

United Nations
ECONOMIC
AND
SOCIAL COUNCIL

Nations Unies
CONSEIL
ECONOMIQUE
ET SOCIAL

UNRESTRICTED
E/CN.4/82/Agd.1
16 April 1948
ENGLISH
ORIGINAL: SPANISH

COMMISSION ON HUMAN RIGHTS

THIRD SESSION

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

Communication from Mexico (Ministry of Foreign Affairs)

/COMMENTS

COMMENTS OF THE MEXICAN GOVERNMENT ON THE DRAFT INTERNATIONAL DECLARATION
ON HUMAN RIGHTS AND THE DRAFT INTERNATIONAL COVENANT ON HUMAN RIGHTS

With reference to the Report of the United Nations Economic and Social Council's Commission on Human Rights Second Session, Geneva, 2 December to 17 December 1947, document E/600, containing a "Draft International Declaration on Human Rights" (Annex A, pages 17 to 22), a "Draft International Covenant on Human Rights" (Annex B, pages 30-36) and a Report of the Working Group on Measures of Implementation (Annex C, pages 41-64), the Government of Mexico wishes to submit the following comments:

I.

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

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 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

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, as set forth below:

Article 2: 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".

Article 5: 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."

Article 10: 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".

Article 13: 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."

Article 16: 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

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."

Article 18: 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."

Article 22: 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."

Article 23: The first paragraph of this article would be more adequately drafted as follows:

"Everyone has the right to paid work."

Article 28: 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 30: 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."

Comments on the Draft International Covenant on Human Rights

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.

Implementation

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 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.

Mexico, D.F., 31 March 1948
