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COMMISSION ON HUMAN RIGHTS

Second Session

Draft Report of the Working Group on Implementation

Rapporteur: M. Fernand Dehousse (Belgium)

At its 30th meeting, held on Friday, 5 December 1947, the Commission on Human Rights set up three Working Groups to undertake respectively the drawing up of a draft Declaration, the preparation of one or more draft Conventions and the study of the question of implementation.

The Third Working Group comprised the following countries: Australia, Belgium, India, Iran, Ukrainian S.S.R. and Uruguay.

The Group met on Friday, 5 December (morning), immediately after the work of the Plenary Commission had been suspended.

At the proposal of the Representative of Australia the Group elected Mrs. Hansa MEHTA (India), Chairman and Mr. Fernand DEHOUSSE (Belgium), Rapporteur.

The Working Group held seven meetings, from the date mentioned to Tuesday, 9 December (afternoon) inclusive.

Mr. Edward LAWSON provided the Secretariat for the Group.

The United Kingdom, United States of America and Union of Soviet Socialist Republics were represented at the discussions by an observer.

A Specialized Agency, the International Labour Organization, and the following non-Governmental Organizations: Co-ordinating Board of Jewish Organizations and the World Jewish Congress were also represented

(34 p.)

The View of the Group as to its Mandate.

The Working Group decided to base its discussions on document E/CN.4/21, Annex H, pages 68 to 74.

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, No. E/CN.4/AC.4/1.

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.

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 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 fulfilment of an obligation that was not one.

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.

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 S.S.R.

The Representative of the Ukrainian S.S.R. 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.

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.

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

The Representative of the Ukrainian S.S.R. was not, however, to be shaken in his opinion.

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."

Following this communication the Representative of the Ukrainian S.S.R. 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 abovementioned 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 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 beginning of its second meeting, the Group accepted a proposal by the Australian representative, couched in the following terms (Doc. 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."

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 incorporate

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.

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.

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.

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.

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

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

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.

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

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 of 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.

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 to the provisions inserted in the Convention.

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.

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.

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' undertakin a revision of their Constitutions by reason of their ratifying the Convention on Human Rights.

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

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.

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

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.

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.

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;

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 4).

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

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

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

the formal delegation of this right in the Report which it is to submit to the Council.

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

There are, on the other hand, weighty practical arguments in its favour. The Economic and Social Council is known to be overburdened with functions; so overburdened, indeed, that it cannot always carry out with 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 rights, and, in particular, to discharge the function, always a delicate one, of elaborating recommendations. The Working Group feels it should add that the members of the Commission are chosen precisely for their personal qualifications in the field of human rights.

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

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

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.

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 (doc.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.

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

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 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 recognised 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[1] and by the decision of the Commission on Human Rights taken at its 28th meeting, outlining the work of an ad hoc Committee on Communications.[2] 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.

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.

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(1) Resolution No. 75 (V), Doc. E/573.
(2) See Doc. E/CN.4/AC.5/1.

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 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.

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 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. In 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.

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.

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

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.

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 utilise the services of the Human Rights Division of the Secretariat, which however will need strengthening if the Group's proposals are adopted.

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 judgment. The Standing Committee will have to aim at reconciling opposing points of view, and it is only if its efforts at conciliation fail, that other solutions, such as judicial proceedings, will come into consideration. The Working Group's main object was to build up a coherent system, culminating, if one accepts its thesis, in judicial proceedings. It therefore provided successive barriers against a spate of petitions or their abuse. The first will be constituted by the provisions of the regulations relating to receivability. Only petitions which have surmounted that barrier will come before the Standing Committee. Only those which have subsequently formed the subject of an attempt at conciliation will ultimately come before the Court. In that way, the Working Group feels that it has opened the door to democracy and closed it to

demagogy.

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.

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 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.

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

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

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.

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.

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 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 Social and Economic 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 88-9 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/W4.pp.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 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.

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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 view 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 and the United States observers) 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 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 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 to 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 jurisdicition 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 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.

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

(1) Should an international Court be empowered to constitute the final guarantor of human rights?

(2) In the event of an affirmative answer, should this Court be a new Court or a special Chamber of the International Court of Justice?

(3) Should the Court, whatever its character, have the right to pronounce final and binding decisions, or merely to furnish advisory opinions?

With regard to the first question the Working Group voted unanimously in the affirmative.

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.

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.

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.

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.

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

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.

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

continue to be the case in the future.

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

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

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, realised 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/CN.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 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.