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CREATION OF THE POST OF UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS

Report of the Third Committee

Rapporteur: Dr. Ludek HANDL (Czechoslovakia)

I. INTRODUCTION

1. At its 1758th plenary meeting, on 20 September 1969, the General Assembly allocated to the Third Committee agenda item 53 entitled "Creation of the Post of United Nations High Commissioner for Human Rights".
2. This item, originating from a proposal submitted by Costa Rica,^{1/} was first before the General Assembly at its twentieth session. In resolution 2062 (XX) of 16 December 1965, the Assembly requested the Economic and Social Council to transmit the proposal to the Commission on Human Rights for study and report.
3. At its twenty-second session, in 1966, the Commission on Human Rights considered this item, in accordance with a decision taken at its twenty-first session,^{2/} under the title "Question concerning the implementation of human rights through a United Nations High Commissioner for Human Rights or some other appropriate international machinery". By resolution 4 (XXII), the Commission established a working group of nine of its members to study all relevant questions concerning the institution of a United Nations High Commissioner for Human Rights.

1/ Official Records of the General Assembly, Twentieth Session, Annexes, agenda item 98, document A/5963.

2/ Official Records of the Economic and Social Council, Forty-first Session, Supplement No. 8 (E/4184), chapter V.

4. At its forty-second session in 1967, the Economic and Social Council, on the recommendation of the Commission on Human Rights, adopted resolution 1237 (XLII) recommending to the General Assembly the establishment of a United Nations High Commissioner's Office for Human Rights. In resolution 1238 (XLII), the Council requested the Secretary-General to bring resolution 1237 (XLII) and the amendments thereto submitted by the United Republic of Tanzania (E/AC.7/L.526 and Corr.1) to the attention of Member States, as well as the ILO and UNESCO, and to invite their views on the question.
5. At its twenty-second session, the General Assembly had before it, inter alia, the texts transmitted by the Economic and Social Council and the statements of Governments and the specialized agencies submitted in response to Council resolution 1238 (XLII). The Assembly was, however, unable to consider the item owing to the heavy programme of work and by resolution 2333 (XXII) of 18 December 1967 decided to give high priority to the question at its twenty-third session. At its twenty-third session, by resolution 2437 (XXIII) of 19 December 1968, the Assembly expressed its regret at again not being able to give the item the required priority and decided to give high priority to the consideration of the question at the twenty-fourth session.
6. The Third Committee discussed this item at its 1727th, 1730th and 1731st meetings, held between 5 and 9 December 1969.
7. The Committee had before it: (a) a note by the Secretary-General (A/7498) containing the text of Council resolution 1237 (XLII), the amendments proposed thereto by the United Republic of Tanzania, the replies received from Member States in response to paragraph 1 of Council resolution 1238 (XLII) and the reports received from the ILO and UNESCO in accordance with paragraph 2 of resolution 1238 (XLII); and (b) a statement of administrative and financial implications (A/C.3/L.1728) of Council resolution 1237 (XLII) and the amendments submitted thereto by the United Republic of Tanzania.

II. PROCEEDINGS IN THE COMMITTEE

(a) Draft resolution and amendments

8. At the 1727th meeting, on 5 December 1969, the representative of Costa Rica presented a draft resolution (A/C.3/L.1751), on behalf of Afghanistan, Costa Rica,
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Dahomey, France, Japan, Netherlands, Nicaragua, the Philippines, Sierra Leone, the United Kingdom, the United States and Uruguay. The draft resolution read as follows:

"The General Assembly,

"Recalling its resolutions 2062 (XX), 2333 (XXII) and 2457 (XXIII), relating to the creation of the post of United Nations High Commissioner for Human Rights,

"Noting Economic and Social Council resolutions 1237 (XLII) of 6 June 1967 on the establishment of a United Nations High Commissioner's Office for Human Rights and 1238 (XLII) on the question concerning the implementation of human rights through a United Nations High Commissioner for Human Rights or some other appropriate international machinery,

"Noting also the views expressed in the current general debate on that question,

"Considering that there has not been sufficient time at the twenty-fourth session to complete the consideration of this matter,

"1. Decides to give the highest priority to the consideration of this item with a view to concluding such consideration at the twenty-fifth regular session of the General Assembly;

"2. Requests the Secretary-General to provide the General Assembly at its twenty-fifth session with all the relevant information prepared in conformity with the resolutions of the General Assembly, the Economic and Social Council and the Commission on Human Rights on this matter."

9. At the 1730th meeting, on 9 December 1969, Uganda, the United Republic of Tanzania and Zambia introduced amendments (A/C.3/L.1753) to the draft resolution which would:

(i) replace the second preambular paragraph by the following:

"Recalling also Economic and Social Council resolution 1237 (XLII) and the amendments submitted thereto by the United Republic of Tanzania, and resolution 1238 (XLII) on the question concerning the implementation of human rights through a United Nations Commissioner for Human Rights, or some other appropriate international machinery,"

(ii) in the first operative paragraph, after "with a view to" add the words "the possibility of"

(iii) replace operative paragraph 2 by the following:

"Requests the Secretary-General to provide the General Assembly at its twenty-fifth session with an analytical study relating to Economic and Social Council resolutions 1237 (XLII) and the amendments thereto, and 1238 (XLII) on this subject."

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10. At the 1731st meeting, on 9 December 1969, the representative of the Union of Soviet Socialist Republics introduced an oral amendment seeking to replace operative paragraph 1 of the draft resolution by the following:

"1. Requests the Economic and Social Council to consider the question of the possibility both of the creation of the post of United Nations High Commissioner for Human Rights and the creation of some other appropriate international machinery and to submit, taking into account the views of the Commission on Human Rights and the Commission on the Status of Women, its conclusions to the General Assembly with a view to a subsequent consideration of this question."

(b) Debate

11. Representatives advocating the early creation of the post of United Nations High Commissioner for Human Rights, as envisaged in Economic and Social Council resolution 1237 (XLII), felt that such an institution was urgently needed for the promotion and protection of human rights. They also stressed that the human rights committee envisaged in the International Covenant on Civil and Political Rights was unlikely to come into existence in the immediate future, and that in the meantime there was need for an agency which, unlike the existing organs dealing with human rights on a periodic basis and publicly, could offer its advice and assistance promptly and discreetly.

12. In the opinion of these representatives, the High Commissioner would act entirely without prejudice to the power of other organs or bodies responsible for the application of human rights standards or the United Nations Secretariat impartiality would be enhanced by the panel of expert consultants provided for in resolution 1237 (XLII) who would be drawn from all of the principal legal systems and geographical regions. Moreover, the High Commissioner would be expected regularly to consult with the Secretary-General.

13. The objections voiced in the past and at the current session that the High Commissioner would interfere in the domestic affairs of sovereign States seemed to these representatives unjustified. In the first place, he could offer advice and assistance to States, as to other organs of the United Nations or to the specialized agencies, only at their request. He would even have to consult any Government or specialized agency concerned before mentioning it in his report to the General Assembly. Secondly, he would be under the direct authority of the General Assembly, which could exercise adequate control.

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14. As regards the right of the proposed new institution to have access to communications of the kind referred to in Economic and Social Council resolution 728 F (XXVIII), there again, in the view of the supporters of the new institution, the risk of intervention in domestic affairs was virtually non-existent. The right of access to a communication and its eventual reference to the Government concerned did not by itself create any right of petition or authorize the High Commissioner to dictate to a Government methods of solving its own problems.

15. Speakers opposed to the establishment of a High Commissioner's office stated that the implementation of human rights would be best achieved through the ratification and implementation by States of international instruments relating to human rights and fundamental freedoms. Yet some of the strongest supporters of the proposed institution had systematically refused to ratify such instruments, thus clearly showing that their sole aim in pressing for a High Commissioner was to exert political pressure on other countries. Thus, from the point of view of the developing countries in particular, the High Commissioner would be a positive danger.

16. Moreover, some speakers contended, the appointment of a High Commissioner would be inconsistent with the provisions of the United Nations Charter, which called for the exercise of supervision over human rights by representative bodies established therein. Responsibility in the matter thus rested with the General Assembly through its Third Committee, the Economic and Social Council, the Commission on Human Rights, the Commission on the Status of Women, the Special Committee on Apartheid, the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples and the implementation machinery created by United Nations conventions, none of which could delegate their powers to an individual official. They stated that violations of human rights and fundamental freedoms could be eradicated through international co-operation among States, as envisaged in the Charter of the United Nations, and not by creating posts which would be occupied by one individual. Such an individual would either duplicate or usurp the functions of the established organs and would severely impede the work of the Division of Human Rights. In the circumstances, therefore, he would be not only dangerous but also unnecessary, since the satisfactory work of the established

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organs in recent years left no substantive questions for him to deal with. As an example, it was asked what a High Commissioner might do in the elimination of illiteracy in the world or in relation to the policies of apartheid and other gross violations of human rights and fundamental freedoms.

17. The proposal to give the High Commissioner access to communications from private sources was, in the view of several speakers, a clear attempt on the part of some States to intervene in the internal affairs of others. The existing procedure for dealing with such communications was perfectly adequate, and recognized the principle of State sovereignty.

18. The representatives opposing the proposed new institution also stated that the working group of the Commission on Human Rights, composed wholly of supporters of establishing a High Commissioner's office had never considered the possibility of the "other appropriate international machinery" explicitly mentioned in the Commission's agenda and in the title of Council resolution 1237 (XLII). They stressed that the question of the possibility of the establishment of the High Commissioner or other appropriate international machinery was a very complicated and controversial one and consequently should be once more carefully studied by the Commission on Human Rights and the Economic and Social Council. An amendment was introduced to this effect.

19. Certain speakers stated that, if the office of the High Commissioner were to be created, their Governments would undertake no legal, moral or financial commitment in connexion therewith.

20. Some speakers urged that the High Commissioner, if he were created, should be elected by the General Assembly rather than appointed, since the elective process would provide an added safeguard as to his impartiality and moral standing. Moreover, in the opinion of these speakers, the post should be created not by a resolution of the General Assembly but by an international convention which would be binding only between the Parties. Again, a convention would have the advantage of setting out the High Commissioner's mandate in clear legal terms. Certain representatives added that a convention was in fact the only possible course, since the General Assembly had no power to create such a new organ by a mere resolution.

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21. Other representatives, while expressing no deep preference for either election or appointment, believed that the General Assembly's powers to create the post of High Commissioner by resolution were not seriously in doubt. The General Assembly could approve the creation of the High Commissioner's office by resolution in the same way as it could establish any other purely advisory body.

22. The view was expressed that the High Commissioner, in the performance of his duties, should be assisted by regional human rights offices with specialized knowledge of local conditions.

23. Several representatives voiced their opposition as regards the financial implications of the proposed new office. The figures in the Secretary-General's statement on the matter were exceedingly high, and it was surprising that many delegations which traditionally urged economy were in favour of such an expensive project which could in the future cause a substantial strain on the United Nations budget. Other speakers replied that the question whether or not any given expenditure was justified could only be answered in the light of specific merits which respective delegations attached to proposals submitted to the General Assembly.

24. The sponsors of the three-Power amendments (A/C.3/L.1753) to the twelve-Power draft resolution (A/C.3/L.1751) explained that the analytical study which the Secretary-General would be asked to prepare could up-date studies previously affected on the subject taking into account more recent action by the Commission on Human Rights and the Economic and Social Council and considering such matters as the possibilities of creating the institution by means of an international convention. The view was also expressed that the specialized agencies should be asked whether the activities of a High Commissioner might not give rise to a conflict in certain areas of competence reserved to the agencies, and as to their attitude to the establishment of such an institution.

25. The Director of the Division of Human Rights stated that the Secretary-General could produce a factual study and obtain advice on the relevant legal aspects of the problems raised, but could not undertake to evaluate the merits of the proposal nor express assessments of the effectiveness of existing governmental organs active in the field of human rights. As regards the financial implications, the Secretary-General's statement (A/C.3/L.1728) gave an estimate for only the first year of the proposed new institution's activities. The cost for subsequent years could only be determined in consultation with the High Commissioner in the light of his exact needs and spheres of activity.

III. VOTING

26. At its 1731st meeting, on 9 December 1969, the Third Committee voted on the twelve-Power draft resolution (A/C.3/L.1751) and on the amendments thereto:

(a) The first three-Power amendment (A/C.3/L.1753) was adopted by 30 votes to 26, with 37 abstentions;

(b) The oral amendment of the Union of Soviet Socialist Republics was rejected by 40 votes to 30, with 28 abstentions;

(c) The second three-Power amendment (A/C.3/L.1753) was adopted by 34 votes to 26, with 36 abstentions;

(d) The third three Power amendment (A/C.3/L.1753) was adopted by 34 votes to 32, with 29 abstentions;

(e) The draft resolution (A/C.3/L.1751) as a whole, as amended, was adopted by 55 votes to 24, with 15 abstentions. At the request of the representative of the Union of Soviet Socialist Republics the vote was recorded (see paragraph 27 below). The voting was as follows:

In favour: Afghanistan, Argentina, Australia, Austria, Belgium, Bolivia, Canada, Ceylon, Chad, Chile, China, Colombia, Congo (Democratic Republic of), Costa Rica, Cyprus, Dahomey, Denmark, Ecuador, Finland, France, Ghana, Greece, Guatemala, Guyana, Honduras, Iceland, India, Ireland, Israel, Italy, Ivory Coast, Jamaica, Japan, Kenya, Mali, Netherlands, New Zealand, Niger, Norway, Pakistan, Panama, Philippines, Senegal, Sierra Leone, Somalia, Spain, Sweden, Thailand, Tunisia, Turkey, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Venezuela, Zambia.

Against: Algeria, Brazil, Bulgaria, Byelorussian Soviet Socialist Republic, Congo (Brazzaville), Cuba, Czechoslovakia, Hungary, Iraq, Jordan, Kuwait, Lebanon, Libya, Mexico, Mongolia, Poland, Romania, Rwanda, Saudi Arabia, Sudan, Syria, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic.

Abstaining: Botswana, Burma, Burundi, Ethiopia, Indonesia, Lesotho, Liberia, Malaysia, Mauritania, Morocco, Nepal, Nigeria, Peru, Upper Volta, Yugoslavia.

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IV. RECOMMENDATION OF THE THIRD COMMITTEE

27. The Third Committee therefore recommends to the General Assembly the adoption of the following draft resolution:

Creation of the post of United Nations High Commissioner for Human Rights

The General Assembly,

Recalling its resolutions 2062 (XX) of 16 December 1965, 2333 (XXII) of 18 December 1969 and 2437 (XXIII) of 19 December 1968 relating to the creation of the post of United Nations High Commissioner for Human Rights,

Recalling also Economic and Social Council resolution 1237 (XLII) and the amendments submitted thereto by the United Republic of Tanzania, and resolution 1238 (XLII) of 6 June 1967 on the question concerning the implementation of human rights through a United Nations High Commissioner for Human Rights, or some other appropriate international machinery,

Noting also the views expressed in the current general debate on that question,

Considering that there has not been sufficient time at the twenty-fourth session to complete the consideration of this matter,

1. Decides to give the highest priority to the consideration of this item with a view to the possibility of concluding such consideration at its twenty-fifth session;

2. Requests the Secretary-General to provide the General Assembly at its twenty-fifth session with an analytical study relating to Economic and Social Council resolution 1237 (XLII) and the amendments thereto, and resolution 1238 (XLII) on this subject.
