill of Rights. Such scheme must be based on the existence of a permanent and authoritative machinery, endowed with resources commensurate with the magnitude of the task, of an administrative, political, semi-judicial and judicial character.

(5) The form of the International Bill of Human Rights must be expressive of the profound and unprecedented significance of an instrument to be adopted under the aegis of international society and by a vote of a Special Assembly of the United Nations. It ought not to be cast in the traditional forms of a declaration, recommendation, resolution or convention.

(6) There is no justification for the assumption that the realization of the principal requirement of an International Bill of Rights, namely, its implementation through international agencies is impracticable either in general or within the framework of the United Nations.

(7) Given the support of a substantial majority of the Members of the United Nations rendering possible the establishment of the required machinery and organs by the General Assembly, an effective International Bill of Human Rights can be put into operation as part of the activities of the United Nations in the fulfilment of its major purpose of promoting human rights and fundamental freedoms.

ANNEX

COMMISSION ON HUMAN RIGHTS

I

DRAFT DECLARATION ON HUMAN RIGHTS

Article 1

All men are born free and equal in dignity and rights. They are endowed by nature with reason and conscience, and should act towards one another like brothers. (Where the word "men" is used, the Commission implied both men and women.)

Article 2

In the exercise of his rights everyone is limited by the rights of others and by the just requirements of the democratic state. The individual owes duties to society through which he is enabled to develop his spirit, mind and body in wider freedom.

Article 3

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, which includes colour, sex, language, religion, political or other opinion, property status, or national or social origin.

All are equal before the law regardless of office or status and entitled to equal protection of the law against any arbitrary discrimination or against any incitement to such discrimination in violation of this Declaration.

Article 4

Everyone has the right to life, to liberty and security of person.

Article 5

No one shall be deprived of his personal liberty or kept in custody except in cases prescribed by law and after due process. Everyone placed under arrest or detention shall have the right to immediate judicial determination of the legality of any detention to which he may be subject and to trial within a reasonable time or to release.

Article 6

Everyone shall have access to independent and impartial tribunals in the determination of any criminal charge against him and of his rights and obligations. He shall be entitled to a fair hearing of his case and to have the aid of a qualified representative of his own choice, and if he appears in person to have the procedure explained to him in a manner in which he can understand it and to use a language which he can speak.

/Article 7

Article 7

Any person is presumed to be innocent until proved guilty. No one shall be convicted or punished for crime or other offence except after fair public trial at which he has been given all guarantees for his defence. No person shall be held guilty of any offence on account of any act or omission which did not constitute such an offence when it was committed, nor shall he be liable to any greater punishment than that prescribed for such offence by the law in force at the time when the offence was committed.

Nothing in this Article shall prejudice the trial and punishment of any person for the commission of any act which, at the time it was committed, was criminal according to the general principles of law recognized by civilized Nations. No one shall be subjected to torture, or to cruel or inhuman punishment or indignity.

Article 8

Slavery, in all its forms, being inconsistent with the dignity of man, shall be prohibited by law.

Article 9

Everyone shall be entitled to protection under law from unreasonable interference with his reputation, his privacy and his family. His home and correspondence shall be inviolable.

Article 10

Subject to any general law not contrary to the purposes and principles of the United Nations Charter and adopted for specific reasons of security or in the general interest there shall be liberty of movement and free choice of residence within the borders of each State.

Individuals shall have the right to leave their own country and, if they so desire, to acquire the nationality of any country willing to grant it.

Article 11

Everyone shall have the right to seek and be granted asylum from prosecution. This right will not be accorded to criminals nor to those whose acts are contrary to the principles and aims of the United Nations.

Article 12

Everyone has the right everywhere in the world to recognition as a person before the law and to the enjoyment of fundamental civil rights.

Article 13

The family deriving from marriage is the natural and fundamental group unit of society. Men and women shall have the same freedom to contract marriage in accordance with the law. Marriage and the family shall be protected by the State and society.

Article 14

Everyone has the right to own property in conformity with the laws of the state in which such property is located. No one shall be arbitrarily deprived of his property.

Article 15

Everyone has the right to a nationality.

All persons who do not enjoy the protection of any government shall be placed under the protection of the United Nations. This protection shall not be accorded to criminals nor to those whose acts are contrary to the principles and aims of the United Nations.

Article 16

Individual freedom of thought and conscience, to hold and change beliefs is an absolute and sacred right.

Every person has the right either alone or in community with other persons of like mind and in public or private, to manifest his beliefs in worship, observance, teaching and practice.

Articles 17 and 18

Freedom of Information. /These Articles were not finally adopted for the reason that they will be considered at the International Conference on Freedom of Information.⁷

Article 19

Everyone has the right to freedom of peaceful assembly and to participate in local, national and international associations for purposes of a political, economic, religious, social, cultural, trade union or any other character, not inconsistent with this declaration.

Article 20

Everyone has the right, either individually, or in association with others, to petition or to communicate with the public authorities of the state of which he is a national or in which he resides or of the United Nations

Article 21

Everyone without discrimination has the right to take an effective part in the government of his country. The state shall conform to the will of the people as manifested by elections which shall be periodic, free, fair and by secret ballot.

Article 22

Everyone shall have equal opportunity to engage in public employment and to hold office in the state of which he is a citizen or a national. Access to public employment shall not be a matter of privilege or favour..

Article 23

Everyone has the right to work.

The state has a duty to take such measures as may be within its powers to ensure that all persons ordinarily resident within its territory have an opportunity for useful work.

/The state

The state is bound to take all necessary steps to prevent unemployment.

Article 24

Everyone has the right to receive pay commensurate with his ability and skill; to work under just and favourable conditions, to join trade unions for the protection of his interests in securing a decent standard of living for himself and his family.

Women shall have the right to work with the same advantages as men and to receive equal pay for equal work.

Article 25

Everyone without distinction as to economic and social conditions, has the right to the preservation of his health through the highest standards of food, clothing, housing and medical care, which the resources of the state and community can provide. The responsibility of the state and community for the health and safety of its people can only be fulfilled by provision of adequate health and social measures.

Article 26

Everyone has the right to social security. The state has a duty to maintain or ensure the maintenance of comprehensive measures for the security of the individual against the consequences of unemployment, disability, old age and other loss of livelihood for reasons beyond his control.

Motherhood shall be granted special care and assistance. Children are similarly entitled to special care and assistance.

Article 27

Everyone has the right to education. Fundamental education shall be free and compulsory. There shall be equal access for higher education as can be provided by the state or community on the basis of merit and without distinction as to race, sex, language, religion, social standing, financial means or political affiliation.

Article 28

Education will be directed to the full intellectual, physical, moral and spiritual development of the human personality, to the strengthening of respect for human rights and fundamental freedoms and to the combating of the spirit of intolerance and hatred against other nations or racial or religious groups everywhere.

Article 29

Everyone has the right to rest and leisure.

Rest and leisure should be ensured to everyone by laws or contracts providing in particular for reasonable limitations of working hours and for periodic vacations with pay.

Article 30

Everyone has the right to participate in the cultural life of the community, to enjoy the arts, and to share in the benefits that result from scientific discoveries.

Article 31

(The Commission did not take a decision on the two texts reproduced below, but submitted both for consideration).

Text proposed by the Drafting Committee:

In states inhabited by a substantial number of persons of a race, language or religion other than those of the majority of the population, persons belonging to such ethnic, linguistic or religious minorities shall have the right, as far as compatible with public order, to establish and maintain schools and cultural or religious institutions, and to use their own language in the press, in public assembly and before the courts and other authorities of the state.

Text proposed by the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities:

In states inhabited by well-defined ethnic, linguistic or religious groups which are clearly distinguished from the rest of the population, and which want to be accorded differential treatment, persons belonging to such groups shall have the right, as far as is compatible with public order and security to establish and maintain their schools and cultural or religious institutions, and to use their own language and script in the press, in public assembly and before the courts and other authorities of the state, if they so choose.

Article 32

All laws in any state shall be in conformity with the purposes and principles of the United Nations as embodied in the Charter, insofar as they deal with human rights.

Article 33

Nothing in this declaration shall be considered to recognize the right of any state or person to engage in any activity aimed at the destruction of any of the rights and freedoms prescribed herein.

II

DRAFT CONVENTION ON HUMAN RIGHTS

Article 1

The States Parties hereto declare that they recognize the principles set forth in Part II hereof as being among the human rights and fundamental freedoms founded on the general principles of law recognized by civilized nations.

Article 2

The State Parties to the present instrument undertake to ensure:

- (A) That their laws secure to all persons under their jurisdiction, whether citizens, persons of foreign nationality or stateless persons, the enjoyment of these human rights and fundamental freedoms;
- (B) That such laws, respecting these human rights and fundamental freedoms, conform with the general principles of law recognized by civilized nations;
- (C) That any person whose rights or freedoms are violated shall have : effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
- (D) That such remedies shall be enforceable by a judiciary whose independence is secured; and
- (E) That their police and executive officers shall act in support of the enjoyment of these rights and freedoms.

Article 3

On receipt of a request to this effect from the Secretary-General of the United Nations, made under the authority of a resolution of the General Assembly, the Government of any Party to this Bill shall supply an explanation as to the manner in which the law of that State gives effect to any of the said provisions of this Bill of Rights.

Article 4

- (1) In time of war or other public emergency, a state may take measures derogating from its obligations under Article 2 above to the extent strictly limited by the exigencies of the situation.
- (2) Any State Party hereto availing itself of this right of derogation shall inform the Secretary-General of the United Nations fully of the measures which it has thus enacted and the reasons therefore. It shall also inform him as to when the measures cease to operate and the provisions of Article 2 are being fully executed.

Article 5

It shall be unlawful to deprive any person of his life save in the execution of the sentence of a court following his conviction of a crime for which this penalty is provided by law.

Article 6

It shall be unlawful to subject any person to any form of physical mutilation or medical or scientific experimentation against his will.

Article 7

No one shall be subjected to torture or to cruel or inhuman punishment or indignity.

Article 8

- (1) No person shall be held in slavery or servitude.

(2) No person shall be required to perform forced or compulsory labour in any form other than labour exacted as a punishment for crime of which the person concerned has been convicted by due process of law.

(3) For the purpose of this article, the term "forced or compulsory labour" shall not include:

(A) Any service of a purely military character, or service of a non-military character in the case of conscientious objectors, exacted in virtue of compulsory military service laws;

(B) Any service exacted in cases of emergency created by fire, flood, famine, earthquake, violent epidemic or epizootic disease, invasion by animals, insect or vegetable pests, or similar calamities or other emergencies threatening the life or well-being of the community;

(C) Any minor communal services considered as normal civic obligations, incumbent upon the members of the community, provided that these obligations have been accepted by the members of the community concerned directly or through their directly elected representatives.

Article 9

(1) No person shall be subjected to arbitrary arrest or detention.

(2) No person shall be deprived of his liberty save in the case of:

(A) The arrest of a person affected for the purpose of bringing him before a court on a reasonable suspicion of having committed a crime or which is reasonably considered to be immediately necessary to prevent his committing a crime;

(B) The lawful arrest and detention of a person for non-compliance with the lawful order or decree of a court;

(C) The lawful detention of a person sentenced after conviction to deprivation of liberty;

(D) The lawful detention of persons of unsound mind;

(E) The parental or quasi-parental custody of minors;

(F) The lawful arrest and detention of a person to prevent his effecting an unauthorized entry into the country;

(G) The lawful arrest and detention of aliens against whom deportation proceedings are pending.

(3) Any person who is arrested shall be informed promptly of the charges against him. Any person who is arrested under the provisions of sub-paragraphs (A) or (B) of Paragraph 2 of this Article shall be brought promptly before a judge, and to trial within a reasonable time or be released.

(4) Every person who is deprived of his liberty shall have an effective remedy in the nature of habeas corpus by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

/(5) Every person

(5) Every person shall have an enforceable right to compensation in respect of an unlawful arrest or deprivation of liberty.

Article 10

No person shall be imprisoned or held in servitude in consequence of the mere breach of a contractual obligation.

Article 11

Subject to any general law not contrary to the purposes and principles of the United Nations Charter and adopted for specific reasons of security or in the general interest there shall be liberty of movement and free choice of residence within the borders of each State.

Any person who is not subject to any lawful deprivation of liberty or to any outstanding obligations with regard to national service shall be free to leave any country including his own.

Article 12

No alien legally admitted to the territory of a state shall be arbitrarily expelled therefrom.

Article 13

In the determination of any criminal charge against him or of any of his civil rights or obligations, every person is entitled to a fair hearing before an independent and impartial tribunal and to the aid of a qualified representative of his own choice. No person shall be convicted or punished for crime except after public trial.

Article 14

No person shall be held guilty of any offence on account of any act or omission which did not constitute such an offence at the time when it was committed, nor shall he be liable to any greater punishment than that prescribed for such offence by the law in force at the time when the offence was committed.

Nothing in this Article shall prejudice the trial and punishment of any person for the commission of any act which, at the time it was committed, was criminal according to the general principles of law recognized by civilized nations.

Article 15

No person shall be deprived of his juridical personality.

Article 16

(1) Every person shall have the right to freedom of religion, conscience and belief, including the right, either alone or in community with other persons of like mind, to hold and manifest any religious or other belief, to change his belief, and to practise any form of religious worship and observance and he shall not be required to do any act which is contrary to such worship and observance.

/(2) Every person of

(2) Every person of full age and sound mind shall be free, either alone or in community with other persons of like mind, to give and receive any form of religious teaching and in the case of a minor the parent or guardian shall be free to determine what religious teaching he shall receive.

(3) The above rights and freedoms shall be subject only to such limitations as are prescribed by law and are necessary to protect public order and welfare, morals and the rights and freedoms of others.

Article 17

(The Commission decided not to elaborate a final text on this Article until it had before it the views of the Sub-Commission on Freedom of Information and of the Press and of the International Conference on Freedom of Information. The texts reproduced below have been proposed by the Drafting Committee and by the representative of the United States respectively.)

Drafting Committee Draft:

(1) Every person shall be free to express and publish his ideas orally, in writing, in the form of art or otherwise.

(2) Every person shall be free to receive and disseminate information of all kinds, including both facts, critical comment and ideas by books, newspapers, or oral instruction, and by the medium of all lawfully operated devices.

(3) The freedoms of speech and information referred to in the preceding paragraphs of this Article may be subject only to necessary restrictions, penalties or liabilities with regard to: Matters which must remain secret in the interest of national safety; publications intended or likely to incite persons to alter by violence the system of government, or to promote disorder or crime; obscene publications; publications aimed at the suppression of human rights and fundamental freedoms; publications injurious to the independence of the judiciary or the fair conduct of legal proceedings; and expressions or publications which libel or slander the reputation of other persons.

United States Draft:

Everyone shall have the right to freedom of information, speech and expression.

Everyone shall be free to hold his opinion without molestation, to receive and seek information and the opinion of others from sources wherever situated, and to disseminate opinions and information, either by word, in writing, in the press, in books or by visual, auditive or other means.

Article 18

All persons shall have the right to assemble peaceably for any lawful purpose, including the discussion of any matter, on which under Article 16 any person has the right to express and publish his ideas. No restriction

/shall be placed

shall be placed on the exercise of this right other than those necessary for:

- (A) The protection of life or property;
- (B) The prevention of disorders; or
- (C) The prevention of the obstruction of traffic or the free movement of others.

Article 19

All persons shall be free to constitute associations, in whatever form may be appropriate under the law of the state, for the promotion and the protection of their legitimate interests and of any other lawful object, including the dissemination of all information of which under Article 16 the dissemination is unrestricted. The rights and freedoms set forth in Articles 15 and 16 shall be enjoyed by such associations.

Article 20

Every person shall be entitled to the rights and freedoms set forth in this Bill of Rights without distinction as to race which includes colour, sex, language, religion, political or other opinion, property status, or nation or social origin.

Every person, regardless of office or status, shall be entitled to equal protection under the law against any arbitrary discrimination or against all incitement to such discrimination in violation of this Convention.

Article 21

Any advocacy of national, racial, or religious hostility that constitutes an incitement to violence shall be prohibited by the law of the state.

Article 22

Nothing in this Convention shall be considered to give any person or state the right to engage in any activity aimed at the destruction of any of the rights and freedoms prescribed herein.

Article 23

(1) This Bill of Rights shall be open for accession to every state member of the United Nations or Party to the Statute of the International Court of Justice and to every other state whom the General Assembly of the United Nations, shall, by resolution, declare to be eligible.

(Alternative United States suggestion: It being in the interest of humanity that the rights and obligations enunciated herein shall be as widespread as possible, this Convention shall be open for accession by all states, whether or not members of the United Nations.)

(2) Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations, and as soon as two-thirds of the States Members of the United Nations have deposited such instruments the Bill of Rights shall come into force between them. As regards any state which accedes thereafter, the Bill of Rights shall come into force on the date of the deposit of its instrument of accession.

(3) The Secretary-General of the United Nations shall inform all members of the United Nations and the other states referred to in Paragraph (1) above of the deposit of each instrument of accession.

Article 24

In the case of a Federal State, the following provisions shall apply:

(A) With respect to any articles of this Bill of Rights which the Federal Government regards as wholly or in part appropriate for federal action, the obligations of the Federal Governments shall, to this extent, be the same as those of parties which are not federal states;

(B) In respect of Articles which the Federal Government regards as appropriate under its constitutional system, in whole or in part, for action by the constituent states, provinces or cantons, the Federal Government shall bring such provisions, with a favourable recommendation, to the notice of the appropriate authorities of the states, provinces or cantons.

Article 25

This Bill of Rights shall apply in respect of any colony or overseas territory of a state party hereto, or to any territory subject to the suzerainty or protection of such state, or to any territory in respect of which such state exercises a mandate or trusteeship when that state has acceded on behalf and in respect of such colony or territory.

The state concerned shall, if necessary, seek the consent at the earliest possible moment of the governments of all such colonies and territories to this Bill and accede on behalf and in respect of each such colony and territory immediately its consent has been obtained.

Article 26

(1) Amendments to this Bill of Rights shall come into force when they have been adopted by a vote of two-thirds of the members of the General Assembly of the United Nations and ratified in accordance with their respective constitutional processes by two-thirds of the parties to this Bill.

(2) When such amendments come into force they shall be binding on those parties which have ratified them, leaving other parties still bound by the provisions of the Bill which they have accepted by accession including earlier amendments which they have ratified.

Article 27

In construing the Articles of this Bill of Rights, the several articles shall be regarded in their relation to each other.