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COMMISSION ON HUMAN RIGHTS

THIRD SESSION

COMMENTS FROM GOVERNMENTS ON THE DRAFT INTERNATIONAL DECLARATION ON HUMAN RIGHTS, DRAFT INTERNATIONAL COVENANT ON HUMAN RIGHTS AND THE QUESTION OF IMPLEMENTATION

Communication Received from Egypt

Cairo, 21 April 1948

MEMORANDUM

The Royal Ministry of Foreign Affairs presents its compliments to the Secretary-General of the United Nations and has the honour to inform him, with reference to his letter No. SOA 17/1/01/JH of 9 January 1948, that the Royal Government approves in principle of the draft International Declaration on Human Rights and the draft International Covenant on Human Rights. It would nevertheless make the following observations on these two drafts and on the question of implementation:

A. OBSERVATIONS ON THE DRAFT DECLARATION

1. The Draft Declaration, which contains virtually a complete enumeration of all possible human rights, would be improved by making it more concise.

2. With regard to Article 10 (2), the Royal Government would point out that some legislations make it obligatory for nationals wishing to acquire foreign nationality to obtain the prior authorization of their own Governments. It is understood that this formality does not conflict with the provisions of the aforesaid Article.

3. The freedoms and rights enumerated in Articles 16, 17, 18 and 19 are not in the Draft Declaration made subject to any restrictions, whereas in the Draft Covenant on Human Rights they are subject to restrictions. The Royal Government considers that, unless both drafts are put into effect simultaneously, the freedoms and rights enumerated in the above-mentioned Articles should be made subject to the same restrictions as in the Covenant.

4. The duty incumbent on the State under the provisions of Article 23

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is a positive one; all that can be required of the State is that it should do everything possible to organize its domestic economy in such a way as to give all persons ordinarily resident in its territory an opportunity for useful work.

5. The Royal Government proposes that the following paragraphs be added at the end of Article 26:

> "It is understood that the rights enumerated in Articles 23, 24, 25 and 26 can only be exercised so far as the economic conditions and potentialities of each State permit".

6. With regard to Article 31, which deals with the problem of minorities, and on which no decision was taken by the Commission, the Royal Government considers that such an article is out of place in a declaration on human rights, the object of such a declaration being to enumerate the rights of man and not those of minorities. Minority rights should be covered by a convention on minorities. It is to be hoped, moreover, that when the International Declaration on Human Rights is put into effect by States and men are given equal treatment everywhere the problem of minorities will disappear.

B. OBSERVATIONS ON THE DRAFT COVENANT

1. With regard to sub-paragraph (b) of Article 9 (2) the Royal Government considers that the word "court" should be replaced by "judicial authority" since under some legislations "orders or decrees" may be issued by the Public Prosecutor's office (Parquet), which is a judicial authority but is not a "court".

2. Paragraph 5 of Article 9 also calls for some comment. In some countries the State bears no responsibility for the acts of agents of the judiciary. If agents of the judiciary commit an offence the State can only be held responsible to the individual whose rights have been violated in very exceptional cases. In certain cases, moreover, the injured person will be able to have personal recourse against the agent of the judiciary guilty of the offence.

This Article should be interpreted in the light of the above comment.

3. Article 12 calls for comment. Its provisions do not prevent the expulsion of an alien whose presence might be prejudicial to public order, or to the public peace, public morals or public health; or of an alien sentenced for a crime or offence punishable by more than three months' imprisonment, or of a destitute alien who is a charge on public funds.

The Royal Government considers, therefore, that this Article should be interpreted in the light of the above comment.

/4. Article 14,

4. Article 14, though it lays down the principle of the non-retroactivity of criminal legislation, attempts, nevertheless, to restrict that principle by enacting in paragraph 2 that "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". This paragraph clearly had in mind the prosecutions of war criminals. It departs from one of the fundamental maxims of penal law laid down in the constitutions of many States.

The Nürnberg Tribunal judged war criminals for any acts they had committed which were considered as war crimes under the London Convention of 8 August 1945 and certainly the atrocities committed by those criminals could not but justify the procedure advocated in the London Convention.

The Royal Government therefore considers that this paragraph should be deleted from the draft Convention, particularly as it is included in the draft Declaration. It might make it difficult for some States which did not accede to the London Convention of 8 August 1945 to ratify the draft Convention. Besides, the United Nations has decided to draw up a code of international penal law which will make it possible in future for war criminals to be punished without difficulty.

C. OBSERVATIONS ON THE QUESTION OF IMPLEMENTATION

1. The Royal Government has no objection to accepting the solution of the first important question raised by the Working Group on Implementation, namely "the establishment of the right of the General Assembly and other organs of the United Nations, including possibly the Commission of Human Rights, to discuss and make recommendations in regard to violations of the Convention".

That right is actually vested in the General Assembly and the Economic and Social Council under the Charter (cf. Articles 10, 13 and 62) and there would be no objection to giving the same right to the Commission on Human Rights also.

2. The Royal Government agrees with the Working Group on Implementation that "one could establish the right of individuals to petition United Nations, as a means of initiating procedure for the enforcement of human rights". It is clear that detailed regulations would be necessary to define how petitions should be presented and examined.

3. Similarly, the Royal Government is not in principle opposed to the idea of having petitions examined by a permanent committee of five members

/to be appointed

to be appointed by the Economic and Social Council. The function of the Committee would be "essentially one of conciliation, not of arbitration and still less of final decision". The procedure for such examination would clearly need to be defined by detailed regulations.

4. The Royal Government considers that it would be premature to set up an international court of justice responsible for settling disputes relating to human rights. Nevertheless, it is prepared to reconsider this question as soon as the system of petitions is in operation, but on grounds of economy it would suggest that, if the principle of setting up a court is adopted, it should be left to the present International Court at The Hague to deal with these questions.
