

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

Memorandum by the Secretary-General

1. At its Second Session the Commission on Human Rights requested the Secretary-General (a) to transmit its 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 their comments on the draft International Declaration on Human Rights, draft International Covenant on Human Rights and the Question of Implementation and (c) to circulate these comments to the members of the Commission as soon as they are received.

2. In compliance with this request the Secretary-General transmitted the Commission's report to the Governments, and has the honour to circulate the following communications which have been received from Member Governments:

1. TELEGRAM RECEIVED FROM PAKISTAN

Dated, the 2nd April 1948

Your note SOA 17/1/01/JH January 9th

Draft International Declaration on Human Rights and corresponding Convention Government of Pakistan have no comments at this stage

2. COMMUNICATION RECEIVED FROM CANADA

DEPARTMENT OF EXTERNAL AFFAIRS

CANADA

Ottawa, April 1, 1948

Sir:

I have the honour to refer to your letter of January 9, 1948, in which was enclosed a report on the Second Session of the Commission on Human Rights, /and to inform

and to inform you that the proposals contained in the draft International Bill of Human Rights have been closely considered by officials of the Government, and it is expected that they will be considered by a Joint Parliamentary Committee on Human Rights. A discussion of this subject by Parliament has not yet been possible, however, and the Canadian Government would not wish to express views on a matter of such importance without having had the benefit of learning the opinion of Parliament. This is especially true in view of the nature of the Canadian Constitution, and the Canadian Government, therefore, regrets that final comments on the Declaration will not be available for April 3rd.

The Canadian Government is anxious that ample opportunity be afforded to comment on the International Bill of Rights both at the meeting of the Economic and Social Council in July and at the meeting of the General Assembly in September.

It is the opinion of the Canadian Government that the final drafting of an International Bill of Rights is a serious task involving the reconciliation of differing philosophies and judicial principles. It is therefore respectfully suggested that the final expression by the United Nations of human rights and fundamental freedoms may well require much more time than is at present contemplated, and that postponement of approval of the Draft Bill from the 1948 to the 1949 Session of the General Assembly might be with advantage taken into consideration.

3. COMMUNICATIONS RECEIVED FROM THE NETHERLANDS

NETHERLANDS DELEGATION

April 9, 1948

With reference to your letter dated January 9, 1948, No. SOA 17/1/01, concerning the observations, suggestions and proposals which Member Governments might wish to make relating to the Draft International Declaration on Human Rights, the Draft International Covenant on Human Rights, and the Question of Implementation, contained in Annexes A, B and C of the Report of the Second Session of the Commission on Human Rights, I have the honour to submit herewith the observations of the Netherlands Government on the above Report of the Commission on Human Rights.

/OBSERVATIONS

OBSERVATIONS OF THE NETHERLANDS GOVERNMENT ON THE
REPORT OF THE COMMISSION ON HUMAN RIGHTS (E/600)

The Netherlands Government have submitted the report of the Commission on Human Rights to the National Commission established in conformity with the resolution of the Economic and Social Council of 21 June 1946. Having taken cognizance of the report presented by this National Commission, the Government have the honour to present the following observations.

A. GENERAL OBSERVATIONS

1. The Netherlands Government welcome the work accomplished by the Commission on Human Rights. As the Netherlands representative said in the Economic and Social Council, on 5 February last, the Netherlands is keenly interested in this problem. It is the wish of the Netherlands Government that by the further study of this matter an "International Bill of Human Rights", in the sense given to this term by the Commission on Human Rights, may be attained in a near future.

Some co-ordination, however, of the various provisions proposed will be indispensable before deciding on their final form; on the whole a shorter and less detailed text might in some cases be preferable; finally it might be advisable to leave out certain provisions (f.i. Articles 29 and 30 of the Declaration) which, because of their vague nature, can be of no use.

2. The Netherlands Government agree with the proposal of the Commission to prepare at the same time a Declaration and a Covenant, it being understood that the Declaration gives a great number of general directions, whereas the Covenant contains those provisions which in the present stage of international development will probably be acceptable to a number of States as provisions of a formal treaty. In conformity with the Commission the Government assume the Declaration having only a moral importance, to be adopted by the General Assembly, whereas the Covenant which will be a legally binding instrument will have to be ratified or accepted in a formal way by the States.

In accepting this distinction between the two instruments Her Majesty's Government feel that a further and different definition of their nature would be desirable. In the same way as the International Labour Conference uses to adopt a recommendation as an addition to a Convention, laying down in the recommendation provisions which States are not willing to accept in a binding form, it might be suggested that the Declaration on Human Rights should be considered as a supplement to the Covenant. The Netherlands Government are not in favour of such a conception: in their opinion the Declaration should cover the whole field of human rights and should therefore deal with

/all the

all the problems treated in the Covenant; this latter document should elaborate in a treaty-form some of the principles laid down in the Declaration. By this procedure Members of the United Nations who are not prepared to ratify the Covenant, will by their vote in the Assembly, have an opportunity to accept the contents of the Declaration as general directives. Although the Netherlands Government do not share the opinion that the drafting of the Covenant is premature so long as the text of the Declaration is not completed and the opinions of the Governments on the Declaration have not been received and considered, priority should be given to the Declaration.

As observed by the representative of France the Covenant now under discussion may be considered as a first Convention of a series of international instruments to be elaborated later on.

3. In the opinion of the Netherlands Government it is not advisable to bind the Parties to the Covenant with regard to the manner in which they will bring their national legislation in conformity with the Covenant; some Parties will have recourse to a modification of the Constitution, but it should be left to each State to decide whether or not the provisions of the Covenant should be included in the Constitution. On the other hand, it should be stated explicitly that, by ratifying the Covenant, the Parties undertake to bring their national legislation in conformity with the contents of the Covenant. It goes without saying that equally all the other organs of the State which has become a Party must act accordingly; Article 2 of the Covenant which deals with this problem should be shortened and drafted in a more precise way.

4. The drafts of the Declaration and of the Covenant submitted by the Commission contain some isolated provisions with regard to discrimination as to race, sex, religion a.s.o. In the Declaration, Article 3 contains a general rule on this matter; Articles 21 and 25 repeat the terms "without discrimination" or "without distinction"; as to the Covenant, Article 20 contains a general rule. If in fact, the principles of non-discrimination could be accepted on the whole line, it would be preferable if both instruments contained one article of a general character on this point. It must, however, be admitted that such stipulations will hardly be acceptable to countries where populations of a totally different character are living together.

5. In some cases the rights granted to individuals are expressed in the form of a duty imposed on the State (f.i. Articles 21 and 23 of the Declaration). It should be remembered that the instruments to be

/elaborated

elaborated do not deal with rights and duties of States but should as a rule be confined to rights and freedoms of the individual.

6. Both, the Declaration and the Covenant, admit limitations of the rights and freedoms which are accorded; these limitations are of a various nature.

In Article 16, paragraph 2, persons who are not "of full age and sound mind" are excluded.

Article 16, paragraph 3 of the Covenant introduces 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 of the Covenant dealing with the freedom of information enumerates in paragraph 3 a number of restrictions.

In Article 19 of the Declaration the right to freedom of assembly and of association is stated to be subject to the condition that this right is "not inconsistent with this Declaration."

On the other hand, in some articles (Articles 2 and 33 of the Declaration, Article 20 of the Covenant) an attempt has been made to put a general limit to the human rights by stipulating that no one will have the right to aim at the destruction of the rights and freedoms prescribed in the Declaration or Covenant.

The Netherlands Government suggest that this question of limitations should be considered as a whole. Anyhow, it is essential to make clear that a human right may never be exercised in such a way as to destruct any human right of other people.

7. Finally, attention may be drawn to the safeguarding clause which is to be found in Article 4 of the Covenant, and which may imperil the success of the work of the Commission. The expression "other public emergency" seems so vague, that it might for instance include an economic crisis or other abnormal conditions in a country. If possible, the circumstances under which a Party may evade its obligations should be defined as precisely as possible. Moreover it will be necessary to state explicitly that the application of this clause will also be subject to the jurisdiction provided for in the Chapter on implementation.

B. DECLARATION

Article 1

It seems superfluous to state explicitly that the word "men" implies both men and women.

/Article 3

Article 3

The words "regardless of office or status" should be deleted.

Comment: The use of the word "status" in paragraph 2 probably means to prohibit a distinction by race, sex, language, etc. as mentioned in paragraph 1. The word "status", however, may also be interpreted in a more restrictive sense as "civil status". Such an interpretation should be excluded, because, if accepted, discrimination on the grounds mentioned in paragraph 2, would be lawful. If the words "regardless of office or status" are deleted it is made clear that paragraph 2 has in view the prohibition of the same discrimination as paragraph 1.

Article 4

This article should read as follows: "Everyone has the right to life, to bodily integrity and to liberty of person".

Comment: The right to "security of person" is too vague an expression. The proposed wording which is in conformity with Article 6 of the Covenant, although being somewhat more restrictive, would be preferable.

Article 7

This article deals with two different matters: one is the protection of the individual against unjust treatment, the other is a doctrine of general character. Therefore it is suggested that the article should be divided into two articles: the first to contain the first two sentences of paragraph 1 together with paragraph 3, the other consisting of the rest of the first paragraph and the second paragraph.

Article 9

This article should read as follows: "No one shall be subjected to unreasonable interference with his privacy, family, home correspondence or reputation".

Comment: In order to enable legal exceptions to the principle of inviolability of home and correspondence, the first sentence of Article 3 proposed by the United States is to be preferred to the text as proposed by the Commission.

Article 10

It is suggested to insert in paragraph 2 after the word "individuals" the words "who are not subject to any lawful deprivation of liberty or to any outstanding obligations with regard to national service, tax liabilities or voluntarily contracted obligations binding the individual to the Government".

/Comment: An

Comment: An unrestricted right to emigrate is inadvisable. The question may be raised whether a Government, in view of urgent national necessity, may not retain within the borders of the country persons exercising a special profession. Anyhow, the freedom to emigrate should not be given to persons who have undertaken special obligations to the Government which commitments have not yet been fulfilled. Finally, it goes without saying that people who are lawfully imprisoned should not be free to leave the country.

Article 11

It may be doubted whether the problem of asylum enters within the scope of the Declaration. As the Commission decided to examine this question at an early opportunity, the Netherlands Government prefer not to pronounce themselves for the moment on this article.

Article 12

It must be understood that this article does not exclude a legal provision that special categories of individuals, for instance married women, will need the authorization of other individuals when they have to appear before a Law Court.

Article 15

The first paragraph should be deleted.

Comment: It appears from the second paragraph that the object of this article is to ensure that every one will have the right to invoke some official protection; for this purpose paragraph 1 stipulating that every one has the right to a nationality is not necessary, and as this right is not a very clear denotation, it had better be left out.

If the suggestion of the protection of the United Nations to be given to stateless persons is accepted the question arises whether such a protection should be given by the United Nations themselves or whether it would be preferable to entrust this task to the International Refugee Organization.

Article 16

(a) Paragraph 1 should read as follows: "Every person shall have the right to freedom of thought, religion, conscience and belief, including the right, either alone or in community with other persons of like mind, to hold, adopt and manifest any religious or other belief, to practise any form of religious worship and observance and he shall not be required to perform any act which is contrary to such worship and observance."

/Comment: The

Comment: The suggested draft which is in conformity with Article 16 of the Covenant is to be preferred to the draft proposed by the Commission.

(b) It may be asked whether the last part of this paragraph "and he shall not be required etc." does not go too far for certain cases in which the refusal to perform such an act would be contrary to existing legislation.

(c) It is suggested to add to paragraph 2 "and to persuade other persons of the truth of his beliefs".

Comment: The freedom of conversion should be included.

Article 20

It should be understood that the right "to petition or to communicate with the public authorities" can only be exercised in writing.

Article 22

The meaning of the words "citizen" and "national" in contradiction to a foreigner should be made clear.

Article 24

(a) The acceptance of the principle of equal pay for equal work for men and women should not exclude the system of family allowances being given to married people, although, in practice, such a system implies that different people do not get equal remuneration for equal work.

(b) The condition that women shall work with the same advantages as men should not exclude the possibility of special prohibitive laws with regard to the labour of women, such as a prohibition of nightwork for women only.

Article 25

The second sentence should be deleted.

Comment: Apart from the question as to whether the regulation of this matter really enters in the scope of the Declaration, the inclusion of such an obscure provision should be avoided.

Article 27

(a) The first sentence should read: "Every one has the right to fundamental education".

Comment: Other education than fundamental education cannot be demanded as a right.

(b) The second sentence should be deleted.

Comment: The Declaration cannot deal with the problem whether education should be free and compulsory; should the sentence be maintained, the question arises whether the gratuitous education should not be limited to those who are unable to pay.

/(c) In the

(c) In the third sentence the words "higher education" should be replaced by "other than fundamental education".

Comment: By this substitution instruction such as technical education will also be included.

It should be understood that the term "fundamental education" means general education and not merely technical education. Perhaps the word "elementary" would be preferable to make this clear.

Article 31

The Netherlands Government reserve the right to determine their point of view with regard to the important problem of schools and language of minorities. In any case, it should be made clear that stipulations on these problems will only apply to nationals and not to foreigners.

C. COVENANT

Article 1

This article should be drafted in such a way as to exclude the conclusion that States, not being Parties to the Covenant, were also bound to the principles set forth in Part II.

Article 3

Cf. paragraph 2 of Observations on Implementation.

Article 8

(a) It will be desirable to have an advisory opinion of the International Labour Organization on this article dealing with forced or compulsory labour.

(b) Paragraph 3 (c) should end as follows: "Provided that these obligations have been contracted in the manner usually adopted by that community".

Comment: The proviso suggested by the Commission goes too far, as it cannot be assumed that in all countries minor communal services can be authorized only by elected representatives.

Article 9

To paragraph 2 (d) should be added: "or suffering from a serious contagious disease".

Article 10

The rule that no person shall be imprisoned in consequence of the mere breach of a contractual obligation, should be restricted to the breach of contractual obligations in the field of labour; in this way the possibility will remain of holding in servitude a person who does not fulfil any financial obligation resulting from a contract.

/Article 11

Article 11

- (a) The present text implies the unrestricted liberty of movement from the mother country to any other territory of the State which liberty in some cases would seem to go too far.
- (b) As to paragraph 2, cf. the observation on Article 10 of the Declaration.

Article 12

- (a) The rule that no alien legally admitted to the territory of a State shall be arbitrarily expelled therefrom should be made subject to the condition that the alien does not change his nationality after his arrival in the country; in some cases, a State may wish to restrict the number of nationals of a special country.
- (b) The word "arbitrarily" should mean that expulsion by a judicial body is allowed.

Article 13

A third paragraph should be added: "All judgments shall state the grounds upon which they are based and in penal cases they shall indicate the legal provisions upon which the condemnation is based".

Comment: Such a clause seems particularly important with a view to possible international control of such sentences.

Article 15

Cf. Observation on Article 12 of the Declaration.

Article 16

- (a) It is proposed to insert in paragraph 1 the word "thought" after the words "freedom of" and the word "adopt" after the verb "to hold"; the words "to change his belief" should be deleted; finally the following sentence should be added: "No person shall be deprived of civil and civic rights because of his conversion to another religion or belief".

Comment: The freedom of thought should be covered by this article. The expression "to change his belief" is superfluous, if the word "adopt" is inserted after "to, hold".

- (b) It is proposed to insert in paragraph 2 twice the words "or other" after "religious" and to add after the words "any form of religious teaching" the sentence "and to endeavour to persuade other persons of the truth of his beliefs".

Comment: The freedom of religious conversion should be stated explicitly.

/(e) Between

(e) Between paragraphs 2 and 3, a new paragraph should be inserted which reads as follows: "The freedom of religion, thought, conscience and belief shall also include: (1) the freedom for religious denominations or similar communities (including missionary societies) to organize themselves, to appoint, train and support their ministers, to enjoy civil and civic rights, to perform educational, medical and other social work, wherever they desire, as well as to communicate with sister communities in foreign countries; (2) the freedom for these communities to observe the religious holy-days and days of commemoration which observance shall be respected by the Government; (3) the freedom for missionaries to enter, travel and reside in, any country, to erect religious buildings and to open schools and hospitals in such country, with a view to the prosecution of their calling."

Comment: The freedom of performing the usually attendant social work, as well as the right of missionaries to enter, and travel in, any country should be explicitly mentioned. The autonomous rights of religious denominations and communities, as well as the observance of holy-days and commemoration days should be equally safeguarded.

Article 17

(a) In paragraph 2 at the end of (a) should be added the words "or which are part of a professional secret, acknowledged by law".

Comment: It would seem advisable to enable the safeguarding of professional secrets.

(b) In paragraph 2 (g) after the words "other persons" should be inserted the words "governmental or public authorities, or groups of persons who are all or in part nationals of a High Contracting Party or who belong all or in part to a certain race".

Comment: By this addition a limitation is introduced to establish the criminal character of injuring public authorities and groups of persons.

Article 18

(a) The words "prevention of disorders" should be replaced by "repression of disorders".

Comment: The word "disorders" is so vague that it may serve as an excuse for prohibiting any meeting; by

/creating

creating restrictions on a preventive basis one risks to take away the whole importance of the article; therefore the freedom of public meeting should only be restricted to reasons based on the repression of disorders.

(b) As a point (d) should be added: "the prevention of foreign political interference".

Comment: It might seem advisable to add this new restriction.

(c) At the end of the article should be added a clause making public meetings in the open air subject to an official authorization.

(d) It should be understood that the right to assemble does not include the right to hold pageants, or processions in the streets.

Article 23

(a) In paragraph 2, the words "two-thirds of the States Members" should be replaced by "two States Members". It is possible that only a very limited number of Members of the United Nations will be ready to subscribe to the Covenant. Therefore it would seem useful not to stick to the condition, that the Covenant will only come into force after ratification by some forty States. In the same way as International Labour Conventions come into force when they have been ratified by two States, the Covenant on Human Rights, even if only accepted by a few Members of the United Nations would register a certain progress.

(b) The first paragraph making the participation of States, being non-Members of the United Nations subject to a decision of the General Assembly is to be preferred to the suggestion of the United States that the Covenant should be open for accession to all States. The expression "eligible" should be avoided.

Article 25

In this article the terms "any colony or overseas territory" should be replaced by the usually employed expression "non-self governing territory".

Article 26

If the amendment proposed to Article 23 about the number of ratifications required for the coming into force is accepted, Article 26 should be modified accordingly. This might be done by substituting the words "two-thirds of the Parties" to "two-thirds of the Members of the General Assembly of the United Nations".

Article 27

This article should be deleted, as it goes without saying that, in interpreting articles of an international treaty, the several articles should be regarded in their relation to each other.

D. IMPLEMENTATION

1. The Netherlands Government consider the question of implementation as one of the most important aspects of the subject matter. An International Bill of Human Rights without provisions on implementation would not be complete and, in practice, it would be rather meaningless. The argument that rules on implementation would be contrary to the principles of sovereignty and independence of States must be refuted.

The question has been raised whether studies of this problem of implementation could be undertaken before the final contents of the Covenant had been decided upon. The Netherlands Government agree with the Belgian representative in the Working Group that although the final decisions may depend on the stipulations of the Covenant, the overall question can be considered at once in its own right. Therefore, the Commission on Human Rights has done useful work by outlining in its early stage a number of general principles on this matter.

With regard to these suggestions of the Working Group of the Commission, the Netherlands Government wish to present the following observations, it being understood that the suggestions only refer to the Covenant and not to the Declaration.

2. In this respect, attention may be drawn first of all to Article 3 of the Covenant providing that each Party shall bind itself to supply an explanation as to the manner in which its law gives effect to any of the provisions of the Covenant. It might be advisable to elaborate this rule, as one of the first stages of the procedure of implementation, when this matter will be considered more in detail.

3. As regards the suggestion that some organ of the United Nations should have the right to discuss, and make recommendations in regard to violations of the Covenant, the Government suggest that some organ should exercise general supervision on the way in which the Parties apply the Human Rights laid down in the Covenant. The Government share the opinion of the Working Group that in view of the fact of the Economic and Social Council being overburdened with functions, it would be preferable to have another organ entrusted with this task; the Commission on Human Rights would seem to be the body best qualified to fulfill these functions.

4. The Netherlands Government are in favour of establishing the right of individuals, associations and groups of individuals to petition the United Nations as a means of initiating procedure for the enforcement of human rights. In view of the considerable number of petitions that may be presented it will be essential to have an appropriate body of the first

/instance

instance to examine these petitions and to put aside the unimportant ones. Instead of the Standing Committee of five independent persons established by the Economic and Social Council, as proposed by the Working Group, the Netherlands Government suggest that this task be entrusted to the Executive Committee of the High Commission, which organ, in the opinion of the Government, should be established with a view to the adjustment of non-legal disputes concerning human rights (see § 6 below).

5. It will be essential to entrust some organ with jurisdiction in the case of disputes either between States or between States and individuals. With regard to the question as to whether it would be wise to create an International Court of Human Rights, as proposed by a small majority of the Working Group, or whether the Court should be the International Court of Justice, the Netherlands Government would prefer the second alternative. The question as to whether the International Court should institute a special Chamber for Human Rights or whether these cases should be dealt with by the full Court, can be put off until the discussions have reached a more advanced stage.

There is, however, one great difficulty to be overcome before the International Court of Justice could be entrusted with the task of jurisdiction in the field of human rights. Article 34, paragraph one, of the Statute of the Court reads: "Only States may be parties in cases before the Court". Now with regard to human rights, the jurisdiction that is wanted is a jurisdiction to be invoked not only by States but also by individuals and groups of individuals; therefore a modification of the Statute of the Court would be indispensable. As such a modification of the Statute will require the ratification by two-thirds of the Members of the United Nations, it does not seem probable that such a modification of the Statute will be attained shortly. Therefore, it would seem necessary, at least for the immediate future, to create a special jurisdiction for questions on human rights.

6. Jurisdiction will only be possible for legal questions. All other problems which may arise cannot be brought before a Court. Therefore, the Netherlands Government suggest that a new organ be created which may be called the "High Commission", and which should consist of experts acting independently of their Governments; this Commission should deal with all problems not being legal problems.

7. If this idea were accepted, it should be realized that this body would act, in part, as an international legislative body. No doubt it will be claimed that this task should not be entrusted to a body consisting of private people having no responsibility towards their Governments.

/Therefore,

Therefore, some supervision of the decisions of the High Commission should be provided. This might be done by instituting a governmental supervisory body, a "Permanent Human Rights Council". Of course, not all the decisions of the Commission should be reconsidered by the Council, but for the important cases an appeal to this governmental body should be possible, so as to prevent any action of the Commission contrary to the wishes of the Governments. Perhaps in future this political intervention may become unnecessary, but for the moment it would seem to be indispensable.

8. Two other points appear to be important.

First, it should be made clear that the Court and the Commission should also be competent when the question arises whether in a particular case the safeguarding clause may be invoked. It may be essential to restrict the use of this clause, as a too frequent use would weaken the value of the whole Covenant.

Secondly, it should be laid down explicitly that, if the Court, or the Commission, has pronounced its findings in one particular case, the State concerned - and if possible all the Parties to the Covenant - will be bound to act in conformity with these findings in similar cases. Article 59 of the Statute of the International Court says first the contrary: "The decision of the Court has no binding force except between the parties and in respect of that particular case". Therefore, if the International Court will be entrusted with jurisdiction in matters of human rights, this article should equally be modified.

31 March 1948.

4. COMMUNICATION RECEIVED FROM AUSTRALIA

AUSTRALIAN MISSION TO THE UNITED NATIONS

14 April 1948

I have the honour to refer to your Note SOA-17-1-01 of 9th January 1948. I am setting out in the following paragraphs the comments of the Australian Government on the draft International Bill of Human Rights prepared by the Commission on Human Rights at its Second Session.

Draft International Declaration on Human Rights

The Australian Government considers that the Draft Declaration in the form proposed by the Second Session of the Commission is not satisfactory, and contains many provisions which would be more appropriately inserted in the Covenant. The Declaration should be an instrument of popular appeal and persuasion, and the present text should be replaced by a more concise statement of general principles. The Australian Government reserves the right to make detailed comments, both at the meeting of the Drafting Committee and the following session of the Commission, on the present text and on any other proposal there put forward.

The Government also considers that the Declaration should be incorporated as a preamble to the Covenant. It should also be promulgated as a separate instrument.

Draft International Covenant on Human Rights

The Australian Government considers that the Covenant should be more comprehensive, and include more provisions for the implementation of the general principles of the Declaration. In particular, the Covenant does not at present give definitive effect to the principles contained in the Draft Declaration in its present form in Articles 1, 9, 11, 13, 14, 15, 20, 21, 22, 23, 24, 25, 26, 27, 29, 30, 32 and additional articles of the Covenant should be included accordingly. The Australian Government reserves the right to propose appropriate additional articles, and also to make comments on matters of detail in the Covenant as a whole.

Method of Implementation

It is considered that all matters relevant to the implementation of the Covenant should be discussed at the meetings of the Drafting Committee and Session of the Commission in May 1948, including, in particular, the Australian proposal for the establishment of a Court of Human Rights; and a comprehensive plan of implementation, including a draft statute for the Court of Human Rights, should be drawn up by the Drafting Committee for approval by the Commission and submission to the General Assembly. The implementation and methods of enforcement are essential component elements of the Covenant, and machinery for implementation should be agreed upon at the same time as the Covenant is drafted.

5. COMMUNICATION RECEIVED FROM THE UNITED STATES

April 15, 1948

The United States Representative at the Seat of the United Nations presents his compliments to the Secretary-General of the United Nations and, with reference to his note of January 9, 1948 has the honour to transmit herewith the observations, suggestions and proposals of the United States relating to the Draft International Declaration on Human Rights, and the Draft International Covenant on Human Rights contained in Annexes A and B of the Report of the Commission on Human Rights, dated December 17, 1947.

The observations with respect to implementation will be forwarded at a later date.

/OBSERVATIONS

OBSERVATIONS, SUGGESTIONS AND PROPOSALS OF THE UNITED STATES
RELATING TO THE DRAFT INTERNATIONAL DECLARATION ON HUMAN
RIGHTS, AND THE DRAFT INTERNATIONAL COVENANT ON HUMAN
RIGHTS CONTAINED IN ANNEXES A AND B OF THE REPORT
OF THE COMMISSION ON HUMAN RIGHTS DATED
DECEMBER 17, 1947

The Government of the United States desires in the first place to indicate its awareness and appreciation of the intensive and able work which has been done on the Bill of Human Rights by the Commission, its Drafting Committee and by the Secretariat. The work that has thus far been done is of great significance, taking into account the magnitude of the task and the multiplicity of possible approaches to its accomplishment. This Government believes, however, that much needs to be done in the way of refinement of the documents so far produced in order that they may serve the purpose for which they are intended.

A basic difficulty which the Government of the United States finds with both the draft Declaration and draft Covenant is that they are too long and complex effectively to accomplish their purpose.

DECLARATION - GENERAL COMMENTS

The Declaration is envisaged as properly fulfilling two functions:

1. To serve as basic standards to guide the United Nations in achieving, within the meaning of the Charter, international co-operation in promoting and encouraging respect for and observance of human rights and fundamental freedoms for all;
2. To serve as a guide and inspiration to individuals and groups throughout the world in their efforts to promote respect for and observance of human rights.

For the achievement of the first of these purposes, a shorter and more concise declaration will be more effective than a long and detailed declaration. The Declaration is not intended to be a legislative document in any sense. The manner in which the United Nations will undertake the task of promoting and encouraging respect for and observance of human rights and fundamental freedoms remains to be determined but it will almost necessarily have to adopt as a general rule, a broad rather than a detailed approach. However, its freedom to take up matters of detail would be enhanced, rather than diminished, by a declaration in broad and comprehensive terms.

With respect to the second purpose of the Declaration, namely to serve as a focal point for the development of world public opinion, this
/objective

objective is largely defeated by a long and complicated instrument. The first prerequisite to such a result is a document that is set forth in as simple and readily understandable terms as possible. A spelling out of details in the Declaration itself cannot increase its usefulness for such purposes.

The United States accordingly is strongly in favour of a short and concise Declaration.

Since it is the proper purpose of the Declaration to set forth basic human rights and fundamental freedoms, as standards for the United Nations, it is inappropriate to state the rights in the Declaration in terms of governmental responsibility. In particular it is improper to state in the Declaration that certain things shall be unlawful. If such references are retained, it will be difficult to know what the purpose and meaning of the Declaration is, especially in contrast to the Covenant. The same consideration applies to some extent to assertions of governmental responsibility found in some parts of the draft Declaration. It is true that the guaranty of certain rights, such as the right to fair trial, rests exclusively in the hands of the Government. In the case of other rights, such as the right to work, the right to health and the right to social security, there are widely different theories and practices in different parts of the world as to the manner in which the Government can best facilitate the desired end.

The United States believes that the Declaration should proclaim rights, but should not attempt to define the role of government in their ultimate attainment. This role will necessarily vary from country to country. The United States not only feels that this difference is inevitable, but that the flexibility of approach which results from it is valuable and should be preserved.

In concluding its commentary on the Declaration, the United States believes that it cannot better express its view of the nature and purpose of this document than by setting forth the following statement by Abraham Lincoln. Referring to the assertion of human equality in the United States Declaration of Independence, he said:

"They [the drafters] did not mean to assert the obvious untruth that all were then actually enjoying that equality, or yet that they were about to confer it immediately upon them. In fact, they had no power to confer such a boon. They meant simply to declare the right, so that the enforcement of it might follow as fast as circumstances should permit.

"They meant to set up a standard maxim for free society which should be familiar to all, - constantly looked to, constantly

/laboured

laboured for, and even, though never perfectly attained, constantly approximated, and thereby constantly spreading and deepening its influence, and augmenting the happiness and value of life to all people, of all colours, everywhere."

COVENANT - GENERAL COMMENTS

The United States is of the opinion that brevity and conciseness are at least as important in the Covenant as in the Declaration.

In particular, the United States is of the opinion that the effort to define detailed limitations to various rights presents serious problems, both from the International and domestic standpoints. It is believed that the effect of such limitations would be to reduce the effectiveness of the Covenant and render it liable to abuse.

The United States regards the Covenant as an undertaking on the part of the contracting parties to observe certain human rights. It is, of course, understood that some of the rights enumerated must be limited in the interests of the full enjoyment of the rights of all and of the general welfare. A general provision having this effect should be included and made applicable to the entire Covenant. However, the attempt to define in detail all the limitations permissible under each article is unnecessary and probably impossible; it is likely to create serious difficulties in the field of domestic law in a number of countries, including the United States, and might result in the Covenant being a retrogressive rather than a progressive document.

The incorporation of detailed limitations can not alter the basic criterion as to whether a party is complying with the Covenant. This criterion is the reasonableness of the limitations imposed on any rights in question. If a state unreasonably limits a right, its situation is not altered in the least by the fact that it asserts a limitation clause in its defence. The hazard in any limitation is that it may be misused to justify unreasonable restrictions on the right the covenant is intended to guarantee. This hazard is increased when a series of detailed limitations is set up as each of these presents the possibility of such abuse.

It is not believed to be possible to set forth the obligations of the Covenant with such precision as to avoid future debate about the meaning intended. This is for the reason that this Covenant will have to be interpreted in terms of actual situations, the nature of which cannot be foreseen in advance. In any given case, the right in question will have to be related to the situation involved, and frequently to other rights which bear on the situation, to considerations of general welfare, etc.

/The draft

The draft under study, even while attempting to be specific, reveals the true character of these concepts as being based on relative values (see especially Article 27) and the test of reasonableness. Articles 16 and 18, for example, contain limitations so vaguely worded as to require interpretation in specific cases. Article 9, which attempts to be quite specific, contains such words as "reasonable" in paragraph 2 (a) and "lawful" in paragraph 2 (b) and 2 (c) which require further interpretation. Furthermore, the thousands of recorded court decisions dealing with the interpretation of statutes reveal the impossibility of drafting language capable of covering all contingencies.

An essential difficulty with the expression of specific limitations is that, by common rules of construction, such expression implies the exclusion of others. It would thus be open to argument that any other limitations imposed by law are contrary to the treaty. To give a hypothetical example, it might be necessary for the protection of the public welfare, to enact new legislation restricting obnoxious medical advertising transmitted by television. Action of this sort would be perfectly proper, but it would not be appropriate at this time to cover the specific point in a broad general instrument affecting fundamental rights only, in many countries, a substantial proportion of which are not concerned today with television. Other technological developments, whose nature cannot be forecast in any way, are bound to arise. To require formal, solemn amendments of the covenant to cover each of these developments would be clearly impractical. Even existing contingencies can not all be mapped out with respect to all member nations between the present time and September 1948, when the General Assembly next convenes. The only type of document on which general agreement can possibly be secured is one of a general nature.

Detailed specific provisions purporting to set forth all possible limitations would be particularly unfortunate in countries like the United States where the basic constitutional document describes treaties, together with the Constitution and laws, as the supreme law of the land. Treaty provisions which, while not intended to change the existing law, are capable of creating confusion and raising multifarious controversies are obviously to be avoided. For this reason alone there might be considerable doubt as to the ability of the United States to accept a Covenant containing such specific limitations.

The foregoing argument presents one detailed reason why, in attempting to draft a treaty on the extremely broad and complex subject of human rights, the best and perhaps the only practicable approach is to have a

/clear and

clear and simple document. It is quite possible that a Covenant which attempts to go into too great detail, even if it could be ratified, would be so complex and confused as to be unworkable in practice.

COVENANT - SPECIFIC SUGGESTIONS

PART I OF COVENANT

Articles 1 and 2

It is suggested that these Articles be replaced by a simple statement to the effect that the contracting parties agree to observe and protect, through appropriate laws and procedures, the human rights and fundamental freedoms set forth in Part II of the Covenant.

The detailed statement in Article 2 appears to be unnecessary. The object should be the establishment of a duty to guarantee the requisite standard of protection, the method of accomplishing this being the concern of the state.

Article 4

The deletion of this Article is suggested for the reason that it carries an unwarranted implication that the rights set forth in the Covenant are absolute. While this is true of some rights (such as freedom from slavery, torture and mutilation) others must be regarded as relative. This is indicated in Article 27 of the draft. The relationship of these rights to each other and to the general welfare can be altered not only by war or other national emergency, but by other factors. For example, the concept of freedom of expression has been limited to recognize the right of the public to be protected against fraudulent advertising. The effect of war or national emergency does not, therefore, justify a state in "derogating" from its obligations. The obligations still remain fully in force and the question remains whether limitations imposed are reasonable under the circumstances.

The United States has in mind a limitation provision, applicable to the entire Covenant, somewhat along the following lines:

"The High Contracting Parties agree that a State party to this Covenant may take action reasonably necessary for the preservation of peace, order, or security, or the promotion of the general welfare. Such action by any State party to this Covenant must be imposed by or pursuant to law."

Here or elsewhere in the covenant it should be made clear that no one shall be denied equal protection of the law with respect to any of the rights and freedoms set forth in the substantive articles of the covenant.

/Article 27

Article 27 of the Commission draft would be merged in such an article.

PART II OF COVENANT

The United States at this time suggests that the following provisions be deleted:

Article 14

Paragraph 1 of the Article provides protection against ex post facto laws. The United States feels that this right should not be impaired. Paragraph 2 should therefore be deleted.

Article 20

Last part of last sentence - arbitrary discrimination and incitement to discrimination. The State cannot be expected to prevent all types of arbitrary discrimination as between private individuals. The phrase concerning "incitement" appears to be subject to the same commentary as is made in the following paragraph in connection with Article 21.

Article 21

The present laws of the United States prevent incitement to violence for any reason when there is a clear and present danger that violence will actually result. Long experience with the problem of free speech has led to the conclusion that any greater limitation would be liable to misuse for the purpose of suppressing free speech. It is felt that the utmost freedom of speech is a better safeguard against hostility and violence than general laws giving increased powers to suppress freedom of speech.

Since it is desirable that the Covenant be as short and concise as possible, the United States believes that the enumeration of rights should be limited to those which are of basic importance and as to which serious violations might well justify international representations. The United States will at the appropriate time suggest that certain provisions, in addition to those listed above, be deleted either because they are not of basic importance or because they are covered by other more basic rights.

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In transmitting this communication, the United States Government wishes to point out that it is also considering other observations with respect to the Declaration and the Covenant which it reserves the right to submit to the attention of the United Nations at a later date. It expects also to submit observations with respect to implementation, which is a subject not specifically covered in this paper.