

**ECONOMIC  
AND  
SOCIAL COUNCIL**

**CONSEIL  
ECONOMIQUE  
ET SOCIAL**

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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 RECEIVED FROM THE UNITED KINGDOM

5th May 1948

Sir,

I have the honour to refer Your Excellency to my letter No. 84  
(522/40/48) of the 20th April, 1948.

- ... 2. I am now enclosing the preliminary comments of His Majesty's  
Government on the Draft Declaration of the International Bill of Human  
Rights. I should like to stress to Your Excellency that these comments  
do not purport to represent all that His Majesty's Government may have to  
say in regard to the Declaration and are not intended to represent their  
final views.

/General

### General Comments

There are three General Comments which His Majesty's Government in the United Kingdom (hereafter referred to as H.M.G.) wish to make at the outset.

(a) The assumption on which His Majesty's Government have been studying the Draft Declaration is that it is a statement of ideals, a goal towards which mankind should strive, and in no way a document creating binding legal provisions, such as the Covenant. His Majesty's Government consider it important therefore that this point should be given due prominence, preferably both in the preamble to the text of the Declaration and in the text of the Assembly Resolution (see Part II (2) of the draft resolution at Appendix I of His Majesty's Government's written comments on Implementation) which will embody the General Assembly's approval both of the Declaration and of the Covenant.

A text on the following lines would meet the case:

As regards the Preamble:

"The states party to the Declaration on Human Rights reaffirm their faith in the principles of Fundamental Freedoms and Human Rights set out therein and solemnly declare that they will strive to realise this statement of ideals, having due regard to the safeguards required by their security, public order and general welfare."

(b) His Majesty's Government second comment is that the Draft Declaration should be throughout in declaratory and not in mandatory form. This would be more in accordance with the purpose of the Declaration, which is to be a statement of ideals.

(c) The last comment, which His Majesty's Government wish to make, is that delegates of member states should agree, one and all, to try and keep the text of the Draft Declaration short, inspiring and on the lines, for instance, indicated in the United States Draft Declaration, (pages 25 and 26 of document E/600). There are a number of provisions in the existing text which are too detailed and verbose to be suitable for a declaration and are yet too loose to be suitable for a covenant. (See also paragraph 50 of E/600)

### Detailed Comments

Preamble. This point has hardly been considered by delegations as yet and it is assumed that it will be given careful attention by the Drafting Committee. In (a) of the previous paragraph His Majesty's

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Government have offered a suggestion for the preamble.

Article 1

Attention is drawn to the resolution of the Economic and Social Council passed on 3 March 1948, which recommends to the Human Rights Commission the following amendments:

"All people are born of free and equal in dignity and rights. They are endowed by nature with reason and conscience and should act towards one another in the spirit of brotherhood."

It is suggested that the amendment be accepted, but that the word "persons" be used in lieu of the word "people", as being more appropriate to the language of a Bill.

Articles 2 and 3

It would be preferable if the order of Articles 2 and 3 were reversed.

Article 2. Member states will probably agree that there exist diverging interpretations about the meaning of the phrase "just requirements of the democratic state".

It is suggested, therefore, that the following draft, which omits any mention of the words "democratic state" and which appears to be more in accordance with the language and spirit of a Draft Declaration should be inserted in lieu of the present text:

"The just claims of the State, which all men are under a duty to accept, must not prejudice the respect for man's right to freedom and equality before the law and the safeguard of Human Rights, which are primary and binding conditions of all just Government.

"In the exercise of his rights everyone must recognise the rights of others and his obligations to society so that all may develop their spirit, mind and body in wider freedom."

Article 3 (1)

A shortening of this text by the Drafting Committee would be welcomed by His Majesty's Government.

Article 3 (2)

Many member states will probably find it difficult to accept this provision. The following redraft is suggested in lieu of the present text in the hope that it may find more general acceptance:

"All persons are entitled to equal protection of the law against any act of arbitrary discrimination, regardless of the office or status of the person, who commits such an act of arbitrary discrimination."

Articles 4 and 5

If Article 4 is accepted, as appears to be reasonable, Article 5 seems unnecessary.

Articles 6 and 7

The following text is suggested as a drafting improvement instead of the original one which seems to fall half way between language appropriate for a Declaration and a Covenant.

"Any person is presumed to be innocent until proved guilty.  
Everyone shall be entitled to a fair hearing.

"No-one shall be subjected to torture or to inhuman indignity."

Article 8

The following more comprehensive text is suggested in lieu of the present one:

"Slavery or enforced servitude in any form being inconsistent in the....."

Article 9

This Article appears to include a number of unrelated elements. The points concerning the family, it is suggested, should be omitted and should be dealt with in the context of Article 13.

As regards the remaining points the following redraft is suggested as representing an improvement on the original text:

"There shall be respect for the sanctity of the home and for the privacy of correspondence. The law shall afford protection for a person's good reputation."

Article 10 (1)

The beginning of the present "Subject \_\_\_\_\_.....general interest" seems inappropriate for a declaration of ideals while yet being too imprecise for a covenant. The following redraft is suggested in lieu of the original:

"There shall be liberty of movement and free choice of residence within the borders of each state."

Article 10 (2)

The meaning of the second line of this paragraph is not clear. His Majesty's Government have assumed that it aims at ensuring that "everyone has the right to divest himself of his nationality, if he wishes to do so."

His Majesty's Government are not convinced of the need to include a provision covering the above point. If the majority of other member states should wish it, however, His Majesty's Government would suggest a provision on the lines indicated above.

Article 11

A number of member states will probably find it difficult to accept the

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present formula. His Majesty's Government wish to suggest the following text in lieu of the original one:

"Everyone shall have the right to seek and may be granted asylum from political, racial and religious persecution."

The second sentence of this Article should be omitted altogether. A criminal seeking refuge is not a person seeking asylum from persecution. A prohibition against giving refuge to criminals is hardly suitable in this Declaration of ideals.

#### Article 12

It is suggested that this Article would fit more appropriately higher up in the text of the Declaration, i.e. before Article 4.

#### Article 13

It is suggested that this Article be simplified and recast as follows:

"The family deriving from marriage is a natural and fundamental unit of society.

(ii) Marriage and the family should be protected by law.

(iii) Men and women shall have equal rights to contract or dissolve marriage in accordance with the law.

(iv) Marriage shall not be contracted before the age of puberty and without the full consent of both intending spouses."

(N.B. (iii) above is in accordance with a resolution adopted on 3 March last by the Economic and Social Council. (It was originally suggested by the Commission on the Status of Women)).

#### Article 14 (1)

It is suggested that the following draft would be more appropriate in the Declaration:

"Everyone has the right to own property." The meaning of this text is that some right of ownership of private property is regarded as an essential human right. It is not intended to mean that every sort of property must be susceptible of private ownership.

#### Article 15 (1)

The meaning of this Article is not clear. It is assumed that it refers to stateless persons and that it endeavours to provide that no persons may be deprived of the right of holding the nationality he has possessed at birth, unless he has obtained another nationality. If the above interpretation is the correct one, it is suggested that the text should be redrafted as follows:

"Persons shall not be deprived of their nationality, which they have acquired at birth, unless possessing another nationality."

/Article 15 (2)

Article 15 (2)

The text of this paragraph is also not very clear. It appears no longer to concern stateless persons only, but to be mainly directed to the protection of refugees from Governments, of which such refugees are nationals, but whose protection they no longer enjoy.

If the above is the correct interpretation of the meaning of this text, before commenting on the suggestions made, His Majesty's Government would like to know the nature and the scope of the protection, which it is suggested the United Nations might be expected to extend to such persons, and secondly, the manner in which this protection should be exercised. It is questionable if this should be adopted as an ideal unless and until there is some general agreement on these points.

Articles 16 (2), 17, 18 and 19

It is suggested that all the above mentioned articles could be amalgamated and that the provisions contained in them could be set out more concisely and shortly in the following redraft:

"There shall be freedom of religion, of expression of opinion, and of peaceful assembly."

Article 20

The meaning of this Article is not clear, but, if it has been correctly understood, it would seem to raise a problem of considerable difficulty.

Anybody may send a petition to the United Nations by post, but the substantial questions are

1. whether he is to be immune from penalties and liabilities for so doing and if so under what conditions;
2. what will be done with the petition when received.

As indicated above the intention of the provision is not clear. It may refer to the right of making petitions with regard to the operation of the Declaration. As it is however questionable whether it is appropriate to have any system of petition in respect of the operation of the Declaration, since petitions are in the nature of enforcement measures and the Declaration is a Declaration of Ideals, not calling for enforcement.

This Article, however, may aim at providing that everyone shall have the right to petition the head of his state and the United Nations on matters arising under the Covenant. If that is the intention the Declaration is not the place to deal with it.

It may be however that the intention of Article 20 with regard to petitions is not so much to create a right to petition with regard to the fulfilment of the Declaration, or the Covenant, but to create a right

/petition

petition a Head of a State and the United Nations about any matter, as a fundamental right. If this is the proposal, it demands most careful consideration.

Let us distinguish here between the two problems raised, namely the petition on any matter addressed to the Head of the State and the similar petition addressed to the United Nations. As regards the former, a petition addressed to the Head of a State is a thing essentially different from a petition addressed to an extraneous organization, whatever it may be since in the former case the whole matter is a domestic one.

The right to petition the Head of a Government with a high measure of immunity is part of the longstanding law and practice in the United Kingdom. His Majesty's Government would have no special observations on this point.

As regards the petition on any matter to the United Nations, this is a more complicated problem. As stated above, creating a right to petition means in effect to provide the right of privileged communications from individuals in an indefinite field. The right could not be unconditional. Such communications might be the means of transmitting the most secret information contrary to national security. It might be the means of transmitting enticement to committing offences.

It is questionable whether it would be right for the United Nations to hold itself out as a recipient of a petition on any conceivable subject irrespective of whether the subjects come within its scope or not. To create the right to petition on any matter might be held to connote a corresponding right of interference by the United Nations in an internal matter of a state.

The distinction between internal petitions and petitions to the United Nations is thus a profound one. Apart from the consideration mentioned one must recall other problems such as the possibility of a petitioner including matter, which is libellous or otherwise transcending the limits laid down in the Covenant on freedom of expression, the system of sanctions to be set up, the protection which a petitioner may enjoy under the law and the degree of confidentiality, in which petition will be dealt with at the United Nations.

In the circumstances it is suggested that it would be preferable to consider only the question of the right to petition the United Nations with regard to the various subjects with which the United Nations deal and to consider in connection with each of these subjects, whether there should be a right to petition and what, if any, should be the machinery for dealing with these petitions.

Article 21

In view of Article 3 (1), it is suggested that the words "without discrimination" in the first line should be omitted.

Article 23

Sub-paragraph (1) is not clear in that it does not distinguish between the right to do work and the right to receive maintenance. Sub-paragraphs (2) and (3) furthermore do not appear to represent a suitable provision for inclusion in the Declaration. It is suggested therefore that this Article should be redrafted as follows:

"Everyone has the right to work or maintenance."

Article 24 (2)

Equal enjoyment of all human rights and fundamental freedoms is already provided for in Article 3 (1). Furthermore there is no reason for singling out at this point "women", whose rights equal to man's should be considered as implicit in the expression "Human Rights". It is suggested therefore that this provision be omitted.

Article 25

It is suggested that the words "without restriction to economic and social conditions" in the first line should be omitted as this point is already provided for in Article 3.

His Majesty's Government would also appreciate an attempt at stating this provision in a more concise fashion.

Article 26

The right to social security referred to in this Article expresses in a general way matters, which are covered in Articles 23 to 26. There appears also to be an overlapping of ideas in Articles 23 to 26.

His Majesty's Government hope that the Drafting Committee will agree to redraft this section by

- (a) bringing the phrase "Everyone has the right to social security" higher up in the text of the declaration and then
- (b) continuing by some words to the effect that social security includes certain other matters and
- (c) then specifying the provisions in question.

Article 27

It is suggested that the words "without distinction as to....." to the end should be omitted as the point in question is already dealt with in Article 3 (1).

Article 29 (2)

It is suggested that this provision is too verbose and detailed for  
/inclusion



inclusion in the Declaration, and that it should be omitted altogether.

Article 31

His Majesty's Government propose the following text as an alternative:

"Minorities shall be entitled to preserve their culture, religion, and language."

Article 32

The meaning of this Article is not clear, as the purpose of the Declaration and of the Covenant is to carry out the provisions of the Charter regarding Human Rights. If the laws of member states are therefore in conformity with the Declaration and the Covenant, they must ex hypothesi be in conformity with the principles of the Charter in so far as these deal with Human Rights.

Article 33

Please see His Majesty's Government's comments on the corresponding provision in the covenant. The provision seems to be out of place altogether in the Declaration.

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