

## COMMISSION ON HUMAN RIGHTS

## SECOND SESSION

## STATEMENT REGARDING THE POSSIBLE WAYS IN WHICH THE RECOMMENDATIONS OF THE HUMAN RIGHTS COMMISSION MIGHT BE PRESENTED TO THE GENERAL ASSEMBLY, SUBMITTED BY THE REPRESENTATIVE OF THE UNITED KINGDOM ON THE COMMISSION ON HUMAN RIGHTS

1. There appear to be three possible forms in which the Human Rights Commission can present its first recommendations to the General Assembly.
  - (a) They can take the form of a Human Rights declaration to be adopted by an Assembly resolution, and nothing more.
  - (b) They can take the form of a convention or International Bill of Rights to be recommended for adoption by members of the United Nations, and no declaration.
  - (c) They can take the form of a declaration plus a convention or International Bill of Rights, both introduced by an Assembly resolution which explains the relationship between the two.
2. For the reasons given below either (b) or (c) would be a proper course for the Commission to adopt whereas course (a) might easily do more harm than good and is highly undesirable.
3. Any declaration which ex hypothesi is not a convention will be framed in terms of short principles and will consist of a statement of ideals and aims which the United Nations will endeavour to promote and secure. It can thus provide a valuable basis for the progressive extension and refinement of human rights, through education, teaching and its moral influence on mankind. But its phraseology will of necessity be general and lacking in detail, and it is therefore probable that no country will be able to observe many of its provisions literally and absolutely.
4. It is therefore clear that such a declaration, by itself, cannot create international obligations on the members of the United Nations. Consequently, if there is a declaration and nothing else, there can be no procedure for enforcement; nor can there be any provisions with regard to petitions or anything else of a like nature. The Government of the United Kingdom, and most other governments will be quite unwilling to contemplate any attempt to enforce a declaration which is only in broad general terms, and which creates no actual legal obligations of any kind.

They would not agree to any procedure for the consideration of petitions based on an instrument which constitutes ideals and aims, and does not purport to constitute any obligation. It is only possible to consider methods of enforcement, including appeals to the General Assembly, and the procedure for dealing with petitions etc. in relation to an instrument which creates obligations precisely defined and which can, in case of dispute, be interpreted by the International Court of Justice. Course (a) cannot, however, be considered to be an adequate fulfilment of the aims expressed in the Charter. While it is to be hoped that such a declaration of aims and ideals may ultimately, by its persuasive force, have a considerable influence in ameliorating the lot of mankind there is a real danger that if it stands by itself, it may lead men to believe that more progress had been achieved than would in fact be the case.

5. Course (b) was the one which was proposed by the United Kingdom delegate at the meeting of the Drafting Group. The drafts then submitted by the United Kingdom contain a Bill of Rights in the form of a convention and also the elements of a declaration, since there is inserted into the draft Assembly resolution a number of principles which should be accepted as aims but which cannot yet take the form of precise legal obligations. The Government of the United Kingdom still consider that this is a possible and proper course.

6. Course (c) is one which might well form a compromise between those who most favour a declaration and those who most desire a convention. Under this course, everything that can immediately be made the subject of precise obligations would be set forth in the Bill of Rights and be made subject to a suitable enforcement procedure. The declaration would then contain (1) certain broad principles which were formulated in terms of precise obligations in the Convention and (2) a statement of further ideals and aims which were not susceptible of immediate formulation as legal obligations.

7. It is impossible to exaggerate the importance of adequately safeguarding human rights and fundamental freedoms. The maintenance of these rights and freedoms, as we know from our own history, forms an essential curb on the ambitions of those who are in power in the individual states. They provide the means through which the individuals in each state, enjoying the rights of full information and of free speech and criticism, can check the reckless courses in which those in power are sometimes prone to plunge their populations. Therefore the establishment of human rights and fundamental freedoms as part of international law, with obligations on each state to observe and maintain them, is an essential safeguard against the danger of war resulting from the ambitions and desires for power by individual states.

8. In this connection attention should be paid to a small paper presented by the eminent Belgian, Professor Charles de Visscher, to the Institute of International Law for discussion this year at Lausanne entitled "The Fundamental Rights of Man as the basis for the restoration of International Law." He rightly points out that:-

"respect for human personality... becomes... the great restraining influence on the Executive; ..... it brings about that just balance which prevents the Executive

from degenerating at home into an instrument of tyranny, and abroad into an engine of aggression and conquest.... The key of the problem therefore lies above all in the relations between man and the State, in an adjustment of the behaviour of the individual towards the body politic, and in the intellectual and institutional counter-weights which in truly democratic countries preserve the Executive from those deviations which arise from the pursuit of power for its own sake .....

"This indissoluble connexion between human liberties and the creation of an international order founded upon law have been thrown into tragic relief during the last 25 years. The totalitarian ideologies, built on a perverted morality, made every effort to sanctify the enslavement of human personality to the Nations State's ideal of power. In absolute contradiction to that 'rule of law', which in countries of liberal tradition safeguards individual rights against the whim of the Executive, national-socialist law was marked by the removal from the constitutional statutes of all mention of these fundamental rights of man which are beyond the reach of political decisions by governments."

Professor de Visscher is one of the Judges of the International Court of the Hague, and the whole of the paper from which these quotations are taken deserves careful study by the Commission.

9. Further, another point made by Professor de Visscher is in full accord with the United Kingdom draft, namely, that human rights and fundamental freedoms are really based on the law of nature which was the foundation of the law of nations, which was again the foundation of international law. This idea is expressed today in Article 38 of the Statute of the International Court by "the general principles of law recognized by civilised nations." To a large extent, therefore, the provisions of the United Kingdom draft of an International Bill of Rights or convention are part of international law already. Moreover, most of its provisions are declaratory of what may be described as the general principles of the law of members of the United Nations in the field of the rights of man. A survey of the constitutions of most countries shows that, in the matter of the recognition of the fundamental rights of the individual, there is already a wide uniformity. This applies in particular to provisions safeguarding personal liberty, freedom of religion, of speech, of opinion, and of association, and of equality before the law. The United Kingdom draft is of course based on British practice, and will therefore have to be amended to take account of the practice in other countries, but many of the principles embodied in it are already part of international law. But by reason of lack of precise definition, and of any procedure for dealing with cases where they are violated, they form a part of international law today in a most imperfect manner. In the opinion of His Majesty's Government these facts were recognised by the Charter itself, and the time has now come to ensure these rights and freedoms by defining them precisely in a convention which will have binding force on all nations which ratify it. To fail to do so would cause bitter disillusionment to the hopes which millions of our fellow-men have placed in the Human Rights Commission, and would thus be a step backwards rather than progress.

10. If the Commission decides to adopt course (c) it is desirable that the nature and purpose of each document should be clearly stated. This will be of value not only in the actual task of drafting the two documents, but also in making clear the relationship between them when they have been approved by the General Assembly. A draft statement on these lines is accordingly annexed hereto. It is suggested that in the event of course (c) being adopted, this draft statement should be discussed and adopted, with any necessary amendments, by the Commission. Thereafter it might be submitted for adoption, in a suitably modified form, by the General Assembly when the Draft Convention and the Draft Declaration are submitted to it.

DRAFT STATEMENT FOR CONSIDERATION BY THE  
COMMISSION ON HUMAN RIGHTS.

1. The task of promoting human rights and fundamental freedoms has two aspects, first, the consolidation of the progress which has already been achieved, so that the barbarities of Nazy Germany may be outlawed for all time; and, secondly, the progressive extension and refinement of human rights and freedoms for all men everywhere.
2. It is not possible for a single document to serve both these purposes. The Human Rights Commission has therefore prepared two documents, one a Declaration of Human Rights, and the other an International Bill of Human Rights.
3. The Declaration is designed to promote the progressive extension and refinement of human rights and freedoms. It must therefore, of necessity, be expressed in terms of general principles which answer to the aspirations of all men everywhere. These principles represent the goal towards which mankind is striving, and it may be hoped that their definition by the United Nations will hasten the day when they will be generally accepted and universally applied. But at the present time, and probably for many years to come, most of them must in practice be subject to many exceptions whose enumeration in the Declaration itself would destroy its whole purpose. The Declaration therefore creates no legal obligations, and none of its provisions can be enforced. It must rely for its efficacy, on teaching and education and on the progressive realisation of man's social and economic well-being.
4. Certain of these general principles however can and should at once be expressed in terms of binding legal obligations if the progress already achieved is to be consolidated. These are the rights which are immediately capable of precise definition and which are already included in the constitutions of most of the members of the United Nations. The example of Nazi Germany shows what results can flow, internationally as well as internally, from the refusal by a Government to recognise elementary human rights and fundamental freedoms. The International Bill of Human Rights is therefore designed to consolidate and codify the general principles of law of the members of the United Nations in the matter of the rights of man by creating legally binding and internationally enforceable obligations on those United Nations which adhere to it. For this reason, its scope is less far-reaching than that of the Declaration of Human Rights, but other parts of the Declaration may from time to time be embodied in the form of Conventions.

5. Thus, while the Declaration cannot, by its very nature, create any legal obligations, the International Bill of Human Rights will, from the moment of its coming into force, form a part of inter-