

UNITED NATIONS  
ECONOMIC  
AND  
SOCIAL COUNCIL



GENERAL

E/CN.4/419  
11 April 1950

ORIGINAL: ENGLISH

COMMISSION ON HUMAN RIGHTS

Sixth session

THE RIGHT OF PETITION

(Report by the Secretary-General)

/SUMMARY  
E/CN.4/419

## SUMMARY

It is the purpose of this document to assist the Commission on Human Rights when implementing General Assembly resolution 217 B (III) on the right of petition. In an introductory part it analyses the request made by the General Assembly and the respective decisions of the Economic and Social Council.

It describes the different form the right of petition takes in national constitutions and legal systems and states that in the preparatory work of the United Nations organs dealing with the International Bill the right to petition national authorities was, at certain stages, linked with the right of communicating with and petitioning the United Nations and that, beginning with the Draft Declaration of Human Rights prepared at the second session of the Drafting Committee, no provision on the right to petition had appeared in the different drafts of an International Bill of Human Rights.

The document submits that the Commission may wish to insert a provision safeguarding the right of petition. It raises the question of adding an article on the right of petition to the Universal Declaration of Human Rights. The main part of the paper is, however, devoted to the study of the right of petitioning the United Nations as one aspect of the problem of the international implementation of the human rights provisions of the Charter of the United Nations, of the Universal Declaration of Human Rights and of such instruments as the Draft Covenant of Human Rights.

The paper records historical examples of the exercise of the right to petition international organizations and congresses from the 17th century to the present day. In addition to mentioning early examples (Congress of Bréda, Congress of Nimègue) the paper describes the handling of petitions by the Congress of Vienna, the Congress of Berlin and the two Hague Peace Conferences. A summary describing the handling of petitions under the League of Nations system for the protection of minorities and under the Geneva Convention concerning Upper Silesia is given. The rules governing petitions under the League of Nations Mandates System are described. The paper also outlines the procedure for representations and complaints provided for in the Constitution of the International Labour Organisation. It refers to the United Nations rules regarding communications concerning human rights, it outlines the recently adopted new arrangements for consultations with non-governmental organizations,

/summarizes the

summarizes the regulation of petitions under the Trusteeship System and also records isolated cases of individuals addressing the General Assembly.

The paper contains, in part IV, an analysis of the main technical problems connected with the right of petitioning the United Nations, in particular, the legal effect of a petition, the receivability of petitions, the mode of presenting petitions, oral hearings of petitioners, the immunity of petitioners, the question of the exhaustion of local remedies and the question of anonymous petitions. A concluding paragraph outlines modern trends towards giving the individual procedural status in international law.

# TABLE OF CONTENTS

|  | Paragraphs | Page |
|--|------------|------|
| <u>Part I.</u> <u>Introduction</u> . . . . .   | 1 - 6      | 5    |
| <u>Part II.</u> <u>Forms of the right of petition</u> . . . . .  | 7 - 10     | 8    |
| The right of petition in national law . . . .  | 7          | 8    |
| The work of the United Nations . . . . .   | 8,9        | 9    |
| The task of the Commission on Human Rights .   | 10         | 10   |
| <u>Part III.</u> <u>History of the right to petition international</u><br><u>congresses and organizations</u> . . . . .                  | 11 - 26    | 12   |
| Early examples . . . . .   | 12         | 12   |
| The Congress of Vienna (1815) . . . . .  | 13         | 12   |
| Congresses held between the Congress of<br>Vienna and the Congress of Berlin<br>(1815-1878) . . . . .                                    | 14         | 13   |
| The Congress of Berlin (1878) . . . . .  | 15         | 13   |
| Congresses held between the Congress of Berlin<br>and the First Hague Peace Conference<br>(1878-1899) . . . . .                          | 16         | 13   |
| The First Hague Peace Conference (1899) . .  | 17         | 14   |
| The Second Hague Peace Conference (1907) . .   | 18         | 14   |
| The question of petitions under the League<br>of Nations System for the protection of<br>minorities . . . . .                            | 19         | 14   |
| The question of petitions under the Geneva<br>Convention on Upper Silesia . . . . .  | 20         | 17   |
| The question of petitions under the League<br>of Nations Mandates System . . . . .   | 21         | 18   |
| The question of petitions (representations<br>and complaints) under the Constitution of<br>the International Labour Organisation . . . . | 22         | 20   |
| United Nations rules regarding communications<br>concerning human rights . . . . .   | 23         | 23   |
| United Nations arrangements for consultation<br>with non-governmental organizations . . . .  | 24         | 23   |
| The question of petitions under the<br>Trusteeship System . . . . .  | 25         | 25   |
| The individual and the General Assembly of<br>the United Nations . . . . .   | 26         | 26   |

/Part IV.

TABLE OF CONTENTS (Cont.)

|  | <u>Paragraphs</u> | <u>Page</u> |
|--|-------------------|-------------|
| <u>Part IV.</u> <u>Selected problems connected with the right</u><br><u>to petition the United Nations</u> . . . . . | 27 - 36           | 28          |
| General observations . . . . .   | 27                | 28          |
| The legal effect of a petition . . . . .   | 28 - 29           | 29          |
| The question of receivability of petitions . . . . .   | 30                | 33          |
| The mode of presenting petitions . . . . .   | 31                | 35          |
| The question of oral hearings. . . . .   | 32                | 36          |
| The question of the immunity of petitioners. . . . .   | 33                | 36          |
| The question of the exhaustion of local<br>remedies . . . . .  | 34                | 37          |
| The question of anonymous petitions . . . . .  | 35                | 37          |
| Modern trends affecting the procedural status<br>of the individual in international law . . . . .                    | 36                | 38          |

PART I. INTRODUCTION

1. On 10 December 1948 the General Assembly adopted resolution 217 B (III) which reads as follows:

"The General Assembly,

"Considering that the right of petition is an essential human right, as is recognized in the Constitutions of a great number of countries,

"Having considered the draft article on petitions in document A/C.3/306 and the amendments offered thereto by Cuba and France,

"Decides not to take any action on this matter at the present session;

"Requests the Economic and Social Council to ask the Commission on Human Rights to give further examination to the problem of petitions when studying the draft covenant on human rights and measures of implementation, in order to enable the General Assembly to consider what further action, if any, should be taken at its next regular session regarding the problem of petitions".

The draft article referred to in the resolution read as follows:

"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 with the United Nations".

The amendments presented by France and Cuba considered by the General Assembly were as follows:

France (A/AC.3/244/Rev.1/Corr.1 - Official Records of the Third Session of the General Assembly, Part I, page 45).

"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. He also has the right to petition or to communicate with the competent organs of the United Nations in matters relating to human rights".

Cuba (A/C.3/261 - Official Records of the Third Session of the General Assembly Part I, page 45).

"Every person has the right, either individually or in association with others, to petition or to communicate with any competent authority for reasons of either general or private interest, and the right to obtain prompt action thereon".

While deciding not to take any action on this matter at its third session, the General Assembly requested the Economic and Social Council to ask the Commission on Human Rights to give further examination to the problem of petitions when studying the draft Covenant on Human Rights and measures of implementation in order to enable the General Assembly to consider what further action, if any, should be taken at its next regular session regarding the problem of petitions.

/2. The Economic

2. The Economic and Social Council at its eighth session by resolution 191 (VIII) transmitted the General Assembly resolution to the Commission on Human Rights for the action contemplated therein.

3. At its fifth session, the Commission on Human Rights dealt with the problem of petitions under items 5 and 6 of its agenda and in chapters V and VI of its report (document E/1371). Reference is made, in particular, to paragraphs 21, 22 and 25 of the Report of the fifth session.

4. The Economic and Social Council at its ninth session considered that the Commission on Human Rights had not yet taken any final decision on the problem of petitions and therefore recommended that the General Assembly take no further action on this problem at its fourth session (resolution 236 B (IV)).

5. In accordance with the recommendation of the Economic and Social Council, the General Committee recommended at the fourth session of the General Assembly that the item of the provisional agenda devoted to the right of petition should not be included in the agenda. At the 224th plenary meeting of the General Assembly, the representative of Cuba expressed his disagreement with the proposal presented by the General Committee. He felt that the right of petition was one of the most fundamental of human rights, the only right which actually affords safeguards and guarantees to the individual enabling him to protect himself from any infringements on his rights by public authority. He would have liked to see the fourth session of the General Assembly complete the Universal Declaration of Human Rights by including this right. He objected to the postponement of a matter of such great importance and concluded by exhorting "the Commission on Human Rights to deal with the right of petition expeditiously and to report upon it so that we can in the near future include the right of petition among the fundamental human rights in the Universal Declaration of Human Rights." He added, "We must safeguard the rights of the individual within each nation state".

After a reference by the President of the General Assembly to the recommendation of the Economic and Social Council, the proposal of the General Committee not to include the item on the agenda was adopted (document A/PV.224).

6. It is the purpose of the present report to assist the Commission in its continued effort to establish a practical procedure for handling petitions.

The Secretary-General draws the attention of the Commission to the fact that in part (b) of paragraph 25 of the report of the fifth session of the Commission on Human Rights (Annex IV, draft resolution C), the Commission resolved to request the Economic And Social Council to ask the Secretary-General

/to examine

to examine the communications concerning human rights received by the United Nations with a view to submitting to the Commission on Human Rights for consideration at its next session such communications as might be receivable under the conditions suggested in the study referred to in paragraph (a) of the resolution. As pointed out in document E/CN.4/368, paragraph 14, the Economic and Social Council did not take any action on draft resolution C annexed to the report of the fifth session of the Commission (document E/SR.320). In the opinion of the Secretary-General, he is precluded from complying with the request contained in paragraph (b) of the said resolution by the terms of Council resolution 75 (V) as amended.



## PART II. FORMS OF THE RIGHT OF PETITION

### 7. The right of petition in national law

The right of petition as recognized in national law is the right to address the authorities with complaints, grievances, requests or proposals on all matters or problems. The scope of this right is very wide and although the details differ from country to country it is recognized in almost all constitutions and legal systems. In some countries, the right of petition is set forth in an absolute and unqualified manner. In others, the right of petition is guaranteed subject to the provisions of the law, or it is stated that it must be exercised in due legal form, or in a manner prescribed by law. The constitutions or laws of some countries provide that petitions must be couched in respectful and suitable language or that they must be presented in an orderly and peaceable manner or that they must be decorously phrased, that they must be in writing, that they must be signed. Most systems grant the right of petition both to individuals and to collectivities, while others do not extend the right to associations. In some legal systems, it is provided that the petitioner has the right to a reply and some constitutions even set a time limit within which the authority must reply. In some systems petitioners enjoy either a conditional or an absolute immunity from prosecution; commitments and prosecutions for petitioning are declared illegal. In others, the constitutional guarantee consists only in the rule that it is not illegal or punishable to present petitions and that nobody shall or will be prosecuted for the mere fact of presenting a petition. In some countries the law provides that while the petitioner cannot be prosecuted for presenting a petition, a prosecution can be based on the contents of the petition.

The right of petition has played an outstanding part in the development of the modern State and of its judicial and administrative machinery. In the course of the centuries what originally was the right of petition, has to a very large extent been transformed by statute or by common law into well defined legal remedies. Some of the functions performed in earlier times by the right of petition have in some communities been taken over by the press; and the guarantee of freedom of expression, assembly and association has very often made recourse to petitions unnecessary. But even in legal systems where the original and historic right of petition has been replaced by modern remedies, some of which still carry the name "petition", the ancient institution of the right of  
/petition has

petition has retained its importance at least for extraordinary circumstances, where the normal procedural remedies are either not available or have been exhausted.

The right of petition belongs to the same category as some of the other procedural rights set forth in the Universal Declaration of Human Rights, e.g., the right to a fair and public hearing by an independent and impartial tribunal (article 10) or the right to an effective remedy (article 8). The right of petition is itself, like other essential human rights, capable of being implemented both on the national and international level.

8. The work of the United Nations

In the course of the preparatory work of the United Nations organs which have been dealing with the International Bill of Human Rights provisions concerning the right to petition both national authorities and the United Nations have been proposed.

The draft outline of an International Bill of Human Rights prepared by the Secretariat provided in article 28 that everyone has the right either individually or in association with others to petition the government of his State or the United Nations for redress of grievances (Annex A of document E/CN.4/21). The suggestion submitted by the representative of France for articles to be included in the International Declaration of Human Rights (Annex D of document E/CN.4/21) provided that no state may deny to any individual the right either for himself or in association with others to petition the authorities or the government of his country or of his residence, or the United Nations for the redress of grievances. The draft Declaration prepared by the Drafting Committee at its first session provided in article 24 that no state shall deny to any individual the right either individually or in association with others to petition or to communicate with the government of his state or of his residence or the United Nations (Annex F of E/CN.4/21).

The draft Declaration prepared at the second session of the Commission on Human Rights (Annex A of document E/600) made provision for the right to petition or to communicate both with national authorities and with the United Nations in article 20, the text of which has already been quoted in paragraph 1 of this report.

9. At the second session of the Drafting Committee, it was decided, however, not to consider Article 20 of the draft Declaration prepared in Geneva until

/articles on

articles on implementation had been drafted (document E/CN.4/95, article 20). In the discussion preceding this decision, the representative of the United Kingdom stated that the question of petitions was closely linked with the implementation of the International Bill of Human Rights and suggested that no decision be taken until that problem had been solved. The representative of Chile pointed out that the right to petition dealt with in article 20 did not only apply to human rights but to all rights as was also indicated in the comments by the Union of South Africa (document E/CN.4/85, page 36). The representative of France felt that a distinction should be made between the right of petition within the domestic jurisdiction of a country and the right to petition the United Nations. The constitutions of almost every country in the world recognized the domestic right of petition. As far as the United Nations was concerned, however, there was no question of sanctioning an ancient right. It should be clearly realized, he said, that a petition can only be serious insofar as the organization was competent to deal with it.

At the second session of the Drafting Committee, the right of petition was, therefore, deleted from the catalogue of the rights to be set forth in what eventually became the Universal Declaration of Human Rights. This elimination applied both to the right to petition national authorities on all questions of public and private concern, and to the right to communicate with or to petition the United Nations. There was no provision setting forth the right of petition in any of the drafts which followed the one prepared by the second session of the Drafting Committee.

#### 10. The task of the Commission on Human Rights

The Commission on Human Rights has been requested by the General Assembly and the Economic and Social Council to give further examination to the problem of petitions when studying both the draft Covenant on Human Rights and Measures of Implementation. The Commission may therefore wish to insert into the draft Covenant on Human Rights a provision pledging States parties to it to respect the right of petition. It will be remembered, however, that the Commission was equally divided on the question at its fifth session. Under these circumstances it may wish to consider one of two alternatives: the insertion in the Covenant of a provision guaranteeing the right to petition both national authorities and the United Nations, or the insertion of a provision which would be restricted to the right to petition national authorities.

/The Commission

The Commission would, it seems, also be acting within the mandate given to it by the General Assembly and the Council, and would be supported by the speech of the representative of Cuba in the debate at the fourth session of the General Assembly (see paragraph 6 above), if it recommended the addition of an article on the right of petition to the Universal Declaration of Human Rights as proclaimed at the third session of the General Assembly.

When studying measures of implementation, the Commission may wish to continue its study of the right to petition the United Nations as one possible procedural aspect of the problem of the international implementation of the human rights provisions of the Charter of the United Nations and of other international instruments dealing with human rights, in particular, the Universal Declaration of Human Rights and the Draft International Covenant on Human Rights. The following observations are directed to this aspect of the problem.

### PART III. HISTORY OF THE RIGHT TO PETITION INTERNATIONAL CONGRESSES AND ORGANIZATIONS

11. The right to communicate with and to petition national authorities is recognized in the constitutional law of most countries of the world. The right to communicate with international conferences and organizations, although of more recent origin, is nevertheless older than is usually assumed. This right was exercised long before the establishment of the League of Nations.

#### 12. Early examples

The record has been preserved of petitions addressed by individuals to international congresses as early as in the 17th century. The Czech philosopher and educator, Comenius, addressed the Congress of Brida in 1667 and Robert Barclay and George Fox addressed appeals in favour of peace to the Congress of Nimègue in 1678.

#### 13. The Congress of Vienna (1815)

The Congress of Vienna received a great number of petitions and acted on a number of them. Many individuals addressed themselves to the Congress asking that their requests be taken into consideration. The representatives of the Catholic Church in Germany asked, e.g., for the restitution of confiscated property. The Jewish community of Frankfurt-on-Main and Dr. Buchholz, representing the Jewish people in the Hanseatic cities, asked the Congress for the recognition of the civil and political rights of Jews by the German States. The principal booksellers of Germany asked for the recognition of freedom of the press and of the right to literary property. In its decisions, the Congress of Vienna paid regard to the petitions. The federal constitution drafted for Germany took into account the rights petitioned for by the booksellers and also the rights of the Jewish people.

While the procedure followed by the Congress of Vienna with regard to petitions does not clearly appear from its records, it is known that Prince Metternich, the President of the Congress, informed the petitioners that their communications had been taken into consideration and that he informed them of the measures the Congress had taken in order to comply with them. Prince Metternich summed up the attitude of the Congress to petitions when he declared that that body "was not indifferent to the welfare of individuals."

#### /14. Congresses held

14. Congresses held between the Congress of Vienna and the Congress of Berlin (1815-1878)

The plenipotentiaries which convened in Aix-la-Chapelle in 1818 also received various kinds of petitions. Some of the petitions presented by French citizens complained against actions taken by foreign sovereigns; the inhabitants of the Principality of Monaco complained of certain actions taken by their prince and one petition was presented in favour of Napoleon, then a prisoner on St. Helena. Robert Owen presented, though through the British representative, a petition in favour of the working classes. Little is known however about the procedure which the Congress of Aix-la-Chapelle followed with regard to these petitions.

15. The Congress of Berlin (1878)

The Congress of Berlin (1878) adopted for the first time a distinct procedure for handling petitions. At its second meeting, its president, Prince Bismarck, informed the Congress that many individual petitions had been received, and that the Secretariat had been instructed to make a selection from them. A list of those which had particular importance was prepared with a brief summary of their contents. In all, 14 lists of petitions were presented to the Congress of Berlin, listing 145 communications which were considered important, of which all but six were addressed to the Congress by individuals or private associations. It was agreed, however, that none of the communications listed should be examined by the Congress, unless a delegate should so request. The President also informed the Congress that an anonymous petition, which was considered important, had not been included in the list, which consisted of authentic petitions only. He stated, however, that the anonymous communication had also been classified by the Secretariat and was available to any delegate for examination.

16. Congresses held between the Congress of Berlin and the First Hague Peace Conference (1878-1899)

Between the Congresses of Berlin and the Hague Peace Conferences a number of technical conferences were held. Those conferences received petitions and handled them on the whole according to the procedure established by the Congress of Berlin. This procedure was in particular followed by the 1890 Conference for the regulation of the condition of workmen in factories and in the mines; at the 1884 Congress for the protection of literary property; and at the 1889-90 Congress for the suppression of the slave trade.

/17. The First

17. The First Hague Peace Conference (1899)

The First Hague Peace Conference referred communications received by its Secretariat to a special "Commission of Correspondence" consisting of five members. The Chairman of the Commission of Correspondence presented the following report to the ninth plenary meeting of the Conference:

"The Commission has examined the different communications, letters and telegrams addressed to the Conference. The majority of them contained wishes for the success of the work of the Conference. They have been answered in appropriate terms by the Chairman and by the Bureau."

"The Commission has likewise found communicated to it a considerable number of resolutions emanating from private sources in favour of disarmament and of arbitration, as well as a quantity of pamphlets, etc., of which, to a great extent, the Delegates have individually received copies. To these there was no answer."

"Finally, it has had to pass by communications of various nature which concern matters foreign to the Conference or out of its jurisdiction".

The Conference approved this report in plenary meeting without debate.

18. The Second Hague Peace Conference (1907)

At the Second Hague Peace Conference of 1907 again, at the President's proposal, a Commission of five members in charge of correspondence was appointed. The President proposed and the Conference unanimously agreed that it should be the duty of the Commission to examine and sort the various communications and to decide upon the action to be taken with regard to them. The Commission divided the communications into three categories similar to those employed at the First Hague Peace Conference.

The Conference considered itself entitled to receive petitions, it appointed a Commission to make a selection and to take appropriate action; a complete list of all communications received was prepared informing the Conference at an early meeting of the main important communications; whenever possible all publications received in sufficient numbers were distributed for the information of the delegates; appropriate thanks were expressed to the authors of communications that expressed good wishes for the Conference or sent documents for its information. No reply was given to those petitions the subject matter of which was beyond the competence of the Conference.

19. The question of petitions under the League of Nations system for the protection of minorities

The Secretary-General has the honour to refer to a survey of the international protection of minorities under the League of Nations which /he

he presented to the Sub-Commission on Prevention of Discrimination and Protection of Minorities in document E/CN.4/Sub.2/6. The Peace Treaties and Minorities Protection Treaties concluded after the first world war and some of the Declarations concerning the protection of minorities made before the Council of the League of Nations provided that their stipulations with regard to the treatment of minorities constituted obligations of international concern placed under the guarantee of the League of Nations. The States affected by the minorities obligations agreed that any member of the Council of the League of Nations should have the right to bring to the attention of the Council of the League of Nations any infraction or any danger of infraction of any of these obligations and that the Council might thereupon take such action and give such directions as it might deem proper and effective in the circumstances. The procedure followed in minorities matters brought before the League Council was laid down in detail in a series of reports and resolutions adopted by the Council between 1920 and 1929 which are listed in chapter IV of the document mentioned above (E/CN.4/Sub.2/6). According to the provisions of the Treaties and Declarations any of its members could bring up a minority question before the League Council. Actually, the procedure was never initiated in this manner. In every instance, the starting point of the procedure was a petition received from minority elements or from a Government not represented on the Council. The Secretary-General of the League verified whether the petitions fulfilled the required conditions for receivability. If the petition was deemed receivable, it was communicated by the Secretary-General to the Government concerned in order that the latter might submit its observations. The petitions were then examined by a Minorities Committee (a Committee of the Council) which decided whether or not to bring the matter before the Council. If the question was referred to the Council it tried to settle it by agreement with the State concerned.

As has been said, any member of the League Council had the right to call the attention of the Council to any infraction or danger of infraction of any of the minorities obligations even although no petition had been presented. In a statement made to the Council by Lord Balfour in 1920, he said: "If it is necessary to protect a minority, one of the members of the Council will have to take upon itself the duty to accuse a State which has not fulfilled its undertakings". This would have been a very unpleasant task and governments would /probably have



probably have been extremely hesitant to assume it. Accordingly, another way was found for initiating the procedure. When minority elements had complaints to make they would present a petition to a committee of the Council. If the committee decided after having examined the petition to put the matter before the Council responsibility was thus shared by several States. The ultimate object of the petitions was to bring certain facts to the attention of the Council but they did not in themselves have the effect of putting the matter before the Council. It was stated in one of the reports laying down the procedure that the petitions "cannot have the legal effect of putting the matter before the Council and calling upon it to intervene". Allegations by minorities elements retained, as was said in one of the resolutions, "the nature of a petition or a report pure et simple". In practice it was therefore the Minorities Committee which was responsible for considering petitions and which decided to bring the case before the Council. The propriety of this practice was challenged particularly by the Polish Government, which in a statement made before the Permanent Court of International Justice, said that under the Treaty provisions it was for members of the Council individually and not for a committee to bring questions before the Council. The argument was, however, rejected by the Permanent Court in its Advisory Opinion of 10 September 1923 (P.C.I.J. Series B, No. 6, page 22). The Advisory Opinion contained the following statement:

"So far as concerns the procedure of the Council in minority matters, it is for the Council to regulate it. On the other hand, it is impossible to say that the present matter has not been brought to the attention of the Council by any of its members in accordance with the provisions of Article 12. The report of M. Da Gama, opens with the statement that the matter had been brought to the attention of the Council by a report presented by three of its members, and it does not matter that these members were members of a committee formed under the Resolution of the Council of 25 October 1920, to facilitate the performance by the Council of its duties in minorities matters".

Under the procedure of the League of Nations it was the task of the Secretary-General to examine each petition in order to determine whether it complied with the following formal conditions laid down in the resolution adopted by the Council of the League on 5 September 1923:

"... petitions addressed to the League of Nations in connexion with the protection of minorities:

- (a) Must have in view the protection of minorities in accordance with the Treaties;

/(b) In

- (b) In particular, must not be submitted in the form of a request for the severance of political relations between the minority in question and the State of which it forms a part;
- (c) Must not emanate from an anonymous or unreliable source;
- (d) Must abstain from violent language;
- (e) Must contain information or refer to facts which have not recently been the subject of a petition submitted to the ordinary procedure".

If the Secretary-General decided that a petition was not receivable because it did not satisfy the prescribed conditions, he so informed the petitioner by, "if necessary, communicating to him the Council resolution of 5 September 1923, laying down the conditions of receivability...". The petitioner was thus given the opportunity of preparing a fresh petition free of the defects which had rendered his original petition unreceivable. If the Secretary-General decided a petition was receivable, he communicated it to the State concerned in the petition. That State could dispute the receivability of the petition, and in anticipation of such a contingency the above-mentioned resolution provided that: "the Secretary-General shall submit the question of acceptance to the President of the Council, who may invite two other members of the Council to assist him in the consideration of this question. If the State concerned so requests, this question of procedure shall be included in the agenda of the Council".

For a description of the further procedure of the Minorities Committee and the Council of the League of Nations reference is again made to document E/CN.4/Sub.2/6, chapter IV.

20. The question of petitions under the Geneva Convention on Upper Silesia

While in the general provisions of the Peace Treaties, Minorities Treaties and Declarations, members of minorities had the right only to lay information before the Secretariat of the League and the Council of the League was seized of such matters only when the governments forming the Minorities Committee saw fit to seize the Council of a complaint, the procedure under the Geneva Convention concerning Upper Silesia was different. The Geneva Convention provided in article 72 (2) for the general procedure as laid down in the Minorities Treaties. In addition, article 147 provided as follows:

"Article 147. The Council of the League of Nations is competent to pronounce on all individual or collective petitions relating to the provisions of the present Part (27) and directly addressed to it by members of a minority. When the Council forwards these petitions to the government of the state in whose territory the petitioners are domiciled, this government shall return them, with or without observations, to the Council for examination".

/This provision

This provision gave the minorities direct approach to the Council of the League of Nations. The Convention also provided for the establishment of Minorities Offices in the German and Polish parts of Upper Silesia and for the handling of such petitions by the minorities offices and the President of the Mixed Commission. Article 149 provided that if the petitioners were not satisfied with the action taken by the administrative authorities they might appeal to the Council of the League of Nations.

21. The question of petitions under the League of Nations Mandates System

On 31 January 1923, the Council of the League of Nations adopted with slight modifications a report by the Italian delegate, Mr. Salandra, and decided "that the following procedure shall be adopted in respect of petitions regarding the inhabitants of mandated territories:

- (1) All petitions to the League of Nations by communities or sections of the population of mandated areas should be sent to the Secretariat of the League through the Mandatory Government concerned; the latter should attach to these petitions such communications as it might think desirable.
- (2) Any petitions from the inhabitants (of mandated areas) received by the Secretariat of the League through any channel other than the Mandatory Governments concerned should be returned to the signatories with the request that they should re-submit the petition in accordance with the procedure prescribed above.
- (3) Any petitions regarding the inhabitants of Mandated territories received by the League from any source other than that of the inhabitants themselves should be communicated to the Chairman of the Permanent Mandates Commission. The latter should decide which, if any - by reason of the nature of their contents or the authority or disinterestedness of their authors - should be regarded as claiming attention and which should be regarded as obviously trivial. The former should be communicated to the government of the Mandatory Power which will be asked to furnish, within a maximum period of six months, such commentaries as it might consider desirable. The Chairman of the Commission should be asked to submit a report upon the others.
- (4) All petitions sent to the League in conformity with the prescribed procedure should, together with the comments of the Mandatory Powers, be held and accumulated until the next session of the Permanent Mandates Commission.
- (5) The Commission, after discussing any petitions received, should decide which, if any, accompanied by the observations of the Mandatory Power, should be circulated to the Council and the Members of the League. The minutes of the Meeting at which the petitions were discussed should be attached."

The Permanent Mandates Commission was a subsidiary body of the Council of the League. It was not composed of government delegates but of members appointed by the Council of the League in their individual capacity.

The rules laid down in the above-mentioned resolution distinguish between petitions received from inhabitants of mandated territories (paragraph 2 of the resolution) and petitions regarding the inhabitants of mandated territories received from any source other than the inhabitants themselves. With regard to the former it was provided that the petition must be submitted through the Mandatory Government concerned. With regard to the latter, the right to screen them was vested in the Chairman of the Permanent Mandates Commission who was to decide which of them deserved attention and which should be regarded as obviously trivial.

The rules laid down in the resolution of 31 January 1923 were developed and supplemented in subsequent years both by resolutions of the Council of the League of Nations and by resolutions adopted by the Permanent Mandates Commission itself. On 2 July 1925, the Permanent Mandates Commission adopted a report in which it stated that it was not entitled to set itself up as a court of appeal to judge decisions regularly pronounced by the courts of the Mandatory Power in application of legislation in force in Mandated Territories, or in cases which were clearly justiciable by those courts. The Commission declared that if a petitioner appealed to the Commission against decisions regularly pronounced by a court of a Mandatory Power or if he could prosecute in a court of that power, his petition would be declared out of order and would not be taken into consideration. The Permanent Mandates Commission went on to state:

"But if, on the other hand, he protested against an act on the part of a Mandatory Power in regard to which he has no judicial remedy, the Commission would have to consider whether this act was in conformity with the terms of Article 22 of the Covenant and with the terms of the mandate in question. It may be pointed out that the policy of the Mandatory Power is expressed not only by its administrative and executive acts, but also by its legislative power. It may, therefore, happen that a petitioner might be entitled to appeal to the Mandates Commission to ask it to determine not whether the courts whose decisions have gone against him had correctly interpreted the legislation of the Mandatory Power, but whether this legislation itself was in conformity with the principles of the Covenant and of the Mandates.

"It is also possible that the absence of legislation on a given point might render a petition permissible, if the principles of the Covenant and of the Mandate call for such legislation, and that the

/Mandatory's

Mandatory's failure to legislate on this point might have the result of depriving the petitioner of rights which he could legitimately claim under the terms of the Covenant and of the Mandate."

On 28 October 1925, the Permanent Mandates Commission adopted rules concerning the receivability of petitions received from sources other than the inhabitants of mandated territories to the effect that petitions should be receivable subject to the following limitations:

- (a) That they should not contain complaints incompatible with the provisions either of the Covenant or of the Mandate Agreement;
- (b) That they should not be anonymous;
- (c) That they should not, in substance, consist of a mere repetition of a communication recently sent to the mandatory power without bringing forward new data.

If petitions were declared non-receivable the petitioners were informed of the causes of the refusal to accept the petition. The rules laid down for petitions from sources other than the inhabitants of the mandated territories were declared applicable by analogy to petitions coming from those inhabitants and transmitted to the League through the Mandatory Power. The Commission's reply was sent directly to the petitioner and not through the Mandatory Power. The provision that the inhabitants of Mandated Territories must present their petitions through the Mandatory Power, a provision which had no counterpart in the provisions applying to petitions based on the minorities system of the League, was often criticized by members of the Mandates Commission and of the Council of the League; the provisions were, however, maintained.

The regulations adopted by the Council of the League and the Permanent Mandates Commission did not provide for oral hearings of petitioners by the Commission. It might be added, however, that the members of the Commission often interviewed petitioners personally while always pointing out that they did not do so in an official capacity.

22. The question of petitions (representations and complaints) under the Constitution of the International Labour Organisation

Under Article 24 of the Constitution of the International Labour Organisation, any industrial association of employers and workers may make representation to the International Labour Office in the event of any Members having failed "to secure in any respect the effective observance within its jurisdiction of any Convention to which it is a party." This right to make  
/representations

representations is accorded to any industrial association of employers or workers, even though it may not be a representative organization recognized by Article 3 of the Constitution; it is also accorded to international organizations (Article 24 of the Constitution of the International Labour Organisation and article 3 of the Standing Orders of 5 February 1938).

The effect of a representation made by an industrial association under article 24 of the Constitution of the ILO is that on its receipt the Governing Body of the International Labour Office may communicate it to the governments concerned and may invite that Government to make such statements on the subject as it may think fit. If no statement is received within a reasonable time or if the statement is not deemed to be satisfactory, the Governing Body has the right to publish the representation and the statement, if any, made in reply to it (article 25). When any matter arising out of such a representation is being considered by the Governing Body, the Government in question shall, if not already represented thereon, be entitled to send a representative to take part in the proceedings of the Governing Body while the matter is under consideration (Article 26).

The Constitution of the International Labour Organisation also provides for a procedure different from the procedure concerning representations described in the preceding paragraph - a procedure by complaints. The complaints procedure can be set in motion against any party to an international labour convention which is alleged to have violated it:

- (a) By any Government which has ratified the Convention concerned;
- (b) By any delegate to the International Labour Conference irrespective of whether he be a government, workers' or employers' delegate and irrespective of the country from which he comes and irrespective also of whether his own country has or has not ratified the Convention, and
- (c) By the Governing Body on its own motion (Article 26).

From the last mentioned provision according to which the Governing Body may adopt the complaint procedure of its own motion it follows that the Governing Body may pursue a matter which has been brought to its attention by the representation of an industrial association and apply to it of its own motion the procedure for dealing with complaints presented by Member Governments and delegates to the International Labour Conference.

/The complaint procedure

The complaint procedure is as follows:

(a) Communication to the Government concerned

The Governing Body may, before referring a complaint to a Commission on Enquiry, communicate the complaint to the Government against which it is made and invite a statement in reply (articles 26 (3) and 24 of the ILO constitution).

(b) Appointment of a Commission of Inquiry

Where no statement in reply is received, or where the statement is not considered to be satisfactory, or where at the outset the Governing Body does not think it necessary to communicate the complaint to the Government in question, the Governing Body may appoint a Commission of Inquiry to consider the complaint and to report thereon. In this case also the Government in question shall, if not already represented thereon, be invited to send a representative to take part in the proceedings of the Governing Body (article 26 (3)).

(c) Facilities of the Commission

All Members of the ILO are under the obligation, whether directly concerned in the complaint or not, to place at the disposal of the Commission all the information in their possession which bears on the subject matter of the complaint (article 27).

(d) Report and recommendation of the Commission of Inquiry

When the Commission of Inquiry has fully considered the complaint, it shall prepare a report embodying its findings on all questions of fact, relevant to determining the issue between the parties, containing such recommendations as it may think proper as to the steps which should be taken to meet the complaint and the time within which they should be taken (article 28). The report of the Commission on Inquiry is communicated to the Governing Body, to each of the Governments concerned and is published (article 29 (1)).

(e) Acceptance of report or judicial adjudication

Each of these Governments shall within three months declare whether or not it accepts the recommendations contained in the report of the Commission; and if not, whether it proposes to refer the complaint to the International Court of Justice (article 29 (2)).

/(f) The

(f) The International Court of Justice

The Court may affirm, vary or reverse any of the findings of the Commission of Inquiry; its decisions shall be final (articles 31, 32).

(g) Action by the Governing Body

In the event of any Member failing to carry out within the time specified the recommendations of the Commission of Inquiry or the decision of the Court, the Governing Body may recommend to the International Labour Conference, such action as it may deem wise and expedient to secure compliance therewith (article 33).

The special procedure concerning allegations of infringement of trade union rights recently adopted by the Governing Body of the International Labour Office and by the Economic and Social Council (document E/1595, paragraph 5; resolution 277 (X); see also document E/CN.4/164/Add.1) is referred to below in paragraph 27 of this report.

23. United Nations rules regarding communications concerning human rights

Following upon recommendations made by the Commission on Human Rights at its first session, the Economic and Social Council laid down rules for the handling of communications in resolution 75 (V) and in a number of resolutions adopted at later sessions by which these rules were amended and supplemented.

For an up-to-date description of the present situation in this regard the Secretary-General has the honour to refer to document E/CN.4/361 which also contains references to decisions of the Economic and Social Council in the matter of communications concerning freedom of information and communications alleging infringement of trade union rights and recommendations submitted by the Sub-Commission on Prevention of Discrimination and Protection of Minorities on the question of petitions.

The Secretary-General also refers to the survey presented to the Economic and Social Council in document E/857/Rev.1 and to the memorandum which he circulated to the Commission on Human Rights at its fifth session, document E/CN.4/165. In view of the extensive documentation that has been circulated on this subject, the Secretary-General will not deal with this question further in this memorandum.

24. United Nations arrangements for consultation with non-governmental organizations

In accordance with Article 71 of the Charter, the Economic and Social Council has at its various sessions decided upon suitable arrangements for  
/consultation



consultation with certain non-governmental organizations. At its tenth session, by resolution 288 B (X), the Council has laid down revised arrangements which are to govern such consultation. According to these arrangements the Council has established three categories of organizations with whom consultation is to take place.

Category A is for such organizations as the Council determines have basic interest in most of the activities of the Council and are closely linked with the economic and social life of the areas they represent.

Category B is for such organizations as the Council decides have a special competence in and are concerned specifically with only a few of the fields of activities covered by the Council.

The Council also contemplates relations with other organizations which are entered by the Secretary-General in a register established for the purpose. The register is to include organizations recommended for inclusion by the Council or its Committee on Non-Governmental Organizations; international organizations in consultative status or similar relationship with a specialized agency which have not been granted consultative status in categories A and B; other international organizations which apply to the Secretary-General for inclusion, and which, in his opinion, have a significant contribution to make to the work of the Council or its subsidiary bodies.

The organizations according to their categories have been granted certain privileges as regards their relationship to the Council and its subsidiary bodies. Category A organizations have certain rights concerning the provisional agenda of the Council and the Commissions. They may propose to the Council Committee on Non-Governmental Organizations that the Committee request the Secretary-General to place items of special interest to the organizations on the provisional agenda of the Council under certain circumstances. Such organizations may also propose items for the provisional agenda of Commissions subject to certain conditions and with the proviso that any proposed item shall be included in the agenda of the Commission if it so decided by a two-thirds majority of those present and voting in the Commission.

Both Category A and Category B Organizations have certain rights as regards submission of written statements and oral hearings relevant to the work of

/the Council

the Council or its subsidiary bodies. In cases where the statements concern human rights, this creates an exception to the general rules concerning communications or human rights described in the preceding section.

25. The question of petitions under the Trusteeship System

Article 37 of the Charter of the United Nations provides that the General Assembly and, under its authority, the Trusteeship Council, in carrying out their functions, may accept petitions and examine them in consultations with the administering authority.

The rules of procedure for the Trusteeship Council as approved at its first session and as amended during its second, fourth and fifth sessions (T/1/Rev.2) provide elaborate regulations concerning petitions in rules 76 to 93. At the time this report is being prepared, the Trusteeship Council is considering, at its sixth session in Geneva, additional changes in its procedure concerning petitions.

Rule 76 provides that petitions may be accepted and examined by the Trusteeship Council if they concern the affairs of one or more Trust Territories or the operation of the International Trusteeship System as laid down in the Charter. Petitioners may be inhabitants of trust territories or other parties (rule 77). Petitions may be presented in writing or orally (rule 78). The rules of procedure do not provide that petitions from inhabitants of trust territories should be transmitted to the United Nations through the Administering Authority; they may moreover be addressed to and received by visiting missions (rules 84 and 89). With the exception of petitions which are considered by the Secretary-General as manifestly inconsequential, the screening of the petitions is left to the ad hoc committee on petitions provided for by the rules of procedure.

The Secretary-General is requested to circulate promptly to the members of the Trusteeship Council all written petitions received by him except those which are manifestly inconsequential. A list of these latter communications with a summary of their contents is communicated to the members of the Trusteeship Council, the original documents of which are made available to the Trusteeship Council for final disposition (rule 85). It should be noted, however, that rule 85 is one of those provisions the amendment of which

/the Trusteeship

the Trusteeship Council is considering at its sixth session. The new text of rule 85 proposed by the Trusteeship Council Committee on Rules of Procedure will be found in T/L.13.

Rule 81 provides that normally petitions shall be considered inadmissible if they are directed against judgments of competent courts of the Administering Authority or if they lay before the Council a dispute with which the courts have competence to deal. This rule shall not be interpreted, however, so as to prevent consideration by the Trusteeship Council of petitions against legislation on the grounds of its incompatibility with the provisions of the Charter of the United Nations or of the Trusteeship Agreement irrespective of whether decisions on cases arising out of such legislation have previously been given by the courts of the administering authority.

26. The individual and the General Assembly of the United Nations

A description of the practice of the United Nations concerning written and oral petitions and communications from individuals and non-official organizations would not be complete if reference were not also made to isolated cases where individuals or representatives of non-official organizations are permitted to address the General Assembly or its Committees. These cases were recalled by the Chairman of the Fourth Committee on 21 November 1949 when that Committee was examining the question whether a hearing should be granted to the Rev. Michael Scott, the representative of certain tribes in South West Africa. The Chairman of the Fourth Committee pointed out that a letter received from the Rev. Michael Scott was not properly speaking a petition, but simply a request for a hearing before the Fourth Committee. Certain precedents showed that there were no reasons why the Committee should not hear the Reverend Scott. The General Assembly had heard Mr. LaGuardia, Director of UNRRA; the Fifth Committee had heard private individuals; the First Committee had heard representatives of unofficial organizations on the question of the former Italian colonies. In the first part of the third session of the General Assembly, a representative of the Legal Department had stated that the Charter did not provide for granting hearings to representatives of unofficial organizations but, that it did not forbid such hearings. He had concluded that it was for the body concerned to decide in each case. Consequently, the Fourth Committee had the right to take the decision it judged most suitable (A/C.4/SR.130, page 15). The Committee

/therefore

therefore requested the Secretary-General to circulate parts of certain communications relating to the request of the Rev. Michael Scott for an oral hearing. In pursuance of this decision the relevant portions of these communications were circulated to the Committee. The Committee decided to grant a hearing to one or more of the representatives of the indigenous population of South West Africa who could provide due evidence of his representation by presenting suitable credentials. The Committee appointed a sub-committee of 7 members to study such credentials and to report to the Committee as soon as possible. The sub-committee announced that it had examined the credentials of the Reverend Michael Scott as representative of certain groups of the indigenous population of South West Africa and found that they were in suitable order and should be given full faith and credit. The report of the sub-committee was approved and the committee decided to grant an oral hearing to the Rev. Michael Scott. At the 138th meeting of the Fourth Committee, the Rev. Scott made an oral statement. The Committee decided that certain communications referred to in the statement of the Rev. Scott should form part of the Official Records of the General Assembly (A/C.4/SR.138).

In the debates preceding the decisions taken in this case, several delegations which voted for granting a hearing were careful to point out that no precedent was being created since the Committee was dealing with a special situation which necessitated recourse to special methods. Delegations which were opposed to the hearing based their objections on their fear of creating a precedent. They were of the opinion that the granting of the hearing would be premature. Reference was also made to the procedure laid down by the Economic and Social Council (resolution 75 (V)).

It will be recalled that in the light of the international status of South West Africa, the petitions procedure provided for Trust Territories was not applicable.

PART IV. SELECTED PROBLEMS CONNECTED WITH THE RIGHT TO PETITION  
THE UNITED NATIONS

27. General observations

(a) The basic question of policy is outside the scope of this memorandum

It is not the purpose of the present report to examine the question whether or not at the present time the right of individuals, groups of individuals, and non-governmental organizations with or without consultative status, to petition the United Nations concerning alleged violations of human rights should be embodied in the set of instruments which are being prepared by the Commission (the International Bill of Human Rights). The opinions of governments expressed in this regard have been collected in Annex III of document E/1371, in the series of documents E/CN.4/353 and addenda, and in the compilation of the comments on the question of implementation (E/CN.4/366). Expressions of opinion on this question made at previous occasions, will be found in Annex III of the report of the fifth session (document E/1371). A statement by the representative of Egypt on measures of implementation is reproduced in Annex II of that report. Reference is also made to the compilation of comments presented to the third session of the Commission (E/CN.4/35).

The actual procedure which may be established for the consideration of petitions is outside the scope of the present report. An outline of a system of rules concerning the preliminary examination of petitions and the participation of the governments concerned in this process based on the report of the Working Group of Implementation of the second session of the Commission on Human Rights will be found in document E/CN.4/93.

(b) The question of developing the present system of handling communications is also outside its scope

It is also outside the scope of this paper to examine the possibilities of developing the present system of handling communications into a more satisfactory scheme of application of the human rights provisions of the Charter of the United Nations: this has been done in a memorandum presented to the Commission on Human Rights at its fifth session (document E/CN.4/165) and also by the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities at its second session in resolution G of document E/CN.4/351, which was endorsed at the third session (Chapter IV and draft resolution VI of the Annex to document E/CN.4/358).

/The sole

The sole purpose of this part of the present report is to list and briefly to comment upon some of the major problems which have arisen in this regard whenever an international conference or organization received petitions and which will call for a solution by the Commission on Human Rights if and when it decides to codify provisions regulating the international right of petition by individuals, groups of individuals or organizations.

28. The legal effect of a petition

The petition may be either simply a source of information or have additional legal effects.

In the procedure established by resolutions of the Council of the League of Nations under the system of protection of minorities, it was provided that petitions coming from minorities elements "must retain the nature of a petition, or a report pure et simple and cannot have the legal effect of putting the matter before the Council of the League."

The rules laid down by the Economic and Social Council for the handling of communications concerning human rights in resolution 75 (V), as amended, make it clear that the author of such a communication does not have a right, merely by submitting a communication, to seize the Commission on Human Rights or any other organ of the United Nations of the matter. The Commission on Human Rights has stated and the Economic and Social Council has approved the statement that "the Commission recognizes that it has no power to take any action in regard to any complaints concerning human rights". In his report on the present situation with regard to communications concerning human rights (E/CN.4/165, paragraphs 8 et seq.) the Secretary-General has outlined certain developments which may justify a re-consideration of the situation and a discussion of the question whether the Commission on Human Rights should not request the Economic and Social Council to amend resolution 75 (V) so that the Commission on Human Rights would have the right to take certain appropriately defined action in certain cases which would also be defined as clearly as possible. The Secretary-General has, in particular, suggested that the Commission on Human Rights may wish to examine the possibility of recommending to the Economic and Social Council that the Commission be given the right to report to the Economic and Social Council and to make recommendations to it on matters which have been brought to the Commission's attention in the course of its examination of communications

/concerning

concerning human rights (paragraph 13 of E/CN.4/165). At the fifth session of the Commission on Human Rights, it was felt by the Committee on Communications appointed at that session that the Committee had not sufficient time to make a detailed study of the report of the Secretary-General and that consideration of the Secretary-General's report as a whole should be taken up after the completion of the International Covenant on Human Rights (see document E/CN.4/302 and also E/CN.4/361, paragraph 6).

In the meantime, the Economic and Social Council has made arrangements with regard to one particular human right, **namely, the right of association of workers and employers (trade union rights)**, whereby the Council and by its authorization a Fact Finding and Conciliation Commission on Freedom of Association established by the Governing Body of the International Labour Office both on behalf of the United Nations and on its own behalf, now have the right to take certain action of a fact finding and conciliatory nature with regard to allegations of infringements of trade union rights (see E/1595, paragraph 5; resolution of the Economic and Social Council 277 (X); see also document E/CN.4/164/Add.1, paragraphs 9 and 10). Allegations may be referred to the Fact Finding and Conciliation Commission for investigation, inter alia, by the Governing Body of the International Labour Office or by the Economic and Social Council on the basis of complaints received from trade union or employers' organizations. The Governing Body has decided that communications from sources other than Governments, trade union or employers' organizations are not receivable. The Economic and Social Council has requested the Secretary-General to bring allegations regarding infringements of trade union rights received from Governments or trade unions or employers' organizations to the attention of the Council notwithstanding the provisions of resolution 75 (V) as amended.

It has also been provided that the Council and the Governing Body of the International Labour Office will take any appropriate alternative action designed to safeguard freedom of association in any case in which the consent of a State to submit to the procedure is not forthcoming (documents E/1595, paragraph 5, and resolution of the Economic and Social Council 277 (X)).

Examples of petitions which in themselves have the legal effect of seizing an international body of the subject matter set forth therein and which therefore differ fundamentally from the type of petition which is "information

/pure et

pure et simple" are the petitions lodged under articles 147 and 149 of the Geneva Convention concerning Upper Silesia. Similarly, petitions under the Trusteeship System (Article 87 (B) of the Charter and rules 76 et seq. of the Rules of Procedure for the Trusteeship Council) have the effect of seizing the Trusteeship Council provided, of course, the petitions are found admissible and are therefore circulated.

29. The proposals of those Governments Members of the United Nations which are in favour of recognizing the right to petition the United Nations or are in favour of granting this right to individuals, to non-governmental organizations, or to certain organizations only are throughout based on the assumption that such petitions will be more than a simple source of information and will therefore be the initial step of setting in motion some form of international machinery of fact finding, conciliation or adjudication.

(a) Article 17 (1) (b) (c) and (d) of the Australian proposals for an International Court of Human Rights (Annex III, E/1371) contemplates that individuals, groups of individuals and associations, whether national or international, may be parties in cases before the proposed International Court of Human Rights. Article 18 of the same proposals expressly provides that the Court shall be open to nationals of States parties to the draft Statute and contemplates that the conditions under which the Court shall be open to nationals of other States will, subject to the special provisions contained in treaties in force, be laid down by the Economic and Social Council. In its comments which are before the sixth session of the Commission (E/CN.4/353/Add.10) the Australian Government has indicated that in the interests of a speedy and as widespread an acceptance of the Covenant as possible, it might be for the moment preferable to attempt to secure agreement on less ambitious machinery.

(b) The French proposals on Measures of Implementation (Annex III, E/1371) provide in article 25 that the suggested Special Commission (article 21) should be moved by applications or petitions submitted, inter alia, by a non-governmental organization or a private person or a group of private persons. The French proposals also provide that, except where the application is submitted by a State Party to the Covenant, the Special Commission may make the consideration of any petition conditional upon

/the preliminary



the preliminary favourable opinion of one of the non-governmental, national or international organizations granted consultative status by the Economic and Social Council and included in a special list approved by the Special Commission for this purpose. The French proposals also contemplate giving to such non-governmental organizations the right to submit petitions directly to the Special Commission. In their comments E/CN.4/353/Add.8, (section III (3)) the Government of the French Republic has stated that in order to bring its original proposals closer to those submitted by other Governments, it is prepared to agree that the Special Commission should have more strictly specialized functions than those suggested in the original French proposals. In their comments, the French Government maintains, however, the proposition that the Special Commission should be able "to consider petitions submitted by a non-governmental organization or a private person or a group of private persons. In this way, recognition is given to the principle that individuals are free to regard themselves as direct subjects of international law." (Ibid, section III (4)).

(c) The proposals submitted by the representative of Guatemala at the fifth session of the Commission (Annex III, E/1371) also contemplate that non-governmental organizations and private individuals residing in countries the Governments of which ratify the Covenant may be parties to the contemplated procedure. Complaints would be transmitted to the Secretary-General who would submit them to a Committee. The Committee would determine whether complaints submitted by non-governmental organizations or individuals are to be considered by conciliators or, if not, the manner of their disposal.

(d) The proposals submitted by the representative of India at the fifth session of the Commission (Annex III E/1371) contemplate that a Standing Committee shall, inter alia, receive petitions from individuals, groups, associations or States. The Committee would proceed in private session to examine the petitions and conduct negotiations. In their comments, document E/CN.4/353/Add.9, the Government of India have stated that their views are in accord with those submitted by the Indian representative on the Commission on Human Rights.

/In their

In their replies to the questionnaire on Measures of Implementation, the Government of India have also expressed their view that individuals, groups of individuals and non-governmental organizations should be given the right of petition.

(e) The Government of the Philippines proposes to grant the right of petition to non-governmental organizations and groups of individuals, but not to individuals acting independently. (E/CN.4/353/Add.3). It proposes that the consideration of such petitions be conditional upon the preliminary favourable opinion of one of the non-governmental organizations granted consultative status which are included in a special list approved by the implementation organ for this purpose (reply to question Part II, Chapter 2 B (5) of the Questionnaire). The Philippine Government have also expressed themselves in favour of the right of specially listed non-governmental organizations to petition without any other condition except that such a petition must relate to an alleged violation committed in a territory or place within the jurisdiction of a signatory State (E/CN.4/353/Add.3).

(f) The Government of Israel suggest (E/CN.4/353/Add.4) that the right of petition should be given to non-governmental organizations recognized for this purpose by the implementation body. The Government of Israel propose that the non-governmental organizations granted the right of petition should be permitted to use this right without any limitations (reply to Question II, Chapter II (b) (9)).

30. The question of receivability of petitions

It will be noted from the **historic examples** quoted in this report that whenever an international body was confronted with the task of receiving petitions care was given to the establishment of rules on the receivability of petitions and that a system of regulations to this effect was, in particular, in force under the League system on protecting minorities. Under that system, jurisdiction to screen petitions and decide upon their receivability was vested in the first instance in the Secretariat. Under the procedure adopted for petitions under the mandates system of the League, it was the Chairman of the Permanent Mandates Commission who had to decide whether a petition should be regarded as deserving attention or regarded as obviously trivial.

/Under the

Under the Trusteeship System, it is the duty of the Secretary-General to exclude petitions which are manifestly inconsequential. The actual screening of petitions is left to the Ad Hoc Committee on Petitions. A change in the rules concerning the sifting of petitions is at present under consideration by the Trusteeship Council (see rule 85 and the Final Report of the Committee on Rules of Procedure - T/L.13).

It is clear from the various examples mentioned in this report that in any international system where the right of petition has been provided for, regulations governing the receivability of petitions have been made. Such regulations have been aimed at the sifting of petitions and at providing against the abuse of the right to petition.<sup>1/</sup>

The rules which are at present in force in the United Nations for communications concerning human rights (resolution of the Economic and Social Council 75 (V) as amended) do not contain provisions concerning the receivability of communications. The resolution is applied to any communication concerning human rights. When what eventually became resolution 75 (V) was examined in the Social Committee of the Economic and Social Council at its fifth session, the Czechoslovak representative proposed an amendment to the recommendations contained in Chapter V of the report of the first session of the Commission on Human Rights (document E/259) to the effect that communications, in order to be submitted to the procedure of examination by the Commission on Human Rights, must have the following qualifications:

- (1) The interest to protect human rights must be evident.
- (2) They must not emanate from an anonymous, unauthenticated or irresponsible source (E/AC.7/27). The Czechoslovak proposal was, however, rejected by 4 votes for and 10 votes against (E/AC.7/SR.12, 13 and 14).

In the "Suggested Regulations on the Subject of Petitions" which the Secretary-General was requested to prepare for the third session of the

---

<sup>1/</sup> The Commission may wish to refer to the statistics concerning petitions under the League system of protection of minorities which will be found in the Annex to document E/CN.4/Sub.2/6.

Commission on Human Rights (document E/CN.4/93) the following rules concerning the receivability of petitions were proposed:

"Art.2. Petitions other than those emanating from Governments of States parties hereto shall be receivable only if such petitions are made in accordance with the following rules:

- (a) Petitions must not be anonymous. A petition which contains a signature and an address shall be presumed to comply with this rule.
- (b) Petitions must not contain violent or abusive language.
- (c) Petitions which obviously have no relation to any violation of this Covenant shall not be receivable.
- (d) Petitions which obviously do not emanate from States, individuals or groups or organisations as provided for in article 1 hereof shall not be receivable.

"Art.3. The Secretary-General of the United Nations shall forward to \_\_\_\_\_ only those petitions which comply with article 2 hereof. He shall also furnish the \_\_\_\_\_ with a list of those petitions which he deems non-receivable.

"Art.4. The \_\_\_\_\_ shall, on the basis of information supplied to it by the Secretary-General, decide whether a petition forwarded to it by the Secretary-General or included in the list mentioned in Article 3 is receivable.

"Art.5. When a petition has been declared to be receivable the Secretary-General shall so notify the petitioner. When a petition has been declared non-receivable the Secretary-General will inform the petitioner of this decision and the reasons therefor".

### 31. The mode of presenting petitions

Under the rules prevailing under the Mandates system of the League, petitions from inhabitants of Mandated Areas had to be presented through the mandatory government. No corresponding provision was in force with regard to the procedure under the minorities system of the League. A proposal submitted by the Polish Government on 22 August 1923 to the effect that petitions emanating from persons belonging to minority groups of the State against which the petition was directed, should be addressed to the League through the Government of the State concerned was not accepted by the Council of the League. Nor has this provision been introduced into the rules governing petitions under the Trusteeship System. Not only can petitions be directly addressed to the United Nations, but as has been pointed out, visiting

/missions

missions of the Trusteeship Council also have the right to accept petitions while on circuit.

The rules at present in force with regard to communications concerning human rights contain no provision regulating the mode of presenting communications. It is implied in these rules, however, that communications are in writing (or by telegram) and that they can be directly addressed to the different organs of the United Nations or received by the Secretary-General on their behalf.

In their comments on Measures of Implementation which were before the third session of the Commission, the Government of Egypt agreed with the Working Group on Implementation that "one could establish the right of individuals to petition the United Nations as a means of initiating a procedure for the enforcement of human rights". The Egyptian Government added that "it is clear that detailed regulations would be necessary to define how petitions should be handled and examined" (document E/CN.4/85, chapter XIV, item 5, paragraph 2). At the fifth session of the Commission, the Egyptian delegation, while not opposed in principle to petitions from organizations or individuals, considered that it would be well to proceed by stages and that a beginning should be made by examining the complaints (petitions) received from States (document E/1371, Annex II, page 33).

### 32. The question of oral hearings

Contrary to what the situation was in the Mandates system of the League, the rules of procedure for the Trusteeship Council provide for oral hearings of petitioners both by the Council and by visiting missions. An isolated example of a private person addressing the Fourth Committee of the General Assembly was referred to in paragraph 25 above.

### 33. The question of the immunity of petitioners

While national legislation (e.g. the English Bill of Rights) sometime provides for immunity from persecution of persons who petition national authorities, the provisions in force under the League of Nations did not contain provisions to this effect. Nor is this the case at present with regard to communications concerning human rights addressed to the United Nations. In the decisions taken by the Economic and Social Council in this regard, an attempt was made to solve this very difficult and delicate problem by providing

/for a certain

for a certain secrecy in the procedure and in particular by the prohibition to divulge the name of the persons communicating with the United Nations.

The United Kingdom Government in the comments on the Draft International Covenant on Human Rights and Measures of Implementation (E/CN.4/353/Add.2) have expressed the opinion that it would be necessary to make clear that no immunity could be claimed by petitioners who disclose state secrets, encourage the overthrow of a Government by force or utter a malicious libel about an individual.

34. The question of the exhaustion of local remedies

The procedure which applied under the minorities system of the League did not include the rule that a petition was not receivable because the case had been the subject of a decision by a local court or was pending in a local court or was susceptible of treatment by a local court. The fact that a case was pending in a local court led only to the postponement of the League procedure until the local courts had handed down a final decision.

Under the Mandates system, however, petitions dealing with matters that had the character of justifiable disputes in local law were not admissible.

Under the draft article on implementation proposed by the United States Government (document E/CN.4/353/Add.1) it is proposed that the contemplated Human Rights Committee shall normally if it finds that in a matter before it domestic judicial and administrative remedies have not been availed of or exhausted, limit its report to this finding.

The United Kingdom Government have drawn attention to the fact that "Constitutional problems of some complexity would be raised by petitions which appealed from the decision of the highest tribunal of a State" (document E/CN.4/353/Add.2).

35. The question of anonymous petitions

The problem how to deal with anonymous petitions has faced international congresses and organizations from the very beginning. It has been pointed out above that a special decision regarding this question was taken by the Congress of Berlin. The regulations applicable in the Minorities system of the League stipulated that a petition to be receivable must not emanate from an anonymous or unauthenticated source.

The Economic and Social Council itself discussed the question of anonymous communications at its fifth session and by rejecting in the Social Committee the

Czechoslovak proposal (document E/AC.7/27) decided that anonymous communications should not be excluded from the application of resolution 75 (V). At the Council's sixth session, the representative of Lebanon proposed that a special confidential list of anonymous communications should be compiled by the Secretary-General. He added that the term "anonymous communications" applied to communications coming from people whose real personality remained unknown whether they signed with a pseudonym or not. The representative of the Secretary-General drew attention to the fact that the Secretariat had no possibility of determining whether a signature was or was not authentic. The Lebanese proposal that a separate list of anonymous communications should be compiled was rejected by two votes in favour, three votes against and twelve abstentions (document E/AC.7/SR.32).

The United Kingdom comments (E/CN.4/353/Add.2) stress the necessity to "determine what would happen to petitions submitted anonymously or under a non de plume".

The Trusteeship Council is at present seized of a proposal submitted to it by its Committee on Rules of Procedure concerning anonymous petitions (document E/L.3, paragraph 6).

In the Secretary-General's proposals, presented at the third session of the Commission (E/CN.4/93) the provision is proposed that the petitions must not be anonymous (Article 2 (a)). It is added, however, that "a petition which contains a signature and an address shall be presumed to comply with this rule".

36. Modern trends affecting the procedural status of the individual in international law

Recent developments, particularly those which have taken place during and since the second world war indicate that the status of individuals and of non-governmental organizations in international society is undergoing a fundamental change. While a half century ago it was the almost unchallenged doctrine of international law that only States and not individuals are subjects of international law, an evaluation of the present position does not lead to the same unqualified opinion. The modern trend is indicated by such events as the adoption of the Charter of the International Military Tribunal for the trial of major European war criminals and the corresponding Charter of the International Military in the Far East. Both documents apply the principle of the criminal responsibility

/of the

of the individual in international law. Both also contemplate the protection of the individual ("any civilian population") against certain outrageous behaviour of national authorities. In addition to the four signatories the London Charter of 8 August 1945 was adhered to by 19 States which eventually became Members of the United Nations. Its principles were applied in the Nürnberg and Tokyo trials and in a great number of national, military and occupation tribunals. They are also reflected in the five Peace Treaties concluded with Italy, Bulgaria, Romania, Hungary and Finland on 10 February 1947.

The General Assembly of the United Nations affirmed the principles of the London Charter in two resolutions (95 (I) and 177 (II)). It also initiated and concluded the work concerning the Convention for the Prevention and Punishment of the Crime of Genocide which is now in the process of ratification by Member States (Resolutions 96 (I), 180 (II), 260 (III)). The General Assembly invited the International Law Commission to study the desirability and possibility of establishing an international judicial organ for the trial of persons charged with genocide or other crimes.

The recognition of obligations of the individual in international law backed by penal sanctions has its counter-part in steps leading towards the recognition of the rights of the individual in international law. Hence not only the human rights programme of the United Nations, and related activities of specialized agencies and of regional inter-governmental bodies, but also the whole system of consultative arrangements with non-governmental organizations evolved by the United Nations and the specialized agencies. The question which the Commission is called upon to consider in connexion with the right of petition is one of the basic elements in this development.

-----