

COMMISSION ON HUMAN RIGHTS

DRAFTING COMMITTEE

SECOND SESSION

AUSTRALIA: DRAFT PROPOSALS FOR AN INTERNATIONAL
COURT OF HUMAN RIGHTS

The following proposals are intended to give effect to the decisions of the Commission's working group on implementation.

It is proposed that the following draft articles relating to the Court of Human Rights be inserted in the Covenant:

"Draft Articles for Inclusion in CovenantInternational Court of Human Rights

1. There is established an International Court of Human Rights. The Court shall be constituted and shall function in accordance with the Statute of the Court, which forms an integral part of this Covenant.
2. All parties to this Covenant are ipso facto parties to the Statute of the Court.
3. (1) Each party to this Covenant undertakes to comply with the decision of the Court in any case to which it is a party.
(2) If any party fails to perform the obligations incumbent upon it under a judgment rendered by the Court, the other party or the Commission on Human Rights may have recourse to the General Assembly of the United Nations, which may, if it deems necessary, make recommendations as to measures to be taken to give effect to the judgment.
4. The Commission on Human Rights may request the Court to give an advisory opinion on any question relating to human rights or fundamental freedoms.
5. The Court shall make an annual report to the Economic and Social Council on the working of the Court in relation to the rights and freedoms within its jurisdiction. The Court may also make other reports to the Council if and when it thinks proper to do so."

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The following is a draft Statute of the Court. It is based to a large extent on the Statute of the International Court of Justice although it has not been thought necessary to make detailed provisions as to its procedure. It appears to us that the Court of Human Rights is a new concept and the procedure adopted by it should be as flexible as is necessary to ensure its adequate functioning in the field which is assigned to it.

DRAFT STATUTE OF THE INTERNATIONAL COURT
OF HUMAN RIGHTS

Article 1

The International Court of Human Rights established by the Covenant on Human Rights shall be constituted and shall function in accordance with the provisions of the present Statute.

Organization of the Court

Article 2

The Court shall be composed of a body of independent judges, elected regardless of their nationality from among persons of high moral character who possess the qualifications required in their respective countries for appointment to the highest judicial offices.

Article 3

1. The Court shall consist of six members, no two of whom may be nationals of the same State.
2. A person who for the purposes of membership in the Court could be regarded as a national of more than one State shall be deemed to be a national of the one in which he ordinarily exercises civil and political rights.

Article 4

1. The members of the Court shall be elected by the General Assembly of the United Nations on the recommendation of the Economic and Social Council.
2. The members of the Court shall be recommended and elected from a list of candidates nominated by States Members of the United Nations, each of whom shall be entitled to nominate one candidate.

Article 5

1. The members of the Court shall be elected for nine years and may be re-elected; provided however that of the judges elected at the first election, the terms of two judges shall expire at the end of three years, and the terms of two more judges shall expire at the end of six years.
2. The judges whose terms are to expire at the end of the above-mentioned periods of three and six years shall be chosen by lot to be drawn by the Secretary-General immediately after the first election has been completed.
3. The members of the Court shall continue to discharge their duties until their places are filled. Though replaced, they shall finish any cases which they may have begun.
4. In the case of resignation of a member of the Court, the resignation shall be addressed to the President of the Court for transmission to the Secretary-General. This last notification makes the place vacant.

Article 6

1. Vacancies shall be filled by the same method as that laid down for the first election.
2. A member of the Court elected to replace a member whose term of office has not expired shall hold office for the remainder of his predecessor's term.

Article 7

1. No member of the Court may exercise any political or administrative function, or engage in any other occupation of a professional nature.
2. No member of the Court may act as agent, counsel or advocate in any case.
3. Any doubt on these matters shall be settled by decision of the Court.

Article 8

1. No member of the Court can be dismissed unless, in the unanimous opinion of the other members, he has ceased to fulfil the required conditions.
2. Formal notification thereof shall be made to the Secretary-General by the Registrar.
3. This notification makes the place vacant.

Article 9

The members of the Court, when engaged on the business of the Court, shall enjoy diplomatic privileges and immunities.

Article 10

Every member of the Court shall, before taking up his duties, make a solemn declaration in open Court that he will exercise his powers impartially and conscientiously.

Article 11

1. The Court shall elect its President and Vice-President for three years; they may be re-elected.
2. The Court shall appoint its Registrar and may provide for the appointment of such other officers as may be necessary.

Article 12

The seat of the Court shall be established at The Hague. This, however, shall not prevent the Court from sitting and exercising its functions elsewhere whenever the Court considers it desirable.

Article 13

1. The Court shall remain permanently in Session, except during the judicial vacations, the dates and duration of which shall be fixed by the Court.
2. Members of the Court are entitled to periodic leave, the dates and duration of which shall be fixed by the Court.

3. Members of the Court shall be bound, unless they are on leave or prevented from attending by illness or other serious reasons duly explained to the President, to hold themselves permanently at the disposal of the Court.

Article 14

A quorum of three judges shall suffice to constitute the Court.

Article 15

1. Each member of the Court shall receive an annual salary.
2. The President shall receive a special annual allowance.
3. The Vice-President shall receive an allowance for every day on which he acts as President.
4. These salaries and allowances shall be fixed by the General Assembly. They shall not be decreased during the term of office.
5. The salary of the Registrar shall be fixed by the General Assembly on the proposal of the Court.
6. Regulations made by the General Assembly shall fix the conditions under which retirement pensions may be given to members of the Court and to the Registrar, and the conditions under which members of the Court and the Registrar shall have their travelling expenses paid.
7. The above salaries and allowances shall be free of all taxation.

Article 16

The expenses of the Court shall be borne by the United Nations in such a manner as shall be decided by the General Assembly.

Competence of the Court

Article 17

1. The following may be parties in cases before the Court:
 - (a) States
 - (b) individuals
 - (c) groups of individuals
 - (d) associations, whether national or international.
2. The Court, subject to and in conformity with its rules, may request of public international organizations information relevant to cases before it, and shall receive such information presented by such organizations on their own initiative.

Article 18

1. The Court shall be open to the States or nationals of States parties to the present Statute.
2. The conditions under which the Court shall be open to other States or their nationals, shall, subject to the special provisions contained in

treaties in force, be laid down by the Economic and Social Council, but in no case shall conditions place the parties in a position of inequality before the Court.

3. Where a State which is not a member of the United Nations or a national of such a State, is a party to a case, the Court shall fix the amount which that party is to contribute towards the expenses of the Court.

Article 19

1. The jurisdiction of the Court shall comprise the following:

- (i) All disputes arising out of the interpretation and application of the Covenant on Human Rights referred to it by any party to such Covenant;
- (ii) All disputes arising out of the interpretation and application of Articles concerning human rights in any treaty or convention between States referred to it by any party to such treaty or convention;
- (iii) All matters concerning the observance of human rights by the parties to such Covenant or to any such treaty or Convention referred to it by the Commission on Human Rights.

2. In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court.

Article 20

1. The Court may refer the whole or part of a dispute which is before it, or any matter arising out of the dispute, to the Commission on Human Rights for investigation and report, and may delegate to that Commission such of the powers of the Court as the Court may deem desirable to enable the Commission to reach a settlement of the dispute by amicable agreement, and may at any time revoke such reference.

2. The Court may also, in relation to any matter referred to it by the Commission on Human Rights, request that Commission to investigate and report to it on the matter in such respects as may be specified by the Court, and for that purpose may delegate to the Commission such of the powers of the Court as the Court may deem desirable, and may at any time revoke such request.

Article 21

The Court in reaching its decision shall apply:

- (a) international conventions, whether general or particular, establishing rules expressly recognized by the contesting or interested states;
- (b) international customs, as evidence of a general practice accepted as law;

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- (c) the general principles of law recognized by civilized nations;
- (d) subject to Article 26, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law;
- (e) general principles of equity and justice.

Procedure

Article 22

1. The official languages of the Court shall be French and English.
2. The Court shall, at the request of any party, authorize a language other than French or English to be used by that party.

Article 23

1. The Court shall frame rules for carrying out its functions. In particular, it shall lay down its own rules of procedure, including the method of presentation of matters to the Court, the procedure to be followed in the conduct of the proceedings and the delivery and promulgation of the judgment. So far as they may be applicable, the procedures adopted by the International Court of Justice shall be followed.
2. The Court may amend such rules from time to time as occasion may require, and may, if it considers it desirable in the interest of a speedy and just determination, suspend any such rule.

Article 24

1. All questions shall be decided by a majority of the judges present.
2. In the event of an equality of votes, the President or the judge who is authorized by him to act in his place, shall have a casting vote.

Article 25

1. The judgment shall state the reasons on which it is based.
2. It shall contain the names of the judges who have taken part in the decision.
3. If the judgment does not represent in whole or in part the unanimous opinion of the judges, any judge shall be entitled to deliver a separate opinion.

Article 26

The decision of the Court has no binding force except between the parties and in respect of that particular case.

Article 27

The judgment is final and without appeal. In the event of dispute as to the meaning or scope of the judgment, the Court shall construe it upon the request of any party.

Article 28

Unless otherwise decided by the Court, each party shall bear its own costs.

Advisory Opinions

Article 29

1. The Court may give an advisory opinion on any question relating to human rights at the request of the Commission on Human Rights.
2. Questions upon which the advisory opinion of the Court is asked shall be laid before the Court by means of a written request containing an exact statement of the question upon which an opinion is required, and accompanied by all documents likely to throw light upon the question.

Article 30

The Court shall adopt rules of procedure for the purpose of carrying out its functions with respect to advisory opinions, and, in so doing, shall be guided by the provisions of the present Statute which apply in contentious cases to the extent to which it recognizes them to be applicable.

Amendments

Article 31

Amendments to the present Statute shall be effected by decision of the General Assembly made by a two-thirds majority of the members present and voting.

Article 32

The Court shall have power to propose such amendments to the present Statute as it may deem necessary, through written communications to the Secretary-General, for consideration in conformity with the provisions of Article 31.
