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COMMISSION ON HUMAN RIGHTS

PROPOSAL FOR A UNITED NATIONS ATTORNEY GENERAL
FOR HUMAN RIGHTS

Summary of a statement submitted by the Consultative Council of
Jewish Organizations, a non-governmental organization
in category B consultative status

The Secretary-General has received the following summary
of a statement, which is circulated in accordance with
paragraphs 28 and 29 of Council resolution 288 B (X)

Submitted: 5 April 1950

Received: 5 April 1950

Introduction

At the Fifth Session of the Commission on Human Rights, the Consultative Council of Jewish Organizations had the honour of submitting for the consideration of the Commission a comprehensive plan for the implementation of an international Covenant of Human Rights. Specifically, the Council proposed the granting to individuals and groups of individuals of the right to initiate proceedings before international bodies by way of petition and to have legal standing as parties to such proceedings. It suggested vesting international jurisdiction in human rights cases in independent Commissions on central and regional levels, and outlined a procedure for the processing of petitions, the conduct of proceedings before the Commissions and the settlement of cases of violation of human rights. The basis of this plan has been the recognition of the fact that adequate guarantees for the effective observance of human rights require that the aggrieved individual be given the right to invoke international protection directly, without the intervention of the State or States parties to the Covenant.

The Consultative Council notes with regret the declared opposition on the part of a number of Member States to the right of individual and group petition

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at least for the time being. In these circumstances, the Council desires to place before the Commission an alternative proposal which, it hopes, will meet the objections of States which are not yet prepared to recognize the individual as a subject of international law. This proposal refers to the creation of the office of a United Nations Attorney-General, or High Commissioner for Human Rights, to act as an intermediate agent between the complainant and the Commissions charged with mediation in human rights cases.

Organization

It is submitted that the idea of an Attorney-General (High Commissioner) can be readily adapted to diverse patterns of implementation. In this connection, the Council respectfully calls the attention of the Commission to the Council's proposals for the establishment of one Central and several Regional Commissions. In the opinion of the Council, such a system would contribute to a more efficient and equitable functioning of the machinery of implementation, inasmuch as it would afford the possibility of taking appeals from the Regional Commission to the Central Commission. By the same token, it is suggested that the office of a United Nations Attorney-General (High Commissioner) should likewise be established on two levels, corresponding to the levels of the Commissions, in order to allow appeals from decisions of the Regional Attorney (Commissioner) at the regional level to the Attorney-General (High Commissioner).

Functions

Fundamental to the Covenant of Human Rights and underlying the work of the Commission is the recognition that the protection of human rights and fundamental freedoms is a matter of concern to the international community as a whole.

The primary function of the United Nations Attorney-General, or High Commissioner, would therefore be to act as the conscience of the international community in matters of human rights and fundamental freedoms. Just as under Article 99 of the Charter the Secretary-General has the right to bring to the attention of the Security Council any matter which, in his opinion, may threaten the maintenance of international peace and security, so the Attorney-General or High Commissioner would have the right to draw attention to violations of human rights.

Notice of violations of the covenanted human rights would reach the--

/United Nations

United Nations Attorney-General (High Commissioner) by way of complaint or petition from individuals or groups of individuals, communications from governments, semi-official bodies or private organizations, or by way of information resulting from his own supervisory activities. As a matter of principle, all such complaints, petitions, information, etc., should be addressed directly to the United Nations Attorney (Commissioner) at the regional level. Upon receipt of such communications, the United Nations Attorney (Commissioner) would decide, after preliminary investigation, whether or not to initiate proceedings before the Commissions.

In case of a decision against proceedings, the complainant or petitioner would have the right to appeal to the Attorney-General (High Commissioner) whose decision, upon additional preliminary investigation, would be final.

Receivability of Petitions

To prevent abuse or vexation, as well as to forestall a flood of complaints and petitions, the Attorney-General (High Commissioner) would be guided by specific rules of receivability. These rules would, in the main, provide that complaints, petitions, etc., should be free from abusive or improper language; that they should not be anonymous; that they should refer to specific violations of provisions of the Covenant of Human Rights by a Covenanting State to the detriment of an individual or group of individuals who, at the time of the alleged violation, were within the jurisdiction of the said State. In case of complaints or petitions from organizations, the rules should provide that communications from national organizations should be receivable if they refer to violations allegedly committed within the jurisdiction to which they themselves belong, while international organizations would not be subject to this limitation.

Exhaustion of local and diplomatic remedies

In the exercise of his discretion whether or not to institute proceedings before the Commissions, the United Nations Attorney (Commissioner) should not be limited by a strict requirement of the exhaustion of local remedies since the latter, as demonstrated by experience, might cause undue hardship to the wronged individual or group of individuals who might have to spend years in litigation before domestic constitutional, administrative, claim courts, etc., before the former could seize the international Commissions of the case. The same applies
/to exhaustion

to exhaustion of diplomatic remedies.

Position before Commissions

The United Nations Attorney (Commissioner) at the regional level would seize the Regional Commission of a case by filing a documented request to institute proceedings. Should such a request be rejected, the United Nations Attorney (Commissioner) would have the right to appeal to the Central Commission which, before deciding on the appeal, would hear the Attorney-General (High Commissioner). It would have the right to order the Regional Commissions to institute proceedings if the appeal is sustained, or conduct such proceedings itself.

In addition to the right to appeal a rejection by the Regional Commission, the United Nations Attorney (Commissioner) would have the right to appeal specified interlocutory and procedural orders and rulings, as well as the award of the Regional Commission. They would also have the right to desist from the prosecution of a case by a declaration to the Commission before which the case may be pending at the time.

In such proceedings, the United Nations Attorney (Commissioner) at both levels, would enjoy the same position and procedural rights as a State, party to a dispute before the International Court of Justice. As a rule, advocacy before the Regional Commission would be incumbent upon the United Nations Attorney (Commissioner) at the regional level; advocacy before the Central Commission would be incumbent upon the Attorney-General (High Commissioner). However, the latter should also have the right to appear before the Regional Commissions at any stage of proceedings. In the course of the proceedings before the Commissions, the United Nations Attorney (Commissioner) would, either in his own right or by delegation at the option of the Commissions, exercise certain functions of inquiry and investigation.

Finally, the Attorney-General (High Commissioner) might be entrusted with general supervisory functions over the domestic implementation of the covenanted obligations.

/Election

Election

As to the mode of election of the United Nations Attorney (Commissioner), at both levels, several alternatives suggest themselves. In the first place, they might be elected by the States which, at the time of election, are parties to the Covenant. Another method might be their election by one of several bodies of the United Nations, either by the Security Council, or the Economic and Social Council, or by the General Assembly, or concurrently by the General Assembly and the States which, at the time of election are parties to the Covenant. In case of the latter, the elections should be held separately by each of the two bodies, with a majority of two-thirds of those present and voting required in each.

Analogies with Municipal law

The last chapter of the Memorandum discusses the position of Attorney-General or Public Prosecutor in the various legal systems.

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