

REPORT OF THE COMMISSION ON HUMAN RIGHTS

SECOND SESSION

Geneva, 2 December to 17 December 1947

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CHAPTER I

INTRODUCTION

1. The Second Session of the Commission on Human Rights opened on Tuesday, 2 December 1947, at the European Headquarters of the United Nations, Geneva, Switzerland. The Commission held twenty-three Plenary Meetings and terminated its work on Wednesday, 17 December 1947.
2. The following Representatives of Member Nations on the Commission attended:

Chairman:

Mrs. Franklin D. Roosevelt (United States) Representative

Rapporteur:

Dr. Charles Malik (Lebanon) Representative

Col. W. R. Hodgson (Australia) Representative

Mr. Fernand Dehousse (Belgium) Representative

Mr. A. S. Stepanenko (Byelorussian Soviet
Socialist Republic) Representative

Senator E. Cruz-Coke (Chile) Alternate

Dr. C. H. Wu (China) Alternate

Mr. Omar Loutfi (Egypt) Alternate

Prof. René Cassin (France) Representative

Mrs. Hansa Mehta (India) Representative

Mr. A. G. Pourevaly (Iran) Alternate

Mr. M. Amado (Panama) Alternate

Brig.-Gen. Carlos P. Romulo (The Philippines) Representative

Mr. Michael Klekovkin (Ukrainian Soviet
Socialist Republic) Representative

Mr. A. E. Bogomolov (Union of Soviet
Socialist Republics) Representative

Lord Dukeston, C.B.E. (United Kingdom) Representative

Mr. Juan J. Carbajal Victorica (Uruguay) Alternate

Dr. Vladislav Ribnikar (Yugoslavia) Representative

3. The following Representatives of Specialized Agencies were also present at the session:

Mr. J. de Givry) International Labour Organization

Mr. P. de Briey, and)

Mr. J. Bessling)

Mr. J. Havet United Nations Educational, Scientific
and Cultural Organization

Miss M. Barblé, and)

Dr. P. Weis) Preparatory Commission for the
International Refugee Organization

/4. The following

4. The following consultants from non-governmental organizations were also present:

Category A

Miss Toni Sender	American Federation of Labor
Mr. A. van Istendael and)	International Federation of Christian
Mr. P. J. S. Serrarens)	Trade Unions
Mr. Leopold Boissier and)	Inter-Parliamentary Union
Mr. A. R. de Cléry)	

Category B

Mlle. E. de Romer	Catholic International Union for Social Service, and the International Union of Catholic Women's Leagues
Mr. O. Frederick Nolde	Commission of the Churches on International Affairs
Mr. A. G. Brotman	Co-ordinating Board of Jewish Organizations
Prof. Norman Bentwich)	Consultative Council of
Mr. Milton Winn)	Jewish Organizations
Mr. Eugene Weill and)	
Prof. Paul Mantoux)	
Mr. Th. de Félice	International Abolitionist Federation
Mr. J. M. E. Ouchosal and	International Committee of the Red Cross
Mr. C. Pilloud	
Dr. Eder and)	International Council of Women
Miss van Eeghen)	
Mrs. Alva Myrdal	International Federation of Business and Professional Women
Mrs. Gabrielle Duchêne	Women's International Democratic Federatio
Mr. John A. F. Ennals	World Federation of United Nations Associations
Dr. F. R. Bienenfeld)	World Jewish Congress
Mr. Alex Easterman and)	
Mr. Gerhard M. Riegner)	

5. Although scheduled to meet on 1 December, the Commission could not open its session before 2 December, owing to the unavoidable delay in arriving in Geneva of the Chairman and several other Representatives.

/6. The Representatives

6. The Representatives or Alternates representing Chile (Senator CRUZ-COK China (Dr. C. H. WU), Lebanon (Dr. Charles MALIK), the Philippines (Brig.-Gen. Carlos P. ROMULO), the United Kingdom (Lord DUKESTON) and Uruguay (Mr. Juan J. Carbajal VICTORICA) were unavoidably delayed in reaching the session. Senator CRUZ-COKE participated from the thirty-third to the thirty-seventh meeting; Dr. C. H. WU participated in the thirty-first and following meetings; Dr. MALIK participated in the twenty-eighth and following meetings; Mr. AMADO from the twenty-third to the forty-first meeting; Brig.-Gen. ROMULO from the twenty-ninth to the forty-first meeting; Lord DUKESTON in the twenty-fourth and following meetings; and Mr. Juan J. Carbajal VICTORICA in the thirty-second and following meetings. Dr. C. H. WU was represented at the twenty-third to thirty-first meeting by Dr. Nan-Ju WU. Brig.-Gen. ROMULO was represented at the twenty-eighth meeting by Mr. Salvador P. LOPEZ. Lord DUKESTON was represented at the twenty-third meeting by Mr. A. CAMPBELL.

7. Observers representing the Governments of Greece, Poland, Rumania and Turkey, and the Holy See, attended diverse meetings of the Session.

8. Prof. John P. HUMPHREY, Director of the Division of Human Rights, represented the Secretary-General. Mr. Edward LAWSON acted as Secretary of the Commission.

9. The Commission took note of the Rules of Procedure for Functional Commissions adopted by the Economic and Social Council on 12 August 1947.

10. The Commission adopted the Provisional Agenda (document E/CN.4/22/Rev.2) as its Agenda, with the understanding that the listing of documents in brackets after each item was for information purposes only.

11. In accordance with Resolution 46 (IV) of the Economic and Social Council, the Commission invited the officers of the Commission on the Status of Women to be present and to participate without vote in its deliberations when sections of the draft of the International Bill of Human Rights concerning the particular rights of women were being considered. The Commission on the Status of Women was represented by Mrs. Bodil BEGTRUP, Chairman, and Mrs. E. URALOVA, Rapporteur.

12. The expression of the views of the Members of the Commission is embodied in the summary records of the plenary meetings (documents E/CN.4/SR.23 to 45) and in the summary records (documents E/CN.4/AC.2/SR.1 to 9, E/CN.4/AC.3/SR.1 to 9, and E/CN.4/AC.4/SR.1 to 7) and the reports (documents E/CN.4/53, E/CN.4/56 and E/CN.4/57) of the three working groups.

13. Taking into consideration the necessity for the Drafting Committee to be fully informed of the replies from the Governments before its next meeting on 3 May 1948, the Commission requested the Secretary-General

/(a) to transmit

(a) to transmit this Report to the Governments during the first week of January 1948; (b) to fix the date of 3 April 1948 as the time limit for the reception of the replies from Governments on the draft International Bill of Human Rights, and (c) to circulate these replies to the members of the Commission as soon as they are received.

14. In respect of the report of its third session to the seventh session of the Economic and Social Council, the Commission requested the Economic and Social Council to waive, if necessary, its rule requiring the submission of Reports of Commissions at least six weeks in advance of the session of the Council in which the Reports would be considered.

CHAPTER II

PLAN OF WORK IN REGARD TO THE BILL OF HUMAN RIGHTS

15. The Commission decided, by a majority vote of 10 to 4 with one abstention, to proceed without delay to the consideration of the Articles suggested for inclusion in an International Declaration of Human Rights, contained in Annex F of the Report of the Drafting Committee (document E/CN.4/21); and the Articles suggested for inclusion in an International Convention on Human Rights, contained in Annex G of the same Report.

16. In order to fulfil its mission, the Commission decided to set up three Working Groups immediately, to deal respectively with the problem of the Declaration, the Convention or Conventions, and Implementation. The membership of these Working Groups, as determined by the Chairman with the approval of the Commission, was as follows:

Working Group on the Declaration: The Representatives of the Byelorussian Soviet Socialist Republic, France, Panama, the Philippines, the Union of Soviet Socialist Republics and the United States.

Working Group on the Convention or Conventions: the Representatives of Chile, China, Egypt, Lebanon, the United Kingdom and Yugoslavia.

Working Group on Implementation: The Representatives of Australia, Belgium, India, Iran, the Ukrainian Soviet Socialist Republic and Uruguay.

17. The Working Groups began their work immediately upon establishment, and met simultaneously. The Working Group on the Declaration met nine times, that on the Convention nine times and that on the question of Implementation seven times. When the Commission received the Reports of the three Working Groups (documents E/CN.4/57, E/CN.4/56 and E/CN.4/53) respectively, it decided to examine first the proposed Articles for the Declaration article by article, referring to corresponding Articles in the

Convention wherever such existed.

18. Two titles were frequently used in respect of the documents in preparation, Declaration and Convention. The latter was to be entered into and ratified by governments and not only to be discussed and adopted by the General Assembly. The question arose whether the term "Bill of Rights" was to be applied only to the Convention, or only to the Declaration, or to the two documents taken together. In its night meeting on 16 December 1947, the Commission decided:

- (a) to apply the term "International Bill of Human Rights", or, for brevity, "Bill of Rights", to the entirety of documents in preparation; the Declaration, the Convention and the Measures of Implementation;
- (b) to use the term "Declaration" for the articles in Annex A of this Report;
- (c) to call the Convention on Human Rights embodied in Annex B, "The Covenant on Human Rights"; and
- (d) to refer to the outcome of the suggestions embodied in Annex C as "Measures for Implementation", regardless of whether these measures will eventually form part of the Covenant or not.

19. In discussing the Articles for the Declaration and the Convention, the Commission accepted a ruling of the Chairman (which was challenged and upheld) that in order to save time only one person would be recognized to speak for, and only one to speak against, each Article or proposed amendment.

20. It was agreed that every Representative had a right to submit to the Rapporteur, in writing, before the closure of the session, any comment he wished to make upon a particular Article or upon the documents as a whole, for inclusion in the Report, provided that such comment be read first to the Commission.

CHAPTER III

INTERNATIONAL DECLARATION ON HUMAN RIGHTS

21. The Working Group on the Declaration on Human Rights held nine meetings. Mrs. Franklin D. ROOSEVELT (United States) was elected Chairman and Professor Rene CASSIN (France), Rapporteur. The views expressed by the members of the Working Group will be found in its Report (document E/CN.4/57) and in the summary records of its meetings (documents E/CN.4/AC.2/1 to 9).

22. The Report of the Working Group was received and noted by the Commission, and Chapter 3, containing articles suggested for inclusion in an International Declaration on Human Rights, was considered in detail. Members commented

/upon the form

upon the form and substance of the various articles, and proposed alterations. These comments and proposals are found in the summary records. The result of this examination is embodied in Annex A of this Report.

CHAPTER IV

INTERNATIONAL COVENANT ON HUMAN RIGHTS

23. The Working Group on the Covenant on Human Rights held nine meetings. Lord DUKESSTON (United Kingdom) was elected Chairman and Dr. Charles MALIK (Lebanon), Rapporteur. The views expressed by the members of the Working Group will be found in its Report (document E/CN.4/56) and in the summary records of its meetings (documents E/CN.4/AC.3/1 to 9).

24. The Report of the working Group was received and noted by the Commission, and Chapter 2, containing articles suggested for inclusion in an International Covenant on Human Rights was considered in detail. Members commented upon the form and substance of the various articles, and proposed alterations. These comments and proposals are found in the summary records. The result of this examination is embodied in Annex B of this Report.

CHAPTER V

THE QUESTION OF IMPLEMENTATION

25. The Working Group on the Question of Implementation held seven meetings. Mrs. Hansa MEHTA (India) was elected Chairman and Mr. Fernand DEHOUSSE (Belgium), Rapporteur. The views expressed by the members of the Working Group will be found in its Report (document E/CN.4/53) and in the summary records of its meetings (documents E/CN.4/AC.4/1 to 7).

26. The Report of the Working Group was received and noted by the Commission, and the Representatives proceeded to make general comments on it. A summary of these comments is contained in the summary records of the thirty-eighth and thirty-ninth plenary meetings (documents E/CN.4/SR.38 and 39). The Commission decided to take no decision on any specific principle or solution stated in the Report, but to transmit the Report to the Governments of the various States and to the Economic and Social Council for their consideration and comment. Annex C of the present Report reproduces in full the Report of the Working Group on Implementation together with such comments by Representatives as were expressly submitted in writing to the Rapporteur for inclusion in this Report.

CHAPTER VI

COMMUNICATIONS

27. The Commission received, in private meeting, a confidential list of communications received concerning human rights compiled by the Secretary-General. This list contained a brief indication of the substance of each communication, without divulging the identity of the authors. In accordance with the suggestion made by the Economic and Social Council in its Resolution of 5 August 1947 (Resolution 75 (V)), the Commission decided to establish an ad hoc committee to meet shortly before the third session for the purpose of reviewing the confidential list of communications prepared by the Secretary-General under part (a) of that Resolution and of recommending which of these communications, in original, should, in accordance with paragraph (c) of the Resolution, be made available to members of the Commission on request. The Commission requested the ad hoc committee to perform a similar function during the current session. In addition to the functions for the Committee suggested by the Economic and Social Council, the Commission requested that the Committee should also submit to it a report on the list of communications prepared under paragraph (a) of the Resolution, along with any recommendation it deemed appropriate.

28. The ad hoc Committee held one meeting. Its members were the Representatives of Chile, France, Lebanon, the Union of Soviet Socialist Republics and the United States. Mrs. Franklin D. ROOSEVELT (United States) was elected Chairman, and Prof. René CASSIN (France) Rapporteur. The views expressed by its members are contained in the summary record of that meeting (document E/CN.4/AC.5/SR.1), and in the Report of the ad hoc Committee (document E/CN.4/64). The Commission, having noted that Report, and having noted that in the confidential list of communications transmitted by the Secretary-General there were a considerable number dealing with the principle involved in the promotion of universal respect for and observance of human rights, decided:

- (a) to transmit immediately to the members of the Commission an analysis of these communications on general principles prepared by the Secretariat (document E/CN.4/AC.5/2,, and
- (b) to recommend that the originals of the communications listed in document E/CN.4/AC.5/2 should, in accordance with paragraph (c) of the Resolution of the Economic and Social Council of 5 August 1947, and without prejudice to the powers of the Secretary-General under the same paragraph, be made available to the members of the Commission on request.

/29. The Commission

29. The Commission decided that the task of the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities would be facilitated if the Economic and Social Council agreed to modify and extend its resolution of 5 August 1947, so as to give the members of the Sub-Commission, with respect to communications dealing with discrimination and minorities and at the request of the Human Rights Commission in each case, the same facilities as are enjoyed by members of the Commission.

30. The Commission requested the Economic and Social Council to reconsider the procedure for communications relating to human rights laid down in its resolution of 5 August 1947, in particular as regards points (a) and (b). It suggested that the Secretary-General be requested to compile, before each session of the Commission, two lists of communications received concerning human rights with a brief summary of the substance of each; (1) a non-confidential list of communications in which the authors state that they have already divulged or intend to divulge their names, or that they have no objections to their names being divulged; and (2) a confidential list which will be furnished to the Commission, in private meeting, without divulging the identity of the authors of the communications.

CHAPTER VII

FREEDOM OF INFORMATION AND OF THE PRESS

31. The Commission noted the Report of the first session of the Sub-Commission on the Freedom of Information and of the Press (document E/441), which had been submitted directly to the Economic and Social Council in conformity with that Council's Resolution No. 46 (IV) of 28 March 1947.

32. The Commission decided to recommend to the Economic and Social Council the extension of the life of the Sub-Commission on the Freedom of Information and of the Press for one additional year, in order that this Sub-Commission might hold a meeting after the session of the International Conference on Freedom of Information which will open on 23 March 1948.

33. The Commission adopted the following resolution:

THE COMMISSION ON HUMAN RIGHTS:

1. RECOGNIZES that freedom of expression and of information is one of the most fundamental freedoms;
2. AFFIRMS that this freedom must be included both in the International Declaration and in the Covenant on Human Rights;
3. DECIDES, having before it two texts on this subject for inclusion in the International Covenant, one submitted by the United States of America and one by the Drafting Committee, not to elaborate a final text

until it has before it the views of the Sub-Commission on Freedom of Information and of the Press and of the International Conference on Freedom of Information, and remits to the Sub-Commission on Freedom of Information and of the Press these two texts for its consideration, requesting it further:

- (a) to take into account the two resolutions of the General Assembly on this question (document A/428, "Measures to be taken against Propaganda and the Inciters of a New War" and document A/C.3/180/Rev.1, "False and Distorted Reports");
 - (b) to consider the social, economic and political conditions which will render this fundamental freedom real; and
 - (c) to consider the possibility of denying this freedom to publications and other media of public expression which aim or tend to inflict injury, or incite prejudice or hatred, against persons or groups because of their race, language, religion or national origin;
4. **RECOMMENDS** to the Economic and Social Council that it remit to the International Conference on Freedom of Information the same documents with identical instructions; and
5. **DECIDES** to refer Articles 17 and 18 of the draft Declaration to the Sub-Commission on Freedom of Information and of the Press for its consideration and report and to request the Economic and Social Council to refer these Articles to the Conference on Freedom of Information for its own consideration and report.

CHAPTER VIII

THE PREVENTION OF DISCRIMINATION AND THE PROTECTION OF MINORITIES

34. In its thirty-first meeting on 8 December 1947, the Commission noted the Report of the first session of the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities (document E/CN.4/52), presented by the Chairman of the Sub-Commission, Mr. E. E. EKSTRAND (Sweden). The comments of the members of the Commission at the time of its presentation will be found in the summary record of that meeting (document E/CN.4/SR.31). The Report was referred to each member for study, and to the three Working Groups for use as they saw fit.

35. As a result of a later examination of this Report, in its forty-third and forty-fourth meetings, the Commission decided to request the Economic and Social Council:

- (a) to request the Secretary-General to organize studies and prepare
/analyses

analyses designed to assist the Sub-Commission in determining the main types of discrimination which impede the equal enjoyment by all of human rights and fundamental freedoms, and the causes of such discrimination, the results of such studies and analyses to be made available to members of the Sub-Commission; and to suggest that in so doing he consider whether or not the groups involved are of recent or long historic origin, and whether or not in the past they have been in the nature of active protesting minorities;

(b) to adopt such measures as are necessary to provide the Sub-Commission, for purposes of its future work, with all information that it might require in order to distinguish between genuine minorities and spurious minorities which might be created for propaganda purposes;

(c) to invite the Secretary-General to keep in mind, in connection with any studies which he might be directed to make in the fields of the prevention of discrimination and the protection of minorities, the desirability of formulating effective educational programmes in these fields, and to report any findings that might assist the Sub-Commission in making appropriate recommendations to this end;

(d) to advise the United Nations Educational, Scientific and Cultural Organization of the interest of the United Nations in such programmes; to request UNESCO to make available to the Sub-Commission any relevant material or analyses that might result from that Organization's proposed study of social tensions or from any other UNESCO programmes; to suggest collaboration between the United Nations and UNESCO in the formulation of such a programme; and to suggest that UNESCO consider, as a first step, the desirability of initiating and recommending the general adoption of a programme of disseminating scientific facts with regard to race;

(e) to invite UNESCO to consider the creation of a committee of world leaders in educational theory and practice, which should make it its business to study and select the most common and basic principles of a democratic and universal education in order to combat any spirit of intolerance or hostility as between nations and groups.

36. The Commission declared that in any peace treaties not yet concluded there should be included wherever appropriate specific clauses seeking to protect human rights and minority rights.

37. The Commission further decided, in accordance with the request of the Sub-Commission:

/(a) to draw the

(a) to draw the attention of the Economic and Social Council to document C.L.III.1927 (Annex) of the League of Nations, which reproduces a large number of texts of treaties and declarations relating to international obligations undertaken to combat discrimination and to protect minorities;

(b) to request the Economic and Social Council to consider the question whether, and to what extent, these treaties should be regarded as being still in force, at least insofar as they would entail between contracting States rights and obligations, the existence of which would be independent of their guarantee by the League of Nations; and

(c) to express the view that there is here involved a juridical situation which, owing to its implications and possible consequences, should in any event be elucidated, possibly through a request by the Economic and Social Council for an advisory opinion on this matter from the International Court of Justice.

38. The Commission took note of the Sub-Commission's opinion (a) that the implementation of the rights formulated in those parts of the proposed Declaration and Covenant on Human Rights which deal with the prevention of discrimination and the protection of minorities would be of vital importance, and (b) that the machinery covering this matter formed but one part of the machinery for the implementation of human rights as a whole. In this connection, the Commission requested the Sub-Commission to examine any proposals for Measures of Implementation of the International Bill of Human Rights formulated by the Commission, and to submit to it suggestions in this regard.

39. The Commission approved the following text relating to the prevention of discrimination:*

"The Prevention of Discrimination is the prevention of any action which denies to individuals or groups of people equality of treatment which they may wish."

* The Representative of Lebanon wishes to note that strictly speaking this statement is incorrect. To make it correct, he suggests the insertion of "reasonable" before "equality" and "justly" before "wish".

40. The Commission decided to postpone until its third session the consideration of the text submitted by the Sub-Commission relating to the protection of minorities (document E/CN.4/52, page 13, Section V (2)).*

41. The Commission requested the Economic and Social Council to make arrangements with the Secretary-General enabling the Sub-Commission to convene at such a time that its findings might be submitted to the Commission well in advance of the date on which they were due for discussion by it, and to prevent any overlapping between the meetings of the Sub-Commission and the Commission.

42. The Commission decided to postpone until its third session the re-examination of the terms of reference of the Sub-Commission.

CHAPTER IX

TRUSTEESHIP COUNCIL QUESTIONNAIRE**

43. The Commission noted the provisional questionnaire prepared by the Trusteeship Council (document T/44), and recommended to the Economic and Social Council the adoption of the following resolution:

"THE ECONOMIC AND SOCIAL COUNCIL,

Having regard for the importance of the Trusteeship Council's Questionnaire in developing standards of social policy; and
Desirous of promoting the widest possible application of the International Bill of Human Rights,

Requests the Trusteeship Council to consider the Human Rights Section at its Questionnaire as provisional until the Commission on Human Rights is able to review it in the light of an approved Bill of Human Rights."

* For footnote see next page.

** For footnote see next page.

- * The Representative of Belgium noted that the definition of minorities contained in document E/CN.4/52 (Section V (2)) is ambiguous. This definition should, in his opinion, apply only to such members of a minority as possess the nationality of the State in which such a minority exists. It should never be extended to apply to aliens, because of the possible dangers that might arise in such a case with regard to the implementation of a proposed system for the protection of minorities.
- ** The Representative of the Union of Soviet Socialist Republics requested that the following additions be inserted in the Trusteeship Council Questionnaire:

1. Question 138

"How many newspapers are published in the native language of the residents of a given territory?"

2. Question 139

"Are there any films in the language of the residents of a given territory?"

"Are there any regular broadcasts in the language of the residents of a given territory?"

3. Question 140

"What part do the local residents take in such voluntary organizations and in their board of directors?"

"Are there any professional trade unions? Give the number. Give the percentage of workers belonging to such professional trade unions. Give details on the organization and leadership of such trade unions and on the part which the local residents take in such leadership."

4. Question 142

(a) "What part of the budget is allocated to national education in the different localities? Give the number of primary, secondary and other schools. Give the number of professors and, in particular, of professors of local origin. Which language is used for teaching purposes?"

(b) "What part of the budget is allocated to public health in the different localities? How many general and maternity hospitals? What is the total number of hospital beds?"

"To what extent do the local residents make use of the available hospital and maternity facilities?"

"Give the total number of doctors and physicians and indicate how they are distributed over a given territory."

"Are there doctors or physicians of local origin?"

(c) "How is social security organized for local residents?"

"What is the number of local residents among the public officials and employees of a given locality?"

"What is the percentage of vote among the local residents for elections to local public functions or to a director's post in public organizations?"

CHAPTER X

YEAR-BOOK ON HUMAN RIGHTS AND OTHER DOCUMENTATION

44. At the twenty-ninth Plenary meeting of the Commission, the Chairman appointed a Sub-Committee composed of the Representatives of Belgium, Egypt and Yugoslavia, to examine the Year-Book on Human Rights, the Report of the War Crimes Commission, and the question of the study of the evolution of human rights.

The Sub-Committee held one meeting. Mr. Fernand DEHOUSSE (Belgium) was elected Chairman, and Mr. Omar LOUTFI (Egypt) Rapporteur. The views expressed by the members during this meeting are contained in the summary record (document E/CN.4/AC.6/SR.1), and in the Report of the Sub-Committee (document E/CN.4/63). In its forty-third meeting, the Commission considered this Report. This consideration is to be found in the summary record of the meeting (document E/CN.4/SR.43). The Commission amended the first sentence of the second paragraph of Section II to read as follows:

"This work must include the sentences pronounced at any time in the countries not already included in the document prepared by the War Crimes Commission."

45. The Commission approved the Report of the Sub-Committee with the amendment and transmitted it to the Economic and Social Council.*

* The Representative of the Union of Soviet Socialist Republics requested that the following proposals, relating to the question of the Year-Book on Human Rights, be included in the Report:

1. That the texts of the laws relating to human rights should be quoted, not in the form of extracts, but more fully.
2. That the extracts from the Constitution of other Soviet Republics be quoted in full, and not in the form of a reference to the Constitution of the Union of Soviet Socialist Republics or to laws applying to the Union as a whole.
3. That among the most important historical documents relating to human rights, be included such statutes as, for instance, the "Declaration of Rights of the Peoples of Russia".
4. That the text of the Decree of the Presidium of the Supreme Soviet of the Union of Soviet Socialist Republics, dated 26 May 1947, on the Abolition of Capital Punishment in the Union of Soviet Socialist Republics in time of peace, be included in the symposium.
5. That the making of surveys of a strictly international character on the question of the rights of particular countries be entrusted to the experts recommended by the corresponding Governments.

CHAPTER XI

MISCELLANEOUS RESOLUTIONS

46. Stateless Persons

The Commission considered a Draft Resolution on Stateless Persons proposed by the Working Group on the Covenant relating to Stateless Persons (document E/CN.4/56; page 15). As a result, it adopted the following resolution:

THE COMMISSION ON HUMAN RIGHTS

(1) EXPRESSES the wish:

(a) that the United Nations make recommendations to Member States with a view to concluding conventions on nationality;

(b) that early consideration be given by the United Nations to the legal status of persons who do not enjoy the protection of any government, in particular pending the acquisition of nationality as regards their legal and social protection and their documentation;

(2) RECOMMENDS that such work be undertaken in consultation with those Specialized Agencies at present assuming the protection of some categories of persons not enjoying the protection of any government and that due regard be paid to relevant international agreements and conventions.

47. Minor Communal Services

The Commission decided to refer paragraph 3 (c) of Article 8 of the Draft International Covenant on Human Rights (see Annex B) to the International Labour Organization for early consideration and report in the light of the Forced Labour Convention of 1930.

48. Right of Asylum

The Commission decided to examine at an early opportunity the question of the inclusion of the right of asylum of refugees from persecution in the International Bill of Human Rights or in a special convention for that purpose.

49. Local Human Rights Committees

The Commission decided that at its next session it would take up, among other things, the functions of the information groups or local human rights committees established within countries in conformity with the Resolution of the Economic and Social Council of 21 June 1946.

50. Declaration on Human Rights

The Commission requested the Drafting Committee, in revising the Draft Declaration on Human Rights in its second session, to make it as short as possible.

ANNEX A

PART I

DRAFT INTERNATIONAL DECLARATION ON HUMAN RIGHTS

Article 1

All men are born free and equal in dignity and rights. They are endowed by nature with reason and conscience, and should act towards one another like brothers.

Article 2

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

Article 3

1. Every one is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, (which includes colour), sex, language, religion, political or other opinion, property status, or national or social origin.
2. All are equal before the law regardless of office or status and entitled to equal protection of the law against any arbitrary discrimination, or against any incitement to such discrimination, in violation of this Declaration.

Article 4

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

Article 5

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

Article 6

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

Article 7

1. Any person is presumed to be innocent until proved guilty. No one shall be convicted or punished for crime or other offence except after fair
/public

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

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

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

Article 8

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

Article 9

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

Article 10

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

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

Article 11

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

Article 12

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

Article 13

1. The family deriving from marriage is the natural and fundamental unit of society. Men and women shall have the same freedom to contract marriage in accordance with the law.

2. Marriage and the family shall be protected by the State and Society.

Article 14.

Article 14

1. Every one has the right to own property in conformity with the laws of the State in which such property is located.
2. No one shall be arbitrarily deprived of his property.

Article 15

Every one has the right to a nationality.

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

Article 16

1. Individual freedom of thought and conscience, to hold and change beliefs is an absolute and sacred right.
2. Every person has the right, either alone or in community with other persons of like mind and in public or private, to manifest his beliefs in worship, observance, teaching and practice.

(Concerning the following two Articles, 17 and 18, the Commission decided not to elaborate a final text until it had before it the views of the Sub-Commission on Freedom of Information and of the Press and of the International Conference on Freedom of Information.)

(Article 17)

- (1. Every one is free to express and impart opinions, or to receive and seek information and the opinion of others from sources wherever situated.)
- (2. No person may be interfered with on account of his opinions.)

(Article 18)

(There shall be freedom of expression either by word, in writing, in the press, in books or by visual, auditive or other means. There shall be equal access to all channels of communication.)

Article 19

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

Article 20

Every one 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.

/Article 21

Article 21

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

Article 22

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

Article 23

1. Every one has the right to work.
2. The State has a duty to take such measures as may be within its power to ensure that all persons ordinarily resident in its territory have an opportunity for useful work.
3. The State is bound to take all necessary steps to prevent unemployment.

Article 24

1. Every one has the right to receive pay commensurate with his ability and skill, to work under just and favourable conditions and to join trade unions for the protection of his interests in securing a decent standard of living for himself and his family.
2. Women shall work with the same advantages as men and receive equal pay for equal work.

Article 25

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

Article 26

1. Every one has the right to social security. The State has a duty to maintain or ensure the maintenance of comprehensive measures for the security of the individual against the consequence of unemployment, disability, old age and all other loss of livelihood for reasons beyond his control.
2. Motherhood shall be granted special care and assistance. Children are similarly entitled to special care and assistance.

Article 27

Every one has the right to education. Fundamental education shall be free and compulsory. There shall be equal access for higher education as can be provided by the State or community on the basis of merit and without
/distinction

distinction as to race, sex, language, religion, social standing, financial means, or political affiliation.

Article 28

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

Article 29

1. Every one has the right to rest and leisure.
2. Rest and leisure should be ensured to every one by laws or contracts providing in particular for reasonable limitations on working hours and for periodic vacations with pay.

Article 30

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

(Article 31)

(The Commission did not take a decision on the two texts below. They are reproduced here for further consideration.)

(Text proposed by the Drafting Committee:)

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

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

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

/article 32

Article 32

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

Article 33

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

ANNEX A

PART II

COMMENTS ON THE DRAFT INTERNATIONAL DECLARATION
ON HUMAN RIGHTS

General Comments on the Draft Declaration:

1. Wherever the word "men" is used, the Commission implied both men and women.
2. The Commission decided to suggest the following Article, which appears as Article 25 in the Report of the Working Group on the Declaration, for consideration in connection with the formulation of a preamble to the Draft Declaration:

"When a government, group, or individual seriously or systematically tramples the fundamental human rights and freedoms, individuals and peoples have the right to resist oppression and tyranny."
3. The Representative of Australia expressed the view, with which the Representative of the United States associated herself, that the language of the articles of the Declaration is confused in that it is both declaratory and mandatory. He felt that as it had been agreed that the Declaration imposes no legal obligation and requires no measures for implementation, it should be drafted in declaratory form only, or in the present indicative sense. For this reason he felt that Article 38 proposed by the Working Group (document E/CN.4/57, page 17) was out of place, since it appeared to be applicable only to the Covenant on Human Rights. The Representative of Australia suggested some such wording as "No one is to be deprived of..." or "Everyone has the right..." should be used in articles of the Declaration; and that the wording of every article in the Covenant should be in mandatory form.
4. The Representative of France withdrew the following two amendments which he had proposed:

Article 38. "A system of effective judicial and administrative appeal shall be organized by each State for the purpose of penalizing violations of these principles."

Article 39. "The United Nations recommends...all the International Conventions and would take, with the assistance of Member States, all necessary steps to give full effect to the provisions of the Charter and of the present declaration, in order to safeguard these rights and freedoms throughout the world."

This withdrawal was dictated solely by the desire to reserve for a suitable stage all discussions concerning the "implementation" of human rights, both in the Declaration and the Convention or Conventions to follow.

5. The Representative of France requested that the following comment be inserted in the Report:

"In voting for the draft Declaration, the French delegation emphasized that it constitutes the first stage reached after eighteen months work. Its defects do not detract from the fact that it contributes something new: the individual becomes a subject of international law in respect of his life and liberty; principles are affirmed, side by side with those already laid down by the majority of national laws which no national or international authority had hitherto been able to proclaim, let alone enforce."

6. The Representative of France also requested that attention be directed to the suggestions he submitted for articles of the International Declaration of Human Rights during the first session of the Drafting Committee. These suggestions are contained in Annex D of the Report of the Drafting Committee to the Commission on Human Rights (document E/CN.4/21, pages 48-68).

7. The Representative of Lebanon proposed the addition of the following Article at the end of the Declaration:

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

The proposal was lost by seven votes for to seven against.

The Representative of Lebanon wishes this article to be further considered in the future.

8. The Representative of Panama made the following comments:

"1. The draft has been made under the definite assumption that the Declaration implies no obligation whatever, and as a consequence, the drafting of the instrument is neither clear nor precise.

"2. The present draft, although it should have taken into special consideration, according to a unanimous vote by the Group that worked on the Declaration, the text submitted by the delegation of Panama since the San Francisco Conference, (see document E/CN.4/53, page 3), actually has ignored the text proposed by Panama.

"3. The present draft carries as articles what in the text proposed by Panama goes into the comments. The present draft includes some controversial wording of rights which will not be acceptable to several Governments.

"4. In the course of the discussion it has been evident that the only basis of discussion can be the text originally proposed by Panama, not only because of the various provisions already taken in its

/behalf,

behalf, but particularly because it contains a minimum of rights acceptable to all, drafted in a series of eighteen short articles, worded with juridical correctness and precision.

"5. The delegation of Panama points out that in the San Francisco Conference three Latin-American Republics - Panama, Cuba and Mexico - proposed the drafting of an international Bill of Rights made up of two Declarations: one on the fundamental rights of man and the other on the duties and rights of the States. The guarantees of the individual cannot be satisfactorily declared unless the duties and rights of the State, of which he is a citizen, are also recognized."

9. The Representative of the Union of Soviet Socialist Republics felt that the draft "Declaration on Human Rights", as prepared by the Commission is not sufficient for the protection of the essential human rights. Consequently, he reserved his right to present, at a later stage of the work, a Soviet draft "Declaration on Human Rights".

10. The Representative of the United States requested that the following articles, suggested by her at the commencement of the second session, be included as a comment. The articles might be considered by Member Governments which would prefer a shorter and less technical Declaration:

Article 1

Everyone is entitled to life, liberty, and equal protection under law.

Article 2

Everyone has the right to freedom of information, speech, and expression; to freedom of religion, conscience, and belief; to freedom of assembly and of association; and to freedom to petition his Government and the United Nations.

Article 3

No one shall be subjected to unreasonable interference with his privacy, family, home, correspondence or reputation. No one shall be arbitrarily deprived of his property.

Article 4

There shall be liberty to move freely from place to place within the State, to emigrate, and to seek asylum from persecution.

Article 5

No one shall be held in slavery or involuntary servitude. No one shall be subjected to torture or to cruel or inhuman punishment or indignity.

Article 6

No one shall be subjected to arbitrary arrest or detention. Anyone who is arrested has the right to be promptly informed of the /charges

charges against him, and to trial within a reasonable time or to be released.

Article 7

Every one, in the determination of his rights and obligations, is entitled to a fair hearing before an independent and impartial tribunal and to the aid of Counsel. No one shall be convicted or punished for crime except after public trial pursuant to law in effect at the time of the commission of the act charged. Everyone, regardless of office or status, is subject to the rule of law.

Article 8

Every one has the right to a nationality. Everyone has a right to take an effective part in his government directly or through his representatives; and to participate in elections, which shall be periodic, free and by secret ballot.

Article 9

Every one has the right to a decent living; to work and advance his well-being; to health, education and social security. There shall be equal opportunity for all to participate in the economic and cultural life of the community.

Article 10

Every one, everywhere in the world, is entitled to the human rights and fundamental freedoms set forth in this Declaration without distinction as to race, sex, language or religion. The full exercise of these rights requires recognition of the rights of others and protection by law of the freedom, general welfare and security of all.

11. The Working Group on the Declaration suggested the following Article, which the Commission omitted from its draft with a view to inclusion of its substance either in the preamble or in a final Article:

"When a government, group or individual seriously or systematically tramples the fundamental human rights and freedoms, individuals and peoples have the right to resist oppression and tyranny."

Comments on Specific Articles of the Draft Declaration.

Article 2

1. The Representative of China suggested the following wording:

"In the exercise of these rights every one shall respect the rights of others and comply with the just requirements of the democratic State."

2. The Representative of the United Kingdom expressed the view that the State should not be regarded as limiting the rights of individuals but as promoting the rights of all. He proposed the following alternative text, which he requested should be placed on record:

"In the exercise of his rights everyone must recognize the rights of others and his obligation to society so that all may develop their

3. The Representative of the United States preferred the following text, which she had suggested:

"The full exercise of these rights requires recognition of the rights of others and protection by the law of the freedom, general welfare and security of all."

4. The Representative of Uruguay proposed that the provision adopted be replaced by another, more in harmony with the final provisions of the Declaration and the Convention he had himself proposed, which provide for the deprivation and limitation of rights, specifying the juridical acts required for this purpose, which, in principle, must be the law, and the reasons on which these acts must be based: public order and the security of the State; normal development of social life; harmonious exercise of all rights.

Article 10

The Representative of the Philippines requested that the following comment on Article 10 appear in the Report:

"It was recognized that the right of emigration, affirmed above, would not be effective without facilities for immigration into and transit through other countries. It is recommended that these corollaries be treated as a matter of international concern and that members of the United Nations co-operate in providing such facilities."

Article 13

1. The Representative of Lebanon made a motion to amend Article 13 by substituting for the second sentence of the text the two sentences following:

"The family deriving from marriage is the natural and fundamental group unit of society. It is endowed by the Creator with inalienable rights antecedent to all positive law and as such shall be protected by the State and society."

Only the first of these substitute sentences was adopted; consequently the Representative of Lebanon desires that the second sentence be further considered in the future.

2. The Representative of the United Kingdom suggested the following additional wording for Article 13:

"Married persons shall have the right to reside together in any country from which they cannot be lawfully excluded."

3. The Representative of Uruguay stated, with reference to the motion of the Representative of Lebanon, that his country would not accept any national or international document, whether legal or political, embodying assertions of a religious nature, on account of his country's Constitution which provided for the separation of Church and State, though at the same time it ensured freedom of worship and instruction.

Article 19

1. It is understood that no individual or association that aims to destroy the fundamental rights and freedoms set forth in this Declaration can claim protection under this Article. The Article is not intended to include international political associations forbidden by law.
2. The Representative of Uruguay, in accordance with the position of his country on liberty of thought and all its logical consequences and with the formula submitted to replace the article of the Covenant dealing with the right of assembly disapproves any restriction on the right of assembly.

Article 21

Following the suggestion of the Representative of the United Kingdom, it was agreed that in non-metropolitan territories the use of such balloting procedure as the secret ballot could not be imposed when its effect might be contrary to the intentions of Article 74 (a) of the Charter, or to the obligations contained in the relevant parts of the Trusteeship agreements.

Article 24

- A. The Representative of the United Kingdom expressed the view that the first line of Article 24 should read, "Everyone has the right to work or to maintenance," and that Article 24 should be placed immediately after the end of Article 27. In this way the responsibility of society for providing adequate measures of social security would be placed in its proper relationship with the right of the individual to work.
- B. The representative of the United States questions the desirability of setting forth positive duties of the State in this Article, since it tends to throw the rest of the Declaration (the Articles of which with a few exceptions do not set forth such positive duties) out of balance.
- C. The Representative of the Byelorussian Soviet Socialist Republic suggested the following addition to this Article:

"The State is obliged to take all necessary measures against unemployment.

Article 25

The Representative of Uruguay calls attention to the necessity to insert in the first paragraph of this article: "Every one has the duty to preserve his health." Although his proposal was rejected, he urges that this duty justifies the intervention of the State in matters of health.

Article 26

See comment of the Representative of the United States (B above) on Article 24.

Article 27

1. The Representative of the Philippines suggested the following additional text for this Article:

/"the right

"The right of private education will be respected and in such places or countries as desire it, religious education shall be permitted in the schools."

2. The Representative of Uruguay voiced the opinion that, in accordance with the provisions of the Uruguayan Constitution, free State-provided elementary, secondary, higher vocational, artistic and physical education should be declared to be nationally and internationally beneficial.

ANNEX B

PART I

DRAFT INTERNATIONAL COVENANT ON HUMAN RIGHTS

PART I

Article 1

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

Article 2

Every State, party hereto, undertakes to ensure:

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

Article 3

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

Article 4

1. In time of war or other public emergency, a State may take measures derogating from its obligations under Article 2 above to the extent strictly limited by the exigencies of the situation.

/2. Any State

2. Any State party hereto availing itself of this right of derogation shall inform the Secretary-General of the United Nations fully of the measures which it has thus enacted and the reasons therefor. It shall also inform him as and when the measures cease to operate and the provisions of Article 2 are being fully executed.

PART II

Article 5

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

Article 6

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

Article 7

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

Article 8

1. No person shall be held in slavery or servitude.
2. No person shall be required to perform forced or compulsory labour in any form other than labour exacted as a punishment for crime of which the person concerned has been convicted by due process of law.
3. For the purposes of this Article, the term "forced or compulsory labour" shall not include:
 - (a) any service of a purely military character, or service of a non-military character in the case of conscientious objectors, exacted in virtue of compulsory military service laws;
 - (b) any service exacted in cases of emergency created by fire, flood, famine, earthquake, violent epidemic or epizootic disease, invasion by animals, insect or vegetable pests, or similar calamities or other emergencies threatening the life or well-being of the community;
 - (c) any minor communal services considered as normal civic obligations incumbent upon the members of the community, provided that these obligations have been accepted by the members of the community concerned directly or through their directly elected representatives.

Article 9

1. No person shall be subjected to arbitrary arrest or detention.
2. No person shall be deprived of his liberty save in the case of:

/(a) the arrest

- (a) the arrest of a person effected for the purpose of bringing him before a court on a reasonable suspicion of having committed a crime or which is reasonably considered to be immediately necessary to prevent his committing a crime;
 - (b) the lawful arrest and detention of a person for non-compliance with the lawful order or decree of a court;
 - (c) the lawful detention of a person sentenced after conviction to deprivation of liberty;
 - (d) the lawful detention of persons of unsound mind;
 - (e) the parental or quasi-parental custody of minors;
 - (f) the lawful arrest and detention of a person to prevent his effecting an unauthorized entry into the country;
 - (g) the lawful arrest and detention of aliens against whom deportation proceedings are pending.
3. Any person who is arrested shall be informed promptly of the charges against him. Any person who is arrested under the provisions of subparagraphs (a) or (b) of paragraph 2 of this Article shall be brought promptly before a judge, and shall be tried within a reasonable time or released.
4. Every person who is deprived of his liberty shall have an effective remedy in the nature of "habeas corpus" by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.
5. Every person shall have an enforceable right to compensation in respect of any unlawful arrest or deprivation of liberty.

Article 10

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

Article 11

1. Subject to any general law not contrary to the purposes and principles of the United Nations Charter and adopted for specific reasons of security or in the general interest, there shall be liberty of movement and free choice of residence within the borders of each state.
2. Any person who is not subject to any lawful deprivation of liberty or to any outstanding obligations with regard to national service shall be free to leave any country including his own.

Article 12

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

/Article 13

Article 13

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

Article 14

1. No person shall be held guilty of any offence on account of any act or omission which did not constitute such an offence at the time when it was committed, nor shall he be liable to any greater punishment than that prescribed for such offence by the law in force at the time when the offence was committed.
2. Nothing in this Article shall prejudice the trial and punishment of any person for the commission of any act which, at the time it was committed, was criminal according to the general principles of law recognized by civilized nations.

Article 15

No person shall be deprived of his juridical personality.

Article 16

1. Every person shall have the right to freedom of religion, conscience and belief, including the right, either alone or in community with other persons of like mind, to hold and manifest any religious or other belief, to change his belief, and to practice any form of religious worship and observance, and he shall not be required to do any act which is contrary to such worship and observance.
2. Every person of full age and sound mind shall be free, either alone or in a community with other persons of like mind, to give and receive any form of religious teaching, and in the case of a minor the parent or guardian shall be free to determine what religious teaching he shall receive.
3. The above rights and freedoms shall be subject only to such limitations as are prescribed by law and are necessary to protect public order and welfare, morals and the rights and freedoms of others.

(Article 17)

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

/(Text proposed)

(Text proposed by the Drafting Committee:)

- (1. Every person shall be free to express and publish his ideas orally, in writing, in the form of art or otherwise.)
- (2. Every person shall be free to receive and disseminate information of all kinds, including facts, critical comment and ideas, by the medium of books, newspapers, oral instructions or any other lawfully operated device.)
- (3. The freedoms of speech and information referred to in the preceding paragraphs of this Article may be subject only to necessary restrictions, penalties or liabilities with regard to: matters which must remain secret in the interests of national safety; publications intended or likely to incite persons to alter by violence the system of Government, or to promote disorder or crime; obscene publications; (publications aimed at the suppression of human rights and fundamental freedoms); publications injurious to the independence of the judiciary or the fair conduct of legal proceedings; and expressions or publications which libel or slander the reputations of other persons.)

(Text proposed by the Representative of the United States:)

(Every one shall have the right to freedom of information, speech and expression. Every one shall be free to hold his opinion without molestation, to receive and seek information and the opinion of others from sources wherever situated, and to disseminate opinions and information, either by word, in writing, in the press, in books or by visual, auditive or other means.)

Article 18

All persons shall have the right to assemble peaceably for any lawful purpose including the discussion of any matter on which under Article 17 any person has the right to express and publish his ideas. No restrictions shall be placed on the exercise of this right other than those necessary for:

- (a) the protection of life or property;
- (b) the prevention of disorders; or
- (c) the prevention of the obstruction of traffic or the free movement of others.

Article 19

All persons shall be free to constitute associations, in whatever form may be appropriate under the law of the State, for the promotion and protection of their legitimate interests and of any other lawful object, including the dissemination of all information of which under Article 17 the dissemination is unrestricted. The rights and freedoms set forth in Articles 16 and 17 shall be enjoyed by such associations.

/Article 20

Article 20

Every person shall be entitled to the rights and freedoms set forth in this Covenant, without distinction as to race, (which includes colour), sex, language, religion, political or other opinion, property status, or national or social origin. Every person, regardless of office or status, shall be entitled to equal protection under the law against any arbitrary discrimination or against any incitement to such discrimination in violation of this Covenant.

Article 21

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

Article 22

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

PART III

Article 23

1. This Covenant shall be open for accession to every State Member of the United Nations or party to the Statute of the International Court of Justice and to every other State which the General Assembly of the United Nations shall, by resolution, declare to be eligible.
2. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations, and as soon as two-thirds of the States Members of the United Nations have deposited such instruments the Covenant shall come into force between them. As regards any State which accedes thereafter, the Covenant shall come into force on the date of the deposit of its instrument of accession.
3. The Secretary-General of the United Nations shall inform all members of the United Nations and the other States referred to in paragraph 1 above of the deposit of each instrument of accession.

Article 24

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

- (a) With respect to any Articles of this Covenant which the federal government regards as wholly or in part appropriate for federal action, the obligations of the federal governments shall, to this extent, be the same as those of parties which are not federal states;
- (b) In respect of Articles which the federal government regards as appropriate under its constitutional system, in whole or in part, for action by the constituent States, Provinces or Cantons, the federal government shall bring such provisions, with a favourable recommendation,

to the notice of the appropriate authorities of the States, Provinces or Cantons.

Article 25

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

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

Article 26

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

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

Article 27

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

ANNEX B

PART II

COMMENTS ON THE DRAFT INTERNATIONAL COVENANT
ON HUMAN RIGHTS

General Comments on the Draft Covenant

1. The Representative of Egypt, while voting for the draft Covenant stressed the fact that it was only a first draft intended for submission to Governments; experts would have to go over it carefully and put it into correct final form.
2. The Representative of France, in voting to submit the draft Covenant to governments, stated that in his opinion a short general declaration should be elaborated first, to be followed by a series of more detailed conventions. He felt that on many questions dealt with in the draft Bill of Rights, the help of experts, and of the Specialized Agencies, would be required.
3. The Representative of France presented the following text which he later withdrew, accepting the ruling that it would be discussed in connection with the preamble of the Covenant:

"The States parties hereto,

"Determined to effectively apply the general principles recognized in the international Declaration on Human Rights and fundamental freedoms, adopted by the General Assembly of the United Nations on

"Have agreed to conclude a First Covenant defining the practical scope of some of those principles and establishing general measures and guarantees for the effective respect of Human Rights and fundamental freedoms."

4. The Representative of the United States submitted the following comment for the Report, and the Representatives of China and Uruguay associated themselves with it:

"The United States believes that the Drafting Committee should seriously consider whether it is better to have one overall limitation clause than to try to spell out every possible limitation in each article."

5. The Representative of the United Kingdom considered that the general limitation clause proposed by the United States would be open to abuse by signatory States, and that the production of a Covenant rendered innocuous by such a clause would bring the Covenant and the United Nations into discredit. In the view of the Representative of the United Kingdom, the only way to achieve progress is by a fairly tightly drawn Covenant which will prescribe, as precisely as possible, the limitations permissible in respect of each separate right and freedom. While appreciating that a Covenant in so precise

a form will not be easy to achieve, he believed that it was well within the bounds of possibility and abundantly worth the effort to achieve it. He suggested that it might well be that only a limited number of Members of the United Nations would subscribe immediately to such a Covenant as the United Kingdom proposed, and that it might not come into force for some time; but when it did come into force it would register great progress. Moreover, once such a Covenant was in existence, there would be certain pressure on members who had not acceded to it to begin with, to accede to it and conform with its terms.

6. The Representative of the Union of Soviet Socialist Republics felt that the drafting of a Covenant was premature before the preparations of the text of the Declaration on Human Rights had been completed and before the opinion of the Governments on this Declaration had been received and considered. For these reasons, he voted against taking any decision on the draft Covenant.

7. The Representative of Uruguay wished to affirm here his comments recorded at greater length in Annex C: that in his opinion all national laws should be brought into conformity with the Covenant, that the Covenant should supercede any part of international law in contradiction with its terms, and that it should be impossible to modify or to abolish the Covenant except by another international Covenant or Convention.

8. The Representative of the American Federation of Labor suggested that the general limitation clause be the same in the Covenant and in the Declaration, and suggested that the following clause be for that purpose:

"The full exercise of these rights requires recognition of the rights of others and protection by law of the freedom, general welfare, and security of all."

Comments on Specific Articles of the Draft Covenant

Article 4

1. The working group on the Covenant felt that articles concerning violations and communications, still to be elaborated, ought to appear in Part I, immediately after Article 4.

2. The Representative of Uruguay suggested the following article on the right to life:

"Every person has the right to life. It is the duty of the State to protect persons born or conceived, incurables, and persons physically or mentally incapable. The State is obliged to ensure minimum conditions enabling all persons to live a dignified and worthy life. The death penalty shall never be applied to political or ordinary offenders merely by decrees issued in virtue of laws previously in force, but only after trial in which all the guarantees necessary for reaching a just verdict are ensured."

--Article 1 of the Draft of the Inter-American Juridical Committee;
Article 1 of the draft of Professor J. A. Ramirez of Uruguay.

The Representative of Uruguay felt that the death penalty could not be justified by any philosophic or sociological argument or on any grounds of criminal or ethical policy.

Article 5

The Representative of India stated that she was of the view that the second paragraph of the corresponding article proposed by the Working Group (document E/CN.4/56, page 6, Article 4) should be omitted on the ground that it was not of general application and because in her opinion every State should be left free to legislate according to its own needs and the convictions of its people.

Article 8

The Representative of Lebanon moved the addition of the following phrase to Article 8, paragraph 3, part (a) of the Draft Covenant: "provided that the civilian service of conscientious objectors be compensated with adequate maintenance and pay." The proposal signifies by "maintenance" food, clothing and shelter; by "pay" the same pay as is received by the soldier of the lowest rank. This motion was defeated by a vote of 6 to 4 with 7 abstentions. The Representative of Lebanon wishes this amendment to be considered further in the future.

Article 9

1. The Representative of India felt that it would be desirable to add the words "and to prevent evasion of the legal process" to paragraph 2 (b), in view of the procedure obtaining in most countries. She also felt that in paragraph 3, words should be added to except from the provision of the first sentence of the Article offences that do not always require legal proceedings, e.g., orders in regard to aliens.
2. The Representative of the United States also was not sure that the text adopted covers adequately all cases of civil arrest. She felt that paragraph 2 might not clearly give adequate safeguards to insane persons, aliens, and possibly others.
3. The Representative of the United States also wished it to be noted that in connection with paragraph 5 of the Article, it was the feeling of the Working Group, which drafted the Article, that the requirements of the paragraph could be satisfied by the bona fide provision of private remedies as well as by remedies for compensation by the State.
4. The Representative of Uruguay felt that the text should be drafted in a less detailed form. He agreed with the point of view expressed in paragraph 5.

Article 13

The Representative of Uruguay feels certain that the Commission adopted the word "misdemeanor" to replace the word "crime" in paragraph 2, upon his

Article 15

The Representative of Uruguay felt that in connection with the phrase "No person shall be deprived", a distinction should be drawn between the position of individuals and that of organizations which have obtained juridical personality. He urged that the text read: "No human being..."

Article 17

The Representative of Uruguay suggested the following article for consideration:

"There shall be entire freedom to communicate thoughts expressed by means of the press, postal services, wireless, telegraphy, telephone, motion pictures and any other instruments of propaganda. Censorship is forbidden. For the suppression of abuses all preventive means, direct or indirect, are excluded. The action of the State shall be confined to the imposition of penalties. There shall be full freedom of access to means of information and dissemination of opinions, subject to the right of States and private individuals to rectification and reply. The right of free expression of thought may be limited at times of civil or international war, but only in respect of information on military operations."

He felt that Uruguay could not accept the preventive prohibition of certain forms of propaganda, the creation of offences of opinion, the imposition of a certain intellectual legitimism preventing the free exercise of criticism within a political democracy. Offences may be established but not to punish opinions, except in cases where ideas expressed in public may give rise to seriously dangerous acts. In such cases, too, intervention by the State can only be justified after the propaganda has been published.

Article 23

The Representative of the United States offered the following suggested text for this Article:

"It being in the interest of humanity that the rights and obligations enunciated herein shall be as widespread as possible, this Covenant shall be open for accession by all States, whether or not members of the United Nations."

ANNEX C

PART I

Report of the Working Group on Implementation

1. At its thirtieth meeting, the Commission on Human Rights established three working groups to undertake respectively the drawing up of a draft Declaration, the preparation of one or more draft conventions or covenants, and the study of the question of implementation.
2. The working group on implementation was composed of the Representatives of Australia, Belgium, India, Iran, the Ukrainian Soviet Socialist Republic, and Uruguay. The Representative of Uruguay, being unavoidably delayed in reaching the session, did not participate in any meeting of the working group. The United Kingdom, the Union of Soviet Socialist Republics, the United States and the International Labour Organization were represented at diverse meetings by an observer. Observers from two non-governmental organizations, the Consultative Council of Jewish Organizations and the World Jewish Congress, also participated.
3. Mrs. Hansa MEHTA (India) was elected Chairman of the working group, and Mr. Fernand DEHOUSSE (Belgium), Rapporteur. Mr. Edward LAWSON acted as Secretary.

The View of the Group as to its Mandate

4. The Working Group decided to base its discussions on document E/CN.4/21, Annex H, pages 68 to 74.
5. A letter from Mr. René Cassin, Representative of France, addressed to the CHAIRMAN, also came up for discussion and was published as United Nations document E/CN.4/AC.4/1.
6. The Group had no difficulty in agreeing that in view of the limited time at its disposal it would be impossible for it to submit to the Plenary Commission texts of articles for incorporation in the Draft Convention or Conventions. It regarded its task therefore as consisting in the formulation of general principles concerning the problem entrusted to it. In its view it would rest with the Drafting Committee at its next session to put these principles into the proper form.
7. Various Representatives pointed out on the other hand that the Secretariat's Memorandum contained in the above-mentioned Annex H had really been drawn up with a view to the preparation of a Declaration. The Group considered that its Mandate undoubtedly extended to study of the implementation of one or more possible Conventions. It even arrived at the conclusion that the question of implementation had much more to do with the Convention than with the Declaration. The latter indeed was in the last analysis to take the form of a recommendation by the General Assembly of the
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United Nations, and was consequently not legally binding in the strict sense of the term. It therefore appeared to the Working Group a manifest impossibility to contemplate measures for the fulfillment of an obligation that was not one.

8. In connection with the Declaration, the Group therefore confined itself to answering the four questions of a general legal character embodied in paragraph 3 of the Secretariat's Memorandum.

9. The Group also applied by analogy the questions raised by the Memorandum concerning the implementation of the Declaration to the implementation of the Convention.

Objection Raised by the Representative of the Ukrainian Soviet Socialist Republic

10. The Representative of the Ukrainian Soviet Socialist Republic doubted whether the Group was really in a position to embark on its studies before the final contents of the Declaration and, in particular, the Convention had been decided upon. In his opinion, the question of implementation demanded previous knowledge of the rules to be implemented.

11. The reply given to this, in particular by the Representative of Belgium, was that the question of implementation might indeed depend on the existence in the Declaration or in the Convention of certain special stipulations, but that the overall question could be considered at once in its own right, since it concerned the creation, description and working of institutions and machinery to be studied at their own level.

12. The Group was also of the opinion that, had it been accepted, the view expressed by the Representative of the Ukrainian Soviet Socialist Republic would have made it impossible for the Working Group to carry out the task entrusted to it by the Commission.

13. The Representative of the Ukrainian Soviet Socialist Republic was not, however, to be shaken in his opinion.

14. At the meeting on Saturday, 6 December (morning) he sent the Chairman a written memorandum reading as follows:

"I have got a strong opinion during these discussions that it is impossible for me to take my part in them because I am standing on my old position that it is necessary to discuss the question of an implementation on a more late stage of the Human Rights Commission's work, when the work of another Working Party will be finished.

"Standing on this position I decided to be out from this discussion and ask you to put down my opinion and decision in the Report of the Third Working Party to the Human Rights Commission.

"I hope, dear Chairman, you will not take my opposition as opposition against your ruling."

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Following this communication the Representative of the Ukrainian Soviet Socialist Republic left the meeting and took no further part in the work of the Group.

The Representative of Belgium and the Representative of Australia stated that they deplored this attitude and asked for their regret to be recorded in the Group's Report. The Representative of Australia explained that the decision of the Ukrainian Representative had been taken despite his having been assured on various occasions that the Third Working Group would confine itself to outlining general principles. The Representative of Australia also expressed a desire to have this latter statement of his recorded in the Report.

Replies to the First Four Questions Contained in Paragraph 3 of the Secretariat's Memorandum

The Group regarded paragraphs 1 and 2 of the Secretariat's Memorandum as of purely historical and documentary interest. It accordingly began its examination of the Memorandum at paragraph 3.

That paragraph contains four questions all referring to the Bill (Declaration). The Group gave their answers to them with reference to both the Declaration and the Convention.

Question A

Whether or not the Bill (or the Convention) should contain a provision to the effect that it cannot be unilaterally abrogated or modified?

The Group was unanimous that there should be no such provision.

It considered that the insertion of a clause of that kind might decrease the authority of the Declaration or Convention.

In the case of the Declaration, moreover, it would exceed the General Assembly's competence, as the Declaration was intended ultimately to constitute a recommendation.

In the case of the Convention, the fact should be stressed that it was an international obligation, the violation of which was obviously forbidden by international law.

Question B

Whether or not the Bill (or the Convention) should include an express statement to the effect that the matters dealt with in it are of international concern?

The Group studied the bearing of Article 2, paragraph 7, of the Charter of the United Nations on the future Declaration or Convention.

The proposed clause seemed to it unnecessary. The "domestic jurisdiction" of States, to which the above-mentioned article referred, if rightly interpreted, only covered questions which had not become international in one way or another. Once States agreed that such questions should form the subject of a Declaration or Convention, they clearly placed them outside

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their "domestic jurisdiction" and Article 2, paragraph 7 became inapplicable.*

Question C

Whether or not the Bill (or the Convention) should become part of the fundamental law of States accepting it?

After some discussion at the end of its first and at the beginning of its second meeting, the Group accepted a proposal by the Australian Representative, couched in the following terms (document E/CN.4/AC.4/SR.2):

"The Working Group is of the opinion that the provisions of the Bill or Convention must be a part of the fundamental law of States ratifying it. States, therefore, must take action to ensure that their national laws cover the contents of the Bill, so that no executive or legislative organs or government can over-ride them, and that the judicial organs alone shall be the means whereby the rights of the citizens of the States set out in the Bill are protected."

15. It will be noted: (1) that implementation was envisaged in this text in respect of the Convention alone; (2) that the Australian proposal constituted a reply both to the question examined here and to that given under 3 (d) of the Memorandum (see below); (3) that it was expressly stated that it was in the fundamental law of States that the Convention was to be incorporated.

16. The Group adhered to its view that it should confine its study to the Convention. It considered that the problem of implementation did not arise with regard to the Declaration under Question C. The same opinion with regard to the Declaration was also expressed in relation to Question D. In both cases, it was the non-binding nature of the Declaration - a recommendation - which led the Group to this conclusion.

17. After discussing paragraph 3 (c) of the Secretariat's Memorandum, the Group therefore ruled out completely any further consideration of the question of implementing the Declaration.

18. Subsequent discussion made it clear not only that Question C should be studied in conjunction with Question D as indicated in the Australian proposal, but that Questions C and D raised various delicate points concerning the relationship between international law and municipal law within the legal systems of States.

* The Representative of the United States was of the opinion that removal of the subject matter from "domestic jurisdiction" should be limited to States parties to the Convention. She concurred in the conclusion reached, that no express statement to the effect that the matters dealt with are of international concern should be included in the convention, but not in the reasoning which follows that statement in the Report on this point.

19. On the suggestion of the Belgian Representative, the Group then decided to hear the views of someone who was particularly well versed in these problems namely, Mr. C.W. Jenks, Legal Adviser to the International Labour Office. The problems connected with the application of International Labour Conventions bear a very close analogy to those raised by the application of a Convention on Human Rights, in that, in both cases, the main effect of the Convention is produced inside each State, and not only in the field of relations between States. As the International Labour Office has more than a quarter of a century's experience in this sphere, it was felt that one of its Representatives should certainly be heard.

20. The Working Group heard the statement by Mr. Jenks at its meeting on Monday 8 December (morning).

21. Previous to this, it decided to hold in abeyance its final acceptance of the Australian proposal.

22. An indication will be found, under the heading "Question D" below, of the solutions finally adopted by the Working Group in regard to Questions C and D taken in conjunction.

Question D

Whether or not the provisions of the Bill (here read: CONVENTION only) should be declared to be directly applicable in the various countries without further implementation by national legislation or transformation into national law.

23. The Working Group decided to recommend to the Commission on Human Rights, four conclusions which it has extracted and retained from Mr. Jenks' statement.

24. The Working Group believes, firstly, that if an answer is to be provided to Questions C and D, reference will first have to be made to the constitutional law of each State signing the Convention. If the constitutional law of any State concerned permits the immediate application within the legal system of the State of treaties ratified, the Working Group considers that this solution should certainly be adopted, since it is so simple and practical from the point of view of implementation.

25. However, the Group believes - and this is its second observation, that attention must be drawn to the fact that, even in the case mentioned in the foregoing paragraph, special or additional implementation measures may be necessary. Treaties frequently contain provisions calling for action by the legislative or executive organs in the domestic field. These would therefore not be sufficient in themselves and it is obvious that their mere incorporation in the national legislation of the ratifying State does not relieve the latter of the duty to provide for any implementation required. This will apply to the Convention on Human Rights in the same way as to treaties in general, according

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to the provisions inserted in the Convention.

26. Regardless of the implementation measures required by the ratification of the Convention or by its contents, the Working Group recommends, thirdly, that wherever this is not precluded by the constitutional law of the ratifying State the foregoing measures should preferably be taken prior to ratification.*

It is convinced that this procedure is the surest means of forestalling any political or legal difficulties which may arise from a discrepancy between the commitments and responsibilities assumed by a State in the international field, and the necessity, in which it may find itself, to obtain from its parliament a vote approving the essential implementation procedures.

27. Finally, the Working Group desires to point out that, where ratification nevertheless occurs before implementation has been assured, there should be a clear understanding that implementation would ensue within the shortest possible time.

28. After adopting the four recommendations described above, the Group re-examined the Australian proposal, already referred to. It finally concluded that this proposal was compatible with the above-mentioned recommendations. It thereupon gave final approval to the proposal. It altered the first sentence of the text, however, replacing the words "fundamental laws" by the word "laws". This decision was taken to satisfy those representatives who had remarked on the difficulties, possibly insuperable, in the way of their countries' undertaking a revision of their Constitutions by reason of their ratifying the Convention on Human Rights.

29. The Group therefore submits two categories of suggestions to the Commission: firstly, the amended Australian proposal, secondly, four recommendations, not yet drafted, embodying principles.

30. In regard to the third and fourth recommendations, the United Kingdom Observer raised the question of the relations between his country and some of its colonies in respect of treaties. He stated that in many cases the United Kingdom was pledged to consult the colonies by procedures which differed widely, and which might delay or prevent the application of treaties to a given colony. He pointed out that in his opinion the appropriate moment for this consultation would occur between signature and ratification of the Convention and he expressed the desire to have his statement recorded in this Report as a personal observation.

* The Representative of the United States was of the opinion that full implementation cannot be required of all States prior to ratification.

International Machinery for the Effective Supervision and Enforcement of
the Convention on Human Rights

31. At this second stage of its work, the Working Group took as a basis for its discussions: (1) the questions mentioned on pages 68 and 69 of the Secretariat's Memorandum, under the letters A, B, C and D; and (2) the Australian draft resolution for the establishment of an International Court of Human Rights.

32. This draft resolution, presented in document E/CN.4/15, is also reproduced in the Secretariat's memorandum, paragraph 4. Paragraphs 5 and 6 deal with the further development of this question. Paragraphs 7-14 refer to various proposals and suggestions, inter alia, a draft resolution submitted by the representative for India included in document E/CN.4/11 as well.

33. In view of the very special importance attaching to the creation of an International Court of Human Rights, this problem will be dealt with separately in the third and last part of this Report. The establishment of the Court - this term was generally used by the Working Group in preference to "Tribunal" - moreover raises very different points from those examined in the five questions mentioned above (a), (b), (c), (d) and (e), which alone would justify the classification adopted here.

Question (a) suggested:

the establishment of the right of the General Assembly and other organs
of the United Nations, including possibly the Commission on Human Rights,
to discuss and make recommendations in regard to violations of the
Convention;

34. The replies furnished by the Group to this question may be summed up under four heads:

(1) In the first place the Group wished the report to contain a reference to the right of discussion and, except as provided in Article 12, the right to make recommendations vested in the General Assembly under Article 10 of the Charter. As is commonly known, these two prerogatives apply to any questions or any matters within the scope of the Charter, or relating to the powers and functions of any organs provided for therein. Clearly then, they include human rights, mentioned at seven different points in the Charter, and in respect of which one of the principal organs of the United Nations, the Economic and Social Council, has been invested by the Charter with special powers.

The group accordingly laid special stress on the right of the General Assembly to make recommendations to the Members of the United Nations.

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

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

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

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

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

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

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

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

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

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

Question (b)

One could establish the right of individuals to petition United Nations, as a means of initiating procedure for the enforcement of human rights.

35. The Group has been helped considerably in the reply it gave to this question by two proposals made by the Indian Delegation, namely; (1) a document submitted by that Delegation for the abolition of discrimination and the protection of minorities (document E/CN.4/Sub.2/27); (2) a Working Paper drawn up by the Chairman in the course of the Group's work. This Working Paper has not been published or distributed, but its substance, with various amendments, is embodied in the decisions reached by the Group, which appear below as drafted.

36. To begin with, the Group found no difficulty in reaching agreement on the three following basic points:

(1) The right to petition in respect of the violation of human rights shall be open not only to States, but also to associations, individuals and groups.*

Groups of individuals are here understood to mean groups of two or more persons not constituting associations properly so-called.

It appeared that if the right to petition were confined to States alone this would not furnish adequate guarantees regarding the effective observance of human rights. The victims of the violation of these rights are individuals. It is therefore fitting to give them access to an international organ (to be determined), in order to enable them to obtain redress, as was formerly provided for under the system for the protection of minorities established under the aegis of the League of Nations. That is why the Working Group has

* The Representative of the United States felt that the United Nations is not yet in a position to take effective and comprehensive action upon petitions. In this connection, she felt that the results of the work of the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities might be of interest.

The United States member of the Sub-Commission, acting in an individual capacity, offered a thorough-going proposal pursuant to which petitions dealing with Discrimination and Minorities problems should be referred to small committees for negotiation of complaints wherever possible. This was, of course, a less "far-reaching" plan than that of incorporating machinery in a Convention. The proposal proved unacceptable to the Sub-Commission which concluded that one individual petition should now be considered, but otherwise contented itself with generalities. The Sub-Commission lagged behind the United States expert in this respect.

With regard to insertion in a Convention, the United States feels that it is all very well to set up machinery for curing all the ills which afflict human individuals, but it is another thing to see that this machinery will work.

On this point the United States believes in taking things up one by one, within the limits of foreseeable accomplishment. It believes that complaints should for the time being be handled under the Convention only when sufficiently important to be brought to the Commission by States. That is something which can be taken care of under a Convention with no excessive strain on existing machinery, and which can accomplish real good, with co-operation of the States and intelligence and luck.

If it works out well, the stage is set for taking up what may be the next development - the handling of individual petitions. That will be the time to consider the amendment of the Convention to open the door to petitioners. The United States fully realizes that the opening of the doors is an important point because in many cases the complaint of the individual is levelled against his own government, therefore his government can not be counted upon to see that it is brought before the Commission.

extended the right to petition to individuals and, of course, to the groups and associations which modern society often leads them to form.

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

Consequently there is a very marked difference between the concept adopted here and that which governed the solution of question (a). As regards the latter, the measures advocated in this report should either be mentioned in the Plenary Commission's Report, or, in the case of a delegation of powers to the Human Rights Commission, should be mentioned in the said Report and form the subject of a decision by the Economic and Social Council.

The reason for this distinction lies in the fact that the system of petitions gives rise to various organizational questions and should therefore be worked out in sufficient detail. Moreover, and above all, it should be noted that this system does not appear in the Charter, but is entirely new. All the present Members of the United Nations may not be disposed to accept it. Therefore, in order to establish it, a Convention separate from the Charter, namely, the Convention or one of the Conventions relating to Human Rights (should several Conventions be concluded) is required.

It should be noted that in such a case there would in future be two parallel systems for the protection of human rights. The first, and older, would be that constituted by the provisions of the Charter concerning human rights and by later developments of those provisions, i.e. by the Resolution of the Economic and Social Council of 5 August 1947, in connection with the action to be taken concerning communications received by the Secretariat* and by the decision of the Commission on Human Rights taken at its twenty-eighth meeting, outlining the work of an ad hoc Committee on Communications.** As the name implies this system would not be a system of petitions but one of communications. Its advantage over the other would be that it would be more general in the sense that it would include all members of the United Nations, but it would also no doubt be less effective or rather less "advanced". The second system on the other hand would be a system of petitions in the real sense of the word. It would be limited in geographical scope to States that had ratified the Convention setting it up and in consequence to associations, individuals or groups belonging to those States. Relating as it does to contractual obligations, the new system would, by definition, only be binding on the parties to the Convention.

* Resolution No. 75 (V), document E/573.

** See document E/CN.4/AC.5/1.

Various members of the Working Group expressed their regret at this situation, but had to yield to the force of this elementary yet imperative judicial concept.

Two questions about the conventional character assigned to the system of petitions were, however, asked.

It was clear that the Convention to be concluded would be open to all Members of the United Nations, but the possibility of opening it to non-Members of the Organization also was considered. The Group thought that this point came within the province of the Second Working Group (on the Convention). It therefore left it in abeyance. At the same time, however, it resolved to bring it to the attention of the Drafting Committee and the Secretariat, for study by the latter.

Representatives of Non-Governmental Organizations present at the meetings of the Group also desired to know what would happen to these Organizations in the likely event of their having affiliated members belonging both to States that had ratified the Convention and to ones that had not. Would they in that case be refused the right to petition? The Working Group, after careful consideration and having left the examination of the point till the end of the list of six questions drawn up by the Rapporteur (see below), arrived at a solution which reconciles the legitimate desires of the Non-Governmental Organizations with the requirements of conventional law. It decided that: "Petitions from Non-Governmental (International) Organizations shall be permissible if they originate in a country or countries whose Government or Governments have ratified the Convention".*

Organizations satisfying the various requirements mentioned are therefore to be added to the list of those benefiting by the right to petition, as previously described. This amounts to an interpretative decision of the word "association" occurring in the list. The word should therefore be understood in texts produced by the Working Group to include not only national associations but international associations in the sense just defined.

The Working Group was convinced that no valid objections could be made to the idea of setting up, within the framework of the United Nations, the protection of Human Rights through a Convention separate from the Charter. In the first place under the head of Human Rights the Charter only contains brief provisions of which it would be no exaggeration to say that they call for, indeed postulate, specification. Secondly, there are already a certain

* The Representative of the United States felt that if petitions are to be handled under the Convention, the petitions should be from nationals of States which are parties to the Convention. This would include non-governmental organizations which are organized under the laws of States parties to the Convention.

number of precedents (for example the Peace Treaty with Italy and the functions conferred by this Treaty on the Security Council for the Territory of Trieste) for treaties distinct from the Charter assigning to organs of the United Nations functions not provided for in the Charter. The only thing needed to make such a procedure perfectly legal is, of course, that the organ concerned should accept the task assigned to it.

(3) The Working Group resolved to request the Secretariat to draw up for the Drafting Committee a full and detailed scheme of regulations on the subject of petitions. However much it might have wished to, the Group was indeed unable to examine the question from all angles in the very short time at its disposal. The various decisions it has taken, in particular the fundamental ones about to be mentioned, should be regarded simply as bases for the Secretariat's assistance in working out the future regulations. Where necessary therefore gaps in them should be filled.

37. Having settled these three fundamental points the Working Group proceeded to a full general discussion of the question of petitions. To simplify the investigation the Representative of Belgium, acting as Rapporteur, submitted a list of six main questions still to be dealt with, which the Group accepted.

These were as follows:

- (1) Is it necessary to transmit all petitions direct to an International Court (to be specified) or to establish a Committee of first instance to examine petitions?
- (2) If such a Committee is created, how would it be composed? Would it be composed of representatives of Governments, of experts or of representatives of International Non-Governmental Organizations?
- (3) Would petitions be examined at a private sitting?
- (4) What would be the powers of the Committee?
- (5) If the Committee has powers of conciliation and such conciliation fails, could a petition be referred to the Court? By whom? (Question of creating a post of Attorney General, nominated by the Economic and Social Council).
- (6) The status of International Non-Governmental Organizations.

The last point has already been dealt with above.

In connection with the other five, the text of the decision adopted by the Working Group on the basis of a working paper drawn up by the Chairman is given below:

- (1) A Standing Committee composed of not less than five independent (non-government) men and women, shall be established by the Economic and Social Council. The term of office of the members, their style and qualifications shall be decided by Resolution of the Economic and Social Council. The members of the Committee will be elected by the Council from

/lists

lists submitted by those States which have ratified the Convention or Conventions on Human Rights.

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

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

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

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

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

38. It is obviously impossible to give a complete and thorough comment on the above decision. There are, however, three points which should be brought out.

39. It will be seen that the Working Group, having decided in favour of the establishment of a Committee to act prior to any judicial proceedings, proposed that the Committee should be permanent in character and composed of experts, and that the latter should be appointed by the Economic and Social Council. The Group considered that this procedure would provide the best guarantee of impartiality. The proposed action by the Economic and Social Council is to be explained by the fact that the latter constitutes the highest authority in our particular sphere. There is no contradiction between this solution and the one of asking the said Council to delegate powers to the Commission on Human Rights in respect of recommendations, since the Council's function is limited to the appointment of the Standing Committee.

* The Representative of the United States felt that this was essentially a job for the Secretariat.

40. In the course of discussion it was made clear that the Standing Committee could, naturally, itself appoint Sub-Committees, including a Sub-Committee to examine the receivability of petitions in accordance with regulations to be drawn up by the Secretariat. It is obvious that five people cannot be given the immense task of themselves undertaking all the work connected with petitions. It is also quite clear that the Standing Committee will be able to utilize the services of the Human Rights Division of the Secretariat, which however will need strengthening if the Group's proposals are adopted.

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

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

43. A third and last point must finally be mentioned. As has been seen, the Group recommended that the Standing Committee should examine petitions and conduct negotiations in private session. That procedure, which is reminiscent of that of the League of Nations in respect of minorities, is also comparable to the rules already laid down for examining communications addressed to the Secretariat. The Group considered that if such a decision had been made in the case of communications, the same should a fortiori apply to petitions, which gave rise to proceedings involving greater rights, and therefore greater duties. The Group however provided that reports would be sent by the Standing Committee to the Commission on Human Rights, so that

/the latter

the latter would be kept informed of decisions taken, and that the Commission could, if it thought opportune, make public the reports it received.

Suggestion (c).

The establishment of a special organ of the United Nations with jurisdiction and the duty to supervise and enforce human rights motu proprio.

44. The Group considered that its comments on this suggestion were largely implied in its comments on the preceding one. It decided, however, to mention in this Report the possibility of setting up, at a later stage in the international development of Human Rights, either a subsidiary organ in virtue of Article 7, paragraph 2 of the Charter, or even a specialized agency.

45. The latter would be established by a Convention and might be called, for instance, the International Human Rights Organization.

46. The Group attaches importance to a word contained in the text of Suggestion (c), the word "enforce". It linked the study of the measures evoked by that word to that of measures to guarantee the execution of the decisions given by the International Court of Human Rights, which, as already stated, will be dealt with in the third part of this report.

Suggestion (d).

The establishment of jurisdiction in this organ to consider cases of suspension of the Bill of Rights, either in whole or in part.

47. Various representatives said they did not quite understand the implications of this suggestion. If it is a matter of violations of Human Rights, as defined in the Convention or Conventions to be concluded, the Group believes such cases are covered by the provisions envisaged in connection with Suggestion (b), and by the provisions relating to the establishment of an International Court of Human Rights.

Suggestion (e).

The establishment of local agencies of the United Nations in the various countries with jurisdiction to supervise and enforce human rights therein.

The Commission might find it useful, in this connection, to study the precedents established, for example, by the Convention between Germany and Poland on Upper Silesia of 15 May 1922.

48. The Group's comment on this suggestion was identical to that given in the second paragraph of its comment on Suggestion (d). In addition, some representatives expressed the view that the solution suggested in the text of Suggestion (e) was premature and might perhaps deter some countries from ratifying a Convention in which it was embodied.

Annexes

1. Following the intervention of various representatives, the Working Group studied the problem of the ratification of the Convention or Conventions

/that are

that are to come into being.

It decided to incorporate in this report a formal recommendation to States Members of the United Nations to ratify the Conventions in question, and in particular to accept the machinery advocated in the replies to questions (a), (b), (c), (d) and (e) on pages 87 and 88 of the Secretariat's Memorandum.

With the final recommendation to the General Assembly in view, the Group also wished to remind the Human Rights Commission and the Economic and Social Council of the right possessed by the General Assembly and recently exercised in the case of the Constitution of the World Health Organization, to invite the Members of the United Nations to ratify certain Conventions.

2. In the course of its study of the system of petitions the Group considered the question whether it would be appropriate to confine petitions to cases of infringement of the Convention or Conventions on Human Rights, or whether it might not be preferable to widen their scope to include other treaties also, already concluded or to be concluded, containing provisions on human rights, and especially the Peace Treaties signed at Paris on 10 February 1947.

This question has repeatedly given rise to exchanges of opinion in the Group. The Group found that it was bound up with complex and difficult legal problems, which it was not in a position to examine. As in the question of accession of non-Members, and in that of the rules relating to petitions, the Group decided to ask the Secretariat to investigate this matter, and to submit its findings to the Drafting Committee.

It will be noted, however, that a provision relating to the protection of human rights on the basis of treaties other than the Convention or Conventions now under discussion, has been incorporated in the Draft Statute for the International Court prepared by the Group. But this provision applies to disputes between States, and not to the system of petitions (see below).

3. On pages 88-89 of the Secretariat's Memorandum the following suggestion is formulated:

"The Commission may want also to discuss the roles which the Security Council might play in the implementation of the (Bill). According to Article 2, paragraph 7, of the Charter, the exception of domestic jurisdiction cannot be imposed in cases where enforcement measures are being taken by the Security Council under Chapter VII. The Commission may want to consider the question whether the Security Council should not be given a more extended jurisdiction in the matter (E/CN.4/W.4 pages 13 and 14)".

It has already been pointed out that the draft drawn up by the Group for the implementation of the Convention on Human Rights did not and could not
/infringe

infringe on the prerogatives of the Security Council as defined in the Charter with regard to the settlement of international disputes. Conversely, the Group negatived the Secretariat's suggestion regarding a possible extension of the Security Council's powers for the protection of human rights. In expressing this opinion the Group was not prompted by legal considerations, seeing that it would of course be quite possible to invest the Security Council with new functions through a new Convention provided the Council agrees to assume them. But the Group considered that the Security Council was certainly not the appropriate organ to deal with the international protection of human rights as such. In taking this view the Group has not departed from its policy which is to find in each case the organ technically most suited for the international protection of Human Rights.

49. International Court of Human Rights.

The Working Group had repeatedly had occasion during its earlier discussions particularly during its discussions on petitions, to regard with favour the suggestion that the general machinery for the protection of human rights should be supplemented and rounded off, so to speak, by the institution of a right of appeal to an International Court.* Several representatives had expressed strong support for the suggestion, and this principle had been tacitly implied during the progress of the work.

However, divergencies of views had come to light on various points. They re-emerged when the Working Group began consideration of paragraph 4 of the Secretariat's Memorandum, i.e. the Australian proposal. The Working Group was unanimous in admitting the principle of a right of appeal to an International Court, but some representatives (those of Australia, Belgium and Iran) demanded the creation of a new Court, whilst others (the Representative of India and the United Kingdom observer) on the other hand, favoured the employment of the present International Court of Justice. There were also two variants of the latter view. One favoured and one opposed the creation under Article 26 of its Statute of a special Chamber of this Court, to deal with human rights. There were also different opinions as to whether final decisions (in other words, binding decisions), or merely advisory opinions should be obtained from the present Court.

* The Representative of the United States felt that such a proposal must be considered very seriously, and that it could not be put into effect in the foreseeable future. She further had grave doubts regarding the desirability of making it more difficult for States to ratify the convention by inserting in it far-reaching provisions regarding an international tribunal.

/The Chairmen

The Chairman submitted a compromise proposal, in the following terms:
"If a dispute arises as to whether any violation has taken place, the matter in dispute shall be referred for judgment to a Panel of 3 or 5 Judges of the International Court of Justice, to be appointed for the purpose by the Chief Justice of the Court, or in a Standing Order of the Chief Justice."

According to this proposal therefore, no new Court was set up; but on the other hand the present Court was to be requested to pronounce final decisions. This, at any rate, was the construction placed on the foregoing text during the course of the discussions.

The Working Group did not feel it should take up this text.

It also decided not to take up a draft prepared by the delegation of the United States of America and presented as document E/CN.4/37. This draft contained an Article 5 laying down a complete procedure to be followed in case of the violation of the Convention on Human Rights. Under this procedure, the advisory opinion of the International Court of Justice might be requested under certain conditions.

The Working Group considered that this machinery was somewhat complicated and also did not coincide, in its preliminary provisions, with the views and solutions on which the Working Group had earlier agreed.

It was generally considered that the idea of advisory opinions was inadequate. The Working Group was under no misconception as to the usefulness of such opinions, but believed them incapable of producing the desired guarantee of redress and action in the case of a violation of the Convention on Human Rights. The Working Group then took up the idea of final decisions and, viewing the problem in this light, was thus led to choose between the present Court and a new Court.

Two whole meetings, the sixth and seventh, were devoted to this discussion.

The following arguments were adduced against the establishment of a new Court:

(1) It is not advisable to increase unduly the number of international organizations, particularly organizations of a judicial character. A Court of Genocide is proposed one day, a Court of Human Rights the next: where will one call a halt?

(2) Some States may be reluctant to undertake such obligations. Hence the risk of not securing sufficient ratifications of the Convention would be increased.

(3) What parties shall have access to this new Court? If all those having a right to make petitions, and not merely States, are admitted, the foregoing

/risk

risk would be heightened, even if the system made it obligatory that conciliation should first be sought before the Standing Committee on Petitions.

(4) It is just possible that binding decisions could be obtained without recourse to the creation of a new Court, i.e. by widening the jurisdiction of the present Court through the medium of the Convention. Precedents for this line of action can be cited in the case of the former court of the League of Nations; the Permanent Court of International Justice. These could no doubt be followed in the case of the International Court of Justice, whose Statute is virtually identical with that of its predecessor. However, the whole question is whether, at the present time, a large number of States would be prepared to accept the principle of final and binding decisions in the field of the violation of human rights.

In reply to these contentions, the advocates of the Australian proposal set forth the following considerations in support of their own thesis:

(1) either a full and effective observance of human rights is sought, or it is not. If it is sought, then the consequences of this principle must be admitted and the idea of compulsory judicial decisions must be accepted. Certain States may in fact be reluctant to subscribe to this point of view. But the others will be able to begin now to lay the foundations of a true international protection of human rights, and through their example, eventually induce the dissidents to join them.

(2) it would not be possible to obtain compulsory judicial decisions, on a scale larger than could be obtained by the creation of a new Court, on the basis solely of the Statute of the present Court.

It should not be forgotten that the jurisdiction of the International Court of Justice is still voluntary, in principle; in other words, matters in dispute are only referred to the Court following an agreement in the form of a compromise between the parties. Admittedly Article 36 of the Statute provides for the possibility of conferring the power of compulsory jurisdiction upon the Court in regard to legal disputes concerned with four stated subjects. Admittedly these subjects include the fact of breaches of international obligations in general and the right of the Court to determine any reparations to be made. But it should not be forgotten that the application of Article 36, which might be useful in cases of violation of a Convention on Human Rights, is conditional upon formal declarations by the States parties to the Statute of the Court. This means, in fact, that if compulsory jurisdiction is to be obtained in the field which concerns the present Commission, it must first be agreed to. Therefore, there is no visible difference, as far as prospects of success are concerned, between what was formerly styled the Voluntary Clause for Compulsory Arbitration and the necessity for concluding a new Convention

/for the establishment

for the establishment of a new Court. In point of fact, the field of expansion of Article 36 would probably be no wider than that of a Court of Human Rights.

(3) If the power of compulsory jurisdiction were to be conferred on the present Court, not by virtue of a general declaration made in accordance with Article 36, but by virtue of a Convention, distinct from the Statute and relating solely to human rights, the same ratification problem would immediately reappear. It is not clear why, once this stage has been reached, a new Court should not, in the last analysis, be established.

(4) A further argument, worthy of consideration and frequently cited in this Report, can be adduced in favour of the establishment of such a Court, namely, the argument of technical qualifications. An inescapable corollary to modern civilization has been the specialization of men and institutions and, to a certain extent, the complication of machinery. There can be no doubt, however, that disputes concerning human rights would be appraised more authoritatively by judges chosen for this purpose than by judges possessing only general qualifications.

(5) Finally, there should be provisions restricting access to the new Court. It would not be possible, in the present state of international relations, for individuals, groups of individuals and associations to be invested with the character of parties to a dispute and the right to bring cases before the Court. However, a compromise solution between the previous system, limited to States, and a system of such large dimensions could be obtained by conferring upon the Commission on Human Rights the power to bring before the Court disputes in respect of which the conciliation procedure in the Standing Committee on Petitions had been without effect. The Commission would retain the power to decide what action should be taken in this connection on the reports of the Standing Committee. This would create a further barrier - the third which would help to prevent the list of cases from becoming unduly large.

The foregoing were the arguments advanced for and against the establishment of a new Court. The Working Group decided to include them in its Report. It is for this reason that they have been developed at such length.

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

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

/final

final and binding decisions, or merely to furnish advisory opinions?

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

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

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

When these decisions had been taken, the United Kingdom and the United States observers pointed out that each of the States Members of the Human Rights Commission naturally retained the right to bring up the whole problem again in the Plenary Commission. The Chairman answered that that was so, and that the above statements would be mentioned in the Group's report.

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

"The Court shall have jurisdiction to hear and determine:

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

This proposal was adopted unanimously. It must therefore be regarded as a decision of the Group. It was expressly understood that it would take the place, in the Australian draft resolution given in paragraph 4 of the Secretariat's memorandum, of paragraphs 2, 3, 4 and 8 of that draft.

52. The Group then decided to transmit to the Drafting Committee - if, of course, the Commission approved the decision - the complete text of the Australian draft, as amended by the above proposal. It will be noted that, in the new text, the jurisdiction of the International Court of Human Rights covers not only the protective convention or conventions, but also any other treaties containing clauses relating to human rights. In such cases, the matter will not be brought before the Court through our Commission; the right to do so belongs directly and exclusively to the States parties to the treaties in question. The Australian proposal thus endeavoured so far as possible to take account of two objections: the objection that some of these treaties (the peace Treaties in particular) have been concluded outside the framework of the United Nations, and the cognate objection that among the parties to the said treaties are States which are not Members of our Organization.

53. It should also be pointed out that all the decisions taken by the Group might have to be incorporated in any Convention on Human Rights. The

/observations

observations previously made with regard to the nature and consequences of the conventional system thus established are therefore applicable here.

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

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

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

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

57. Annexes.

(1) The Group felt that no useful purpose would be served by studying the question of creating the post of an Attorney-General for the International Court on Human Rights, as had been originally suggested. It considered that the duties of such an official in connection with the Convention or Conventions would in point of fact be carried out by our Commission.

(2) The Group was not called upon to examine clauses of the Convention entailing special measures of implementation. As a matter of fact, it had finished its work before the second Working Group. It was, however, realized that clauses and measures of that kind might subsequently have to be studied in connection either with the Convention which is still being discussed, or with other Conventions relating to the protection of human rights.

(3) On the eve of the day it finished its work, Monday, 8 December 1947, the Group received the report prepared by the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities (document E/CH.4/52).

It noted with interest Section IV of the report which deals with the problem of implementation. It was glad to observe that the Sub-Commission

/had drawn

had drawn attention to the "vital importance" of the problem. It shares the Sub-Commission's view that the relevant machinery forms "but one part of the machinery for implementation of human rights as a whole." It hopes the Sub-Commission will complete its study of such machinery by a date which will allow the Drafting Committee to take it into consideration if necessary.

The Group feels however, that it is not incumbent upon it to deal with the problem. The measures of implementation which it advocates are applicable to members of minorities, just as are human rights in general. As regards measures aimed at guaranteeing the implementation of rights belonging to minorities as such, the Sub-Commission will doubtless consider that such measures should be based on special treaties.

ANNEX C

PART II

COMMENTS ON THE REPORT OF THE WORKING GROUP
ON IMPLEMENTATION

1. The Representative of Australia made the following statement at the time the Report of the Working Group on Implementation was discussed in the Commission on Human Rights:

"On this report the Australian Delegation hoped to have heard some concrete analyses of its contents and some worthwhile observations on the general framework of the scheme of implementation the working group has submitted, and how this machinery will work. Unfortunately we have heard few comments, and it seems to me, Madam Chairman, that the best service I can perform at this stage is to try and convey a clear picture of this machinery. In our opinion it should work automatically from the time the Convention comes into force. It would be wrong to consider definite machinery for implementation only after the entry into force of the Convention.

"At the outset we dealt with the question of domestic implementation. It will be an obligation on each State to implement into its own national law as fundamental law the principles of the Convention on Human Rights: not in ordinary statute law, not regulations or administrative acts which the executive or legislative organs of Government can override at any time, but law which is so fundamental and constitutional that it can never be overridden. Unfortunately the history of the world has proved that that is not sufficient, and those representatives who suggest if we go beyond that we are interfering with the principles of national sovereignty are apt to forget that violation in the past has largely been violation by Governments, and what we are endeavouring to ensure in the future is that protection and enforcement become a reality.

"We come now to International Implementation. We have in the United Nations a provision to receive and deal generally with petitions or communications as some prefer to call them. These are adequately covered, and we have machinery for this general right. We have no machinery, however, for the question of enforcement of the provisions of the Covenant. So we feel that this Human Rights Commission should be the body entrusted with certain powers which can be delegated by the Economic and Social Council. This was the first main principle the working group agreed on. Then we decided to recommend the creation
/of a standing

of a standing committee of not less than five members to be appointed by the Economic and Social Council, from a panel of names recommended by ratifying States. This body would be given authority to mediate and conciliate and if possible to rectify all alleged violations of human rights. Of course it would have sub-committees, one being for the purpose of screening petitions, with a view to rejecting all frivolous and vexatious claims. If the Standing Committee could not succeed it would then submit the dispute to the Human Rights Commission. The Commission on Human Rights, after considering the question, would then decide which cases should be sent before the international tribunal. The parties concerned in the petition need not necessarily be Governments; they can be individuals or groups of individuals, or associations, or States - but remember this field of petition is limited to those States or individuals in those States which actually adopt the Convention.

"We come now to the international tribunal, and there is still a doubt in the minds of some of the representatives here whether there should be a special court or whether there should be a Division or panel of the International Court of Justice. I would just like to supplement the remarks of my Belgian colleague, and the reasons can be very briefly summed up. The Commission on Human Rights is not one of those organs specifically mentioned in the Charter which can seek an advisory opinion of the International Court, as at present established. This is one of the main legal objections. Even if it could do so that opinion is only one pertaining to a legal subject. We want more than an advisory opinion. We want a binding decision in this particular field which will be binding on the State or parties concerned, and at the same time establish a body of international law which would, we hope, automatically settle hundreds of similar cases. Even if the Court does give an advisory opinion in this field of Human Rights, that opinion has then to go all the way back to the United Nations, and probably have to wait until it could be considered in the form of a recommendation by the General Assembly.

"Our main problem is that of dealing with the infringement of the rights of minorities or individuals or groups of individuals rather than of States, and if the Court merely were a division of the present Court it would be very difficult to deal with the class of case we have in mind. The last reason against a division of the present Court of Justice is that it would mean an amendment of the Charter to give it competent jurisdiction in this field, and you are all aware of the

/difficulties

difficulties of obtaining an amendment to the Charter. It is not mentioned in the report, but it was the view of some representatives that a division of the international Court would be favoured purely on the grounds of expense. I believe an acceptable solution would be for the Court of Human Rights to be set up at the site of the present Court whereby it could utilize the administrative machinery, library, and other facilities there which have been created and established by the International Court. The additional expense for a separate International Court of Human Rights would thus be very little. For the reasons I have indicated it seems to us imperative that we must have an independent Court and not merely a branch of the existing Court owing to the legal and other limitations I have indicated."

2. The Representative of France requested that the letter which he addressed to the Chairman of the Working Group on Implementation be considered in connection with the Report of that group. This letter has been circulated separately as Document E/CN.4/AC.4/1.

3. The Observer of the Union of Soviet Socialist Republics stated, in the course of the discussions of the working group, that the measures proposed by this group were contrary to the principles of the sovereignty and independence of States, that they opened the possibility of intervention in the internal affairs of States, and that they therefore were not in conformity with the principles of the United Nations and were unacceptable.

4. The Representative of the United Kingdom wished to draw the attention of governments to the following Articles in the United Kingdom draft International Bill of Rights (Annex 1 of Annex B of Document E/CN.4/21):

Article 5

A failure by any state party hereto to fulfil the obligations under Article 2* is an injury to the community of states and a matter of concern to the United Nations as the community of states organized under the rule of law.

Comment to Article 5

This Article is meant to apply to failures of a substantial character. It is not intended to apply to failures of a trivial or technical character.

Article 6

1. While declaring their readiness to consider the adoption of further procedures designed to strengthen the international protection of fundamental human rights and freedoms, the States parties hereto accept the right of any of them, acting in the interests of the community of States, to bring to the attention of the General Assembly of the United Nations any violation by any of them of the provisions of this Bill of Rights as

* NOTE: This corresponds to Article 2 of the Draft Covenant prepared by the Commission

constituting a situation likely to impair the general welfare or friendly relations amongst nations and as a violation of the purposes and principles of the United Nations within the meaning of Article 14 of the Charter.

2. Any party hereto which is thus alleged to have violated the provisions of this Bill of Rights shall have the right to request the General Assembly to obtain the advisory opinion of the International Court of Justice thereon and to refrain from taking any further action on the matter until this opinion has been obtained, and if such a request is made the parties hereto agree that they are bound to support the request.

Comment to Article 6

It would be possible to insert here an additional provision under which all parties to this Bill would agree that in the event of any alleged violation of the Bill being brought before the General Assembly they would support a proposal that the matter should first be considered by a committee composed only of members of the United Nations who are parties to the Bill.

Article 7

The parties hereto agree that any one of them which is found by a Resolution of the General Assembly adopted by a two-thirds majority persistently to have violated the provisions of this Bill of Rights should be deemed to have violated the principles of the Charter of the United Nations and therefore be liable to expulsion from the organization under Article 6 of the Charter.

5. The Representative of Uruguay requested that the following comment on the Report of the Working Group on Implementation be included in this Report:

"The Representative of Uruguay, owing to circumstances over which he had no control, did not reach Geneva until 10 December, when he immediately began to participate in the work of the Commission on Human Rights, but was unable to collaborate with the Working Group on the Implementation of the Convention on Human Rights.

"The latter body, which started its work on 5 December, completed its task with praiseworthy diligence on 9 December, when it submitted an intelligent and profound study in which I am sorry I did not participate. I therefore request that these observations be appended to the Report of the Working Group to which I belong, in order to put on record the Uruguayan Delegate's opinion on the ways and means of effectively implementing the international law which is to be applied, as a system for protecting individuals and groups of individuals.

"1. The main cause of the differences between the view of the Representative of Uruguay and that put forward by the Working Group in its most valuable report, is the fact that the Report is in the main

/based on

based on the Resolution of the Human Rights Commission, which separated the Declaration of Rights, etc. from the Convention, and gave it the form of a recommendation to States. Uruguay, owing to the nature of her public law and international policy, and by reason of the fact that it is a purpose and principle of the United Nations to develop and promote respect for human rights and fundamental freedoms, and having regard to the Resolutions adopted at the Inter-American Conference of Mexico on the problems of war and peace, considers that the Declaration of Rights should be embodied in a Convention, with clauses ensuring the international protection of human rights. Her views are based on Resolution XL of the Mexico Conference which, after taking note of the Declaration of the United Nations on the international protection of essential rights, affirms that if such protection is to be effective the rights must be defined in a Declaration adopted by States in the form of a Convention.

"2. Flagrant and general violation of fundamental rights and freedoms prevents the existence of a rule of law and of political democracy, becomes a threat to peace, as Roosevelt prophesied at the Buenos Aires Conference in 1936, and is to be regarded as a matter affecting international public order. Uruguay maintained that the notorious and repeated violation of human rights and fundamental freedoms might, owing to its far-reaching consequences give rise to consultation between Governments or to action by the organs set up to ensure the implementation on the continent, of international law. In the preamble to the Treaty on the "Inter-American Peace System" approved at Rio de Janeiro on 2 September 1947, it is laid down that for the American community it is "a manifest truth that juridical organization is a necessary condition of security and peace and that peace is based on justice and moral order and therefore on the international recognition and protection of the rights and freedoms of the human person, etc., etc."

"Consequently, that being the core of the matter, the Representative of Uruguay is compelled to maintain that the Declaration of Rights representing the inter-nationalization of the constitutional right of protection of the individual should have binding force on all States. It must be a positive obligation on all States and therefore the text of the Declaration must provide for three things:

- (a) the embodiment of the Declaration in the law of the nation;
- (b) the abrogation of any international law which is contrary to the agreed Declaration;
- (c) the impossibility of abrogating or amending the Declaration except by international agreement.

"The American Republics have declared that international law is the effective rule of their conduct; they are at present studying declarations to be adopted on the subject of the rights and duties of the individual and of States, taking into account, we hope, the fact that what has been accepted as the essential principles of international law must shortly be embodied by the appropriate means in municipal law." (Resolution XII - Conference of Mexico).

"3. The duty of States to ensure respect for fundamental rights and freedoms is embodied with legal force in the Charter of the United Nations. It is a matter of applying an existing law, and not of recommendations. . . It is a common purpose which nations must endeavour to achieve. It represents a fundamental principle, which in case of repeated violation, may result in the expulsion of the offending State. Owing to its supreme importance to civilization, and for the sake of international order, the Economic and Social Council of the United Nations can make recommendations to promote respect for those rights and freedoms and make them effective. Definitions and rules concerning those rights and freedoms may be lacking, but their existence is established with the force of positive international law, binding on all Member States.

"I considered, therefore, that even in the absence of a Declaration or Convention, supreme importance will always attach to the application of the system of international protection as required by the Charter of the United Nations in respect of those human rights and freedoms proclaimed as important principles of the international organization.

"4. We are in favour of wide recognition of the right of individuals and groups to petition international authorities, and we agree with the judicious and sagacious observations in the Working Group's Report, concerning the need for establishing rules in this connection.

"5. With regard to the organs to be established to ensure respect for human rights and freedoms it should be mentioned that both in a report of the Advisory Committee on the political defence of America, over which I have the honour to preside, and in other official proposals, the establishment was suggested of an Inter-American Advisory Committee to safeguard human rights, with power to study and make recommendations on the matter, its activities being co-ordinated with the Inter-American Economic and Social Committee and the Economic and Social Council of the United Nations.

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"We are not in favour, in this connection, of setting up local or regional organs of the United Nations as far as America is concerned, especially if agencies for the same purpose are established inside the American system. When internal remedies have been exhausted in each State, and after the procedure of petition and the various stages of attempts at conciliation on a continental level, and international recommendations, there would come into play in special cases a well-defined procedure for recourse to international jurisdiction. Uruguay shares on this point the commendable views expressed in the draft of the Representative of Australia, supported with amendments by the Working Group.

"We are seeking the juridical organization of mankind, and the pacific solution of all disputes through application of the law. For the reasons given under 2. above, we are in favour of an international jurisdiction for the protection of human rights in clearly defined cases to be specified in the appropriate statute. A point to be studied is, in our opinion, whether the jurisdictional - I repeat jurisdictional - organ is to be a special independent Court, or a Chamber of the International Court of Justice. Thus individuals and States will be subject to law, and all will feel assured of equality under juridical principles applied by a competent and impartial judge.

CONCLUSION

"Subject to the above observations, the Representative of Uruguay agrees with the Working Group's recommendations of principle, with the exceptions, for juridical reasons of form, of the proposed delegation of powers to the Commission on Human Rights; he agrees with the well-founded views on the juridical powers of the organs of the United Nations, especially as regards the Assembly and Security Council, etc. and cordially endorses the proposal to establish, under the aforesaid conditions, an international jurisdiction to protect human rights and freedoms."