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COMMISSION ON HUMAN RIGHTS

Seventh Session

SUMMARY RECORD OF THE TWO HUNDRED AND FORTY-THIRD MEETING

held at the Palais des Nations, Geneva,
on Wednesday, 16 May 1951, at 10 a.m.

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Present:

Chairman:

Mr. KALIK (Lebanon)

Members:

Australia	Mr. WHITLAK
Chile	Mr. VALENZUELA
China	Mr. YU
Denmark	Mr. SÖRENSEN
Egypt	Mr. I. Bey
France	Mr. CASSIN
Greece	Mr. EUSTATHIADIS
Guatemala	Mr. LUPONT-WILLEMIN
India	Mrs. KENT
Pakistan	Mr. WAHEED
Sweden	Mrs. RÜSSEL
Ukrainian Soviet Socialist Republic	Mr. KOVALENKO
Union of Soviet Socialist Republics	Mr. KONOSOV
United Kingdom of Great Britain and Northern Ireland	Miss BOWLE Mr. HOWARD
United States of America	Mrs. ROOSEVELT Mr. CLARKE
Uruguay	Mr. CERULLO
Yugoslavia	Mr. JEVROVIĆ
<u>Representatives of specialized agencies:</u>	
International Labour Organisation	Mr. PICKFORD
World Health Organization	Miss HUNELL

Representatives of non-governmental organizations:

Category A

World Federation of Trade Unions	Mr. VONJILLER
International Confederation of Free Trade Unions	Miss SENDER
World Federation of United Nations Associations	Mr. ENNALS

Category B and Register

Caritas Internationalis	Mr. PETERKIN
Carnegie Endowment for International Peace	Mrs. CAPTER
Catholic International Union for Social Service	Miss de ROMER Mrs. SCHRADER
Consultative Council of Jewish Organizations	Mr. MOSKOWITZ
Co-ordinating Board of Jewish Organizations	Mr. WARBURG
International Association of Penal Law	Mr. HABICHT
International Council of Women	Mrs. GIROD
International Federation of Business and Professional Women	Miss TOMLINSON
International Federation of University Women	Miss ROBB
International League for the Rights of Man	Mr. BALWIN Mr. GRANT
International Union of Catholic Women's Leagues	Miss de ROMER Miss ARCHINARD
Liaison Committee of Women's International Organizations	Miss ROBB
World Jewish Congress	Mr. BIENENFELD Mr. RIEGNER
World Union for Progressive Judaism	Rabbi MESSINGER

Secretariat

Mr. Humphrey	Representing the Secretary-General
Mr. Das	Secretary to the Commission

DRAFT INTERNATIONAL COVENANT ON HUMAN RIGHTS AND MEASURES OF IMPLEMENTATION
(item 3 of the agenda):

- (b) Inclusion in the Covenant of provisions concerning economic, social and cultural rights:

Draft Articles on the implementation of provisions relating to economic, social and cultural rights (E/CN.4/629) (resumed from the 242nd meeting)

The CHAIRMAN invited the Commission to examine the draft articles for measures of implementation of the provisions relating to economic, social and cultural rights, submitted in the report (E/CN.4/629) of the Working Group on Implementation of Economic, Social and Cultural Rights set up by the Commission at its 242nd meeting to work out a compromise text.

Aziz Bey (Egypt) noted that, according to article C, "in the case of members of a specialized agency" the States parties to the Covenant were to furnish reports "to the specialized agency in respect of matters within the competence of that agency".

He asked whether, in such cases, States were to furnish the reports only to the specialized agency, or to the specialized agency and to the Secretary-General simultaneously.

The CHAIRMAN replied that it was not envisaged that if governments reported direct to specialized agencies, they should simultaneously report to the Secretary-General on the same subject.

Miss BOWIE (United Kingdom) submitted that the Economic and Social Council and General Assembly were already at liberty to put into operation the kind of procedure outlined in articles F, G and I; and article H was a statement of self-evident fact. It was consequently doubtful whether any of those articles were suitable for inclusion in an instrument of both general application and fundamental importance, such as the draft Covenant.

Aziz Bey (Egypt) said he would support the alternative text proposed by the French delegation in connection with article A, since he was anxious to

preserve the indissoluble bond which, he felt, existed between human rights in general and the United Nations as a whole. The French text reinforced that notion.

He was opposed to the wording of article C for similar reasons. He urged that the United Nations and the Secretary-General must invariably be kept informed of all action in the sphere of human rights. Even if a State Member of the United Nations was also a member of a "competent" specialised agency, the ~~agency~~ furnished by that State should be addressed in the first instance to the Secretary-General of the United Nations, and only subsequently to the specialised agency concerned. It followed that he could not vote in favour of article C unless it was appropriately amended.

He could see no point in the alternative text proposed by the United States delegation for the end of paragraph 2 of article C, since that article, as drafted, already contained the words "and in particular, those rights set forth in this Covenant".

Mrs. MISHRA (India) congratulated the Working Group on having achieved such a substantial measure of agreement. The draft articles it had produced would greatly facilitate the Commission's task. Taking up certain points arising out of those articles, she expressed her support for the proposed French addition to article A, which would enable States which did not accede to the Covenant to report to the General Assembly on the progress achieved in the observance of economic, social and cultural rights.

She herself wished to propose an amendment to paragraph 1 of article B, namely, the insertion of the words "amongst others" after the words "after consultation with"; that would provide for the possibility of the Economic and Social Council's consulting experts or persons in their individual capacities, in addition to States parties and the specialized agencies.

She wished also to propose the addition of the words "and any other reports received from any other source which the Economic and Social Council may consider as having any bearing on human rights" at the end of both

articles D and F. The purpose of that amendment was self-evident.

Mr. SIMSARIAN (United States of America) drew the attention of the Indian representative to the fact that not all of the texts submitted by the Working Group had been adopted unanimously. In fact, the United States delegation had disagreed with some of the provisions proposed. It chiefly objected to the inclusion of articles D and E. In its view, there was no need to make provision in the draft Covenant for the additional step referred to in those articles, namely, the transmission of reports to the Commission on Human Rights. The Economic and Social Council should be left to handle the reports submitted. The United States delegation also felt that article G should be dropped, because it was inappropriate to insert in the draft Covenant a detailed provision about technical assistance. The Commission was well aware of the support lent by the United States Government to the technical assistance programmes, but his Government believed that responsibility for their development lay with the appropriate technical bodies set up for that purpose within the United Nations. The draft Covenant should deal in more general terms with the question of reporting. A provision such as that laid down in article G would in no way assist the development of the technical assistance programme, and might even give rise to difficulties.

The United States delegation could not support the proposed French addition to article A, on the ground that arrangements relating to non-signatory States should not be included in the Covenant, but should be dealt with separately. The alternative text proposed by his delegation for the latter part of paragraph 2 of article C had been inspired by a similar consideration, namely, that States should report on the observance of economic, social and cultural rights and not on all the rights dealt with in the draft Covenant.

Those were his preliminary comments on the text before the Commission. He assumed that there would be a further opportunity of raising points of detail as the Commission came to deal with each article individually.

The CHALDIAN suggested that the Commission should examine the text article by article, voting on the articles seriatim. Such a procedure would not prejudge the position in the draft Covenant that might be assigned to any of the articles.

It was so agreed.

Article A

Mr. CASSIN (France) said that if the additional clause proposed by his delegation was adopted, Article A would read as follows: "The States ... parties ... the observance of these rights in conformity with the following articles and the recommendations which the General Assembly and the Economic and Social Council, in the exercise of their general responsibility, may make to all the Members of the United Nations." There should be no comma between "rights" and "in conformity". The word "ci-dessus" should read "ci-dessous", in the French version. That showed the indivisible character of the article.

Mr. YU (China) supported the proposed French addition to article A, as he was in favour of States that did not sign the Covenant reporting to the General Assembly.

Mr. MOROGOV (Union of Soviet Socialist Republics) said he was not in a position to give his views on the text before the Commission, the English version of which he had only just received. He would therefore ask that, in accordance with rule 51 of the rules of procedure, the Commission defer further consideration of the text until the morning meeting of the following day.

It was so agreed.

The CHALDIAN suggested that all substantive amendments to the draft articles on the implementation of economic, social and cultural rights presented by the Working Group should be submitted to the Secretariat not later than 6 p.m. that evening.

It was so agreed

(c) Consideration of provisions for the receipt and examination of petitions from individuals and organizations with respect to alleged violations of the Covenant + studies of questions relating to petitions and implementation (E/CN.4/558/Rev.1, E/CN.4/560/Rev.1 and Corr., E/CN.4/617 and Corr.1, E/CN.4/620, E/CN.4/621, E/CN.4/627) (resumed from the 240th meeting)

The CHAIRMAN invited the Commission to resume its consideration of item 3(c) of the agenda. He recalled that at its 240th meeting, the Commission had decided to defer further consideration of article 36 bis (E/CN.4/617) pending the circulation of the financial estimates required under rule 28 of the rules of procedure. The estimates had now been circulated as document E/CN.4/627, and the Commission could accordingly take up the article in question.

Article 36 bis (resumed from the 240th meeting.)

The CHAIRMAN reminded the Commission of the Danish representative's suggestion that the word "responsibility" should be replaced by the word "burdens" which would render the meaning of the French word "charges" more accurately.

Mr. WHITLAK (Australia) said he preferred the word "responsibility", which, in English, conveyed the meaning intended more precisely. The word "burdens" might be misunderstood.

Mr. SÖRENSEN (Denmark) said he would not press his suggestion, which had been put forward in order to meet certain objections raised by the Chairman at the 240th meeting.

Mr. CASSIN (France) thought that in English the word "responsibilities" covered both moral and material responsibilities, whereas in French the word "charges" bore the connotation of material rather than moral obligations.

The French text of the amendment to article 36 bis, as proposed by the Danish and French delegations (E/CN.4/617, page 8) should read "... des

responsabilités et des charges que celles-ci leur imposent", The change would not affect the English text.

The CHAIRMAN suggested that the words "with the importance of their office and the responsibility it entails" should be replaced by the words "with the importance and responsibilities of their office", the French text being left as it stood.

Mr. HQUSOV (Union of Soviet Socialist Republics) said that he had already, at the 240th meeting, declared his opposition to the suggestion that non-signatory States should be asked to bear part of the cost of any implementation machinery set up under the Covenant. To spread that financial burden over all the States Members of the United Nations would be unconstitutional, and contrary to the terms of the Charter. Furthermore, the Soviet Union was opposed to the setting up of a Human Rights Committee, because it believed that, far from being effective in promoting the realization of those rights, it would serve to increase international tension. The mode of operation proposed was not consonant with the principle of national sovereignty. He would accordingly vote against the proposed article 36 bis.

Mr. YU (China) suggested that the final words of the article were redundant, and that the text should end with the words "commensurate with the status of their office", which was a more general formula. Only if the Commission was in possession of the fullest possible data on the financial implications would it be in a position to ensure that the members of the committee would receive emoluments commensurate with the importance of their office and the responsibility it entailed. But, in his view, there was no need to write into the draft Covenant any such provision, which would certainly create a precedent. It had been argued that certain United Nations bodies, such as the International Law Commission, had complained about the emoluments paid to their members, but that was surely a matter of financial arrangements which could be left to the General Assembly. Another objection to the wording proposed for article 36 bis was that it would be impossible to determine the

degree of importance of the office or the responsibility of members of the Human Rights Committee. Would it be possible to adjust their remuneration to the importance of the particular task they would have to perform in any one year?

Mr. CASSIN (France) understood and shared the doubts voiced by previous speakers. In mentioning the importance of the office and responsibilities of the members and of the Secretary of the Committee, he had had two considerations in mind: the first, a fixed consideration deriving from the general concept of the office which members and the Secretary would hold, the second a variable consideration based on the actual work they would have to perform.

The emoluments might be quite modest at the outset, but subsequently increase as the responsibilities grew. But, as the Soviet Union representative had emphasized, a question of principle was involved. In that connection, he (Mr. Cassin) would point out that all general expenses incurred by the United Nations were a charge on the international community. In particular, the Covenant should not belong to a small clique, but should tend to become the property of all States Members of the United Nations.

Mr. JEVROMOVIC (Yugoslavia) doubted the need for such a provision. It was obvious that members of the Committee should receive appropriate emoluments. No one could dispute that principle, in face of the adoption by the Commission of the clause on the right of everyone to just and favourable conditions of work. Surely there was no need to provide for the protection of the rights of members of a committee set up to ensure the observance of human rights in general?

Mr. SÖRENSEN (Denmark) thought that there were two questions to be settled by the Commission. First, were the expenses of the Committee to be borne by all States Members of the United Nations, or only by the States which

signed the Covenant? Secondly, was any provision about the emoluments of its members necessary? He suggested that those representatives who did not consider that non-signatory States should contribute towards the cost of maintaining the Committee might submit amendments to article 36 bis rather than vote against it outright.

Despite the arguments adduced against including a provision concerning the emoluments of the members of the Committee, it might be found necessary to do so in the light of the experience of certain other organs of the United Nations. The Yugoslav representative had suggested that the members of such a committee would be in a particularly good position to defend their own rights; but it must be borne in mind that they might be reluctant to press their own interests. It was incumbent upon the Commission to see that its servants received adequate remuneration; it should certainly not leave them to fight their own battles in that respect.

Mr. EUSTATHIADES (Greece) agreed with the Danish representative with regard to the proposed text of article 36 bis, it would, he thought, be desirable to insert in the Covenant a passage concerning the emoluments of the members and secretary of the Committee, so as to ensure their greater efficiency, and consequently better protection for human rights. In that connexion, he would cite the instructive precedent of the International Law Commission, the distinguished members of which had run up against certain difficulties.

Mr. KOROSOV (Union of Soviet Socialist Republics) thought that representatives probably had in mind the complaints about emoluments made by members of the International Law Commission in the Fifth Committee at the fifth session of the General Assembly. He had attended meetings at which that matter had been discussed, where it had been definitely established that the members of that Commission had no grounds for complaint, and that their requests for increased emoluments were unjustified. He did not believe that the work of distinguished jurists should be rated any higher than that of other experts co-opted to serve on United Nations organs. He was a lawyer himself, and could

not therefore be suspected of professional jealousy. He had no sympathy with fellow lawyers who had an exaggerated idea of the importance of their own learning and experience. He viewed with the greatest disfavour the tendency of experts to press for higher remuneration, which would ultimately come out of the pockets of the peoples of States Members of the United Nations. The Fifth Committee of the General Assembly had shown the greatest disinclination to accede to the request of members of the International Law Commission, and had in fact agreed to a small increase in their per diem allowance only under the greatest pressure, and, undoubtedly, out of the high respect in which it held the distinguished lawyers concerned. He did not therefore feel that that particular case provided a very strong argument in favour of the proposed new provision.

Mr. JEVREKOVIC (Yugoslavia) objected to the inclusion of article 36 bis in the measures of implementation. If a provision was to be included concerning the remuneration of the members and secretary of the Committee, then surely, for the sake of consistency, provisions should also be included covering all other details of their conditions of work, for instance, their right to leisure and to social insurance.

Mr. YU (China) considered it inappropriate to place undue emphasis on the importance and responsibility of the work of members of the Committee as an element in the calculation of their emoluments. On the contrary, the spirit of duty and self-sacrifice should be emphasised. For example, in the United States of America many eminent people were doing work of great importance to humanity for a salary of only a dollar a year. Moreover, by fixing a high rate of remuneration, the Commission might be doing an injustice to other international bodies. He doubted whether the General Assembly would approve the payment of such sums, assuming that the emoluments were to be paid by the United Nations; on the other hand, if member States had to pay them, they would be even less inclined to do so.

The CHAIRMAN put to the vote the Chinese representative's proposal that article 36 bis be amended in part to read "..... commensurate with the status of their office".

The Chinese proposal was rejected by 5 votes to 1 with 11 abstentions.

The CHAIRMAN then put to the vote the text of article 36 bis submitted by the Danish and French delegations.

Article 36 bis (E/CN.4/617, page 8) was adopted by 13 votes to 3 with 2 abstentions, the English version being amended to read:

"The Members and Secretary of the Committee shall receive emoluments commensurate with the importance and responsibilities of their office".

Article 37

Mr. HUMPHREY, representing the Secretary-General, stated that he had not had an opportunity of reporting to the Secretary-General on the Danish/French amendment to article 37 in the light of the adoption by the Commission of article 30, which provided for the appointment by the International Court of Justice, of the Secretary to the Human Rights Committee, nor had he received any instructions from the Secretary-General on the point. He therefore reserved the position of the Secretary-General with regard to the suggestion that he should make members of his staff available to the secretary to the Human Rights Committee.

Mr. MROSOV (Union of Soviet Socialist Republics) pointed out that the memorandum submitted by the Secretariat (E/CN.4/627) did not constitute an "estimate of the cost" as defined in rule 28 of the rules of procedure. The views expressed in that memorandum were not the official views of the Secretary-General, but the personal views of Mr. Humphrey. Moreover, it contained only scanty indications of probable expenditure under certain heads. The Commission would also have to know what services the Secretariat could provide for the Human Rights Committee, as it might wish to comment on the

expenditure entailed. At present, therefore, the Commission was not in a position to take a decision on the substance of article 37:

Mr. HURPHREY, representing the Secretary-General, agreed that the memorandum prepared by the Secretariat gave no indication of the salary to be paid to the secretary of the Commission; the Secretariat would not be in a position to fix the figure until the Economic and Social Council or the Commission had taken a decision on the Secretary's status. The document did, however, provide an estimate of all other expenditure which the establishment of the Committee would entail.

He had submitted the estimates in his official capacity as representative of the Secretary-General. The only reservation he had made concerned the suggestion that the Secretary-General should make members of his staff available to the secretary to the Human Rights Committee, a body over which he (the Secretary-General) would have no control.

To give an approximate idea of the salary which would have to be paid to the secretary of the Committee, he stated that the annual gross salary of an Assistant Secretary-General was in the region of \$23,000 a year; that of a Principal Director was about \$17,000, that of a Director, \$15,000, that of a Principal Officer \$13,330 and that of a Senior Officer \$11,510.

Mr. HOWARD (United Kingdom) had hoped that the Secretariat would have been able to provide staff and services for the Committee out of its own resources; but document E/CH.4/627 implied that additional staff would have to be engaged. Moreover, paragraph 5, which concerned only the first year of operation of the Committee, could not be considered as a long-term estimate of the cost of setting it up.

The CHAIRMAN asked the representative of the Secretary-General to submit more detailed estimates of the financial implications to the next meeting of the Commission, and proposed that further discussion of article 37 be deferred until he had done so.

It was so agreed.

Article 38

Mrs. MEHTA (India) said that the Commission was drafting an international code for the protection of the rights of the individual, and at the same time denying him access to the body set up to protect those rights.

The system proposed in the draft articles prepared by the Commission at its sixth session, under which complaints would be brought to light by communications exchanged between States parties to the Covenant, had little to commend it. The experience of the League of Nations had shown that when the responsibility for submitting complaints was left with States very few complaints were in fact submitted, as States hesitated to offend one another. The individual thus found himself in a position in which he could neither submit complaints himself, nor persuade his Government to submit them on his behalf; thus he had no defence against violation of his rights.

Moreover, the violation of the rights of the individual by his State was a matter between the individual and that State; the interference of another State in the dispute would provoke political and diplomatic complications, perhaps even war, thus defeating the whole purpose of the United Nations.

The main objection to granting the individual the right of petition seemed to be that there would then be too many complaints to handle. However, document E/CN.4/561 stated that the Trusteeship Council had been able to deal with the large number of complaints submitted to it. If the Trusteeship Council could do so surely the Human Rights Committee could too.

But even if the fear that the individual would abuse his right of petition by submitting frivolous or propagandist complaints was admitted to be well-founded, the defence of the rights of the individual could be placed in the hands of the non-governmental organizations recognized by the Economic and Social Council; but those organizations were not even mentioned in article 38. The principle that non-governmental organizations and private individuals should enjoy the right to submit petitions had already been accepted by the Commission; she therefore saw no reason why a provision to that effect should not be included

in the Covenant itself. The omission of such a provision from the Covenant would mean that the draft finally submitted to the Economic and Social Council would be incomplete, even if the United States proposal for a separate protocol relating to the receipt of petitions from individuals and non-governmental organizations were adopted. That was why her delegation had submitted its proposal relating to the inclusion of a new article, 38 A (E/CN.4/556).

Mrs. ROOSEVELT (United States of America) re-stated her view that it would be preferable to deal in a separate protocol with the right of individuals and non-governmental organizations to submit petitions. She fully supported those rights in principle, but felt that many countries would not be in a position to give effect to them, and would find it extremely difficult to ratify a Covenant which explicitly provided for them. A separate protocol, on the other hand, could be ratified by States as and when they were in a position to implement its provisions.

The CHAIRMAN pointed out that any decision taken by the Commission on the new article (38 A) proposed by the Indian delegation would automatically imply a contrary decision on the United States proposal that the right in question be dealt with in a separate protocol.

Mr. HILLARD (United Kingdom) agreed with the United States view that it would be preferable for the question of petitions from individuals and non-governmental organizations to be dealt with in a separate protocol. Replying to the argument that the system of State-to-State petitions would be ineffective, he reminded the Commission that under Article 55 of the Charter, States Members of the United Nations undertook to promote "universal respect for, and observance of, human rights and fundamental freedoms for all". It would be quite wrong to assume that States would not accept their obligations in that respect.

Individual petitions were far more likely to be exploited for propaganda purposes than complaints submitted by governments, and it would be unfortunate if the implementation procedure set up, which would constitute so great an

innovation in the field of international law, was discredited at the outset by the misuse of the right to lodge individual petitions.

Mrs. MEHTA (India) suggested that the Commission should discuss the principle of the drafting of a separate protocol, without going into details.

The CHAIRMAN pointed out that paragraph 8 in section F of General Assembly resolution 421 (V) called upon the Economic and Social Council "to request the Commission on Human Rights to proceed with the consideration of provisions, to be inserted in the draft Covenant or in separate protocols, for the receipt and examination of petitions from individuals and organizations with respect to alleged violations of the Covenant;" It should therefore be borne in mind that the General Assembly had sanctioned both the procedures under discussion by the Commission.

Mr. DUPONT-WILLEMEN (Guatemala) wondered whether a compromise formula could not be evolved. In view of the importance of complaints received from either individuals or non-governmental organizations, it would seem advisable to mention that principle in the article under examination, and to defer consideration of the methods of giving it effect until the Commission came to examine the substance of the United States proposal for a separate protocol (E/CN.4/457). In those circumstances, he proposed the addition of the following words to the text of article 38 A proposed by the Indian delegation:

"subject to, and within the limits of, the conditions set forth in the Protocol concerning the examination of such complaints".

The CHAIRMAN said that the decision which the Commission was about to take in relation to article 38 A would have a far-reaching effect on the relationship between the United Nations and the non-governmental organizations, to whose work in the field of human rights throughout the world he took that opportunity to pay tribute.

Miss SENDER (International Confederation of Free Trade Unions), speaking at the invitation of the CHAIRMAN, stated that an international community under the rule of law could only survive if it applied the same

principles as smaller communities had had to apply in the past to enable individuals to live together peacefully. Nobody queried the need for local and national laws backed by adequate systems of enforcement, and it was self-evident that no international community could hope to function unless all its members recognized and obeyed some binding law. To that end, under Article 56 of the Charter all Members pledged themselves "to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55." The principle of international action, and consequently of interference in the domestic affairs of States through international action, was thus sanctioned by the Charter, and could not be gainsaid by a mere assertion that the United Nations had no authority to intervene in matters which were essentially within the domestic jurisdiction of a State.

On the other hand, it could not be ignored that a certain number of governments would refuse to introduce any implementation measures. Moreover, past experience had shown that refusal themselves to implement the law would not prevent such governments from accusing other governments of violating the law which they themselves declined to recognize. If States were willing to submit to the normal processes of international law, that might effectively check the current tendency to represent isolated incidents or alleged incidents as typical of the general situation prevailing in the country in which they occurred.

The right of petition was an essential part of social justice. A single wrong done to one individual might be the first step towards a series of increasingly important violations of human rights. The initiation of conciliation procedures while such disputes could still be settled peacefully was to be encouraged.

If those principles were accepted, the question arose whether they should be enunciated in the Covenant itself, or in a separate protocol. The

International Confederation felt that all the provisions relating to implementation should be included in the Covenant itself; for a Covenant which made no mention of implementation would be a dead letter from the start.

On the question whether the right of petition should be granted to individuals as well as to non-governmental organizations, she considered that, provided an efficient screening procedure was used, there would be no reason to fear any misuse of the right to individual petition. However, if it seemed to a majority of States that some experience should be gained before the right of petition was granted to individuals, then the States which signed the Covenant should nominate a number of non-governmental organizations as forwarding agents for petitions. The protection of human rights would thus be made a reality.

She supported the Indian proposal relating to article 38 A. That proposal was a bold one; but the democracies were faced with a challenge that could only be successfully met by courageous decisions.

Mr. BALDWIN (International League for the Rights of Man), speaking at the invitation of the CHAIRMAN, wished to emphasize certain points which had been made in the statement submitted by his organization in document E/CN.4/NGO/32.

No non-governmental organization was interested in using the Convention to enhance its own prestige; they were all interested solely in seeing that the rights of the individual were protected against violation. The system of making complaints by communications between States parties to the Covenant would prove completely ineffectual.

The Human Rights Committee should be given some discretion with regard to all complaints, whether they originated with individuals, with non-governmental organizations or with governments. The Indian proposal for a new article 38A could not be considered separately from the other Indian proposal (E/CN.4/621), which sought to give the Committee the right itself to make complaints. It had been objected that the Committee should not be empowered to make complaints

on its own initiative; but the Secretary-General already had the power to make such complaints to the Security Council in the case of political disputes, and the Committee should have similar rights in its own field. He did not think that the right of petition would be misused for propaganda purposes by individuals any more than it would be by States.

He therefore opposed the adoption of a separate protocol relating to petitions from individuals and non-governmental organizations, and supported the Indian proposal.

Mr. HABICHT (International Association of Penal Law), speaking at the invitation of the CHAIRMAN, stated that his Association was prepared to co-operate in carrying out the tasks described in the two proposals submitted by the Indian delegation. The Association had many members, in all parts of the world, who were interested in the defence of the individual against the State, and it was prepared to co-operate in the work of the Human Rights Committee, should that be desired. He would point out that any non-governmental organizations which might require assistance to enable them to co-operate similarly, could secure it through the newly created International Service Centre of Non-Governmental Organizations in Brussels.

The Association naturally supported the Indian proposal that individuals should be permitted to submit to the Human Rights Committee complaints concerning violations of their rights. He pointed out that that proposal would not enable the individual to initiate legal procedure against the State of which he was a national. But, if the right to lodge complaints was limited to sovereign States, it was almost certain that they would make complaints only if it agreed with their foreign policy at the time. And it frequently would not.

In conclusion, he expressed the hope that the individual right of petition would be provided for in the Covenant rather than in a separate protocol, and that the Commission would allow individuals and non-governmental organizations to co-operate in the work of the Human Rights Committee.

Mr. CIASULLO (Uruguay) recalled that he had already outlined his delegation's position on the right of petition. In accordance with that position, he would unreservedly support the Indian proposal. The Uruguayan delegation had itself intended to submit a proposal on the subject of complaints which individuals might make in connexion with the violation of human rights. However, in face of the texts laid before the Commission in the meantime, it would no longer do so. He would, however, submit amendments to the United States proposal (E/CN.4/557).

The point of principle which the Commission had to decide was whether the Covenant should include provisions covering the right of petition by non-governmental organizations and individuals. The issue of principle must be decided before the provisions themselves could be drafted; for if the Commission adopted the broader solution of conferring the right of petition simultaneously on States, non-governmental organizations and individuals, it would also have to make provision for the procedure governing the exercise of that right.

There were three possible solutions within the framework of the Covenant: to restrict the right of petition to States alone; to confer it on States and non-governmental organizations; and to extend it further, to individuals. A compromise solution might be found by recognizing the right of petition by States and non-governmental organizations in the Covenant itself, and adopting a separate protocol granting the right of petition to individuals. For its part, the Uruguayan delegation would prefer to see the right of petition recognized in the most comprehensive manner in the Covenant itself. If that were done, mature consideration would have to be given to the procedure to be adopted, for it would be essential to lay down the manner in which the non-governmental organization submitting the complaint or the individual initiating it would be represented before the Human Rights Committee. His own original proposal had envisaged the appointment of a kind of "Attorney General".

In his view, the substantive arguments advanced in the Commission came down in favour of the Indian proposal. If, in fact, a State decided, in the event of a grave violation of a human right, to arraign another State before the Human Rights Committee, serious international complications might ensue, the original dispute between a State and an individual developing into a new and much more serious one between two States. That, he submitted, was the main disadvantage of restricting to States alone the right to lodge complaints.

Whatever incidental difficulties it might give rise to, he considered the Indian proposal essentially well-founded. It was obvious that the individual should be able to seek redress if he felt that one of his fundamental rights had been violated.

In the light of those arguments, he would steadfastly support the Indian proposal, while admitting the possibility of finding a compromise solution such as the one he had indicated.

Azmi Bey (Egypt) unreservedly supported the recognition of the right of individual petition in the Indian proposal. It was, indeed, the individual who was always the first to suffer from any violation of human rights. He also supported the compromise solution suggested by the Guatemalan representative; indeed, he (Azmi Bey) would go further and suggest that the word "non-governmental" before the word "organizations" be deleted. The word "organizations", if unqualified, would still include non-governmental organizations; but he wished other organizations also to be given the right to lodge complaints. An individual who had suffered as a result of a violation of a human right might not, in fact, be able to communicate his complaint to the Human Rights Committee, either directly or through the agency of a non-governmental organization; he might even be subjected to pressure, or ill-treated, to dissuade him from complaining. Moreover, in certain countries there were no non-governmental organizations, and it would be impossible for an individual to transmit his complaint to the Committee if he could not call upon local organizations who were authorized to approach it. Consequently, he (Azmi Bey) wished all organizations to be empowered to serve as intermediaries between individuals and the Committee.

Mr. CASSIN (Franco) considered that the Indian representative had been fully justified in raising, at that stage, the question of principle whether the Covenant should make provision for the right of individual complaint.

With regard to the substance of the issue, he was not satisfied that States alone should be granted the right to submit complaints to the Committee. Non-governmental organizations too should have not only the right, but the duty to do so. But so long as the United Nations failed to recognize the right of individuals to approach the Committee direct, the latter's task could not be completed.

The efforts of the French delegation to get the right of individual petition included in the Universal Declaration of Human Rights had in the end proved unsuccessful. For two years, it had endeavoured to introduce the same right into the draft Covenant. But he realized that the Covenant was a legal instrument whose entry into force would of itself mean certain innovations in international law, which could, in any event, move only very slowly, owing to the wide differences between the organization and concepts of the various States. Most States found themselves in agreement in refusing to relinquish any measure of their national sovereignty, as they would have to do if they allowed their nationals to be considered as subject to the processes of international law. So far, most of them refused to admit the possibility of direct recourse by their nationals to an international law organ.

He knew that time was on the side of his objectives; but he could not ignore the responsibility of the United Nations for encouraging the progressive development of international law. He had therefore reluctantly agreed that the right of petition should form the subject of a separate protocol, instead of being recognized in the Covenant itself. There could be no question, either of trying to achieve perfection at the outset or, conversely, of abandoning the task; the greatest possible progress must be made.

The draft Covenant drawn up by the Commission already represented a considerable advance in the field of international law. For the last two years, the French delegation had been vigorously advocating the setting up of a conciliatory body in the field of human rights, enjoying that political independence without which its establishment would mean no real progress. It might be claimed that, while the Commission had provided for the setting up of such a body, it had assigned it no tasks. He would, however, point out that the mere fact of giving States the right to bring matters before the Human Rights Committee already represented an appreciable step forward.

There were two sides to the question of drawing up a separate protocol. On the one hand, if the right of petition was included in the Covenant itself, it was to be feared that the latter would not command the minimum number of ratifications required to ensure its entry into force. The Commission must therefore ask itself whether the fate of all the other rights enunciated in the Covenant should be imperilled by the recognition of the right of petition, or whether it would not be better to seek to produce a draft covenant likely to be ratified by a sufficient number of States to enter into force.

At first sight, the amendment submitted by the Guatemalan representative might place States parties to the Covenant under the obligation of ratifying the protocol. However, the same objections might be raised against such a provision as against the inclusion of the right of individual petition in the Covenant itself. He himself wondered, with a certain amount of uneasiness, just how many States would ratify the Covenant in its present form; he feared that, even without any provision on the lines of the Indian and Guatemalan proposals, the Covenant might still not be ratified by sufficient States.

On the other hand, the adoption of a protocol such as that proposed by the United States delegation raised the problem of reciprocity. The entry into force of the Covenant would in itself constitute some progress in the field of international law, since it would bring within the orbit of the latter matters which had hitherto come exclusively under the national jurisdiction of States. Even if the Human Rights Committee was never set up, the procedures of ordinary

international law would enable effect to be given to the provisions of the Covenant. But the recognition by implication of individuals as international law subjects and the granting to them of the right to bring their complaints before an international body direct, would be an even more significant advance which many States would be most reluctant to make. Yet it was essential for those nations which bore heavy responsibilities that such an advance be simultaneously accepted by the largest possible number of States. In that connexion, he would recall that the Preamble to the French Constitution provided that "On condition of reciprocity, France accepts the limitations of sovereignty necessary to the organization and defence of peace". The reservation attached to the principle was of significance in connection with the present discussion.

He feared, therefore, that, if the Covenant included the right of individual petition, it would not be ratified by a sufficient number of States to ensure its entry into force, but would, on the contrary, be signed by only a minority of the international community, in which case it could not provide a sufficient guarantee of reciprocity for certain countries, and would be too isolated an event in human progress to be regarded as a mark of genuine, universal recognition. He was accordingly reluctantly obliged to accept the idea that, at least for a start, the right of individual petition should not be recognized in the Covenant.

With regard to the contemplated protocol, several of the ideas expressed by previous speakers were acceptable. He would, for instance, support the idea that a petition from an individual, though not acceptable as such, might be accepted if sponsored by a non-governmental organization in consultative status with the Economic and Social Council. That would in itself be a step forward.

The representative of Uruguay had also earlier made a very interesting suggestion: that of having an accredited representative of the international community entitled himself to bring complaints before the Committee. Though it would not be possible, at that stage to include a provision to that effect in the Covenant, he thought that such a representative of the community of nations

right be made the embodiment of the international conscience in the protocol. In that way, the Committee would hear not only the plaintiff and the State against which the complaint was lodged, but the international advocate of human rights, in the noblest sense of that term. The representative of the international community would not himself act as the plaintiff, but would introduce an element of impartiality into the case.

He was therefore unable to support the Indian proposal, although he thought that the Commission should endeavour year by year to achieve further advances in international law, and particularly in the field of human rights.

The CHAIRMAN observed that the Commission was divided on the problem of whether the right of petition should form an integral part of the Covenant or whether it should be dealt with in a separate protocol. If an impasse was reached on that problem, an intermediate solution might have to be adopted. He therefore suggested that mention should be made in the Covenant of the general recognition of the right of petition, but that the detailed regulation of that right should be effected in a separate instrument to be adopted at a later date. If his suggestion found any support, he would make a formal proposal to that effect.

Mr. EINVALS (World Federation of United Nations Associations), speaking at the invitation of the CHAIRMAN, said that his organization attached great importance to the right of petition. The Fifth Plenary Assembly of United Nations Associations, and the General Council, at its last session, had both agreed that non-governmental organizations should have the right to present petitions.

The non-governmental organizations provided a direct link between the United Nations and public opinion. He realized the difficulty of dealing with a large number of petitions (although the Trusteeship Council had demonstrated its ability to do so), but felt that that difficulty might be met by the adoption of the French suggestion that an individual should be entitled to submit his complaint to the United Nations through a non-governmental organization.

There was a strong case for the inclusion of the non-governmental organizations in the implementation machinery. The Charter clearly recognized their consultative status and they had been regularly consulted since the inception of the United Nations by most of the specialized agencies and the United Nations itself. It would therefore be illogical to exclude them from all participation in the implementation of human rights. Moreover, the General Assembly, on the very day on which it had adopted the Universal Declaration on Human Rights, had adopted two other resolutions, one stating that the right of petition was an essential human right, and the other calling on the non-governmental organizations and specialized agencies to co-operate with the United Nations in the implementation of the rights set forth in the Universal Declaration. In any case, the resolution calling on the Commission to consider the question was surely sufficient authority in itself.

If the Covenant was to be a success, complaints regarding violations of human rights must be brought before the Human Rights Committee, otherwise the work so far done would be wasted. If the lodging of complaints was left to States, cases would inevitably occur in which the State would consider it inappropriate to take action, whereas public opinion might be strongly in favour of action being taken. For instance, the suppression of an important newspaper in a Latin-American State might not seem an appropriate subject for a complaint in the eyes of other States, but such a violation might appropriately be brought to the notice of the United Nations by a non-governmental organization such as the International Conference of Newspaper Editors.

The world was looking to the United Nations to establish and defend human rights. If the right of petition were not included in the Covenant, the world would consider that the United Nations had failed in one of the essential parts of its task. He appreciated the position of representatives, who were bound by the instructions of their Governments, and suggested that the question whether the right of petition should be included in the Covenant or not was too important to be dealt with definitively by the Commission, and should therefore be left to the General Assembly. He hoped, however, that the Commission would agree to insert an article in the Covenant on the lines just suggested by the Chairman.