

---

COMMISSION ON HUMAN RIGHTS

THIRD SESSION

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

(Note by the Secretary-General)

The present document has been prepared by the Secretariat in order to facilitate the work of the Commission on Human Rights and its Drafting Committee in considering the comments from Governments on the Draft International Declaration on Human Rights, Draft International Covenant on Human Rights and the question of implementation.

It reproduces the replies from Governments received by the Secretariat by 30 April 1948 arranged according to subjects. Replies from the following Governments are collated in the order as they were received: Canada, Netherlands, Australia, United States, Mexico, Brazil, United Kingdom, Union of South Africa, Egypt and Norway.

I. GENERAL OBSERVATIONS ON THE WORK OF THE COMMISSION ON HUMAN RIGHTS  
AND ITS IMPORTANCE

1. Canada

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.

2. Netherlands

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

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 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

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 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 22 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.

### 3. United States

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

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,

## II. DRAFT INTERNATIONAL DECLARATION ON HUMAN RIGHTS

### A. General Comments on the Declaration

1. Netherlands (See above under I; General Observations)
2. Australia

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.

### 3. United States

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 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

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 for, and even, though never perfectly attained,

/constantly

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."

4. Mexico

Mexico has always been eager to see fundamental human rights codified in an international declaration. At the Inter-American Conference on Problems of War and Peace (Mexico, 1945) she took the initiative in this question; and the outcome was the adoption of Resolution XL by the Conference. At the San Francisco Conference she proposed the drafting of an "International Declaration on Human Rights" to be annexed to the United Nations Charter.

These earlier proposals were not simply a response to immediate circumstances, prompted by the strong reaction of world opinion to the crimes against human dignity committed by certain countries; they derived, rather, from the deep conviction that a peaceful international order necessarily presupposes a regime of liberty and respect for the rights of the human personality.

For these reasons Mexico welcomes with great interest the Draft International Declaration on Human Rights drawn up by the Commission on Human Rights, an organ of the Economic and Social Council of the United Nations.

The Mexican Government notes with real satisfaction that this Draft fully conforms to the purposes and principles of the United Nations Charter, as declared both in the Preamble and in Articles 1, 3, 4, 55 (c), 56, 62 (2) and 68 of the Charter. The Declaration in no way conflicts with the principle of the sovereign equality of States on which the United Nations is based, nor is it inconsistent with the principle of domestic jurisdiction which, according to authoritative interpretation (UNCIO, Report of the Rapporteur of Committee II/3, document 861, II/3/55/1, pages 3-4), was recognized at the time the Charter was drafted to be the basis of human rights, and is laid down in Article 2 (7).

The Charter's provisions on human rights correspond to one of the functions of the United Nations, namely to create (over and above the legal preventive measures and the machinery of sanctions to deal with threats to the peace or acts of aggression or war) the essential conditions of stability and well-being which are necessary for peaceful and friendly relations among nations. Amongst these conditions the Charter expressly mentions the economic ones and universal respect for, and observance of, human rights and fundamental freedoms.

As the Commission recognized and clearly stated at the time the Geneva drafts were being prepared, the Declaration on Human Rights

/imposes



imposes no legal obligation on States "and requires no measures for implementation"; it should therefore "be drafted in declaratory form only" (document E/600, page 23). The Working Group on Implementation shared this opinion of the Working Group on the Declaration, stating that "the Group ruled out completely any further consideration of the question of implementing the Declaration" (document E/600, page 44).

The Mexican Government acknowledges with satisfaction the correctness of these early statements, which are fully in accordance with its conception of an International Declaration on Human Rights.

The usefulness and importance of the Declaration are not lessened by the fact that it includes no provisions for legal sanctions. The Declaration has a real and effective value in itself; first, because it states precisely the human rights and fundamental freedoms which States Members undertook in signing the Charter of the United Nations to promote and develop, and second, because it solemnly proclaims before the whole world a standard of justice and freedom to serve as guide and encouragement to States in their own practice, and enjoying the approval of international public opinion.

But the very latitude of the Declaration serves its fundamental objectives, since the fact that it is drafted in rather broad terms and lays down a bare minimum of guarantees and rights will make it readily acceptable by almost all States. The Declaration will thus achieve a character of universality. Furthermore it must be remembered that although this Declaration imposes no precise legal obligations on Members, these in signing the Charter undertook to fulfil in good faith the principles stated therein; and these principles include the promotion and respect of human rights. The General Assembly, moreover, may discuss any questions relating to the maintenance of international peace and security brought before it by any Member of the United Nations, and may make recommendations with a view to securing the human rights and fundamental freedoms of all; it may also call the attention of the Security Council "to situations which are likely to endanger international peace and security" (Article 11 (3)).

The Government of Mexico therefore expresses its approval of an International Declaration on Human Rights of the above described character, considering it the most effective means of promoting these rights; and it declares its agreement with the general lines of the Draft Declaration prepared by the Commission on Human Rights at its second session in Geneva, subject to certain comments thereon.

5. Brazil

1. The International Declaration on Human Rights should be as broad as possible. There would hardly be any point in making a declaration

/embodying

embodying only those principles already accepted by the States. The Declaration should constitute an ideal that the States would strive to reach, thereby fulfilling the deficiencies in their juridical organizations. It would thus become a stimulus to the progress of the legal organization of all States.

2. On the other hand, the text of the Declaration should be as concise as possible. Such conciseness, however, should not prevent an accurate definition of acknowledged rights.

3. Attention should be paid to the duties that correspond to the rights. This relation has been emphasized in juridical doctrine and in the most advanced legislations. It seems that, aside from the general reference in Article 2, it has not been always felicitously indicated in the draft Declaration.

4. In the draft there are references to duties of the State. It may be observed that such references would fit better in a specific Declaration of Rights and Duties of States than in the present one.

5. In certain instances the guarantees of the rights are presented as substantive rights. It is well known, furthermore, that guarantees are often as important as the corresponding rights, or even more so, for without guarantees such rights are void. For this reason, it would be better to replace the expression "rights and liberties", used in the draft, by "rights and guarantees".

#### SPECIAL COMMENT

The Brazilian Government favours the inclusion, in the International Bill of Rights, of Articles 5, 6 and 7, proposed by the United Kingdom and mentioned in the Report of the Commission, Annex C, Part 2, No. 4.

#### 6. Union of South Africa

##### Draft Declaration on Human Rights

Article 3, Articles 6 and 7 (1) and (2), Article 7 (3), Article 10, and Article 19 of the draft declaration, correspond with Articles 20, 13, 7, 11 and 18, respectively, of the Draft Convention. The Union Government have no further comment to offer on these articles of the declaration except to say in regard to the presumption referred to in Article 7 that there are many statutory qualifications of this presumption.

Articles 25 - 29: The general principles enunciated in these articles are no doubt highly commendable, but in some cases are too sweeping in their generality. Many of the provisions inserted here do not comprise fundamental human rights at all but rather the duties of States and it would be preferable to consider such duties in conjunction with the draft Convention or declaration concerning the latter subject.

/General:

General: In conclusion the Union Government would point out that some of the articles of this draft declaration do not purport expressly or by implication, to define any right or freedom at all. (See Article 1, Article 13 (except the second sentence of Clause (1)), Article 28 and Article 32). Others again, describe in general terms the duties of States, rather than the specific rights and freedoms of individuals. (See Article 23 (2) and (3), Article 25 (the last sentence of Article 26 (1)), Article 28 and Article 32). Some articles, moreover, would seem to go much beyond the scope of what could legitimately be regarded as rights and freedoms so fundamental as to call for international protection by the society of nations. Amongst these we would refer to the following:

Article 7. The right to be presumed innocent, which, however important, is no more than a question of onus of proof.

Article 10. General freedom of movement and choice of residence, and the right to leave one's own country and to acquire another nationality.

Article 15. The right to a nationality.

Article 21. The right to take part in the government.

Article 22. The right to engage in public employment.

Article 23. The right to useful work, and to claim from the State all necessary steps to prevent unemployment.

Article 24. The right to remuneration commensurate with ability and skill, to just and favourable conditions of work, and to join trade unions, and the right of women to equal pay for equal work.

Article 25. The right to the highest standard of health which the State can provide.

Article 26. The right to social security.

Article 27. Free and compulsory education.

Article 29. The right to leisure, to reasonable limitations on working hours and to periodic vacations with pay.

Article 30. Participation in the cultural life of the community, enjoyment of the arts and a share in the benefits of scientific discoveries.

In the submission of the Union Government these go beyond the elementary essential rights which are indispensable for physical and mental existence as a human being, and with which alone the United Nations are called upon to concern themselves. These articles no doubt give expression to certain ideals of advanced development, but a condition of existence does not constitute a fundamental human right merely because it is eminently desirable for the fullest realization of all human potentialities. What the Charter

/envisages

envisages is the protection of that minimum of rights and freedoms which the conscience of the world feels to be essential, if life is not to be made intolerable, at the whim of an unscrupulous Government. This declaration embraces very much more than that, and to the extent to which it does so, it trespasses upon matters which should be left where they belong, in the domestic sphere of the member States.

In regard to the economic rights, i.e. the right to work, and to do useful work, the right to rest and leisure, the right to remuneration commensurate with ability, the right of women to equal pay for equal work, the right to social security, etc., it will be apparent that the extent to which they can be assured will depend also upon the action taken by private employers. They cannot be effectively ensured for all without the co-operation, compulsory or otherwise, of private employers. If, therefore, they are to be taken seriously (as is intended) it would, in the submission of the Union Government be found necessary to resort to more or less totalitarian control of the economic life of the country. To declare them to be fundamental human rights, would therefore amount to an injunction by the United Nations to State members to move to the left, by assuming greater and greater economic control, an injunction, in fact, to move nearer to the communistic economic system, under which, in practice, many essential human rights are being denied.

It seems to be realized that a declaration of this nature, if passed by the Assembly, would not create legal rights and obligations. That is why, perhaps, it has been drawn with so little regard for precision and particularity, or for the true scope of fundamental rights and freedoms. But it will undoubtedly be invoked as a source of moral rights and obligations, and may therefore lead not only to intensified internal unrest and agitation, but also to repeated embarrassment and agitation before the United Nations and their various organs. It is of the greatest importance, therefore, that it should not be passed in a form so completely unacceptable.

#### 7. Egypt

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:

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

/The freedoms

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.

B. Comments on the Articles of the Draft International Declaration  
on Human Rights

Article 1

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

1. Netherlands

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

2. Brazil

It would seem that this article could be dropped as an independent provision. Only a part of it, namely the statement that all men "should act towards one another like brothers", might be retained and incorporated into Article 2 since it involves a duty which should go along with the other duties of the individual, stated in that article. The remainder of Article 1 has a certain philosophical and mystical quality. Unfortunately, it is not exactly true that all men are endowed by nature with reason and conscience.

Article 2

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

1. Mexico

The first sentence of this Article should be amplified as follows:

"In the exercise of his rights everyone is limited by the rights of others, by the legal safeguards for the liberty, general welfare and security of all, and by the just requirements of the democratic State".

2. Brazil

It should be added here that "all should act toward one another like brothers" - or, at least, in a fraternal spirit. The text would thus become complete, for the exercise of the rights of each one is limited not only by the rights of others but also by this duty of fraternity, which modern law recognizes in a revival of the old Roman precept: summum ius, summa injuria.

Instead of "just requirements" it would be better to say "legal requirements". The requirements of the State should not be motivated by a vague and subjective notion of justice, but by strict legality. The Commission on Human Rights was quite justified in adopting the form - democratic state - proposed by the representative of China.

The Brazilian Government is in accord with the view expressed by the representative of the United Kingdom that the State should not be regarded as "limiting" the rights of the individual. It would be preferable, however, to say that the exercise of these rights is "conditioned" by the rights of others, by the legal requirements of the State and by the duty of fraternity.

Finally, it is the view of the Brazilian Government that the proper position for this article reworded as suggested in the text should be after all others dealing with individual rights. The restriction contained in Article 16, No. 3, of the Covenant, should be included in this article.

Article 3

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

1. Netherlands

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.

2. Brazil

In accord with the preceding comments, of the Brazilian Government on Articles 1 and 2, this article would become No.11. This would be, in fact, the proper position for it, in view of its text.



Article 4

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

1. Netherlands

This article should read as follows: "Every one 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.

2. Brazil

In this article there should be included the restriction contained in Article 5 of the Covenant, also the amplification contained in Article 6 of the Covenant.

Article 5

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

1. Mexico

On grounds of justice, and for political and historical reasons, the following paragraph should be added:

"No one may be imprisoned for purely civil debts".

2. Brazil

Article 9 of the Covenant mentions in detail the cases in which arrest or detention may be effected. These exceptions indicate that the article under discussion should not be drafted in terms as broad as those appearing in the text submitted. It is also made evident that it should not be said "after due process" but rather "by due process".

Article 6

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

1. Brazil

There might be added, after the last word: "and in which he can be understood". This would complete the guarantees given the accused in the matter of expression.

Article 7

1. Any person is presumed to be innocent until proved guilty. No one shall be convicted or punished for crime or other offence except after fair public trial at which he has been given all guarantees necessary for his defence. No person shall be held guilty of any offence on account of any act or omission which did not constitute such an offence at the time when it was committed, nor shall he be liable to any greater punishment than that prescribed for such offence by the law in force at the time when the offence was committed.
2. Nothing in this Article shall prejudice the trial and punishment of any person for the commission of any act which, at the time it was committed, was criminal according to the general principles of law recognized by civilized nations.
3. No one shall be subjected to torture, or to cruel or inhuman punishment or indignity.

1. Netherlands

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.

2. Brazil

No. 2 should be deleted from this article, since it involves an unacceptable derogation of the traditional precept - nullum crimen sine lege.

On the other hand, it is suggested that there might be added that no one can be compelled in any way to confess responsibility for an act or omission of which he be accused.

Article 8

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

No comments received.

Article 9

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

1. Netherlands

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.

2. Brazil

The first part should be redrafted as follows: "Every one shall be entitled to protection under law not only from unreasonable interference with, but also from any offense against his reputation, his privacy and his family (additions are underlined).

It would be proper to mention freedom from threats, terror or oppression.

The inviolability of the home is subject to restrictions arising out of the necessity for repressing crime - and it should so be stated.

The inviolability of correspondence should figure in Article 17 which deals with freedom of expression.

3. Union of South Africa

This article obviously goes too far in declaring a man's home and correspondence "inviolable". That would, for instance, preclude the execution of search warrants in respect of homes, and the opening by post office officials of insufficiently addressed letters, in order to return them to the senders.

4. Norway

The Norwegian government should like to suggest a limitation by adding the following: "except in cases prescribed by law and after due process". Furthermore, my government understands that it has been agreed, that the Declaration imposes no legal obligations.

Article 10

1. Subject to any general law not contrary to the purposes and principles of the United Nations Charter and adopted for specific reasons of security or in general interest, there shall be liberty of movement and free choice of residence within the border of each State.
2. Individuals shall have the right to leave their own country and, if they so desire, to acquire the nationality of any country willing to grant it.

1. Netherlands

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 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.

2. Mexico

In paragraph 2 of this Article the words "temporarily or permanently" should be inserted. The paragraph would thus read as follows:

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

3. Brazil

The statement of principle in No. 1 is followed immediately by the restriction applying thereto, while that in No. 2 is presented in absolute terms and its restriction appears in Article 11, No. 2, of the Covenant.

Reference should be made in this article to the guarantees of the alien against arbitrary expulsion, which appear in Article 12 of the Covenant.

4. Egypt

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.

Article 11

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

1. Netherlands

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.

2. Brazil

It is stated that asylum shall not be accorded to criminals. Exception should be made of persons accused of crimes having a merely political nature.

3. Union of South Africa

Article 11: The first part of this article appears to be in conflict with every restriction on immigration existing anywhere in the world. The second part seems to say that criminals and persons who have acted "contrary to the principles and aims of the United Nations", are not to be granted asylum from persecution. This would mean that once convicted of a crime or once having acted contrary to those principles and aims the offender forfeits his right to asylum, on whatever ground he may be persecuted. There is the further objection that the phrase "those whose acts are contrary to the principles and aims of the United Nations" is so wide and vague as to mean everything and nothing. Would this category of persons include, for instance, the members of a Government who pursued a policy which is contrary to a recommendation of the United Nations? Would the supporters of such a Government fall within the same category?



Article 12

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

1. Netherlands

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.

2. Brazil

Because of its broadness, the precept contained in this article should be incorporated into Article 3 of the draft, which, in accord with previous comments, would become Article 1.

3. Union of South Africa

Article 12: This article introduces a further refinement of confusion into the already chaotic picture of proposed fundamental human rights. It purports to include in such rights, the right to the enjoyment of so-called fundamental civil rights. This is a definition of the unknown, by what is even more unknown. What are fundamental civil rights? Are we to have another convention and another declaration to define these? Are we to delve from fundamentals to fundamentals until we have cut every root of national autonomy?

Article 13

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

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

1. Mexico

The Government of Mexico considers that this article fails to lay down the principle of freedom to contract marriage sufficiently broadly. It proposes that the article be redrafted to read as follows:

"Men and women shall have the same freedom to contract marriage, and the law guarantees them that freedom without distinction as to race, nationality or religion."

2. Brazil

There is, perhaps, a small flaw in drafting technique in this article. It is evident, and as such it has been expressly stated in the General Comments on the Draft Declaration, No. 1, that the word "men" comprises both men and women. In this article, however, it has been used in a restrictive sense. This and No. 2 of Article 24 are the only instances of specification in the matter appearing in the Declaration. It would be preferable to use here a generic expression, such as "every one" or "every person" which appear repeatedly throughout the Declaration.

The Brazilian Government considers acceptable the additional wording proposed by the representative of the United Kingdom, "married persons shall have the right to reside together in any country from which they cannot be lawfully excluded", or at least the first nine words of the foregoing.

The following item, from the draft on the same subject prepared by the Inter-American Juridical Commission, should be added:

"The parents have the right of paternal power over their children during the minority of the latter and the essential obligation to maintain and support them."

It might be possible to improve the text, to read as follows:

"Parents shall have paternal power over their minor or non-emancipated children, involving the obligation to provide them with sustenance and education."

3. Union of South Africa

Article 13: The intention and purpose of the provision that "men and women shall have the same freedom to contract marriage in accordance with the law", are somewhat obscure. Is it the intention to say inter alia that there shall be no difference as to the respective ages at which men and women may contract marriage, that where there is an annus luctus for

/a widow

a widow there must be the same annus luctus for a widower, and that where a State recognizes the right of men to contract polygamous marriages, it is bound also to recognize the right of women to contract polyandrous marriages? It may be said that the answers to these questions are to be found in the words "in accordance with the law", but if that is so, this provision becomes meaningless, because that would leave every State free to impose legal restrictions upon the freedom of women to contract marriage which are not applicable to men, and vice versa.

Article 14

1. Every one has the right to own property in conformity with the laws of the State in which such property is located.

2. No one shall be arbitrarily deprived of his property.

1. Brazil

It is not enough to say that "no one shall be arbitrarily deprived of his property". It should be said also "or without prior and fair indemnity".

2. Union of South Africa

Article 14: If it is the intention to say that a State may not deprive any person of all right to own property, or limit this right in such a way as to render it altogether ineffective it would be desirable to re-word the article.

Article 15

Every one has the right to a nationality.

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

1. Netherlands

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.

2. Brazil

The Brazilian Government recommends the following disposition:

"No State shall deny its nationality to a person having right thereto by birth, in accord with local legislation, nor deprive of such nationality any person who may have acquired it by birth, except by motive of an act declared by law to be incompatible with subsistence of nationality."

It would be advisable to include also the following item proposed by the Inter-American Juridical Commission in drafting a similar document:

"Every person shall be entitled to renounce his nationality, whether such nationality be native or acquired, and to adopt the nationality of another State."

It might be convenient to add: "...in accordance with the laws of the latter and without detriment to prior obligations".

3. Union of South Africa

Article 15: The provision that everyone has the right to a nationality seems to imply some underlying obligation on the part of a State in whose territory a stateless person may be resident, to grant that person its nationality. It may even imply that there is an obligation not to denationalize any person, where the result would be to make him a stateless person. If these are in fact the intended implications of this provision,

/they would

they would require the revision of the laws relating to Union nationality, as in terms of these laws there is no legal obligation to naturalize if certain requirements are not complied with, and there is no restriction which would prevent denaturalization where the person concerned would become stateless. The provision that all persons who do not enjoy the protection of any government shall be placed under the protection of the United Nations, comes perilously near to the recognition of the United Nations as a super-state. To make this protection effective, the Organization would have to issue passports, and may have to appoint officers exercising the functions of diplomatic or consular representatives in States harbouring any considerable number of stateless persons. The United Nations would, presumably have the same status to make representations as to the treatment of such persons, as a State would have in regard to the treatment of its own nationals, and that may open another door to international pressure in internal affairs.

The last sentence of this article corresponds with the second part of Article 11, on which we have already commented above.

Article 16

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

1. Netherlands

(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 practice 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 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.

2. Mexico

The Mexican Government considers that this article is incorrectly drafted in view of the provisions of Article 2, and it therefore proposes that the first part of Article 16 be redrafted as follows:

"Individual freedom of thought and conscience and freedom to hold and change beliefs are fundamental human rights."

The Mexican Government proposes that the second paragraph of this article be redrafted as follows:

"Every person has the right, either alone or in community with other persons of like mind, to manifest his beliefs by means of worship, the observance of rites, practices and teachings in churches or other places provided for by the national law applicable."

3. Brazil

In No. 1 of this article, it would be better to say "unrestricted" instead of "absolute and sacred".

/The manifestation

The manifestation of beliefs, in public or in private, as mentioned in No. 2, is subject to restrictions arising out of requirements of public order and it should so be stated therein, as is done, perhaps in somewhat too broad a manner, in Article 16 of the Covenant.



(Article 17)

(1. Every one is free to express and impart opinions, or to receive and seek information and the opinion of others from sources wherever situated.)

(2. No person may be interfered with on account of his opinions.)

(Concerning Articles 17 and 18 the Commission on Human Rights decided not to elaborate a final text until it had before it the views of the Sub-Commission on Freedom of Information and of the Press and of the United Nations Conference on Freedom of Information).

1. Brazil

The Brazilian Government would prefer that the text of the Declaration follow the draft text proposed by the Commission on Human Rights for Article 17 of the Covenant.

In further connection with these articles, attention is drawn to the comments to follow, under Article No. 19.

2. Union of South Africa

Articles 17 and 18: The ~~Sub-Committee~~ Sub-Committee on Freedom of Information and of the Press, have recommended ~~an~~ article to take the place of these articles. This article corresponds with Clause 1 of the article recommended by the Sub-Commission for inclusion in the convention. We have dealt with this latter article in our comments on Article 17 of the convention.

The Sub-Commission on Freedom of Information and of the Press at its second session decided to recommend to the Commission on Human Rights the following article, which embodies Articles 17 and 18 of the Draft Declaration (document E/CN.4/80, page 4):

"Every one shall have the right to freedom of thought and expression; this shall include freedom to hold opinions without interference; and to seek, receive and impart information and ideas by any means and regardless of frontiers."

The United Nations Conference on Freedom of Information adopted the following opinion on Articles 17 and 18 (Final Act, E/CONF.6/79, Annex B):

Articles 17 and 18 of the Declaration may be embodied in one Article as follows:

"Everyone shall have the right to freedom of thought and expression; this right shall include freedom to hold opinions without interference and to seek, receive and impart information and ideas by any means and regardless of frontiers."

/((Article 18))

(Article 18)

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

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

1. Mexico

This article should be redrafted as follows:

"Every person has the right to use the spoken or written word, the press, books and all visual, auditive or any other means of expression. There shall be equal access for all to all channels of communication of ideas."

2. Brazil

The Brazilian Government would prefer that the text of the Declaration follow the draft text proposed by the Commission on Human Rights for Article 17 of the Covenant.

In further connection with these articles, attention is drawn to the comments to follow, under Article No. 19.

The Sub-Commission on Freedom of Information and the United Nations Conference on Freedom of Information decided to recommend to the Commission on Human Rights that Articles 17 and 18 should be embodied into one article, the proposed texts of which are quoted under the preceding Article 1

Article 19

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

1. Brazil

The principle embodied in this article is presented without the restrictions which are mentioned in Article 18 of the draft covenant. The right to establish associations is regulated by Article 19 of the Covenant. In the comments on Article 19 of the Draft Declaration, which appear in Annex A, Part II, of the Report of the 2nd Session of the Human Rights Commission, the remark is found that "it is understood that no individual or association that aims to destroy the fundamental rights and freedoms set forth in this Declaration can claim protection under this article". It is recommended that a disposition to that effect be included both in the text of the Declaration and in that of the Covenant and extended so as to apply to associations aiming at the violent destruction of social or political order.

The right to constitute associations in the manner prescribed by law should be added to that of "participating" therein.

The constitutions and the legislation of some countries contain justifiable restrictions to the participation of aliens in certain associations. An example of such restrictions is found in the Brazilian Constitution, Articles 155 and 160. Domestic regulations of this nature should be admissible under the International Bill of Rights.

Article 20

Every one has the right, either individually, or in association with others, to petition or to communicate with the public authorities of the State of which he is a national or in which he resides, or with the United Nations.

1. Netherlands

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

2. Union of South Africa

Article 20: The addition at the end of this article of the words "or with the United Nations", constitutes, in its context, a recognition of the right of individuals to petition the United Nations on whatever matter they may desire to raise. This implies a jurisdiction on the part of the United Nations, which they obviously do not possess. If the intention is to deal only with petitions relating to fundamental human rights, the matter could be best dealt with when the implementation of the convention is under consideration.

Article 21

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

1. Brazil

The right set forth in this article should be subject to restrictions in political capacity through legal incompetence (minority, criminality, etc.).

2. Union of South Africa

Article 21: The scope of this article would appear to be too wide; convicts, stateless persons, aliens and in some cases, absentee voters, cannot take an effective part in the government of all countries. Nor can persons who cannot comply with property and literacy or educational qualifications where such qualifications are in vogue.

Article 22

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

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

2. Mexico

The Mexican Government proposes that this article be redrafted as follows:

"Every person shall have equal opportunity to engage in public employment and to hold public office in the State of which he is a citizen, subject or national, except in special cases provided for in the national law.

"Access to public employment shall not be a matter of privilege or favour."

3. Brazil

No. 2 appears unnecessary in view of the comprehensiveness of No. 1.

4. Union of South Africa

Article 22: It is difficult to see how equal opportunity to engage in public employment and to hold public office can be regarded as a fundamental human right. In some countries members of the Communist Party, in other members of a fascist party, or an organization with subversive objectives are debarred from holding public office. The Union Government regard restrictions, imposed for purposes of national security and public peace as legitimate.

Article 23

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

1. Mexico

The first paragraph of this article would be more adequately drafted as follows:

"Everyone has the right to paid work."

2. Brazil

As pointed out by the United States representative, it would be best not to mention positive duties of the State. However, if it is decided that such mention is to be made, No. 3, which appears redundant in view of No. 2, might be worded as proposed by the representative of Byelorussia: "The State is obliged to take all necessary measures against unemployment."

The question of compulsory labour, which is clearly set forth in Nos. 2 and 3 of Article 8 of the Covenant, has not been taken into consideration in the article under review.

3. Union of South Africa

Article 23: The second and third clauses of this article do not constitute human rights or freedoms, but duties of the State concerning which a separate Convention or declaration is being considered. These clauses should be deleted.

4. Egypt

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

Article 24

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

1. Netherlands

(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.

2. Brazil

No. 2 seems unnecessary in view of Article 3, which assures all rights and freedoms set forth in the Declaration, without distinction of sex.

3. Union of South Africa

Article 24: What criterion is to be applied to determine whether the pay received is commensurate with an individual's skill in circumstances where so often the wage paid is determined by the law of supply and demand? It would be preferable to be realistic and stipulate for a "fair and reasonable" wage, all circumstances considered.

As regards reference to Trade Unions, see remarks under Article 19 of the draft Covenant.

This article further embodies the contentious principle of equal pay for men and women for equal work. Where this principle for good reasons is not universally recognized it would be preferable to leave it out, as not an acknowledged fundamental human right.



Article 25

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

1. Netherlands

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.

2. Brazil

The Brazilian Government endorses the additional wording suggested by the delegate of Uruguay: "Every one has the duty to preserve his health". Here, likewise, the observation of ~~the~~ United States representative as to the declaration of positive duties for the State should be taken into account.

Article 26

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

1. Brazil

The remarks of the Brazilian Government to Articles 24 and 25 also apply to this article.

2. Egypt

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."

Article 27

Every one has the right to education. Fundamental education shall be free and compulsory. There shall be equal access for higher education as can be provided by the State or community on the basis of merit and without distinction as to race, sex, language, religion, social standing, financial means or political affiliation.

1. Netherlands

- (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 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 28

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

1. Mexico

The drafting of this article is correct, but the provisions with respect to international relations are purely negative. The Mexican Government therefore proposes the addition of the following text:

"It will use all means to promote understanding and concord amongst peoples and to develop effective support of the pacific activity of the United Nations."

Article 29

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

1. Brazil

This article would be better placed immediately following Article 24, thus bringing together the dispositions relating to labour. This would result in the further advantage that the present Article 30 would be located immediately following Articles 27 and 28 which deal with education.

Article 30

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

1. Mexico

The following text should be added to this article:

"Everyone is likewise entitled to just protection, compatible with the progress of mankind, for his moral and material interests in any inventions or literary, scientific or artistic works of which he is author."

2. Brazil

Add: without detriment to literary, scientific and artistic property rights.

(Article 31)

(The Commission did not take a decision on the two texts below.

They are reproduced here for further consideration)

(Text proposed by the Drafting Committee:)

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

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

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

1. Netherlands

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.

2. Brazil

The Brazilian Government would prefer the text proposed by the Sub-Commission on Prevention of Discrimination and Protection of Minorities. It would seem advisable, however, to add that such provisions do not refer to groups formed by immigration, whether spontaneous or officially fostered, into independent States already in existence at the time of immigration.

3. Egypt

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.

/Article 32

Article 32

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

1. Brazil

Besides the Charter, reference might be made to the Bill of Rights.



Article 33

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

1. Brazil

No remarks.

The Brazilian Government is in agreement with the article suggested in Annex A, Part 2, No. 2 of the Report of the Commission on Human Rights:

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

Such right to resist should be recognized, not only as against oppression and tyranny, but always against illegality, and it should be manifested through adequate judicial recourse, through non-co-operation and even, in extremis, by force.

It should be made evident that the enumeration of rights in the Declaration is not exhaustive but merely exemplary and that it does not preclude the consideration of implied rights; a statement to this effect should be included in the Declaration.

### III. DRAFT INTERNATIONAL COVENANT ON HUMAN RIGHTS

#### A. General Comments on the Covenant

##### 1. Netherlands

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.

##### 2. Australia

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.

##### 3. The United States

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

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 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 paragraphs 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.

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 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.

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.

#### 4. Mexico

Articles 1, 2, 3 and 4 of the Draft provide that States shall undertake to secure effectively in their domestic legislation the human rights stated in the Declaration. Hence, the second part of the Covenant (Articles 5 to 22), which in effect confirms and provides for implementing the Declaration on Human Rights, appears unnecessary. If States undertake to respect human rights in their domestic legislation no such confirmation would seem to be required; and as for implementation, this should preferably be left to the domestic jurisdiction of each country.

B. Comments on the Articles of the Draft International Covenant on Human Rights

Article 1

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

1. Netherlands

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.

2. United States

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.

3. Brazil

The Brazilian Government is of the opinion that attention should be given at the proper moment to the advisability of referring to the International Declaration either in this Article or in the Preamble to precede the Covenant.

4. United Kingdom

Article 1

The words "among the" appear to be unnecessary and might be deleted. Without these words there is no implication that the principles in Part II are all the human rights and fundamental freedoms founded on the general principles of law of civilized nations or that they are not.

5. Union of South Africa

Article 1

This article makes it clear, by the use of the words "as being among", that the rights and freedom dealt with in the Convention, are not exhaustive. These words imply that there are other fundamental rights and freedoms not enumerated in the Convention. This means that even if a state were to accede to and faithfully carry out the Convention, it could still be accused  
/of the violation

of the violation of some other alleged human rights or fundamental freedoms. This would destroy one of the signal advantages which might be derived from this Convention, should it for the time being be regarded as exhaustive. Such an exhaustive Convention would exclude attacks in regard to rights not safeguarded in the Convention. Under this Article as it stands, however, the door is kept open for continued international recriminations in regard to rights not specifically recognized as fundamental.

Article 26 of the draft convention makes provision for amendment. If, therefore, in the light of experience it may appear desirable to add to the list of human rights, amendments to the Convention could be effected by the machinery provided. For this reason the Union Government feel that the Convention on the point of what are and what are not fundamental human rights should not be vague and ambiguous, but should, until the Convention is amended, be exhaustive.

Also the words "founded on the general principles of law recognized by civilized nations", are open to objection. To begin with, the correctness of the statement that all the rights and freedoms dealt with in this draft, are founded on these general principles, is highly questionable. By this draft, the individual is made the subject of international law to an extent previously altogether unknown. If it is adopted, international law will, as between the parties to the Convention, be concerned not merely with the relations between states. There will be added to it, as a recognized sphere of application, a large new field comprising the relationships between states and individuals, which are implicit in these fundamental rights and freedoms. This extension of the domain of international law, is not, of course, entirely an innovation. There are extreme and exceptional cases in which such relationships already are the recognized concern of international law. But to say that this extension is founded on the general principles of international law, is to make rather too much of occasional departures from established principles, and too little of a development which is threatening to assume the proportions almost of a revolution.

It may, further, be anticipated that the words referred to above will sooner or later, as political exigencies may require, be used as an argument for the proposition that, the Convention having been adopted by the necessary two-thirds (or more) of the members of the United Nations, the principles set forth in it either constitute a mere restatement of, or have become part of, the general principles of international law, and are therefore binding also upon those who have not acceded to the Convention.

/Those who

Those who are unable to sign the Convention may find that they have avoided treaty obligations merely to be confronted with so-called legal obligations arising from an alleged general international law declared or created by the consensus of the majority of the "civilized" nations. It may be that such an argument could find little support from the recognized authorities of today, but it would most probably nevertheless appeal to a number of members of the United Nations large enough to force a State which is not a party to the Convention, into the position of a defendant before the United Nations.

For these reasons we would suggest that this Article be redrafted to read as follows:

"The States, parties hereto, declare that they recognize the rights and freedoms set forth in Part II hereof, as fundamental human rights and fundamental freedoms."

Article 2

Every State, party hereto, undertakes to ensure:

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

1. United States

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.

2. Brazil

Section (b) seems unnecessary. Section (e) should come before sections (c) (d). These two last sections could be combined, thus ensuring not only an "effective remedy", but also recourse to an independent judiciary for enforcement.

3. United Kingdom

Article 2 (b)

This paragraph merely seems to repeat the sense of Articles 1 and 2 (a). If that is so, it might be omitted altogether. If it is meant to express some other thought, this should be made clear.

4. Union of South Africa

Article 2

In paragraph (b) of this Article, there is another reference to the "general principles of law recognized by civilized nations". The purport of  
/this whole



this whole paragraph is not clear to us. It seems to add nothing to what has already been said in paragraph (a).

Also the words "these human rights and fundamental freedoms" and "these rights and freedoms", in paragraphs (a), (b) and (c), are confusing. In their content with Article 1, they refer to "the human rights and fundamental freedoms founded on the general principles of law recognized by civilized nations". These are not the human rights and fundamental freedoms dealt with in the Convention. In terms of Article 1, they constitute the general comprehensive category of such rights and freedoms, amongst which are included the rights and freedoms dealt with in the Convention. The drafting seems to be faulty. This would be rectified if the suggested redraft of Article 1 is adopted. Otherwise the words "the human rights and fundamental freedoms set forth in Part II hereof", should be substituted, in paragraph (a), for the words "these human rights and fundamental freedoms".

Article 3

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

1. Netherlands

Cf. paragraph 2 of Observations on Implementation:

"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."

2. Brazil

In the recess between two sessions of the Assembly, the request could be made under authority of a resolution of the Economic and Social Council.

3. United Kingdom

Article 3

It is suggested that the last two lines should be redrafted as follows:

"Supply an explanation certified by the highest legal authorities of the state concerned as to the manner in which the law....."

The inclusion of this sentence would provide an additional safeguard in ensuring that the information supplied is accurate and reliable.

Article 4

1. In time of war or other public emergency, a State may take measures derogating from its obligations under Article 2 above to the extent strictly limited by the exigencies of the situation.
2. Any State party hereto availing itself of this right of derogation shall inform the Secretary-General of the United Nations fully of the measures which it has thus enacted and the reasons therefor. It shall also inform him as and when the measures cease to operate and the provisions of Article 2 are being fully executed.

1. United States

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

2. Brazil

It should be said, after "a State may take measures" - "in accordance with its own political Constitution."

The restrictions of a general character set forth in Article 16, No. 3, of the Covenant, in relation to freedom of religion, should also be mentioned here.

Article 5

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

1. Brazil

It would be preferable to say "by law in force at the time when the offense was committed", precisely as mentioned in Article 7 of the Declaration. Instead of the periphrase "it shall be unlawful" it would be better to say "no one shall be deprived of his life", following the form adopted for Article 7 and the subsequent articles.

The representative of Uruguay suggested an additional article for the Covenant which would ban the death penalty for political offenses; - it would be convenient to say "merely political". The Brazilian Government endorses this suggestion, which could be incorporated in the article under review.

2. Union of South Africa

This article, if it means what it says, could hardly be acceptable to any country. It seems to recognize one exception only to the rule that no person may be deprived of his life, namely, the execution of a death sentence. This leaves out of account the killings which may be necessary for the suppression of rebellions or riots, or in self defence, or in the defence of the life or limbs of another. These further exceptions would, no doubt, be recognized everywhere. In the Union it is also permissible to kill in attempting to effect arrests for certain offences, where the offender cannot be apprehended and prevented from escaping by other means. There are probably many other countries where this exception is also recognized.

It may be said that the suppression of rebellions and riots would be covered by the provision made in Article 4 for the right of derogation in cases of public emergency, but in terms of Article 4 (2) that would in each case entail a full explanation to the Secretary-General of the reasons for the measures taken, with a possible enquiry into the question whether those measures constituted a derogation beyond the "extent strictly limited by the exigencies of the situation".

It may further be said that it would be undesirable to burden the text with obvious exceptions. But why then has the most obvious exception, the execution of death sentence, been specifically mentioned, and why have the exceptions to Article 9 (2) been enumerated with such particularity?

Article 8

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

1. Brazil

It would be preferable to say "by law in force at the time when the offense was committed", precisely as mentioned in Article 7 of the Declaration. Instead of the periphrase "it shall be unlawful" it would be better to say "no one shall be deprived of his life", following the form adopted for Article 7 and the subsequent articles.

Article 7

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

1. United Kingdom

Article 7

The present text cannot, with its use of the subjective terms "cruel or inhuman" in the second half of the phrase, be included in a legal instrument such as the Covenant.

It is suggested that the first step should be to determine, perhaps by discussion in the Drafting Committee, the exact nature of the idea underlying the present text.

2. Union of South Africa

Article 7

The expressions "cruel or inhuman punishment" and "cruel or inhuman indignity", especially the latter, are somewhat vague, for the purposes of a document creating international obligations. The standards of cruelty, inhumanity and dignity vary according to times, places and circumstances. Any punishment which is clearly excessive, may be said to be cruel and inhuman in relation to the offence committed, and whether or not it is regarded as clearly excessive in a particular community, depends upon the protective needs and the general concepts of justice prevailing in, that community. It is not so very long ago that hanging was not considered a cruel inhuman punishment for a petty theft. Today there are an increasing number of humanitarians who regard corporal punishment and solitary confinement on a spare diet, for whatever offence, as too inhuman to be tolerated.

In regard to cruel or inhuman indignities, the United Nations, in attempting to apply this provision, would quite probably soon have to deal with alleged mental cruelties and will in any case be faced with divergent national and personal notions, prejudices and susceptibilities, which determine the sense of dignity.

For the above reasons the Union Government consider that the words "or to cruel or inhuman indignity" should be deleted. The specific abuses against which they are aimed, are not obvious. If they are in the main, degradation of the nature practised in Buchenwald and Treblinka, it could be argued that these words are unnecessary, as the guarantees of life and liberty in Articles 5 and 9 would, if this convention is at all effective, in themselves make such conditions impossible.

/Article 8

Article 8

1. No person shall be held in slavery or servitude.
2. No person shall be required to perform forced or compulsory labour in any form other than labour exacted as a punishment for crime of which the person concerned has been convicted by due process of law.
3. For the purposes of this Article, the term "forced or compulsory labour" shall not include:

- (a) any service of a purely military character, or service of a non-military character in the case of conscientious objectors, exacted in virtue of compulsory military service laws;
- (b) any service exacted in cases of emergency created by fire, flood, famine, earthquake, violent epidemic or epizootic disease, invasion by animals, insect or vegetable pests, or similar calamities or other emergencies threatening the life or well-being of the community;
- (c) any minor communal services considered as normal civic obligations incumbent upon the members of the community, provided that these obligations have been accepted by the members of the community concerned directly or through their directly elected representatives.

1. Netherlands

- (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.

2. Brazil

It is suggested that the word "crime" in No. 2 of this article be substituted by "offense", inasmuch as there are cases, such as vagrancy, in which legal punishment often takes the shape of compulsory work.

The provisions of section 3 (a) should include not only conscientious objections but women also, since the latter may be subject to compulsory services of a non-military nature, as exemplified in the case of the Brazilian Constitution, Article 181, paragraph 1.

The Brazilian Government suggests a provision, which could perhaps be inserted as item (d) in this Article:

"the duty which every person has of contributing to the welfare of the  
/community

community to which he belongs and of co-operating with the state in measures for the preservation of social order."

This is consequent upon the fact that it is not only through work that every one can and should contribute to the common welfare; there are many who, although unable to work, can still render an efficient contribution through other means.

3. United Kingdom

Article 8 (2)

It is common practice for courts simply to sentence offenders to imprisonment and the question of what work prisoners do while in prison is, as a rule determined by the general prison regime, in which the capacity and the interests of the prisoner are taken predominantly into consideration.

The following text is therefore suggested instead of the present text:

"No person except in the course of serving a sentence imposed by a competent court, shall be required to perform forced or compulsory labour".



Article 9

1. No person shall be subjected to arbitrary arrest or detention.
2. No person shall be deprived of his liberty save in the case of:
  - (a) the arrest of a person effected for the purpose of bringing him before a court on a reasonable suspicion of having committed a crime or which is reasonably considered to be immediately necessary to prevent his committing a crime;
  - (b) the lawful arrest and detention of a person for non-compliance with the lawful order or decree of a court;
  - (c) the lawful detention of a person sentenced after conviction to deprivation of liberty;
  - (d) the lawful detention of persons of unsound mind;
  - (e) the parental or quasi-parental custody of minors;
  - (f) the lawful arrest and detention of a person to prevent his effecting an unauthorized entry into the country;
  - (g) the lawful arrest and detention of aliens against whom deportation proceedings are pending.
3. Any person who is arrested shall be informed promptly of the charges against him. Any person who is arrested under the provisions of sub-paragraphs (a) or (b) of paragraph 2 of this Article shall be brought promptly before a judge, and shall be tried within a reasonable time or released.
4. Every person who is deprived of his liberty shall have an effective remedy in the nature of "habeas corpus" by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.
5. Every person shall have an enforceable right to compensation in respect of any unlawful arrest or deprivation of liberty.

1. Netherlands

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

2. Brazil

No mention is made of flagrante delicto, although item (a) would seem to cover this case.

3. United Kingdom

Article 9 (1)

This is a provision, which may be suitable for the Declaration, but being governed by the subjective word "arbitrary" is unsuitable for the Covenant.

It is suggested that this paragraph be deleted since the following paragraphs of the article contain the precise obligations.

/In connection

In connection with Article 9 (2) the restrictions, which can be placed on persons having dangerous infectious diseases, should be borne in mind.

4. Union of South Africa

Article 9

The exceptions to the rule that no person is to be deprived of his liberty, enumerated in Clause 2, do not inter alia seem to include the following:

(a) The arrest and detention of any person for the purposes of his removal from one province of the Union to another, under Section 6 (1) (b) or 21 (b) of the Immigrants Regulation Act, 1913, and the removal from the Union of persons other than aliens, under Section 22 of that Act, Section 1 (16) of the Riotous Assemblies and Criminal Law Amendment Act, 1914, Section 29 (5) of the Native Administration Act, 1927, or Section 148 of the Insolvency Act, 1936.

(c) The arrest of witnesses in order to bring them before a court or other tribunal (such as a Governor-General's commission under Section 3 of Act No. 8 of 1947) for the purpose of taking their evidence.

(d) The detention of children in pursuance of the order of a children's court under the Children's Act, 1937 as such a court does not convict a child, but may order his detention if satisfied that he is a child in need of care. Such an order is not a sentence "after conviction", and does, therefore, not fall within the terms of Clause 2 (c).

It will be observed that the cases referred to in paragraph (a) above, cannot be included in the exceptions to Clause 2 of this Article, unless Clause 1 of Article 11 is deleted or modified.

5. Egypt

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".

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

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

6. Norway

As to Article 9, 2 (a) in the Draft International Covenant, the provisions to arrest a person to prevent his committing a crime, might be open to objections on principle. As to Article 9, 2 (b), it seems advisable to extend these measures to include also persons suffering from contagious diseases (confer Norwegian law of 12 December 1947 on measures against venereal diseases, Article 8). Also in Norway alcoholics may be subject to detention according to a Norwegian law of 26 May 1939, Article 7.

#### Article 10

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

##### 1. Netherlands

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.

##### 2. Brazil

The case of servitude has been mentioned in Article 8 and there is no need to restate it here. The prohibition of imprisonment in consequence of breach of contractual obligation would fit better under Article 9.

##### 3. United Kingdom

The words "or held in servitude" suggest that in certain circumstances a person may be held in servitude, a position which would of course contradict the provision in Article 8 (1). It is suggested therefore that the words mentioned be deleted.

The point at issue in this Article is that no person should be imprisoned merely on the grounds of the breach of contractual obligations. In order to bring this point out more clearly the following redraft is suggested:

"No person shall be imprisoned merely on the grounds of a breach of contractual obligation".

##### 4. Union of South Africa

Article 10. The meaning of the words "the mere breach of a contractual obligation", is not quite clear. These words would cover the case of a statute which simply provides that the breach of any provision or a provision of a specified type, in a particular kind of contract, is an offence punishable by imprisonment. But there is also another possibility. A statute may specify certain acts or omissions, ordinarily specified in a particular kind of contract, and provide that persons who have entered into a contract of that kind, shall be guilty of offences if they perform those acts or are guilty of those omissions, adding a fine or imprisonment as punishment. This would create statutory obligations which may or may not coincide with the actual provisions of a particular contract. In such a case, even if the statutory and contractual obligations happen to coincide, it could be said that the breach is not a breach of a mere contractual obligation, but a breach also  
/of a

of a statutory obligation. Analogous situations could arise also under the common law. A pledgee, for instance, who does away with the pledged goods, would be guilty of a breach of contract, and at the same time of theft.

This article seems to go beyond the concept of elementary human rights. There is nothing particularly shocking in the imposition of imprisonment, where the public interest so required, for the breach of a contractual obligation, voluntarily undertaken with the knowledge that a breach of that obligation will be an offence for which imprisonment may be imposed.

Article 11

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

1. Netherlands

(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.

2. United Kingdom

Article 11 (1). The first two and a half lines of this paragraph appear unsuitable for inclusion in the Covenant. They contain such a wide and subjective exception that the provision is left without any sufficiently definite legal content. It is suggested that further careful consideration be given by the Drafting Committee to the implications of this text in order to see if it is possible to produce a provision, which will have a sufficiently precise meaning and yet will not prevent restrictions by states, to which on "human rights" grounds no objection can reasonably be taken. Further, in so far as such reasonable restrictions are specified here, there will inevitably be close connection between them and the provision in Article 9, seeing that temporary detention may be necessary to enforce such restrictions.

Article 11 (2). Apart from obligations with regard to national service, there may be other ones, such as obligations relating to taxation or the maintenance of dependents, of which account should be taken here.

It is suggested that the text would be more acceptable, if it were redrafted on the following lines:

"..... National Service or against whom a judicial order restraining his departure without giving security has been made on account of other alleged outstanding obligations shall be free to ....."

Further in this connection it must be noted that it is sometimes desirable to protect primitive or unsophisticated communities from exploitation abroad by imposing controls on emigration.

/Further

Further controls may be imposed on emigration to assist a neighbour country to control illegal immigration.

3. Union of South Africa

Article 11. In regard to Clause 1 of this Article the Commission on Human Rights would seem to have gone beyond what could legitimately be regarded as a Human Right.

In some countries labour per force has to be controlled and individuals may be required to work in specified industries and even in specific localities. Where this happens it cannot be said that the individual has a free choice of residence.

In some other countries with a multi-racial population as in South Africa, it has been found necessary in the interests of peace and good Government to proclaim reserved areas in favour of the different sections of the population. In order to prevent exploitation by one section of the other it has been found necessary to restrict and control the free movement and free choice of residence on the part of individuals belonging to different sections of the population. Thus in South Africa Europeans may not enter, purchase land or reside in Native reserved areas without a permit, and vice versa.

Similarly for instance it has been found necessary in the interests of the general welfare and good government to restrict the influx of large numbers of unskilled labourers into urban areas in circumstances where an adequate supply of labour already exists, and housing accommodation is inadequate. To permit uncontrolled population movements in such circumstances must necessarily have a depressing effect on wage rates, lead to unemployment and overcrowding with its resultant deleterious effect on public health and public safety.

It is true that the freedom of movement and free choice of residence is "subject to any general law not contrary to the purposes and principles of the United Nations Charter and adopted for specific reasons of security or in the general interest". But in some of the cases mentioned above the restrictions on movement and residence are not general but sectional and it is doubtful whether the Clause as now framed covers those cases. If it is not to be deleted, it ought to be reframed.

Article 12

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

1. Netherlands

(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.

2. Brazil

The expression "arbitrarily expelled" is rather vague. The following wording is suggested:

"No alien legally admitted to the territory of a State shall be expelled therefrom without judicial homologation of the order of expulsion."

3. United Kingdom

Article 12. The present text dependent as it is on the subjective word "arbitrarily" is unsuitable for the Covenant. The United Kingdom representative on the Drafting Committee will be ready to collaborate with his colleagues to see if a text sufficiently precise for the Covenant can be found, which will be generally acceptable.

4. Union of South Africa

Article 12. Under our immigration laws it is quite a common practice to issue temporary permits to aliens, admitting them to the Union for a specified period, or for an indefinite period which may be terminated at any time. It should be made clear in this article that it does not apply to the expulsion of such aliens for no reason assigned, when the temporary permit has lapsed, and that such expulsion is not to be regarded as arbitrary.

Here also, it is not apparent why the right of an alien not to be expelled except upon some reasonable ground, should be regarded as a fundamental human right.

5. Egypt

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



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.

Article 13

1. In the determination of any criminal charge against him or of any of his civil rights or obligations, every person is entitled to a fair hearing before an independent and impartial tribunal and to the aid of a qualified representative of his own choice.

2. No person shall be convicted or punished for crime except after public trial.

1. Netherlands

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.

2. Brazil

In connection with No. 1 of the article, it might be appropriate to add a provision along similar lines to that in the final part of Article 6 of the Declaration, which reads "and if he appears in person to have the procedure explained to him in a manner in which he can understand it and to use a language which he can speak." Attention is drawn to the remarks of the Brazilian Government under Article 6 of the Declaration.

No. 2 might be amplified with a guarantee of full defense as set forth in the second period of Article 7, No. 1 of the Declaration: "at which he has been given all guarantees necessary for his defense."

3. United Kingdom

Article 13 (2). Logically speaking this paragraph should come before Article 13 (1) and therefore it is considered first.

The following alternative sentence might replace the original one. The reason for this amendment is that in some countries portions of a trial are held in camera in certain circumstances.

"No person shall be convicted or punished for crime except after trial, which shall be public, though certain portions of it may be held in camera for reasons of public security.

In some countries portions of a trial may be held in camera for reasons of morality, decency or in the interest of juvenile offenders".

Article 13 (1). There are certain administrative tribunals of first instance in the United Kingdom dealing with particular matters (such as the right to unemployment benefit or applications for deferment of national  
/service

service on grounds of exceptional hardship), where the assistance of legal advocates is not permitted. Such cases are however outside the scope of this Covenant. It is preferable therefore to confine this text to the sphere of human rights and to redraft it for the purpose as follows:

"In the determination of any criminal charge against him or in the vindication before the courts of any of the human rights provided for in this Covenant every person is entitled to ...."

#### 4. Union of South Africa

Article 13. Insofar as Clause 1 relates to judicial proceedings, there can be no objection against it. There are, however, many instances in which civil rights or obligations may be said to be determined by quasi-judicial statutory authorities. Such authorities, must, of course, observe the elementary rules of justice. Inter alia, they must allow the parties concerned an opportunity of presenting their cases, but they are not necessarily bound to grant them or their representatives an oral hearing. More often than not it is sufficient if they allow the parties concerned an opportunity of submitting written representations. In the preparation of such representations the parties are, of course, at liberty to employ whatever legal assistance they may desire. If this article means (as it may well be interpreted to do) that also quasi-judicial tribunals must in every case be bound to hear oral representations by the parties concerned or their legal representatives, there are many changes which would have to be made in our laws, and in some cases such changes may be found to be quite impracticable.

Clause 2 seems to exclude all trials in camera, while in terms of Section 220 (4) of the Union's Criminal Procedure and Evidence Act, 1917, a superior court may, whenever it thinks fit and any inferior court may if it appears to that court to be in the interest of good order or public morals or of the administration of justice, direct that a trial shall be held with closed doors. The superior courts, although they have a free discretion, seldom exercise this power, but there are, of course, occasions when the interests of justice require that it should be exercised. Where a person under the age of nineteen years is tried, the trial is, in terms of Section 220 (5) of that Act held with closed doors. The accused's attorney or counsel and parent or guardian are entitled to be present, but no other person whose presence is not necessary in connection with the trial, is admitted without the authority of the presiding officer.

#### 5. Norway

Regarding Article 13, 2, it is presumed that this provision does not exclude punishment in those cases especially provided for by law, where fines may be imposed by the police.

Article 14

1. No person shall be held guilty of any offence on account of any act or omission which did not constitute such an offence at the time when it was committed, nor shall he be liable to any greater punishment than that prescribed for such offence by the law in force at the time when the offence was committed.

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

1. United States

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.

2. Brazil

Attention is called to the comments of the Brazilian Government under Article 7 of the Declaration.

3. Egypt

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.

Article 15

No person shall be deprived of his juridical personality.

1. Netherlands

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.

2. Brazil

The Brazilian Government endorses the suggestion of the representative of Uruguay, that the expression "no human being" be used instead of "no person", thus excluding juridical persons.

3. United Kingdom

Article 15. The exact intention of this provision is not understood. "Deprivation of juridical personality" may convey some defined meaning in relation to some systems of law, but some other rendering is required to make the provision generally intelligible. It is only after further elucidation that the United Kingdom will be able to reach any conclusion with regard to this provision.

Article 16

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

1. Netherlands

(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.

(c) 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

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.

## 2. Brazil

The Brazilian Government is of the opinion that No. 1 in this Article should be divided into two parts along the lines of Article 16 of the Declaration, the first part to set forth the right to freedom of religion, conscience and belief and the second part the right to manifest such religious or other beliefs and to practice the forms of worship and observance pertaining thereto.

The restrictions set forth in No. 3 of this Article should apply to all the rights embraced by the Covenant and it should therefore be reworded and located under Article 20 of the Covenant.

### (Article 17)

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

#### (Text proposed by the Drafting Committee:)

(1. Every person shall be free to express and publish his ideas orally, in writing, in the form of art or otherwise.)

(2. Every person shall be free to receive and disseminate information of all kinds, including facts, critical comment and ideas, by the medium of books, newspapers, oral instructions or any other lawfully operated device.)

(3. The freedoms of speech and information referred to in the preceding paragraphs of this Article may be subject only to necessary restrictions, penalties or liabilities with regard to: (a) matters which must remain

/secret

secret in the interests of national safety; (b) publications intended or likely to incite persons to alter by violence the system of Government, (c) or to promote disorder or crime; (d) obscene publications; (e) (publications aimed at the suppression of human rights and fundamental freedoms); (f) publications injurious to the independence of the judiciary or the fair conduct of legal proceedings; and (g) expressions or publications which libel or slander the reputations of other persons.)

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

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

1. Netherlands

(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.

2. Brazil

The Brazilian Government prefers the text proposed by the Drafting Committee. Instead of "ideas" it would be less emphatic to say "concepts" or "opinions". Prior censorship of the press should also be explicitly banned.

3. Union of South Africa

Article 17. The Commission on Human Rights decided that this Article was to stand over until they had received the views of the sub-commission on Freedom of Information. That sub-commission has now submitted a draft which corresponds substantially with the draft of the drafting committee of the Commission on Human Rights.

In their present form these drafts, in their enumeration of permissible restrictions, do not make allowance for the following,

/amongst



amongst a host of other restrictions recognized in our laws:

- (a) The prohibition of the dissemination of information calculated to engender feelings of hostility between European inhabitants of the Union and other inhabitants (Section 1(7) of Act No. 27 of 1914; Section 29(1) of Act No. 38 of 1927).
- (b) The prohibition of notices of meetings which have been prohibited under the Riotous Assemblies and Criminal Law Amendment Act, 1914 (See Section 2 of Act No. 27 of 1914)
- (c) The prohibition of expressions referred to in Sections 8-11 of the latter Act, i.e. approbrious epithets, jeers or jibes in connection with the fact that any person has continued or returned to work or has refused to work for any employer, or the sending of information as to any such fact to any person in order to prevent any other person from obtaining or retaining employment; etc. etc.
- (d) Other statements, expressions or publications which constitute offences or parts of offences under the common law or in terms of statutes, such as blasphemy, treasonable statements, uttering a forged instrument, perjury, contempt of court (covered in the drafts only to the extent to which it may be injurious to the independence of the judiciary or the fair conduct of legal proceedings), the use of indecent, abusive or threatening language in public places, fraudulent statements, statements amounting to crimen injuria, false statements in a prospectus (Section 225 Quat. of the Companies Act, 1926) the offering of any inducement to enter into a hire purchase agreement, (Section 8 of the Hire-Purchase Act, 1942, etc. etc.)
- (e) The restrictions imposed upon the publications of preparatory examination and trial proceedings, where the offence charged involves any indecent act or an act in the nature of extortion, or upon the publication of information which is likely to reveal the identity of an accused person under nineteen years of age or of a child concerned in proceedings before a children's court (Sections 69 and 220 bis of Act No. 31 of 1917 and Section 6(2) of Act No. 31 of 1937).
- (f) The prohibition of the disclosure of information obtained in an official or semi-official capacity, whether or not the disclosure will affect the national safety or the "vital" interests of the State.
- (g) The restrictions which may be imposed under Section 9 of the Entertainments (Censorship) Act 1931, upon the publication of a

/picture

picture or a public entertainment, where the picture or entertainment is calculated to give offence to the religious convictions or feelings of any section of the public, or where it is calculated to bring any section of the public into ridicule or contempt, or is contrary to the public interest or good morals.

(h) The restrictions upon the publication of certain electoral matters, imposed by Section 126 of the Electoral Consolidation Act, 1946.

(i) The restrictions imposed by the laws relating to copyright.

(j) Restrictions which it may be considered necessary to impose in order to eliminate or control ideological propaganda entirely subversive to our way of living.

There are many other examples, but these will serve to show the inadequacy of the exceptions specifically enumerated in the drafts of this Article, not only in relation to our laws, but also, in some instances at any rate, in relation to the laws of other countries.

It should further be pointed out that the word "directly" in Clause 2(c) of the sub-commission's draft, appears to be unnecessarily restrictive. Also an incitement to crime, which is indirect, may be deliberate, and it could hardly be said that the punishment of such a deliberate incitement would violate any fundamental human right. The word "directly" should be omitted, as has been done in Clause 2(b).

In Clause 3, the sub-commission's draft provides that "previous censorship of written and printed matter; the radio and newsreels shall not exist". In this regard it may be observed that it is not clear why a censorship for the purpose of enforcing permissible restrictions should not be allowed.

The Sub-Commission on Freedom of Information and of the Press at its Second Session decided to recommend to the Commission on Human Rights the following text for Article 17 (E/CN.4/80 page 4):

1. Every person shall have the right to freedom of thought and expression without interference by governmental action: this right shall include freedom to hold opinions, to seek, receive and impart information and ideas, regardless of frontiers, either orally, by written or printed matter, in the form of art, or by legally operated visual or auditory devices.

2. The right to freedom of expression carries with it duties and responsibilities. Penalties, liabilities or restrictions limiting this right may therefore be imposed for causes which have been clearly defined by law, but only with regard to:

(a) matters

- (a) matters which must remain secret in the vital interests of the State;
- (b) expressions which incite persons to alter by violence the system of government;
- (c) expressions which directly incite persons to commit criminal acts;
- (d) expressions which are obscene;
- (e) expressions injurious to the fair conduct of legal proceedings;
- (f) expressions which infringe rights of literary and artistic property;
- (g) expressions about other persons which defame their reputations or are otherwise injurious to them without benefiting the public.

Nothing in this paragraph shall prevent a State from establishing on reasonable terms a right of reply or a similar corrective remedy.

3. Previous censorship of written and printed matter, the radio and newsreels shall not exist.

4. Measures shall be taken to promote the freedom of information through the elimination of political, economic, technical and other obstacles which are likely to hinder the free flow of information.

The United Nations Conference on Freedom of Information adopted the following opinion on Article 17 (Final Act, E/CONF.6/79, Annex B):

Article 17 of the Draft Covenant on Human Rights may be as follows:

1. Every person shall have the right to freedom of thought and the right to freedom of expression without interference by governmental action; these rights shall include freedom to hold opinions, to seek, receive and impart information and ideas, regardless of frontiers, either orally, by written or printed matter, in the form of art, or by legally operated visual or auditory devices.

2. The right to freedom of expression carries with it duties and responsibilities and may, therefore, be subject to penalties, liabilities or restrictions clearly defined by law, but only with regard to:

- (a) matters which must remain secret in the interests of national safety;
- (b) expressions which incite persons to alter by violence the system of Government;

/((c) expressions

- (c) expressions which directly incite persons to commit criminal acts;
- (d) expressions which are obscene;
- (e) expressions injurious to the fair conduct of legal proceedings;
- (f) infringements of literary or artistic rights;
- (g) expressions about other persons natural or legal which defame their reputations or are otherwise injurious to them without benefiting the public;
- (h) the systematic diffusion of deliberately false or distorted reports which undermine friendly relations between peoples and states;

A state may establish on reasonable terms a right of reply or a similar corrective remedy.

3. Measures shall be taken to promote the freedom of information through the elimination of political, economic, technical and other obstacles which are likely to hinder the free flow of information.

4. Nothing in this Article shall be deemed to affect the right of any State to control the entry of persons into its territory or the period of their residence therein.

Article 18

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

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

1. Netherlands

- (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 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.

2. Union of South Africa

Article 18. Also the exceptions to the right of assembly, enumerated in this Article, are inadequate for the purposes of the Union's laws. Under Section 1(4) of Act No. 27 of 1914, the Minister of Justice may prohibit a public gathering, if in his opinion there is reason to apprehend that the gathering will engender feelings of hostility between the European inhabitants of the Union on the one hand and any other section of the inhabitants of the Union on the other hand, and he may prohibit a particular person from attending a public gathering if in his opinion there is reason to apprehend that the presence of that person at the gathering will engender such feelings. This is not covered by the exceptions to this Article.

### Article 19

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

#### 1. Brazil

This article refers to Article 17 which sets forth, in its No. 3, restrictions to the dissemination of information including publications intended or likely to incite persons to alter by violence the system of government or to promote disorder or crime. The Brazilian Government feels that associations which implicitly aim at the dissemination of such information should be banned, even when apparently constituted for the promotion of permissible objectives.

#### 2. United Kingdom

Article 19. The third line might be amended as follows to improve the drafting:

"of their legitimate interests or for the promotion of any other lawful object".

#### 3. Union of South Africa

Article 19. On page 7 of Report VII, on Freedom of Association and Protection of the Right to Organize, which is to be submitted to the International Labour Conference at its next session at San Francisco, there is the observation that "the Commission on Human Rights, which met in Geneva in its second session from 2 to 17 December 1947, included, among the objects, which were not referred to in the draft submitted by the Drafting Committee. On the other hand, taking into account the special competence of the International Labour Organization with regard to the regulation of trade union rights, the Commission on Human Rights refrained from dealing with this problem in the Draft International Covenant on Human Rights".

Whatever the intentions of the Commission of Human Rights may have been, the wording of this Article is certainly wide enough to include the right to form trade unions. The Union Government agree that the subject of Trade Unions could best be dealt with by way of an ILO Convention and feel that the Article should be reworded to make this intention clear.

This Article further introduces a new refinement into the concept of human rights. It provides that associations are to enjoy the freedoms

/referred

referred to in Articles 16 and 17. Under the laws of the Union (and no doubt under the laws of many other countries) the vast majority of associations are juristic persons. In effect, therefore, it is proposed by this article to confer upon juristic persons, the right which the Charter undoubtedly intended for natural persons. To that extent this Article goes beyond the purposes of the Charter, and in our view it does so unnecessarily. If the individual members of an association are each and all assured of their fundamental rights, it is not apparent why the association as such should likewise be assured of some of those rights, and by implication be excluded from others. It is also not clear why the dissemination of information in terms of Article 17, should be specifically included in the objects for which associations may be constituted.

Article 20

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

1. United States

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

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 paragraph in connection with Article 21.

2. Brazil

Attention is called to the comments on No. 3 of Article 16 of the Covenant, namely, that

the restrictions set forth in No. 3 of that Article should apply to all the rights embraced by the Covenant and it should therefore be reworded and located under Article 20 of the Covenant.

3. United Kingdom

Article 20. The meaning of the second sentence, which is no doubt intended to express something additional to the first sentence, is not clear and the sentence should be redrafted as necessary.

In any case the adjective "arbitrary" renders the sentence too subjective to be suitable for the Covenant.

4. Union of South Africa

Article 20. The words "political or other opinion, property status, or national or social origin", go beyond the words used in the Charter, and we do not know what purpose they are intended to serve.

The purport of the second sentence of this Article is not clear. Is it the intention merely to say that the laws of a party to the convention must allow the free exercise of human rights in terms of the convention, or is it the intention to say that the law of such a party must provide for legal remedies which will be available to individuals if a fundamental right is interfered with by the State in contravention of the convention? If the latter is the intention, important

/constitutional



constitutional changes would have to be made. This whole question could more appropriately be dealt with when the measures for the implementation of the convention are considered.

This sentence also requires that every person is to be protected against any incitement to arbitrary discrimination in violation of the convention. Also this would require legislation. The necessary legislation moreover, would constitute a further exception to the freedom of expression referred to in Article 17, and the latter article would have to be framed in such a way as to provide for such an exception.

Article 21

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

1. United States

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.

2. Union of South Africa

Article 21. This article seems to be aimed at the protection of minorities, consisting of the nationals of another State, or of some racial or religious group. If it is, its inclusion is perhaps premature, as according to paragraph 40, page 13 of the report of the Commission on Human Rights, the text of an article relating to the protection of minorities, is still to be considered at its third session, the whole matter still being under investigation. We may point out, however, that this Article is so wide in its terms that it would also cover war propaganda. Also war propaganda may be described as the advocacy of national hostility constituting an incitement to violence.

## Article 22

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

### 1. Brazil

This provision appears to be a truism. If, however it is decided to place it on record, it would be better to insert it under Article 20 which deals with general restrictions of rights.

### 2. United Kingdom

Article 22(1). In the first place the inclusion of the words "or state" here seems to be unsuitable. The Covenant is an instrument for securing certain rights for individuals, thereby limiting the freedom of action of states. There is nothing in this part of the Covenant giving any right to a state at all. It is merely a question of how far as the result of this Covenant, the liberty of action of states in a sphere which may hitherto have been within their domestic jurisdiction is now circumscribed. It is thought that in any case the words "or state" should be omitted.

In the second place considerable doubt is felt as to the present form of this provision even with these words omitted. Reference is made to the United Kingdom Bill of Rights, Article 14(3) and Comment B. to that provision (a copy of each is at Annex 2). It may be thought desirable specifically to ensure that the right of freedom of expression which is given in that provision does not include the right to express and publish matter directed to the suppression of human rights and fundamental freedoms themselves. This is logical but, as the aforesaid comment indicated, it is questionable whether use could not be made of this safeguard to impose an undesirable restriction on the freedom of expression. If some such safeguard is included in the Article dealing with Freedom of Expression, the same limitation would also apply automatically to the right of assembly, Article 18, and to the right of association, Article 19. The restriction will therefore apply to the only three rights provided for in the Covenant, which could by any conceivable possibility involve a right to engage in activity aimed at the destruction of the rights and freedoms prescribed herein. Therefore, if this restriction is to be inserted at all, it is thought that the right place to insert it is in the Article relating to Freedom of Expression. If, however, it is inserted as a general provision at the end it becomes a qualification to every provision in the Covenant, including, for instance, the provisions of Articles 5, 6,

/7, 8 and 9,

7, 8 and 9, and therefore might be invoked as a ground for departing in a particular case from the provisions of these other Articles which would make a very dangerous inroad into the provisions of the Covenant as a whole. Even if an individual is engaged in an activity for the suppression of human rights, he should still have the benefit of Article 9 etc.

### Article 23

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

#### 1. Netherlands

(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.

#### 2. Brazil

The Brazilian Government believes that it should be permissible for every State Member of the United Nations to accede to the Covenant, with reservations as to one or more provisions, a faculty which is recognized in Article 24 in the case of Federal States.

#### 3. United Kingdom

Article 23(2). It is suggested that the question of whether or not two-thirds of member states should ratify the bill, before it comes into force, should be considered in relation with the provisions for "implementation", or more accurately since that term implementation seems to be used to cover both (1) execution and (2) enforcement, in connection with enforcement, and that the figure "two-thirds" should be omitted from the text for the time being.

Article 24

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

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

1. United Kingdom

Article 24. The present text appears unacceptable. It is suggested that the Federal Clause and the Colonial Clause be drafted on similar lines, since the reasons for both clauses are similar and there is no reason why wider latitude should be given in connection with federations than in connection with colonies. A redraft combining Articles 24 and 25 is therefore submitted.

"(1) Upon the deposit of the instrument of accession in respect of any state, the present Covenant shall, subject to Article 23, thereupon apply

- (1) to the metropolitan territory of the state; and
- (2) in the case of a federal state, to the jurisdictional sphere therein of the federal authorities.

(2) Each state which has deposited an instrument of accession shall at the earliest possible moment seek the consent of

- (1) the governments of the non-metropolitan territories for whose foreign relations it is responsible, and
- (2) (if it is a federal state) the governments of the constituent elements of the state,

to the application of the Covenant to such non-metropolitan territories or constituent elements.

(3) The present Covenant shall thereafter apply in respect of:

- (1) any non-metropolitan territory for whose international relations the state is responsible, and
- (2) the jurisdictional sphere of any constituent element of the (federal) state,

which is named in a notification of application addressed by the state to the Secretary-General of the United Nations".

/Article 25

Article 25

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

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

1. Netherlands

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

2. United Kingdom

The United Kingdom submitted a draft Article combining Articles 24 and 25 of the Covenant, the text of which is quoted under the preceding Article 24.

3. Union of South Africa

Article 25. The correctness of the expression "any territory in respect of which such State exercises a mandate" appears to be questionable, insofar, at any rate, as they imply the continued existence of valid mandates under the system of the League of Nations. It would be more correct to say "any territory formerly held under mandate, which is administered by such State."

In conclusion the Union Government would like to point out that there is a great deal to be said for the suggestion made in paragraph 4 of Annexure B to the report of the Commission. To enumerate all the exceptions to the various Articles, would not only be a cumbersome, but also a dangerous procedure. It will be extremely difficult to be certain that every possible deviation from any article, which may be contained in a Country's statutes, Acts of Parliament, Ordinances, or proclamations, have been traced and considered. It would moreover, be quite impossible to anticipate specific future changes which may become necessary. There is real danger, therefore, that the specific exceptions may prove to be incomplete, and that innocuous and necessary future departures from a general principle may be unnecessarily barred.

Article 26

1. Amendments to this Covenant shall come into force when they have been adopted by a vote of two-thirds of the Members of the General Assembly of the United Nations and ratified in accordance with their respective constitutional processes by two-thirds of the parties to this Covenant.
2. When such amendments come into force they shall be binding on those parties which have ratified them, leaving other parties still bound by the provisions of the Covenant which they have accepted by accession, including earlier amendments which they have ratified.

1. Netherlands

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".

2. United Kingdom

Article 26. A consequential amendment of the words "two-thirds" will probably be necessary, if an amendment is made to Article 23(2).



Article 27

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

1. Netherlands

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.

2. Brazil

This article is an unnecessary repetition of a principle of treaty interpretation which is generally recognized in international law.

3. United Kingdom

Article 27. The meaning of this Article is not clear. It should be redrafted with this aim in view.

In any event it appears out of place and should come at the end of Part II.

#### IV. COMMENTS ON THE QUESTION OF IMPLEMENTATION

##### 1. Netherlands

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 paragraph 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.

## 2. Australia

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.

## 3. Mexico

The Government of Mexico considers that so long as de facto differences exist between the States which constitute the family of nations, it is impossible to agree to the establishment of a world body

/responsible

responsible for ensuring that the rights of man are respected within each country; especially as owing to disparities of legal systems history and social conditions it is very doubtful whether such a body could judge the interests and welfare of the inhabitants of a particular country with the knowledge which the State concerned would necessarily possess by virtue of those very factors upon which its autonomy as an independent nation was based.

Mexico considers that human rights must be surely and effectively protected, but that this must be done within the framework of the internal legal system of each State, by means of swift proceedings challenging the legality of any laws or acts of authorities which may be inconsistent with such rights. Any judgment pronounced in such proceedings should deal solely with the individual plaintiff, and should restrict itself to helping and protecting him in the particular case to which his claim refers, without making any general declaration on the law or act which gave rise to it. These are the fundamental characteristics of the remedial proceedings which have existed in Mexico for 101 years, and by means of which the Federal courts have protected individuals against any acts of authority violating personal guarantees. It has thus been possible to balance the functions of the State, as representing the interests of society, and the rights of the individual in all the vicissitudes of history.

#### 4. Brazil

##### Question A

The Brazilian Government is in accord with the negative answer to this question, given by the Working Group on Implementation.

##### Question B

The Group has rightly recognized that, since the States enter into international agreements to regulate certain matters, such matters are thereby excluded from the domestic jurisdiction of the States and therefore the disposition envisaged in this question is unnecessary.

##### Question C

The Brazilian Government is in agreement with the draft proposal presented by the Australian delegate.

##### Question D

The Brazilian Government is in general agreement with the solutions advanced by the Group, with the exception of the recommendation that "wherever this is not precluded by the constitutional law of the ratifying State, the foregoing measures should preferably be taken prior to ratification", since, as observed by the United States representative, it

/is not

is not possible to demand full implementation before ratification. This is all the more so since it is only after ratification that the treaties become part of internal legislation and if a treaty modifies previous internal legislation the measures of implementation cannot be established before the corresponding law comes into force.

INTERNATIONAL MACHINERY FOR THE EFFECTIVE SUPERVISION  
AND ENFORCEMENT OF THE CONVENTION ON HUMAN RIGHTS

Suggestion (a)

The Brazilian Government is in accord with the conclusions arrived at in regard to this suggestion.

Suggestion (b)

The Brazilian Government endorses the considerations presented by the Working Group, and notes with satisfaction the growing recognition of the importance of the individual in International Law.

The Brazilian Government realizes that the second basic conclusion, particularly, is essential to ensure the efficiency of the Convention.

Suggestions (c) and (d)

No special remarks at this stage.

Suggestion (e)

The Brazilian Government concurs in the views manifested by several delegates, that the setting up of the agencies envisaged in this suggestion is premature. However, a possibility should be left open for the creation of such agencies at the proper time.

INTERNATIONAL COURT OF HUMAN RIGHTS

Recognition of the right to recourse to an international tribunal is a desirable objective. The controversy appears to be only as to whether a new tribunal is to be created or the services of the present International Court of Justice adapted to the new objective.

It is questioned also if the International Court of Justice should give compulsory decisions or merely advisory opinions.

The Brazilian Government favours a broadening of the jurisdiction of the Court through a Convention whereby States would recognize the compulsory nature of such jurisdiction. In this way, additional expenditure and other inconveniences would be avoided. At least, during the initial stages, while the agenda of the Court does not yet absorb the full time of its members and until the cases dealing with Human Rights assume a considerable volume, the creation of a new tribunal appears to be avoidable.

5. Egypt

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 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.