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STATEMENT ON THE IMPLEMENTATION OF THE INTERNATIONAL COVENANT
OF HUMAN RIGHTS MADE BY THE REPRESENTATIVE OF URUGUAY AT THE
117TH MEETING OF THE COMMISSION ON HUMAN RIGHTS ON 2 MAY 1950

Madam Chairman;

Upon the renewal today of the general discussion on the measures for the implementation of the International Covenant on Human Rights, the delegation of Uruguay wishes to make the following statement in order to establish clearly its position of principle with regard to this problem of such far-reaching importance in relation to the work of the Commission and the activities of the United Nations. Generally,

I

In the first place, I wish to make clear that in the opinion of my delegation, while it is true that the Commission on Human Rights is now engaged in considering the specific problem of the measures of implementation which must accompany the International Covenant on Human Rights prepared during earlier sessions, this does not mean and in no way implies that the delegations here represented believe that the problem of measures of implementation, not only of the ^{present} Covenant but of provisions of the United Nations Charter relating to human rights, is outside the Commission's terms of reference and should not be duly dealt with in a special manner when the Commission has completed its present work.

More precisely, the fact that it was decided at earlier meetings of the Commission to complete a programme of work including the Universal Declaration of Human Rights, the Covenant and measures of implementation must not be interpreted as in any way an acceptance of the contention that, because the provisions of the United Nations Charter on this subject are general and allegedly abstract, they do not impose positive obligations on Members of the Organization and cannot therefore be supplemented and given effect by some appropriate machinery of implementation.

/In this connexion

In this connexion, my Government believes that under the Charter of the United Nations States Members have assumed the legal obligation under positive law to promote respect for, and observance of, human rights and fundamental freedoms, as provided in Articles 55 and 56 of the Charter.

There may still be no exact definition of these rights and freedoms or means of implementing them, but the existence of legal obligations for States with regard to these rights is embodied in positive conventional law which is equally binding on all States Members of the United Nations.

My delegation believes, as it has argued on previous occasions, that even if there had been no Universal Declaration of Human Rights and if there had been no thought of drafting a specific covenant of human rights, it would have been of the utmost importance and absolutely imperative for Members of the United Nations to set up international machinery of implementation in order to ensure the effective protection required by the Charter of the United Nations of the human rights and freedoms established by that Charter as basic principles of the international Organization.

The fact that the Charter does not expressly lay down means of implementing the provisions regarding human rights in no way weakens or affects the legal character of the obligations it establishes in this respect, since the Charter does not establish the machinery to ensure compliance with the other legal obligations it embodies except in cases in which the violation of those obligations constitutes a threat to international peace and security.

Moreover, as regards this aspect of the problem, in accordance with the general principles of the municipal constitutional law of the States, it must be assumed that the power conferred on the organs of the United Nations to make recommendations with regard to human rights necessarily implies a supplementary power to seek information and to undertake inquiries and investigations. The experience of the General Assembly is amply instructive on this point.

In this connexion, it should be noted that the national constitutional doctrine of "implied powers" was formally accepted and applied by the International Court of Justice to the interpretation of the United Nations Charter in its recent advisory opinion on reparation for injuries incurred in the service of the United Nations.

The Court stated that:

/"The Charter has not

"The Charter has not been content to make the Organization created by it merely a centre 'for harmonizing the actions of nations in the attainment of these common ends' (Article 1, para. 4). It has equipped that centre with organs, and has given it special tasks. (page 178)

"In the opinion of the Court, the Organization is at present the supreme type of international organization..." and therefore "it must be acknowledged that its Members, by entrusting certain functions to it, with the attendant duties and responsibilities, have clothed it with the competence required to enable those functions to be effectively discharged. (page 179)

"Under international law, the Organization must be deemed to have those powers which, though not expressly provided in the Charter, are conferred upon it by necessary implication as being essential to the performance of its duties." (page 182)

II

The specific problem now before the Commission, the problem of the measures of implementation needed to ensure the effective application of the proposed International Covenant of Human Rights, affords an opportunity to restate the Government of Uruguay's point of view on this important question.

Our views can be briefly stated in relation to three main ideas which my Government has at all times supported in the United Nations and in the American Regional Organization.

In the first place, the problem of measures to implement an International Covenant of Human Rights raises questions of legal procedures which must be settled by resort to the methods and procedures recognized and proved by international law or by the domestic law of States.

Political solutions derived from appeasement, conciliation and compromise procedures on the basis of mutual concessions are inappropriate to the essence of the problem.

Respect for human rights has been transformed, by the Charter of the United Nations and the Covenant we are drafting, into an essentially international question and a violation of human rights affects the international community as a whole and not merely the injured individual or the claimant State, as the case may be.

In these circumstances, the primary object of any implementation procedure must be, not the prevention or the elimination of disputes, but the establishment of the facts, the restoration of the juridical situation which has been impaired and

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reparation for the wrong suffered. This cannot possibly be achieved by resort to the diplomatic procedures of compromise and conciliation, which are part and parcel of international conciliation.

As regards measures of implementation, the delegation of Uruguay therefore favours a juridical solution.

In the second place my delegation believes that effective machinery to implement the Covenant on Human Rights cannot be established unless properly constituted bodies, with the powers of supervision, inquiry and negotiation essential to that machinery, are also set up.

With this in view, my delegation would be prepared to support the establishment of a permanent special control organ of the kind proposed by some of the delegations taking part in the work of this Commission.

The functions of such a permanent organ must, however, be clearly defined in the instrument establishing it and must, in the opinion of my delegation, be limited to the following:

- (a) General supervision of the normal implementation of the Covenant, irrespective of any complaint or claim regarding violations.
- (b) Examination of any petitions and claims that may be submitted and investigation into the facts.
- (c) Mediation between the parties to disputes regarding breaches of the Covenant with a view to obtaining, by negotiation, the restoration of the juridical situation which has been impaired or reparation for the wrong suffered.

Finally, if the permanent organ set up by the Covenant fails to effect a settlement, the matter should be compulsorily submitted to the International Court of Justice for decision or to any other judicial organ it may be decided to establish, and to which both States and individuals will have access.

In the third place, Uruguay is in favour of the recognition in the Covenant of the right of individuals, groups of individuals and non-governmental organizations to petition international organs, since it considers that this right is the principle guarantee of the Covenant on Human Rights and a procedure essential to the effective implementation of the provisions of the Covenant.

From the theoretical point of view, my delegation's position is based on the principle that the embodiment of human rights and fundamental freedoms in the

Charter of the United Nations in 1945 implies tacit recognition of the individual as a subject of international law.

At this stage and before this Commission there is no need to go into details regarding the theoretical basis and history of the recognition and exercise of the international right of petition by individuals or to give historical and contemporary examples.

I shall merely mention that the Constitution of my country embodies this right in the broadest possible form and that it is recognized by the courts in every field of the public power (Article 29 of the Constitution of Uruguay).

Since the Charter of the United Nations establishes an international legal system, the field of application of the right of petition is extended and goes beyond the boundaries of national constitutional law.

In fact, the right of petition must be regarded as one of the fundamental freedoms, inherent in every subject of law as such; in both international and national law it is an inevitable consequence of the establishment of the "rule of law".

When a man feels that he is the victim of injustice, of something he regards as contrary to his status as a human being, his only remedy is to appeal to authority. Deprived of his power to secure justice for himself by his own hand, he has instead the juridical power to request the co-operation of the constituted powers of the State or of the international Organization.

Under the rule of law, private violence is transformed into petition to the authorities. The right to petition the authorities constitutes a juridical power of the individual and is an essential means of obtaining the assistance of the law. No one can be deprived of this juridical power to appeal to authority; if the right to secure justice oneself is prohibited, it stands to reason that every subject of law must have the right to obtain justice through the authorities; to deprive him of both would be to deny justice itself.

The American jurist, Story, even said that a right of this kind scarcely required to be expressly stated in a republic: It was, he said, impossible, that the right could be denied in practice so long as the spirit of freedom had not entirely disappeared and the people had not become so degraded as to be incapable of exercising the privileges of free men.

We do not believe that the present international position is such and therefore, in view of the silence of the proposals submitted to this Commission

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regarding the recognition and organization of the exercise of this right, my delegation reserves the right to submit, at the proper time, concrete proposals for the inclusion of the right of petition among the measures for the implementation of the International Covenant on Human Rights.
