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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

/1. COMMUNICATION

1. COMMUNICATION RECEIVED FROM THE UNITED KINGDOM

20th April 1948.

Sir,

I have the honour to refer Your Excellency to paragraph 13 of the Report of the Commission on Human Rights (E/600).

His Majesty's Government regret the delay in transmitting their replies on the draft International Bill of Human Rights but it has been found necessary to devote much time and careful thought to the problem in question. In spite of this, however, they have not found it possible to submit their observations on the whole of the International Bill of Rights or to reach final views on the points which they have considered.

I am enclosing for circulation the preliminary written comments of His Majesty's Government on the Draft Covenant. 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 provisions of the Covenant and are also not intended to represent their final views. Their representatives on the Drafting Committee and on the Human Rights Commission in fact may have further observations to make.

Every endeavour will be made to supply as soon as possible comments in writing on the Draft Declaration and on the question of the Implementation of the Draft Covenant.

/ANNEX 1

ANNEX 1

PRELIMINARY COMMENTS ON THE DRAFT COVENANT FOR TRANSMISSION TO THE SECRETARY-GENERAL OF THE UNITED NATIONS

Article 1. The words "among the" appear to be unnecessary and might be deleted. Without these words there is no implication that the principles in Part II are all the human rights and fundamental freedoms founded on the general principles of law of civilized nations or that they are not.

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

Article 3. It is suggested that the last two lines should be redrafted as follows:

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

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

Article 7. The present text cannot, with its use of the subjective terms "cruel or inhuman" in the second half of the phrase, be included in a legal instrument such as the Covenant.

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

Article 8(2). It is common practice for courts simply to sentence offenders to imprisonment and the question of what work prisoners do while in prison is, as a rule determined by the general prison regime, in which the capacity and the interests of the prisoner are taken predominantly into consideration.

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

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

Article 9(1). This is a provision, which may be suitable for the Declaration, but being governed by the subjective word "arbitrary" is unsuitable for the Covenant.

/It is suggested

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

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

Article 10. The words "or held in servitude" suggest that in certain circumstances a person may be held in servitude, a position which would of course contradict the provision in Article 8(1). It is suggested therefore that the words mentioned be deleted.

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

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

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

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

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

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

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

/Further controls

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

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

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

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

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

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

Article 13(1). There are certain administrative tribunals of first instance in the United Kingdom dealing with particular matters (such as the right to unemployment benefit or applications for deferment of national service on grounds of exceptional hardship), where the assistance of legal advocates is not permitted. Such cases are however outside the scope of this Covenant. It is preferable therefore to confine this text to the sphere of human rights and to redraft it for the purpose as follows:

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

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

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

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

/Article 20.

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

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

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

In the second place considerable doubt is felt as to the present form of this provision even with these words omitted. Reference is made to the United Kingdom Bill of Rights, Article 14(3) and Comment B. to that provision (a copy of each is at Annex 2). It may be thought desirable specifically to ensure that the right of freedom of expression which is given in that provision does not include the right to express and publish matter directed to the suppression of human rights and fundamental freedoms themselves. This is logical but, as the aforesaid comment indicated, it is questionable whether use could not be made of this safeguard to impose an undesirable restriction on the freedom of expression. If some such safeguard is included in the Article dealing with Freedom of Expression, the same limitation would also apply automatically to the right of assembly, Article 18, and to the right of association, Article 19. The restriction will therefore apply to the only three rights provided for in the Covenant, which could by any conceivable possibility involve a right to engage in activity aimed at the destruction of the rights and freedoms prescribed herein. Therefore, if this restriction is to be inserted at all, it is thought that the right place to insert it is in the Article relating to Freedom of Expression. If, however, it is inserted as a general provision at the end it becomes a qualification to every provision in the Covenant, including, for instance, the provisions of Articles 5, 6, 7, 8 and 9, and therefore might be invoked as a ground for departing in a particular case from the provisions of these other Articles which would make a very dangerous inroad into the provisions of the Covenant as a whole. Even if an individual is engaged in an activity for the

/suppression

suppression of human rights, he should still have the benefit of Article 9 etc.

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

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

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

(1) to the metropolitan territory of the state; and

(2) in the case of a federal state, to the jurisdictional sphere therein of the federal authorities.

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

(1) the governments of the non-metropolitan territories for whose foreign relations it is responsible, and

(2) (if it is a federal state) the governments of the constituent elements of the state,

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

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

(1) any non-metropolitan territory for whose international relations the state is responsible, and

(2) the jurisdictional sphere of any constituent element of the (federal) state,

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

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

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

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

ANNEX 2

Article 14

International Bill of Human Rights

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

2. Every person shall be free to receive and disseminate information of all kinds, including both facts, critical comment and ideas by books, newspapers, or oral instruction, and by the medium of all lawfully operated devices.

3. The freedoms of speech and information referred to in the preceding paragraphs of this article may be subject only to necessary restrictions, penalties or liabilities with regard to: matters which must remain secret in the interests of national safety; publications intended or likely to incite persons to alter by violence the system of Government, or to promote disorder or crime; obscene publications; /publications aimed at the suppression of human rights and fundamental freedoms/; publications injurious to the dependence of the judiciary or the fair conduct of legal proceedings; and expressions or publications which libel or slander the reputations of other persons.

Comment to Article 14

The fundamental provisions of the Bill of Rights relating to freedom of speech and information will be completed by other agreements, resulting from the work of the sub-committee on Freedom of Information and the international conference on this subject.

Comments to Article 14(3)

(a) The provision in paragraph 3 above, recognizing the right of Governments to impose the necessary restrictions, penalties or liabilities on publications likely or intended to incite persons to alter by violence the system of government, is to be interpreted as strictly confined to such publications as advocate the use of violence, and does not apply to publications advocating a change of government or of the system of government by constitutional means.

(b) Some doubt as to the suitability of the words "publications aimed at the suppression of human rights and fundamental freedoms" from the point of view of drafting. It may be that these words afford a wider power for the limitation of freedom of publication than is necessary or desirable. On the other hand, it may be said that it would be inconsistent for a Bill of Rights whose whole object is to establish human rights and fundamental freedoms to

/prevent

prevent any Government, if it wished to do so, from taking steps against publications whose whole object was to destroy the rights and freedoms which it is the purpose of the Bill to establish. In the last analysis, perhaps, the best definition of a Nazi or Fascist regime is that it is a regime which does not recognize the dignity and worth of the human person and permit individuals to enjoy human rights and fundamental freedoms.

(c) In any case it will be observed that no Government is obliged by the Bill to make use of the powers of limitation which are provided in paragraph 3.

2. COMMUNICATION RECEIVED FROM THE UNION OF SOUTH AFRICA

23rd April 1948

Sir,

With reference to your letter SOA 17/1/101 of 9th January regarding the resolution adopted by the Commission on Human Rights on 17th December, 1947, it is regretted that it has not been possible for my Government to finalise their comments on the draft Convention and draft Declaration on Human Rights in time for submission by April 3rd. However I now enclose herewith the observations which my Government desire to offer on these two documents and it would be appreciated if these comments could be submitted to the Commission on Human Rights.

/PRETORIA, Sout

PRETORIA, South Africa
17th April, 1948

Draft Convention

Article 1. This article makes it clear, by the use of the words "as being among", that the rights and freedom dealt with in the Convention, are not exhaustive. These words imply that there are other fundamental rights and freedoms not enumerated in the Convention. This means that even if a state were to accede to and faithfully carry out the Convention, it could still be accused of the violation of some other alleged human rights or fundamental freedoms. This would destroy one of the signal advantages which might be derived from this Convention, should it for the time being be regarded as exhaustive. Such an exhaustive Convention would exclude attacks in regard to rights not safeguarded in the Convention. Under this Article as it stands, however, the door is kept open for continued international recriminations in regard to rights not specifically recognised as fundamental.

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

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

/of occasional

of occasional departures from established principles, and too little of a development which is threatening to assume the proportions almost of a revolution.

It may, further, be anticipated that the words referred to above will sooner or later, as political exigencies may require, be used as an argument for the proposition that, the Convention having been adopted by the necessary two-thirds (or more) of the members of the United Nations, the principles set forth in it either constitute a mere restatement of, or have become part of, the general principles of international law, and are therefore binding also upon those who have not acceded to the Convention. Those who are unable to sign the Convention may find that they have avoided treaty obligations merely to be confronted with so-called legal obligations arising from an alleged general international law declared or created by the consensus of the majority of the "civilized" nations. It may be that such an argument could find little support from the recognised authorities of today, but it would most probably nevertheless appeal to a number of members of the United Nations large enough to force a State which is not a party to the Convention, into the position of a defendant before the United Nations.

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

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

Article 2. In paragraph (b) of this Article, there is another reference to the "general principles of law recognized by civilized nations." The purport of thi whole paragraph is not clear to us. It seems to add nothing to what has already been said in paragraph (a).

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

/Article 5.

Article 5. This article, if it means what it says, could hardly be acceptable to any country. It seems to recognise one exception only to the rule that no person may be deprived of his life, namely, the execution of a death sentence. This leaves out of account the killings which may be necessary for the suppression of rebellions or riots, or in self defence, or in the defence of the life or limbs of another. These further exceptions would, no doubt, be recognised everywhere. In the Union it is also permissible to kill in attempting to effect arrests for certain offences, where the offender cannot be apprehended and prevented from escaping by other means. There are probably many other countries where this exception is also recognised.

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

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

Article 7. The expressions "cruel or inhuman punishment: and "cruel or inhuman indignity", especially the latter, are somewhat vague, for the purposes of a document creating international obligations. The standards of cruelty, inhumanity and dignity vary according to times, places and circumstances. Any punishment which is clearly excessive, may be said to be cruel and inhuman in relation to the offence committed, and whether or not it is regarded as clearly excessive in a particular community, depends upon the protective needs and the general concepts of justice prevailing in, that community. It is not so very long ago that hanging was not considered a cruel inhuman punishment for a petty theft. Today there are an increasing number of humanitarians who regard corporal punishment and solitary confinement on a spare diet, for whatever offence, as too inhuman to be tolerated.

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

/For the

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

Article 9. The exceptions to the rule that no person is to be deprived of his liberty, enumerated in Clause 2, do not inter alia seem to include the following:

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

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

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

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

Article 10. The meaning of the words "the mere breach of a contractual obligation", is not quite clear. These words would cover the case of a statute which simply provides that the breach of any provision or a provision of a specified type, in a particular kind of contract, is an offence punishable by imprisonment. But there is also another possibility. A statute may specify certain acts or omissions, ordinarily specified in a particular kind of contract, and provide that persons who have entered into a contract of that kind, shall be guilty of offences if they perform those acts or are guilty of those omissions,

/adding

adding a fine or imprisonment as punishment. This would create statutory obligations which may or may not coincide with the actual provisions of a particular contract. In such a case, even if the statutory and contractual obligations happen to coincide, it could be said that the breach is not a breach of a mere contractual obligation, but a breach also of a statutory obligation. Analogous situations could arise also under the common law. A pledgee, for instance, who does away with the pledged goods, would be guilty of a breach of contract, and at the same time of theft.

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

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

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

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

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

It is true that the freedom of movement and free choice of residence is "subject to any general law not contrary to the purposes and principles of the United Nations Charter and adopted for specific reasons of security

/or in the

or in the general interest". But in some of the cases mentioned above the restrictions on movement and residence are not general but sectional and it is doubtful whether the Clause as now framed covers those cases. If it is not to be deleted, it ought to be reframed.

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

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

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

Clause 2 seems to exclude all trials in camera, while in terms of Section 220(4) of the Union's Criminal Procedure and Evidence Act, 1917, a superior court may, whenever it thinks fit and any inferior court may if it appears to that court to be in the interest of good order or public morals or of the administration of justice, direct that a trial shall be held with closed doors. The superior courts, although they have a free discretion, seldom exercise this power, but there are, of course, occasions when the interests of justice require that it should be exercised. Where a person under the age of nineteen years is tried, the trial is, in terms of Section 220(5) of that Act held with closed doors.

/The accused's

The accused's attorney or counsel and parent or guardian are entitled to be present, but no other person whose presence is not necessary in connection with the trial, is admitted without the authority of the presiding officer.

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

In their present form these drafts, in their enumeration of permissible restrictions, do not make allowance for the following, amongst a host of other restrictions recognised in our laws:

(a) The prohibition of the dissemination of information calculated to engender feelings of hostility between European inhabitants of the Union and other inhabitants (Section 1(7) of Act No. 27 of 1914; Section 29(1) of Act No. 38 of 1927).

(b) The prohibition of notices of meetings which have been prohibited under the Riotous Assemblies and Criminal Law Amendment Act, 1914 (See Section 2 of Act No. 27 of 1914).

(c) The prohibition of expressions referred to in Sections 8-11 of the latter Act, i.e. approbrious epithets, jeers or jibes in connection with the fact that any person has continued or returned to work or has refused to work for any employer, or the sending of information as to any such fact to any person in order to prevent any other person from obtaining or retaining employment, etc. etc.

(d) Other statements, expressions or publications which constitute offences or parts of offences under the common law or in terms of statutes, such as blasphemy, treasonable statements, uttering a forged instrument, perjury, contempt of court (covered in the drafts only to the extent to which it may be injurious to the independence of the judiciary or the fair conduct of legal proceedings), the use of indecent, abusive or threatening language in public places, fraudulent statements, statements amounting to crimen injuriae, false statements in a prospectus (Section 225 Quat. of the Companies Act, 1926), the offering of any inducement to enter into a hire-purchase agreement, (Section 8 of the Hire-Purchase Act, 1942, etc. etc.).

(e) The restrictions imposed upon the publications of preparatory examination and trial proceedings, where the offence charged involves

/any indecent

any indecent act or an act in the nature of extortion, or upon the publication of information which is likely to reveal the identity of an accused person under nineteen years of age or of a child concerned in proceedings before a childrens court (Sections 69 and 220 bis of Act No. 31 of 1917 and Section 6(2) of Act No. 31 of 1937).

(f) The prohibition of the disclosure of information obtained in an official or semi-official capacity, whether or not the disclosure will affect the national safety or the "vital" interests of the State.

(g) The restrictions which may be imposed under Section 9 of the Entertainments (Censorship) Act 1931, upon the publication of a picture or a public entertainment, where the picture or entertainment is calculated to give offence to the religious convictions or feelings of any section of the public, or where it is calculated to bring any section of the public into ridicule or contempt, or is contrary to the public interest or good morals.

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

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

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

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

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

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

Article 18. Also the exceptions to the right of assembly, enumerated in this Article, are inadequate for the purposes of the Union's laws.

/Under

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

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

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

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

/Article 20.

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

The purport of the second sentence of this Article is not clear. Is it the intention merely to say that the laws of a party to the convention must allow the free exercise of human rights in terms of the convention, or is it the intention to say that the law of such a party must provide for legal remedies which will be available to individuals if a fundamental right is interfered with by the State in contravention of the convention? If the latter is the intention, important constitutional changes would have to be made. This whole question could more appropriately be dealt with when the measures for the implementation of the convention are considered.

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

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

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

In conclusion the Union Government would like to point out that there is a great deal to be said for the suggestion made in paragraph 4 of Annexure B to the report of the Commission. To enumerate all the exceptions to the various Articles, would not only be a cumbersome, but also a dangerous procedure. It will be extremely difficult to be

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certain that every possible deviation from any article, which may be contained in a Country's statutes, Acts of Parliament, Ordinances, or proclamations, have been traced and considered. It would moreover, be quite impossible to anticipate specific future changes which may become necessary. There is real danger, therefore, that the specific exceptions may prove to be incomplete, and that innocuous and necessary future departures from a general principle may be unnecessarily barred.

Draft Declaration on Human Rights:

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

Article 9: This article obviously goes too far in declaring a man's home and correspondence "inviolable". That would, for instance, preclude the execution of search warrants in respect of homes, and the opening by post-office officials of insufficiently addressed letters, in order to return them to the senders.

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

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

/Article 13:

Article 13: The intention and purpose of the provision that "men and women shall have the same freedom to contract marriage in accordance with the law", are somewhat obscure. Is it the intention to say inter alia that there shall be no difference as to the respective ages at which men and women may contract marriage, that where there is an annus luctus for a widow there must be the same annus luctus for a widower, and that where a State recognises the right of men to contract polygamous marriages, it is bound also to recognise the right of women to contract polyandrous marriages? It may be said that the answers to these questions are to be found in the words "in accordance with the law", but if that is so, this provision becomes meaningless, because that would leave every State free to impose legal restrictions upon the freedom of women to contract marriage which are not applicable to men, and vice versa.

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

Article 15: The provision that everyone has the right to a nationality seems to imply some underlying obligation on the part of a State in whose territory a stateless person may be resident, to grant that person its nationality. It may even imply that there is an obligation not to denationalise any person, where the result would be to make him a stateless person. If these are in fact the intended implications of this provision, they would require the revision of the laws relating to Union nationality, as in terms of these laws there is no legal obligation to naturalise if certain requirements are not complied with, and there is no restriction which would prevent denaturalisation where the person concerned would become stateless. The provision that all persons who do not enjoy the protection of any government shall be placed under the protection of the United Nations, comes perilously near to the recognition of the United Nations as a super-state. To make this protection effective, the Organisation would have to issue passports, and may have to appoint officers exercising the functions of diplomatic or consular representatives in States harbouring any considerable number of stateless persons. The United Nations would, presumably have the same status to make representations as to the treatment of such persons, as a State would have in regard to the treatment of its own nationals, and that may open another door to international pressure in internal affairs.

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

/Articles 17 and 18:

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

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

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

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

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

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

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

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

/Articles 25 - 29:

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

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

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

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

Article 15. The right to a nationality.

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

Article 22. The right to engage in public employment.

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

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

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

Article 26. The right to social security.

Article 27. Free and compulsory education.

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

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

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In the submission of the Union Government these go beyond the elementary essential rights which are indispensable for physical and mental existence as a human being, and with which alone the United Nations are called upon to concern themselves. These articles no doubt give expression to certain ideals of advanced development, but a condition of existence does not constitute a fundamental human right merely because it is eminently desirable for the fullest realisation of all human potentialities. What the Charter envisages is the protection of that minumum of rights and freedoms which the conscience of the world feels to be essential, if life is not to be made intolerable, at the whim of an unscrupulous Government. This declaration embraces very much more than that, and to the extent to which it does so, it trespasses upon matters which should be left where they belong, in the domestic sphere of the member States.

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

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