

COMMISSION ON HUMAN RIGHTS

Fifth Session

MEMORANDUM PREPARED BY THE SECRETARY-GENERAL CONCERNING  
PROPOSALS RELATING TO IMPLEMENTATION

## INTRODUCTORY NOTE

1. The Secretary-General has the honour to present to the Commission in accordance with its decision taken at its 110th meeting on 2 June 1949, a working document based on the plan entitled "General Protocol for the International Protection of Human Rights (or Articles of Implementation for inclusion in the Covenant)" contained in document E/CN.4/168.
2. In preparing this memorandum, the Secretary-General has taken into account the wishes expressed by members of the Commission. In particular, as directed by the Chairman of the Commission, he has acted upon the suggestion made by the representative of the Union of Soviet Socialist Republics to the effect that the headings should not be "General Protocol, etc." or "Initiation of Proceedings, etc." but "Proposals for a General Protocol" or "Proposals concerning the Initiation of Proceedings". Similarly the Secretary-General is not using in the present memorandum expressions like "the right of signatory States etc." but "the question of the right of signatory States, etc.".
3. The Secretary-General has also taken into account that it was the sense of the Commission on Human Rights that Chapter 2 of Part I of the plan should be removed from Part I of the document to Part IV. It was understood that the final place of this Chapter would be reviewed in the light of decisions which the Commission might take concerning Parts I, II and III of the plan.
4. In presenting the present memorandum the Secretary-General is, of course, not proposing a certain order of proceedings for the Commission. The present document only lists the problems and the suggestions which have been made for their solution by governments. The question of the order in which these problems should be discussed is a matter of expediency which the Commission may wish to decide quite independently of the final form of the instrument.
5. Pursuant to paragraph 17 of the report of the third session of the Commission (document E/800) the present memorandum is based on the report of  
/the Working Group

the Working Group on Implementation (Annex C of document E/600) and the documents enumerated in Annex C of document E/800 and the proposals on implementation presented to the current (fifth) session of the Commission on Human Rights by its members, i.e. the Indian proposal (E/CN.4/276) the United Kingdom-U.S.A. proposal (document E/CN.4/274) and the Chilean proposal (document E/CN.4/288). The Secretary-General has included the comments received from governments on the report of the second session of the Commission and in particular on the report of its Working Group. (Annex C of document E/600).

## PART I

## PROPOSALS CONCERNING THE INITIATION OF PROCEEDINGS

Chapter 1. Proposals relating to the question of the right of  
Signatory States to enter complaintsA. Proposals

1. Proposal of the working group on implementation (E/600, page 41):

"The right to petition in respect of violation of human rights shall be open not only to States..."

2. Proposal of the Government of France and the representative of France (E/CN.4/82/Add.10, Article XXV):

"The Commission shall be moved by application submitted by a Contracting Party,..."

3. Proposal of the representatives of China and the United States (E/CN.4/145, para. 2(b)):

"Covenanting States shall settle complaints arising under the Covenant so far as possible by direct negotiation;

"Provision for the appointment of a Committee by Covenanting States shall be made in the Covenant, to which a matter not settled by negotiation or otherwise within a reasonable time should be referred by a Covenanting State or States concerned..."

4. Proposal of the representatives of the United Kingdom and the United States (E/CN.4/274, para. 1):

"If a State Party to the Covenant considers that another State Party is not giving effect to a provision of the Covenant, it may bring the matter to the attention of that State. If the matter is not adjusted between them with ( ) months, either State shall have the right to refer it, by notice to the Secretary-General of the United Nations and to the other State, to a Human Rights Committee to be established in accordance with the provisions of this Article".

5. Proposal of the representative of India (E/CN.4/276, para. 2 (b)):

"The Committee shall "receive petitions from... States..."

6. Proposal of the representative of Chile (E/CN.4/288, para. 5):

"Any complaint by a Member State would be dealt with as in 2, 3 and 4 above" (These relate to the procedure of the proposed Commission)

- B. Comments by Governments on the report of the working group on implementation (E/CN.4/85, page 102).

- (a) Brazil. "The Brazilian Government endorses the considerations presented by the Working Group..."

/(b) India

(b) India (E/CN.4/82/Add.7, page 3). "We agree with the conclusion of working group on implementation..."

(c) New Zealand (E/CN.4/82/Add.12, page 7): "The New Zealand Government consider that there is clear need for the establishment of a satisfactory procedure for dealing with petitions and that action to this end should be proceeded with irrespective of agreement on other measures of implementation. It is not considered essential that such a procedure should be established in detail within the Covenant on Human Rights; it would be adequate for the Covenant to contain references to the procedure for handling petitions to be established by the General Assembly or the Economic and Social Council. This procedure should cover:

(a) The receipt of petitions from states,...including determinations of their receivability in accordance with properly prescribed rules".

Chapter 2. Proposals relating to the question of the right  
of individuals, or groups of individuals and  
of organizations to petition

A. Proposals

1. Proposal of the working group on implementation (E/600, page 41):

"The right to petition in respect of the violation of human rights shall be open not only to States, but also to association, individuals and groups."\*

2. Proposal of the Government of France and the representative of France (E/CN.4/82/Add.10, Article XXV.):

"The Commission shall be moved by application submitted by a Contracting Party, a non-governmental organization or a private person."

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\* The working group also took the following decisions (E/600, pages 42, 43):

"In the second place, the Working Group recognized that provisions relating to the system of petitions should be included in the proposed Convention on Human Rights."

"The working group resolved to request the Secretariat to draw up for the Drafting Committee a full and detailed scheme of regulations on the subject of petitions."

The suggestions of the Secretariat on the second decision of the working group will be found in document E/CN.4/93.

3. Proposal of the representatives of China and the United States (E/CN.4/145, para. 3):

"A reasonable time after the coming into force of this Covenant, Covenanting States should consider whether further measures of implementation are desirable, including measures concerning petitions from individuals, organizations and groups."

4. Amendment proposed by the representative of India to add after the words "Covenanting State or States concerned," in para. 2 (b) of the China-United States proposal the following (E/CN.4/151):

"Provisions shall also be made in the Covenant whereby the Committee shall have like power in regard to complaints referred to it by individuals, organizations or groups concerning a community or body of persons generally."

5. Proposal of the representative of India (E/CN.4/153):

"...the right to petition the United Nations should not be denied to the individuals, and the committee proposed to be set up should in my opinion be empowered to receive such petitions."

6. Proposal of the representative of India (E/CN.4/276, para. 2 (b)):

The Committee shall "receive petitions from individuals, groups, associations or States".

B. Comments by Governments on the report of the Working Group on Implementation

(a) Brazil (E/CN.4/85, page 98): "The Brazilian Government endorses the considerations presented by the Working Group, and notes with satisfaction the growing recognition of the importance of the individual in international law."

(b) Egypt (E/CN.4/85, page 99. "The Royal Government agrees with the Working Group that 'one could establish the right of individuals to petition United Nations, as a means of initiating procedure for the enforcement of human rights'. It is clear that detailed regulations would be necessary to define how petitions should be presented and examined".

(c) India (E/CN.4/82/Add.7, page 3): "We have no objection to individuals and associations petitioning Secretary-General but suggest that Standing Committee should take notice only of such complaints regarding violation of human rights as affecting a community or a body of persons generally and not of individual grievances which it is open to individual to agitate before the Court of Justice in his own country".

(d) Netherlands (E/CN.4/85, pages 102-103): "The Netherlands Government are in favour of establishing the right of individuals, associations and groups of individuals to petition the United Nations as a means of initiating procedure for the enforcement of human rights. In view of the considerable number of petitions that may be presented it will be essential to have an

/appropriate

appropriate body of the first instance to examine these petitions and to put aside the unimportant ones. Instead of the Standing Committee of five independent persons established by the Economic and Social Council, as proposed by the Working Group, the Netherlands Government suggest that this task be entrusted to the Executive Committee of the High Commission, which organ, in the opinion of the Government, should be established with a view to the adjustment of non-legal disputes concerning human rights..."

(d) New Zealand (E/CN.4/82/Add.12, page 7): "The New Zealand Government consider that there is a clear need for the establishment of a satisfactory procedure for dealing with petitions and that action to this end should be proceeded with irrespective of agreement on other measures of implementation. It is not considered essential that such a procedure should be established in detail within the Covenant on Human Rights; it would be adequate for the Covenant to contain references to the procedure for handling petitions to be established by the General Assembly or the Economic and Social Council.

This procedure should cover:

- (a) The receipt of petitions from individuals, groups, associations or states, including determination of their receivability in accordance with properly prescribed rules."

PART II

PROPOSALS CONCERNING CONCILIATION

Chapter 3. Proposals relating to the establishment of  
permanent or ad hoc bodies

A. Proposals

1. Proposal by the working group on implementation (E/600, page 44)\*:

"(1) A Standing Committee composed of not less than five independent (non-government) men and women, shall be established by the Economic and Social Council. The term of office of the members, their style and qualifications shall be decided by Resolution of the Economic and Social Council. The members of the Committee will be elected by the Council from lists submitted by those States which have ratified the Convention or Conventions on Human Rights;

(2) The function of the Committee shall be to supervise the observance of the provisions of the Convention or Conventions on Human Rights. To this purpose, it shall:

(a) collect information, i.e., it will keep itself and the United Nations informed with regard to all matters relevant to the observance and enforcement of Human Rights within the various States. Such information will include legislation, judicial decisions and reports from the various States, as well as writings and articles in the press, records of parliamentary debates on the subjects and reports of activities of organizations interested in the observance of Human Rights;

\* The Working Group also made the following observation (E/600, page 45):

"That function is, essentially, one of conciliation, not of arbitration, and still less of final decision. The Standing Committee will have to aim at reconciling opposing points of view, and it is only if its efforts at conciliation fail, that other solutions, such as judicial proceedings will come into consideration. The Working Group's main object was to build up a coherent system, culminating, if one accepts its thesis in judicial proceedings. It therefore provided successive barriers against a spate of petitions or their abuse. The first will be constituted by the provisions of the regulations relating to receivability. Only petitions which have surmounted that barrier will come before the Standing Committee. Only those which have subsequently formed the subject of an attempt at conciliation will ultimately come before the Court. In that way, the Working Group feels that it has opened the door to democracy and closed it to demagogy."

(b) receive petitions from individuals, groups, associations or States, and

(c) remedy through negotiations any violations of the Convention or Conventions and report to the Commission on Human Rights those cases of violation which it is unable to remove by its own exertions. The Committee may act on its own information or on receipt of petitions from individuals, groups, associations or States.

(3) The Committee will proceed in private session to examine the petitions and conduct negotiations, it being understood that the decisions arrived at will appear in reports submitted by the Committee to the Commission on Human Rights. Such reports will be made public by that Commission, should the latter deem it advisable."

2. Proposal by the Government of France and the representative of France (E/CN.4/82/Add.10):

Article XXI

A special Commission consisting of eleven members and established by the General Assembly of the United Nations shall be responsible for ensuring that the human rights and fundamental freedoms as defined in the foregoing articles are respected.

Article XXII

The members of the said commission shall be appointed by a two-thirds majority of the Assembly for their competence and standing, subject to equitable geographical distribution. They shall be elected from a panel of candidates submitted by the Members of the United Nations on the basis of one candidate for each Member. They shall be elected for three years and be re-eligible.

Article XXIII

By the same majority the Assembly shall appoint a permanent Secretary-General to the Commission who shall serve for a period of five years and be re-eligible.

Article XXIV

The Commission shall consider the provisions of the laws and regulations in force in the various States, and of the agreements between them, and administrative, executory and final judicial decisions, with a view to verifying that they are consistent with the provisions of the present Covenant.

Article XXV

The Commission shall be moved by application submitted by a Contracting Party, a non-governmental organization or a private person.

/Article XXVI



Article XXVI

The Commission, in considering applications, may draw upon any source of information which it may deem necessary.

Article XXVII

The Commission shall make recommendations to the contracting parties based upon its investigations and after holding discussions with the party or parties concerned.

Such recommendations may be accompanied by all or part of the documents on which they are based.

The Commission may also make recommendations to the other organs of the United Nations and to other international organizations.

Article XXVIII

The Commission may propose draft recommendations to the General Assembly for amendments to the present Covenant.

Article XXIX

The Commission shall establish its own rules of procedure. It shall meet three times a year. Should circumstances so require, it may hold special sessions. Such special sessions shall be called by the Secretary-General at the request of a majority of the members of the Commission.

Article XXX

The Secretary-General shall attend all the meetings of the Commission.

He shall submit an annual report to the Commission on its activities.

He shall classify the applications addressed to the Commission.

He shall be generally responsible for the preparation and execution of the work of the Commission.

He may submit proposals to the Commission for action.

Article XXXI

The Secretary-General shall appoint the staff of the Secretariat in conformity with the staff regulations to be submitted to the Commission for its approval.

Article XXXII

The Commission, after being duly authorized to do so by the General Assembly of the United Nations in accordance with Article 96, paragraph 2, of the Charter, may request advisory opinions of the International Court of Justice on legal questions arising within the scope of its activities.

Article XXXIII

Article XXXIV

The headquarters of the Commission and its Secretariat shall be at Geneva.

The Commission may meet elsewhere if it should so desire.

Article XXXV (new)

The provisions of Articles 21 to 33 shall not be construed as excluding private proceedings which may be prescribed by convention in such matters as the protection of the right to life or the regulation of labour.

3. Proposal of the representatives of China and United States (E/CN.4/145, paragraph 2 (a) and (b)):

"(a) Covenanting States shall settle complaints arising under the Covenant so far as possible by direct negotiation;

(b) Provision for the appointment of a Committee by Covenanting States shall be made in the Covenant, to which a matter not settled by negotiation or otherwise within a reasonable time should be referred by a Covenanting State or States concerned. The Committee shall consider a complaint referred to it and, in view of all the circumstances, make a recommendation addressed to the State or States concerned, looking to an amicable solution."

4. Amendment proposed by the representative of India to add the following as paragraph (b2) to the China-United States proposal, directly following the Indian amendment mentioned under Chapter 2 (E/CN.4/151):

"The Committee shall consider a complaint referred to it, and, in view of all the circumstances, make a recommendation addressed to the State or States concerned, looking to an amicable solution."

5. Proposals of the representatives of the United Kingdom and the United States (E/CN.4/274):

"2. The Secretary-General of the United Nations shall establish a panel of persons of high moral character, designated by States Parties to the Covenant from among their nationals, to serve on Human Rights Committees in their personal capacity. Each State Party to the Covenant may designate two persons for periods of five years.

3. Upon notice being given to the Secretary-General, a Human Rights Committee shall be established of five members selected from the panel, one member by the State referring the matter, one member by the other State, and ~~three~~ by agreement between them. If any place on the committee has not been filled within three months, the Secretary-General shall select a person from the panel to fill it. Any vacancy occurring on the committee shall be filled in the manner provided above.

/4. The Committee

4. The Committee shall select its places of meeting and shall establish its own rules of procedure provided that:
  - (a) the States concerned shall have the right to be represented at the hearings of the Committee and to make submissions to it orally and in writing;
  - (b) the Committee shall hold its hearings and other meetings in closed session;
5. The Secretary-General of the United Nations shall provide the necessary services and facilities for the Committee and its members.
6. The Committee may call for relevant information from any State concerned and such State shall supply the information requested.
7. The Committee may ask the Human Rights Commission to request the International Court of Justice for an advisory opinion on legal questions.
8. The Committee shall within six months of its first meeting report its findings of fact to the States concerned, and to the Secretary-General for publication.

The record of the Committee shall be deposited with the Secretary-General."

6. Proposal of the representative of India (E/CN.4/276) is identical to those of the working group on implementation mentioned in paragraph 1 above.

7. Proposal of the representative of Chile (E/CN.4/288):

"The States signatory of the Covenant would appoint a Commission which would be convened by the Secretary-General and would hold its meetings in camera.

The procedure of the Commission would be as follows:

1. In each case it would decide by a majority of votes whether the question was important or not. If the decision were negative, it would order that the documents relating to the case be filed.
2. If it decided that the question was serious, it would hear the arguments of the parties concerned. It would request information from the parties concerned and reports on points of law if it deemed it necessary.
3. On the basis of the foregoing, it would promote a settlement by conciliation.
4. If it failed to do so, it would submit the question to the International Court of Justice or to the consideration of the General Assembly so that the latter should make

/such

such recommendation as it deemed suitable or else discuss the claim and make no recommendation.

5. Any complaint by a Member State would be dealt with as in 2, 3, and 4 above."

B. Comments by Governments on the report of the working group on implementation

(a) Brazil (E/CN.4/85, page 98):

"The Brazilian Government endorses the ~~considerations~~ presented by the Working Group, and notes with satisfaction the growing recognition of the importance of the individual in International Law."

(b) Egypt (E/CN.4/85, page 103):

"The Royal Government is not in principle opposed to the idea of having petitions examined by a permanent committee of five members to be appointed by the Economic and Social Council. The function of the Committee would be 'essentially one of conciliation, not of arbitration and still less of final decision'. The procedure for such examination would clearly need to be defined by detailed regulations."

(c) India (E/CN.4/82/Add.7, page 3):

"The Standing Committee idea is a very good one and should be tried for the purpose not of arbitration but conciliation. A single Standing Committee, however, will not be adequate and should be supplemented by regional committees."

(d) Netherlands (E/CN.4/85, pages 99-100):

"Jurisdiction will only be possible for legal questions. All other problems which may arise cannot be brought before a Court. Therefore, the Netherlands Government suggest that a new organ be created which may be called the 'High Commission', and which should consist of experts acting independently of their Governments; this Commission should deal with all problems not being legal problems.

If this idea were accepted, it should be realized that this body would act, in part, as an international legislative body. No doubt it will be claimed that this task should not be entrusted to a body consisting of private people having no responsibility towards their Governments. Therefore, some supervision of the decisions of the High Commission should be provided. This might be done by instituting a governmental supervisory body, a 'Permanent Human Rights Council'. Of course, not all the decisions of the Commission should be reconsidered by the Council, but for the important cases an appeal to this governmental body should be possible, so as to prevent any action of the Commission contrary to the wishes of the Governments. Perhaps in future this political intervention may become unnecessary, but for the moment it would seem to be indispensable. . . .

/Two other

Two other points appear to be important.

First, it should be made clear that the Court and the Commission should also be competent when the question arises whether in a particular case the safeguarding clause may be invoked. It may be essential to restrict the use of this clause, as a too frequent use would weaken the value of the whole Covenant.

Secondly, it should be laid down explicitly that, if the Court, or the Commission, has pronounced its findings in one particular case, the State concerned - and if possible, all the Parties to the Covenant - will be bound to act in conformity with these findings in similar cases. . .

(e) New Zealand (E/CN.4/82/Add.12, page 7):

"The New Zealand Government consider that there is clear need for the establishment of a satisfactory procedure for dealing with petitions and that action to this end should be proceeded with, irrespective of agreement on other measures of implementation. It is not considered essential that such a procedure should be established in detail within the Covenant on Human Rights; it would be adequate for the Covenant to contain references to the procedure for handling petitions to be established by the General Assembly or the Economic and Social Council. This procedure should cover:

- (a) The receipt of petitions from individuals, groups, associations or States, including determination of their receivability in accordance with properly prescribed rules.
- (b) Endeavours to negotiate settlements, through private discussions with the States concerned, in cases where the petitions were deserving of such consideration.
- (c) Reports on results of negotiations, and transmissions of those cases where conciliation has failed, to the General Assembly or the Economic and Social Council, as may be thought fit, for further action. The Assembly or the Council might call on the assistance of the Human Rights Commission for an initial study of these reports and advice on appropriate further action.

Subject to considering the views of other governments, the New Zealand Government concur in the proposal of the Working Group on implementation that these functions should be discharged by a small committee of independent experts, to be appointed either by the General Assembly or the Economic and Social Council from lists submitted by States which have acceded to the Convention on Human Rights. They are not at this stage able to agree, however, that such a committee should carry responsibility for collecting information on human rights; this should continue to be the responsibility of the Secretariat and the Human Rights Commission."

Chapter 4. Proposals relating to the question of the establishment of  
local agencies

A. Proposals\*

There have been no direct proposals on this question, though the working group on implementation discussed the subject.\*\*

B. Comments on the report of the working group on implementation

(a) Brazil (E/CN.4/85, page 102):

"The Brazilian Government concurs in the views manifested by several delegates, that the setting up of the agencies envisaged in this suggestion is premature. However, a possibility should be left open for the creation of such agencies at the proper time."

(b) India (E/CN.4/82/Add.7, page 3):

"A single Standing Committee ... will not be adequate and should be supplemented by regional committees."

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\* The attention of the Commission is drawn to the resolution of 21 June 1946 of the Economic and Social Council concerning the desirability of establishing information groups or local human rights committees in Member States. The Commission may recall that at its third session it decided to postpone the study of this question until it had decided on the measures of implementation, because it considered that the functions of information groups and local human rights committees could not be defined unless the measures decided on by the Commission for implementing the Covenant were taken into consideration (E/800, paragraph 22). This question is also on the agenda of the present session of the Commission as item 11. Reference may be made to memoranda prepared by the Secretary-General on this subject for the third session (E/CN.4/115, with particular reference to paragraph 7) and for the present session of the Commission (E/CN.4/166).

\*\* The working group had before it reference to the Convention between Germany and Poland on Upper Silesia of 15 May 1922 as a precedent for the establishment of local agencies of the United Nations in the various countries with jurisdiction to supervise and enforce human rights therein, but it considered that it had dealt with this question in connection with its other suggestions and that the proposal was premature and might perhaps deter some countries from ratifying a Convention in which it was embodied (E/600, page 47).

PART III

PROPOSALS CONCERNING JUDICIAL SETTLEMENT

Chapter 5. Proposals relating to the question of a Statute of an  
International Court of Human Rights (or the Special Chamber  
of the International Court of Justice)

A. Proposals

1. Proposal of the working group on implementation (E/600, pages 49-52):

"In response to a proposal by the Rapporteur, three questions were placed before the Working Group:

- (1) Should an International Court be empowered to constitute the final guarantor of human rights?
- (2) In the event of an affirmative answer, should this Court be a new Court or a special Chamber of the International Court of Justice?
- (3) Should the Court, whatever its character, have the right to pronounce final and binding decisions, or merely to furnish advisory opinions?

With regard to the first question the Working Group voted unanimously in the affirmative, 4 in favour and none against.

With regard to the second question, there were three votes in favour of a new Court (Australia, Belgium and Iran) and one against (India).

The vote on the third question was unanimous too, 4 in favour and none against ...."

The Australian Representative asked for a vote on the following proposal:

"The Court shall have jurisdiction to hear and determine:

- (a) disputes covering human rights and fundamental freedoms referred to it by the Commission on Human Rights;
- (b) disputes arising out of Articles affecting human rights in any treaty or convention between States referred to it by parties to the treaty or convention."

This proposal was adopted unanimously....

It was generally considered that the idea of advisory opinions was inadequate. The Working Group was under no misconception as to the usefulness of such opinions, but believed them incapable of producing the desired guarantee of redress and action in the case of a violation of the Convention on Human Rights....

/Finally,

Finally, the Group studied the measures to be adopted to ensure, should the necessity arise, the implementation of decisions of the International Court of Human Rights. A discussion took place about the choice of the United Nations body to which the Convention would entrust this particularly delicate task. The Group had to choose between the Security Council and the General Assembly. It decided in favour of the latter, although it only has powers of recommendation, because of the authority conferred on it by the Charter with regard to questions of economic and social co-operation.

The Group also decided to emphasize in its report the fact that cases have hitherto been rare of States deliberately going against international judicial decisions or arbitral awards. It expressed the unanimous hope that this might continue to be the case in the future.

In conclusion, it should be mentioned that the Group, when attributing jurisdiction to the new Court to settle disputes relating to human rights, constantly bore in mind the terms of Article 95 of the Charter, which are as follows:

"Nothing in the present Charter shall prevent Members of the United Nations from entrusting the solution of their differences to other tribunals by virtue of agreements already in existence or which may be concluded in the future."

2. Proposal of the representative of Australia concerning an International Court of Human Rights including a draft Statute of the proposed court are set out fully in document E/CN.4/AC.1/27. The Secretary-General, because of the length of this document, will furnish a copy of it together with the present document.

3. Proposal of the Government of France and of the representative of France (E/CN.4/82/Add.10, Article XXII):

"The Commission, after being duly authorized to do so by the General Assembly of the United Nations in accordance with Article 96, paragraph 2, of the Charter, may request advisory opinions of the International Court of Justice on legal questions arising within the scope of its activities."

4. Proposal of the representatives of China and the United States (E/CN.4/145):

"2 (c) States may in any event have such recourse to the International Court of Justice as is provided in the Charter of the United Nations and the Statute of the Court;

(d) Any State charged with a violation of the Covenant or the Committee referred to in paragraph (b) may request the



Economic and Social Council to secure an Advisory Opinion from the International Court of Justice, as provided in the Charter of the United Nations and the Statute of the Court, on any legal question involved....

....

4. It is not necessary to create an International Court of Human Rights or a special chamber of the International Court of Justice at least until some experience has been gained of the operation of the Covenant and of the implementation machinery described above."

5. Proposal of the representatives of the United Kingdom and the United States (E/CN.4/274):

"Nothing in this Article shall preclude reference of the matter to the International Court of Justice if the States referred to in paragraph 1 so agree."

6. Proposal of the representative of Chile (E/CN.4/288, paragraph 4):

"If it (the proposed Commission) failed to do so (promote a settlement by conciliation), it would submit the question to the International Court of Justice or...."

B. Comments on the report of the Working Group on Implementation

- (a) Brazil (E/CN.4/85, page 102):

"Recognition of the right to recourse to an international tribunal is a desirable objective. The controversy appears to be only as to whether a new tribunal is to be created or the services of the present International Court of Justice adapted to the new objective. It is questioned also if the International Court of Justice should give compulsory decisions or merely advisory opinions.

The Brazilian Government favours a broadening of the jurisdiction of the Court through a Convention whereby States would recognize the compulsory nature of such jurisdiction. In this way, additional expenditure and other inconveniences would be avoided. At least, during the initial stages, while the agenda of the Court does not yet absorb the full time of its members and until the cases dealing with Human Rights assume a considerable volume, the creation of a new tribunal appears to be avoidable."

- (b) Egypt (E/CN.4/85, page 103):

"The Royal Government considers that it would be premature to set up an international court of justice responsible for settling disputes relating to human rights. Nevertheless, it is prepared to reconsider this question as soon as the system of petitions is in

/operation,

operation, but on grounds of economy it would suggest that, if the principle of setting up a court is adopted, it should be left to the present International Court at The Hague to deal with these questions."

(c) India (E/CN.4/82/Add.7, page 3):

"While Government of India have no objection to establishment of an International Court of Human Rights they consider that we need not set up such Court in hurry. We should first try the machinery of Standing Committee with regional committees and watch the results."

(d) Netherlands (E/CN.4/85, page 99):

"It will be essential to entrust some organ with jurisdiction in the case of disputes either between States or between States and individuals. With regard to the question as to whether it would be wise to create an International Court of Human Rights, as proposed by a small majority of the Working Group, or whether the Court should be the International Court of Justice, the Netherlands Government would prefer the second alternative. The questions as to whether the International Court should institute a special Chamber for Human Rights or whether these cases should be dealt with by the full Court, can be put off until the discussions have reached a more advanced stage.

There is, however, one great difficulty to be overcome before the International Court of Justice could be entrusted with the task of jurisdiction in the field of human rights. Article 34, paragraph one, of the Statute of the Court reads: 'Only States may be parties in cases before the Court'. Now with regard to human rights, the jurisdiction that is wanted is a jurisdiction to be invoked not only by States but also by individuals and groups of individuals; therefore a modification of the Statute of the Court would be indispensable. As such a modification of the Statute will require the ratification by two-thirds of the Members of the United Nations, it does not seem probable that such a modification of the Statute will be attained shortly. Therefore, it would seem necessary, at least for the immediate future, to create a special jurisdiction for the questions on human rights....

Two other points appear to be important.

First, it should be made clear that the Court and the Commission should also be competent when the question arises whether in a

/particular

particular case the safeguarding clause may be invoked. It may be essential to restrict the use of this clause, as a too frequent use would weaken the value of the whole Covenant.

Secondly, it should be laid down explicitly that, if the Court, or the Commission has pronounced its findings in one particular case, the State concerned - and if possible all the Parties to the Covenant - will be bound to act in conformity with these findings in similar cases. Article 59 of the Statute of the International Court says first the contrary: 'The decision of the Court has no binding force except between the parties and in respect of that particular case'. Therefore, if the International Court will be entrusted with jurisdiction in matters of human rights, this article should equally be modified."

(e) New Zealand (E/CN.4/82/Add.12):

"The New Zealand Government are fully appreciative of the force of the arguments which led the Working Group on implementation to reach the conclusion that an international court should be empowered to constitute the final guarantor of human rights. They are not yet convinced, however, of either the advisability of or necessity for a new and special court of human rights. They are concerned that steps should be taken to ensure the full and effective implementation of the provisions of the proposed Covenant on Human Rights and will accordingly give careful consideration to the views of other governments on the various measures of implementation, including the question of the suggested new international court. At this stage they desire only to observe that:

(a) The jurisdiction of the International Court of Justice is sufficiently wide to cover questions of human rights arising either under the Charter of the United Nations or under the proposed Covenant on Human Rights, when it comes into force (Article 36(1) of the Statute of the International Court of Justice).

(b) A large number of states has already accepted the compulsory jurisdiction, in relation to other states accepting the same obligation, of the International Court of Justice.

(c) Various organs of the United Nations have the right to seek the advisory opinions of the Court under Article 65 of its Statute.

/(d) The

(d) The International Court of Justice has power to form one or more chambers for dealing with particular categories of cases (Article 26 of the Statute).

(e) The decision of an international court, whether the International Court of Justice or the suggested court of human rights, can never in itself amount to enforcement, but, as recorded by the Working Group on implementation, 'cases have hitherto been rare of states deliberately going against international judicial decisions or arbitral awards' (E/600, page 63).

(f) Under Article 94 of the Charter, 'every member of the United Nations undertakes to comply with the decision of the International Court of Justice in any case to which it is a party. If any party to a case fails to perform the obligations incumbent on it under a judgment rendered by the Court, the other party may have recourse to the Security Council, which may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgment'.

In these circumstances, the New Zealand Government suggests that provision might be made that any state which has acceded to the Covenant could bring before the International Court of Justice a case concerning the alleged breach of the terms of the Covenant by a party thereto. This, coupled with the right of the appropriate organs of the United Nations to request advisory opinions from the Court, would, it is suggested, provide the means for obtaining judicial decisions on questions of human rights in those cases where such a decision was called for. It is assumed that, whatever the procedure finally adopted, reference to an international court would generally occur only after consideration of the matter in question under the procedure for petitions outlined earlier.

The New Zealand Government advance these comments on the question of an international tribunal in the hope that they will assist in clarifying a problem of great importance and complexity. They reserve the right to consider the matter further on receipt of information on the views of other governments and the result of the further consideration of the matter by the Human Rights Commission."

PART IV

PROPOSALS CONCERNING GENERAL PROVISIONS

Chapter 6. Proposals relating to the question of the right of the Secretary-General of the United Nations to request information from Governments of States parties to the Convention

A. Proposals

1. Proposal in Article 3 of the draft Covenant (Geneva text), which the Drafting Committee decided not to consider until the articles on implementation had been drafted (E/600, page 25):

"On a 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 Covenant shall supply an explanation as to the manner in which the law of that State gives effect to any of the provisions of this Covenant."

B. Comments of Governments on Article 3 of the draft Covenant of the report of the second session of the Commission on Human Rights.

- (a) Brazil (E/CN.4/85, page 58):

"In the recess between two sessions of the Assembly, the request could be made under authority of a resolution of the Economic and Social Council."

- (b) Netherlands (E/CN.4/85, page 98):

"....attention may be drawn first of all to Article 3 of the Covenant providing that each Party shall bind itself to supply an explanation as to the manner in which its law gives effect to any of the provisions of the Covenant. It might be advisable to elaborate this rule, as one of the first stages of the procedure of implementation, when this matter will be considered more in detail."

- (c) United Kingdom (E/CN.4/85, page 58):

"It is suggested that the last two lines should be redrafted as follows:

'Supply an explanation certified by the highest legal authorities of the state concerned as to the manner in which the law....'

The inclusion of this sentence would provide an additional safeguard in ensuring that the information supplied is accurate and reliable."

- (a) Proposals concerning the question of a clause referring to the authority and powers of the organs of the United Nations under the Charter.\*

A. Proposals

1. Proposals of the Working Group on Implementation (E/600, pages 39-40):

"(1) In the first place the Group wished the report to contain a reference to the right of discussion and, except as provided in Article 12, the right to make recommendations vested in the General Assembly under Article 10 of the Charter....

The Group....laid special stress on the right of the General Assembly to make recommendations to the members of the United Nations.

(2) The Group voiced a similar desire in regard to the whole of the prerogatives granted to the Economic and Social Council in various parts of the Charter, particularly in Article 62.

Under this Article the Economic and Social Council may, in respect of human rights as of all other matters falling within its competence, (a) make or initiate studies and reports (paragraph 1); and (b) make recommendations (paragraphs 1 and 2 combined); (c) prepare draft Conventions for submission to the General Assembly (paragraph 3); and (d) call, in accordance with the rules prescribed by the United Nations, international conferences (paragraph 4).

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- \* The Secretary-General does not express an opinion on the controversial question of the extent to which the Charter provisions concerning human rights impose legal obligations on Member States. He wishes, however, respectfully to draw attention to the following resolutions of the General Assembly and of the Economic and Social Council:

General Assembly: Resolution 44 (I) and Resolution of 14 May 1949 (Treatment of people of Indian origin in the Union of South Africa); Resolution 103 (I) (Persecutions and discrimination); Resolution of 25 April 1949 (Violation by the Union of Soviet Socialist Republics of Fundamental Human Rights, Traditional Diplomatic Practices and other principles of the Charter); Resolution of 30 April 1949 (the question of the observance of human rights in Bulgaria and Hungary including questions of religious and civil liberties with special reference to trials of church dignitaries).

Economic and Social Council: Resolution 194 (VIII) (Infringement of Trade Union Rights); Resolution 195 (VIII) (Survey of Forced Labour and Measures for its abolition); Part B of resolution 214 (VIII) (Observance of Fundamental human rights in Palestine and some other areas).

/The Group

The Group noted with keen interest that the right to make recommendations granted to the Council under paragraphs 1 and 2 combined is mentioned specifically in paragraph 2 with reference to 'respect for, and observance of, human rights and fundamental freedoms for all'. In the view of the Group this reference can only be construed as a recognition, in the Charter, of the vital importance of human rights.

The Group also noted that under paragraph 1 of the same Article the Economic and Social Council has the right to make recommendations (in general) to the General Assembly, the Members of the United Nations and the specialized agencies concerned. Like the General Assembly, the Council is therefore entitled to approach the Members directly....

(3) The Group was unanimously of the opinion that the Economic and Social Council, whilst still retaining the whole of its prerogatives and therefore its right to make recommendations with respect to human rights, should also delegate this latter right to the Commission on Human Rights. It therefore proposes that the Commission should, during its present session, request the formal delegation of this right in the Report which it is to submit to the Council.

The Group made a very thorough study of the question of the delegation of powers, and stressed throughout that in its view such delegation should not have the effect of investing the Commission on Human Rights with an exclusive authority not provided for in the Charter; the Commission on Human Rights should have joint authority with the Council. The Working Group believes that the delegation of powers requested might be granted without implying the amendment and, a fortiori, the revision of the Charter. The Commission on Human Rights is in fact one of the organs of the Economic and Social Council and there appears to be no juridical objection to such a delegation of powers, particularly, it must be repeated, since it would not be exclusive in character.

There are, on the other hand, weighty practical arguments in its favour. The Economic and Social Council is known to be overburdened with functions, so overburdened, indeed, that it cannot always carry out with desirable efficiency the many and varied tasks imposed on it. In contrast the Commission on Human Rights is a specialized organ with clear-cut purposes. Hence it would appear to be better qualified than the Council to deal with human

/rights and,

rights and, in particular, to discharge the function, always a delicate one, of elaborating recommendations. The Working Group feels it should add that the members of the Commission are chosen precisely for their personal qualifications in the field of human rights.

The Working Group hopes that, should the Commission accept its arguments, the Economic and Social Council will devote a comprehensive study to this problem.

(4) The Working Group considers that in any case the Commission on Human Rights undoubtedly has the power to submit immediately draft recommendations on human rights to the Economic and Social Council. It requests the Commission, if necessary, to avail itself of this right....

It should here be made clear that the provisions advocated by the Group in respect of petitions of course leave intact the authority which already belongs to the Security Council and the Trusteeship Council in their particular fields. Similarly, the Security Council remains the competent body to decide the action to be taken as the result of violations of Human Rights when they give rise, within the meaning of the Charter, to situations or disputes affecting the maintenance of international peace and security."

2. Proposals of the Government of France and of the representative of France (E/CN.4/82/Add.10).

"Article XXXVI (new)

The present Covenant shall not affect the operation of organizations established by the Economic and Social Council within the sphere of its jurisdiction."

B. Comments on the report of the working group on implementation.

(a) Brazil (E/CN.4/85, page 102):

"The Brazilian Government is in accord with the conclusions arrived at in regard to this suggestion."

/(b) Egypt



(b) Egypt (E/CN.4/85, page 103):

"The Royal Government has no objection to accepting the solution of the first important question raised by the Working Group on Implementation, namely the establishment of the right of the General Assembly and other organs of the United Nations, including possibly the Commission on Human Rights, to discuss and make recommendations in regard to violations of the Convention.

That Right is actually vested in the General Assembly and the Economic and Social Council under the Charter (cf. Articles 10, 13 and 62) and there would be no objection to giving the same right to the Commission on Human Rights also."

(c) India (E/CN.4/82/Add.7, page 3):

"We agree with conclusion of Working group on implementation..."

(d) Netherlands (E/CN.4/85, page 98):

"As regards the suggestion that some organ of the United Nations should have the right to discuss, and make recommendations in regard to violations of the Covenant, the Government suggest that some organ should exercise general supervision on the way in which the Parties apply the Human Rights laid down in the Covenant. The Government share the opinion of the Working Group that in view of the fact of the Economic and Social Council being overburdened with functions, it would be preferable to have another organ entrusted with this task; the Commission on Human Rights would seem to be the body best qualified to fulfill these functions."

(e) New Zealand (E/CN.4/82/Add.12, page 6):

"The New Zealand Government draw attention to the fact, noted in the Commission's Report, that the Charter of the United Nations, an international treaty of unquestioned status, contains numerous references to human rights, including some, e.g. the statement of purposes in Article 1, which call for positive action on the part of the Organization for their promotion and observance. Moreover, the General Assembly and the Economic and Social Council clearly possess certain powers and responsibilities with reference to human rights and fundamental freedoms, e.g. in Articles 10 and 62 (2) of the Charter.

/"In the absence

"In the absence of definition of the different rights and freedoms and clarification of procedures, questions may arise both as to the proper definition of the terms "human rights" and "fundamental freedoms" and as to the scope of the competence of different organs, particularly in relation to the provisions of Article 2(7) of the Charter. The full exercise of the powers and responsibilities of the different organs of the United Nations in relation to human rights and fundamental freedoms and to their promotion and observance will be facilitated therefore by the adoption and entry into force of a comprehensive covenant and the establishment of such procedures as may be deemed necessary.

"The Working Group on implementation has suggested that the Economic and Social Council should give the Human Rights Commission an equal right to that which the Council itself possesses to make recommendations. The New Zealand Government would observe that any suggestion that a functional commission should be granted powers of recommendation direct to state members of the United Nations, and the other powers implicit in the proposals of the Working Group, would raise general questions of organization requiring careful consideration by the Council in relation not only to activities in the field of human rights, but also to the whole scope of the economic and social responsibility of the Council. The New Zealand Government would suggest that, until human rights and fundamental freedoms have been further defined and the procedures for implementation further considered, it would not be advisable to effect the delegation of powers proposed by the Working Group on implementation."

(b) Proposal concerning the question of a clause defining the status, if any, of non-Member States under the instrument

A. Proposals\*

1. Proposal in Article 23 of the draft Covenant as drawn up by the Drafting Committee (E/800):

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\* The Commission may wish to take note of a memorandum (E/CN.4/92) submitted by the Secretary-General relating to petitions concerning the violation of provisions concerning human rights contained, or to be inserted, in Treaties other than the International Covenant on Human Rights.

"This Covenant 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 which the General Assembly of the United Nations shall, by resolution, declare to be eligible..."

- (c) Proposal concerning the question of a clause permitting notification, either at the time of ratification or subsequently, by a State which is a party whether it adheres to the whole instrument or to certain parts thereof, and in the latter case enumerating the parts to which adherence is made.

There have been no proposals on this question.\*

- (d) Proposal concerning the question of a clause permitting adherence by a State to the instrument:
- (i) in respect either of all the rights enumerated in the Covenant or of certain specified rights therein;
  - (ii) in respect of any rights which may form the subject-matter of special conventions in future.

There have been no proposals on this question.

- (e) Proposal concerning the question of a clause defining the status under the instrument of dependent and non-self-governing territories

A. Proposals

1. Proposal in Article 25 of the draft Covenant as submitted by the Drafting Committee (E/800):

"(The Drafting Committee voted in favour of the first of the following texts).

A State party to this Covenant may at the same time of its accession thereto or at any time thereafter by notification addressed to the Secretary-General of the United Nations declare that this Covenant shall extend to any of the territories for the international relations of which it is responsible, and the Covenant shall extend to the territories named in the notification as from the thirtieth day after the date of receipt by the Secretary-General of the United Nations of the notification. The Contracting States undertake, with respect to those territories on behalf of which they do not accede to this Covenant at the time of their accession, to seek the consent at the earliest possible moment of the Governments of such territories and to accede forthwith on behalf of and in respect of each such territory, if and when its consent has been obtained.

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\* The Commission may wish to note the suggestions of the representative of Denmark relating to the draft Covenant in document E/CN.4/186.

Text Proposed by the Representative of the Soviet Union

The conditions of the present Covenant shall extend or be applicable both to the metropolitan territory which is signatory to the present Covenant, as well as to all the other territories (non-self-governing, trust, and colonial territories) which are being administered or governed by the metropolitan power in question."

- (f) Proposal concerning the question of a clause concerning the machinery already established in the field of particular human rights by such instruments as the Convention on the Prevention and Punishment of the Crime of Genocide, conventions in the field of Freedom of Information and of the Press, and conventions under the Constitution of the International Labour Organisation.

There have been no proposals on this question.

The attention of the Commission is however drawn to the following provisions:

- (a) Articles IV, V, VI, VII and IX of the Convention on the Prevention and Punishment of the Crime of Genocide and to Part B of resolution 260 (III) of the General Assembly relating to the Study by the International Law Commission of the question of an international criminal jurisdiction.
- (b) Articles IX, X, XI and XV of the Convention on the International Transmission of News and the Right of Correction.
- (c) Document E/1355 which contains an account of the existing machinery of implementation under the constitution of the International Labour Organisation and the proposed international machinery for safeguarding freedom of association under the Freedom of Association and Protection of the Right to Organize Convention, 1948.

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