A Study on the Proposed International Court of Human Rights

By Vicente Abad Santos *

Preliminary Statement.

The writer aims to examine in general terms the problem of implementation with regard to the International Bill of Human Rights and in particular, as the title indicates, one of the many proposals made on the subject. It must be said, however, that the problem of implementation is still in its earliest stage of consultation and discussion. The writer has chosen to examine one proposal in particular because it seems to him the one most potentially effective. It is said that this proposal is so revolutionary that it has only a small chance of acceptance by the United Nations. Nevertheless, the writer hopes that this work will arouse some interest and win adherents to the proposal.

The Declaration and the Covenant on Human Rights.

On December 10, 1948, the General Assembly of the United Nations adopted at its session held in Paris the Universal Declaration of Human Rights.[1] The Declaration implements the Charter of the United Nations by defining the human rights mentioned therein.[2] However, the Declaration imposes no legal duties on States for as Mrs. Franklin D. Roosevelt said, "It is not a treaty; it is not an international agreement. It is not and does not purport to be a statement of law or of legal obligation."[3] While it may be said that it is only "a statement of principle, an elaboration of essential structure, a setting up of standards of achievement,"[4] it is wrong to say that it is a thing of little value for it is a remarkable expression of a common aim and as an agreed standard of basic values in human life.[5] Brig. Gen. Carlos P. Romulo, President of the United Nations General Assembly, has even described the Declaration as "an

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* A.B., LL.B., Assistant Professor of Law and U. P. Fellow at Harvard Law School.

[1] U. N. Doc. A/811; Department of State Publication No. 3381 (International Organization and Conference Series, III, 20.)

[2] Josef L. Kunz in The American Journal of International Law, Vol. 43, No. 2, p. 322. The Charter refers to human rights in the Preamble, Articles 1, 13, 55, 62, 68 and 76.

[3] Department of State Bulletin, Vol. XIX, No. 494, p. 751.

[4] Charles Malik in United Nations Bulletin, Vol. VII, No. 1, p. 2.

[5] European Movement and the Council of Europe, published by Hutchinson & Co. Ltd. (London), p. 113.

affirmation of the essential rights with which man has been endowed by his Creator." [6]

The Declaration was initially drafted in the United Nations Commission on Human Rights for over a period of two years under the leadership of Mrs. Franklin D. Roosevelt, United States Representative and Chairman of that Commission.[7] It represents the first of three tasks which the Commission has to accomplish in the elaboration of an International Bill of Human Rights. The other remaining tasks of the Commission are to prepare a draft Covenant on Human Rights including Measures of Implementation.[8] Each of the Commission's three tasks is of a progressive character, that is to say, whereas the Declaration "is only a resolution, needs no ratification x x x is not law (and) has no legally binding effect," [9] the Covenant will "create legal norms x x x legally binding upon the states which have ratified it" [10] and the Measures of Implementation will provide machinery for enforcement.

The Problem of the Implementation of the Covenant.

The problem of the implementation of the Covenant is fundamental and it must be solved if the Covenant is to serve its purpose. The Economic and Social Council of the United Nations took cognizance of such a fact when on 21 June 1946 it adopted a resolution which reads as follows: [11]

> "Considering that the purpose of the United Nations with regard to the promotion and observance of human rights, as defined in the Charter of the United Nations, can only be fulfilled if provisions are made for the implementation of human rights and of an international bill of rights, the Council requests the Commission on Human Rights to submit at an early date suggestions regarding the ways and means for the effective implementation of human rights and fundamental freedoms, with a view to assisting the Economic and Social Council in working out arrangements for such implementation with other appropriate organs of the United Nations."

Subsequently, that is on 5 December 1947, at its 30th meeting, the Commission on Human Rights set up three working groups, namely: a

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[6] Address read at The Third Natural Law Instituted presented by the College of Law of Notre Dame University. See New York Times, Dec. 11, 1949, p. 48.

In the Seminar in World Organization, Harvard Law School (1949 Fall Term), there were expressions of opinion that the Declaration may have binding effect on States. Reference was made to Article 38 (c) of the Statute of the International Court of Justice and it was said that the Declaration may be considered as embodying "general principles of law recognized by civilized nations."

[7] James Simsarian in Department of State Bulletin, Vol. XX, No. 496, p. 18.

[8] U. N. Doc. E/CN.4/50.

[9] Josef L. Kunz, cited, p. 321.

[10] Id., p. 322.

[11] Journal of the Economic and Social Council, No. 29, p. 521.

Working Group on the Declaration, a Working Group on the Covenant and a working Group on Implementation.[12]

The Working Group on Implementation started its work on the very day that it was set up. It made a report containing recommendations which were given in the form of replies to certain questions and of comments on certain suggestions made by the Secretariat of the United Nations.[13] The pattern of implementation recommended by the Working Group may be summarized as follows: (1) domestic measures of implementation should consist in making the provisions of the Covenant part of the law of the States ratifying it and (2) international measures of implementation would include (a) general supervision by the Commission on Human Rights, (b) collection of information with respect to observance and enforcement of human rights within the various States, receiving petitions from individuals, groups, associations or States, and conciliation by a Standing Committee on Human Rights, and (c) adjudication by an International Court of Human Rights alone the line of the Australian proposal.[14] In receiving the report, the Commission on Human Rights "decided to take no decision on any specific principle or solution stated in the Report, but to transmit the Report to the Governments of the various States and to the Economic and Social Council for their consideration and comment." [15] At this juncture it must be stated that the problem of working out measures of implementation is still in its earliest stages and a clearer picture of it is not likely to emerge before 1951.[16] This must be so not only because it is the last step but also because it is the most difficult.[17]

Kinds of Implementation.

Implementation of the Covenant can both be on the domestic and international planes. In the domestic plane it means that the signatory

[12] U. N. Doc. E/CN.4/50.

The Working Group on Implementation had members representing Australia, Belgium, India, Iran, Ukrainian S.S.R. and Uruguay.

An interesting sidelight took place in the first meeting of the Working Group when the Ukrainian representative doubted whether the Group could embark on its studies even before the Declaration and the Covenant have been decided upon. He opined that the question of implementation required previous knowledge of the rules to be implemented. The reply given was that the question of implementation concerned the creation, description and working of institutions and machinery to be studied at their own level. It was also stated that to accept the opinion advanced by the Ukrainian representative would make it impossible for the Group to carry out its task. The Ukrainian representative was not to be shaken in his opinion and he withdrew from the discussions. See U. N. Doc. E/CN.4/53, pp. 1-4.

A comment subsequently submitted by the Netherlands Government stated that "the overall question (of implementation) can be considered at once in its own right." See U. N. Doc. E/CN.4/82/Rev. 1, p. 13.

[13] U. N. Doc. E/CN.4/21, pp. 87-97.

[14] U. N. Doc. E/CN.4/53, pp. 4-34; U. N. Doc. E/600, Annex C.

[15] U. N. Doc. E/600, p. 7.

[16] Charles Malik, cited, p. 6.

[17] Josef L. Kunz, cited, p. 322.

States must ensure, within the framework of their governmental organization, the realization of the rights and freedoms embodied in the Covenant. And in the international plane it means that some kind of machinery must be set up as will enable the interested parties to have a check on the observance of human rights in the covenanted States.[18]

Domestic Implementation.

Domestic implementation of the Covenant did not constitute itself as a delicate or difficult problem to the Working Group on Implementation. It readily adopted the Australian proposal that the provisions of the Covenant "must be a part of the laws of the States ratifying it. States, therefore, must take action to ensure that their national laws cover the contents of the Covenant so that no executive or legislative organs or governments can over-ride them and that the judicial organs alone shall be the means whereby the rights of citizens set out in the Covenant are protected." [19] The corresponding provision in the draft of the Covenant as provisionally approved by the Commission on Human Rights reads as follows: [20]

Article 2

"1. Each Party hereto undertakes to ensure to all individuals within its jurisdiction the rights defined in this Covenant. Where not already provided by legislative or other measures, each State undertakes, in accordance with its constitutional processes and in accordance with the provisions of this Covenant, to adopt within a reasonable time such legislative or other measures to give effect to the rights defined in this Covenant.

"2. Each State party hereto undertakes to ensure that any persons whose rights or freedoms as herein defined are violated shall have an effective remedy before the competent national tribunals notwithstanding that the violation has been committed by persons acting in an official capacity."

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[18] Charles Malik, cited, p. 6; U. N. Doc. E/CN.4/168, pp. 1-13.

[19] U. N. Doc. E/CN.4/53, pp. 5-7; U. N. Doc. E/600, pp. 43-45.

[20] U. N. Doc. E/CN.4/322/Add. 2, pp. 1-2.

Article V of the Convention on Prevention and Punishment of the Crime of Genocide provides that "The contracting parties undertake to enact, in accordance with their respective constitutions, the necessary legislation to give effect to the provisions of the present convention and, in particular, to provide effective penalties for persons guilty of genocide or any of the other acts enumerated in Article III." Article VI of the same Convention provides that "Persons charged with genocide or any of the other acts enumerated in Article III shall be tried by a competent tribunal of the State in the territory of which the act was committed, x x x."

The method of implementation proposed in the above article is conservative as compared to Lauterpacht's proposition that "Every State shall, by appropriate constitutional means, adopt Part I of this International Bill of the Rights of Man as part of its domestic law and constitution. The effect of such adoption shall be to abrogate any existing statute or any other rule of law inconsistent with these articles of the International Bill of the Rights of Man. They shall not be abrogated or modified, by legislative action or otherwise, save in pursuance of international agreement or authorization." H. Lauterpacht, An International Bill of the Rights of Man, p. 179.

International Implementation.

The problem of international implementation seems to the writer more fundamental than the problem of domestic implementation. It is at the same time much more controversial and hence rather difficult to solve. It must be stated that the Covenant will be unlike an ordinary treaty in that it aims primarily to protect individuals and groups of individuals from arbitrary State action. An ordinary treaty, as any other rule of international law, is enforceable by the co-signatory injured by its violation by the ordinary means of redress as recognized in international law.[21] In the case of the Covenant, however, ordinary methods of enforcement would be insufficient because it may well happen that the injured party may be a national of the signatory State guilty of its violation and in such event it may be difficult for him to obtain redress. Thus if the Covenant is to serve its purpose it must be enforceable in the international sphere. Lauterpacht expresses this necessity when he says that: "Enforceability is the essence of any rule of law; so is the principle that the person obligated cannot claim the exclusive right of determining whether and to what extent he has complied with his obligation. This being so, the International Bill of the Rights of Man, if it is to be conceived as an instrument creating legal rights and obligations in the international sphere, must ultimately be enforceable by international remedies." [22]

It has been stated that the problem of international implementation is controversial. This is borne out by the fact that there are a number of Member Nations which object to this kind of implementation. This attitude has been taken by the U.S.S.R. and its bloc on one hand and by Mexico also.

Thus during the discussion of the Working Group on Implementation the observer of the U.S.S.R. stated that "the measures proposed by this Group were contrary to the principles of the sovereignty and independence of States, that they opened the possibility of intervention in the internal affairs of States, and that they therefore were no in conformity with the principles of the United Nations and were inacceptable." [23] Subsequently in a statement made by the U.S.S.R. delegation to the Commission on Human Rights regarding the drafts and proposals on implementation it was said (a) that the proposed implementation may become a means of interfering in the internal affairs of a State party to the Covenant and will undermine its sovereignty and independence, (b) that it would conflict with the whole system of international public law regulating the relations between the States, (c) that it will trans-

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[21] H. Lauterpacht, An International Bill of the Rights of Man, p. 169.
[22] *Op. cit.*, pp. 78-79.
[23] U. N. Doc. E/600, Annex C, Part II, p. 67.

form a dispute between a State and its nationals into an international dispute thus enlarging the sphere of international differences which will undermine the foundations of peace, and (d) that it would upset the distribution of powers made by the Charter among the different organs of the United Nations.[24] In peremptory language the Soviet delegation stated that it "disapproves of all the drafts and proposals on implementation presented to the Commission and considers them unsatisfactory."[25]

The Government of Mexico bases its objection to international implementation on the ground that "so long as **de facto** differences exist between States which constitute the family of nations, x x x especially as owing to disparities of legal systems, history and social conditions it is doubtful whether such a (world) body could judge the interests and welfare of the inhabitants of a particular country with the knowledge which the State concerned would necessarily possess by virtue of those very factors upon which its autonomy as an independent nation was based." [26] It then concluded that implementation "must be done within the framework of the internal legal system of each State, by means of swift proceedings challenging the legality of any laws or acts of authorities which may be inconsistent with such (human) right." [27]

It would seem, therefore, that the chief argument of those who are opposed to international implementation is that it would constitute an encroachment on matters which are essentially within the domestic jurisdiction of States.[28] It may well be asked whether the United Nations, by virtue of the provisions of the Charter alone, can protect and take action concerning violations of human rights committed in the territory of a member State. Are matters concerning human rights essentially within the domestic jurisdiction of States? [29]

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[24] U. N. Doc. E/CN.4/154, pp. 1-2.

[25] Id., p. 2.

This attitude of the U.S.S.R. is not surprising. As early as in 1946 in the Conference of Paris in connection with an Australian proposal to establish a European Court of Human Rights, "The Soviet Union expressed strong objection to the principle of interposing an International Court between a State and its control of its subjects." See Report of the New Zealand Delegation on the Conference Held to Consider the Treaties of Peace with Italy, Roumania, Bulgaria, Hungary, and Finland. Department of External Affairs, Wellington, 1947, (Publication No. 30), p. 84.

In the discussion of the draft Convention on Genocide in the Economic and Social Council, Mr. Pavlov, the representative of the U.S.S.R., declared that the trial of those accused of the crime of genocide by an international tribunal would constitute a violation of national sovereignty. See U. N. Doc. E/SR. 219, p. 6.

The same stand was taken by Mr. Morozov, Soviet representative in the General Assembly, when the draft Convention on Genocide was being discussed. See U. N. Doc. A/C.6/SR. 98, pp. 8-9.

[26] U. N. Doc. E/CN.4/82/add.1, p. 6.

[27] Id.

[28] See Charter of the United Nations, Art. 2, par. 7.

[29] Josef L. Kunz, cited, p. 318, states that apart from the case that the violation of human rights constitutes a danger to peace, under positive international law they undoubtedly fall under domestic jurisdiction.

By convention, however, States can place human rights outside their domestic jurisdic-

In answering the question propounded we can start with the proposition that the "question whether a certain matter is or is not solely within the jurisdiction of a State is an essentially relative question; it depends upon the development of international relations." [30] Thus in principle questions of nationality are, in the present state of international law, within the reserved domain but it may well happen that even in such questions the right of a State to use its discretion may be restricted by obligations which it may have undertaken towards other States.[31] Proceeding from these statements we can perhaps say that matters concerning human rights no longer fall within the reserved domain of States which are members of the United Nations in view of the obligations which they assumed with respect to them as expressed in the Charter. Thus a writer stated that "international measures for the implementation of the Covenant on Human Rights might well start from the premise that certain obligations to this end have already been assumed in the Charter of the United Nations." [32] Another writer expressed a similar view when he wrote that: "The world learned, through the grim experience of the totalitarian regime of Nazi Germany, Fascist Italy and militarist Japan, that, if human rights are denied within a State, and if large sections of the citizens are deprived of the fundamental freedoms, that is bound to affect the peace and security of the world. x x x it follows from the purposes of the Charter that a denial of human rights to the citizens of a country can no longer be regarded as 'essentially a matter of domestic jurisdiction of the State.' Henceforth, there will be no fixed frontiers in International Law. They will be moving frontiers like those of the United States in the nineteenth century." [33]

Proposals for International Implementation.

As previously stated, the report of the Working Group on Implementation was transmitted by the Commission on Human Rights to the Governments of the various States and to the Economic and Social Council for their consideration and comment. Thus far there have emerged three principal proposals for international implementation. They are the following:

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tion. This is the view adopted by the Working Group on Implementation. U. N. Doc. E/CN.4/53, p. 5. The same view is held by Kunz, cited, p. 318. While this solution is very convenient it does not help much against those States who may refuse to adhere to the convention. It seems, therefore, that a better solution must be sought.

[30] The Tunis-Morocco Nationality Decrees, Permanent Court of International Justice, 1923. Publications of the Court, Series B, No. 4. In 1 Hudson, World Court Reports, p. 143, at p. 156.

[31] Id.

[32] Herbert W. Briggs in The American Journal of International Law, Vol. 42, No. 2, p. 394. He cites Articles 55, 56 and 62 of the Charter of the United Nations.

[33] Norman Bentwitch in International Law Quarterly, Vol. 2 (Autumn, 1948), pp. 398-399.

First. The United States-United Kingdom proposal.[34] Under this proposal individuals are precluded from bringing complaints regarding violations of human rights. The right is limited to States signatories to the Covenant. A State party to the Covenant who considers that another State party is not giving effect to a provision of the Covenant, the former may bring the matter to the attention of the latter. If it is not adjusted within six months then either State can refer it to a Human Rights Committee. The Committee is to be composed of five members selected from a panel to which signatories to the Covenant designate two of their own nationals. The members of the Committee are to be selected as follows: one to be selected by the State or States referring the matter, another to be selected by the other State or States, and the remaining three to be selected by agreement of such States. If any place in the Committee is not filled within three months, the Secretary-General of the United Nations shall select a person from the panel to fill it. The Committee is to conduct closed hearings and shall within six months of its first meeting report its findings of fact to the States concerned and to the Secretary-General for publication. States concerned are not precluded from referring the matter to the International Court of Justice if they so agree.

Second. The Guatemalan proposal.[35] Under this proposal ratifying States, non-governmental organizations and private individuals of States ratifying the Covenant may be parties to the procedure proposed. Complaints regarding violations of human rights shall be submitted, through the Secretary-General of the United Nations who may request relevant information, to a committee presided by the Chairman of the Commission on Human Rights and consisting, in addition, of two persons elected by a two-thirds majority vote of the General Assembly, one selected from a list submitted by the States parties to the Covenant and the other from a list submitted by governmental organizations recognized by the United Nations, the election being based on the personal qualifications of the candidates. The Committee's chief functions are to investigate and to conciliate. If the Committee is unable to reach a settlement acceptable to the parties, the matter shall be referred to the International Court of Justice, whenever the plaintiff so requests, or to an arbitrator, if the parties so agree. Accusations against non-signatory States shall be in accordance with present procedure if the General Assembly so determines or the accused State consents thereto.

Third. The Australian proposal. This proposal is for the creation of an International Court of Human Rights. It was first advanced

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[34] U. N. Doc. E/CN.4/274/Rev. 1, pp. 1-2.

[35] U. N. Doc. E/CN.4/293, pp. 1-2.

There are other proposals. Thus: Indian proposal (U. N. Doc. E/CN.4/82/Add.7), French proposal (U. N. Doc. E/CN.4/82/Add. 10), Chilean proposal (U. N. Doc.E/CN.4/288.)

by Australia on 5 February 1947 in the Commission on Human Rights.[36] Later on 10 May 1948, upon acceptance in principle of the Australian proposal by the Working Group on Implementation, Australia submitted a more comprehensive proposal entitled "Draft Articles for Inclusion in the Covenant International Court of Human Rights."[37] This document, in addition to draft articles proposed for inclusion in the Covenant, contains a "Draft Statute of the International Court of Human Rights."

The principal features of the Australian proposal are the following: All parties to the Covenant are *ipso facto* parties to the Statute of the Court. Each party to the Covenant must comply with the decisions of the Court to which it is a party. If a party fails to perform its obligations under a judgment, the other party or the Commission on Human Rights may have recourse to the General Assembly of the United Nations, which may, if it deems necessary, make recommendations as to measures to give effect to the judgment. The Commission on Human Rights may request for advisory opinions from the Court.[38]

The following may be parties before the Court: (1) States, (2) individuals, (3) groups of individuals and (4) associations, whether national or international.[39]

The Court is to have jurisdiction over: (1) disputes arising out of the interpretation and application of the Covenant on Human Rights referred to it by any party to such Covenant, (2) all disputes arising out of the interpretation and application of Articles concerning human rights in any treaty or convention between States referred to it by any party to such treaty or convention, and (3) all matters concerning the observance of human rights by the parties to such Covenant or to any such treaty or convention referred to it by the Commission on Human Rights.[40]

From the foregoing survey it may be seen that, excluding the Soviet attitude which rules out international implementation altogether, the United States-United Kingdom proposal calls for the minimum of overseeing, the Australian proposal calls for the near ultimate in international enforcement, and the Guatemalan proposal stands midway between the two.

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[36] U. N. Doc. E/CN.4/15, pp. 1-2.

[37] U. N. Doc. E/CN.4/AC.1/27, pp. 1-8. For convenience a copy of this document is appended to this paper.

[38] Id., p. 1.

[39] Id., p. 5, Art. 17 of the Draft Statute.

[40] U. N. Doc. E/CN.4/AC.1/27, p. 6, Art. 19 of the Draft Statute. It is difficult to reconcile this Article with Article 17. Article 17 gives individuals, etc. the right to be parties before the Court. Article 19, however, seems to negative said right as only States and the Commission on Human Rights can refer matters to the Court.

Implementation by an International Judicial Machinery.

A. Comments of Member Nations on the Australian Proposal.

Reactions of various member Nations to the Australian proposal to create an International Court of Human Rights have been varied. The following lines will reveal the attitude of those Governments that have submitted comments.

The Netherlands Government accepts the desirability of judicial implementation although it prefers to give the task to the present International Court of Justice.[41]

The Mexican Government, as previously stated, objects to international implementation.[42]

The Brazilian Government recognizes the right of recourse to an international tribunal as a desirable objective although it prefers for the present to assign the work of settlement to the International Court of Justice until cases dealing with human rights assume considerable volume.[43]

The Royal Government of Egypt, although it considers pre-mature the setting up of an International Court of Human Rights, is prepared to reconsider the question and suggests that if the principle of setting up the court is adopted the International Court at The Hague should be utilized.[44]

The Government of India has no objection to the establishment of an International Court of Human Rights but believes that it need not be set up in a hurry.[45]

The New Zealand Government is not yet convinced of either the advisability of or the necessity for a new and special court and indicates that it would be preferable to entrust settlement of disputes concerning human rights to the present International Court of Justice.[46]

The Governments of China and the United States, in a joint comment, consider it unnecessary to create an International Court of Human Rights or even a special chamber of the International Court of Justice, at least until some experience has been gained of the operation of the Covenant and of other implementation measures suggested.[47]

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[41] U. N. Doc. E/CN.4/82/Rev.1, p. 14.
[42] U. N. Doc. E/CN.4/82/Add.1, p. 6.
[43] U. N. Doc. E/CN. 4/82/Add.2, p. 12.
[44] U. N. Doc. E/CN.4/82/Add.6, p. 4.
[45] U. N. Doc. E/CN.4/82/Add.7, p. 3.
[46] U. N. Doc. E/CN.4/82/Add.12, pp. 7-9.
[47] U. N. Doc. E/CN.4/145, p. 1.

The French Government is not ruling out the possibility of considering the establishment of international judicial guarantees of human rights because not only great civic organizations, like the *Lique Francaise des driots de l'homme*, but also the Working Group at Geneva had declared themselves in favour of a court to try such matters.[48]

The Soviet Government, as previously stated, is opposed to any form of international implementation.[49]

The United Kingdom Government in submitting its joint proposal with the United States on implementation makes no comment on the Australian proposal.[50]

The Government of Chile makes no special reference to the Australian proposal but suggests the creation of a conciliation commission which, if it fails to promote a settlement, may submit the question to the International Court of Justice or to the consideration of the General Assembly.[51]

The Guatemalan Government makes no reference to the Australian proposal in suggesting its own measures of implementation.[52]

At the present moment the establishment of an International Court of Human Rights as proposed by Australia is still under consideration and study. The latest development on the problem of implementation took place when the Secretary-General of the United Nations prepared for the Commission on Human Rights a methodical questionnaire on implementation [53] which the Commission transmitted to member Governments requesting them to send in their answers and comments not later than 1 January 1950.[54]

What international measures of implementation the United Nations will adopt finally the writer does not hazard to predict. The writer intends, however, to examine further the question of implementation by international judicial machinery.

B. **The Problems Raised.**

In the consideration of the question of implementation by international judicial machinery, the writer deems is desirable to break

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[48] U. N. Doc. E/CN.4/147, pp. 6-7.
[49] U. N. Doc. E/CN.4/154, pp. 1-2.
[50] U. N. Doc. E/CN.4/274/Rev.1, pp. 1-2.
[51] U. N. Doc. E/CN.4/288, p. 1.
[52] U. N. Doc. E/CN.4/293, pp. 1-2.
[53] U. N. Doc. E/CN.4/327.
[54] U. N. Doc. E/CN.4/350, pp. 17-18.
See also Charles Malik, cited, p. 6.

it down, as did the Working Group on Implementation, for its handier treatment. Thus the following problems are raised:[55]

First. Should an international court be constituted as the final guarantor of human rights?

Second. If the answer is in the affirmative, should there be established a new court or should the work be entrusted to the present International Court of Justice?

Third. Should the court, whatever its character, have the right to pronounce final and binding decisions, or merely furnish advisory opinions?

Fourth. If the court is to render final and binding decisions which organ of the United Nations should be entrusted with implementing such decisions?

C. **The First Problem.**

Should an international court be constituted as the final guarantor of human rights? In discussing this question the Working Group on Implementation unanimously gave an affirmative answer.[56] Most of the Governments that have given comments on international implementation agree in principle that human rights should be safeguarded by an international court although it may be said that their emphasis is on the present International Court of Justice. Indeed, when we consider the question, divorced from extraneous considerations, an affirmative answer to the question seems to be the most obvious. Protection of human rights by means of judicial proceedings, whether nationally or internationally, may be said to be the highest form of protection. In the international field an international court has the advantage of greater prestige and dignity which no other international body can possess. This springs from the assumption that judges are insulated from political considerations in the decision of cases which assumption cannot always be applied to other international organs. Thus no right can be said to be genuinely assured unless it is protected by a competent court.[57] Writing on this question Bentwitch gives this most useful observation: "The vindication of human rights by organs of the World Society can best start through a judicial tribunal. Just as the protecting power of the British Crown over all its subjects has been exercised and applied through the judicial instrument of the Privy Council, so the protecting power of the World Society, embodied in the United Nations, may be ex-

[55] U. N. Doc. E/CN.4/53, pp. 30-32.

[56] Id., p. 30.

[57] XXX, Final Act, The Ninth International Conference of American States. See Annals of the Organization of American States, Vol. I, No. 1, p. 133.

ercised in the first place through its judicial organ. The judicial power will precede the legislative and the executive power of the World Order." [58]

D. **The Second Problem.**

Should there be established a new court or should the work be entrusted to the present International Court of Justice?

The Australian proposal to establish an International Court of Human Rights is not unique. It has been considered in bodies other than in the Commission on Human Rights.

In 1946 in the Paris Conference to consider the treaties of peace with Italy, Roumania,, Bulgaria, Hungary and Finland, the draft treaties having provisions that the ex-enemy countries must take all measures to insure to all persons under their jurisdictions the enjoyment of human rights and fundamental freedoms,[59] the Australian delegation contended that it was of little use to write these rights unless machinery was provided to give them proper judicial protection. The delegation proposed that the machinery be in the form of a European Court of Human Rights to which individuals and groups would have access as of right. Unfortunately the Australian proposal did not receive an impartial consideration by the Conference.[60]

The Ninth International Conference of American States held in Bogota, Colombia in 1948 also considered the question of human rights. In the Charter adopted by the Conference it was agreed that "The American States proclaim the fundamental rights of the individual without distinction as to race, nationality, creed or sex." [61] The Conference also adopted an "American Declaration of the Rights and Duties of Man." [62] And complementary to this Declaration there was adopted the following recommendation:[63]

> "Inter-American Court to Protect the Rights of Man
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> "Whereas: The internationally recognized rights of man should be properly protected;
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> "Such protection should be guaranteed by a judicial organ, inasmuch as no right is genuinely assured unless it is safeguarded by a competent court;

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[58] Norman Bentwitch, cited, p. 401.

[59] See for example Treaty of Peace with Bulgaria which contains in Part II, Section I provisions for the ensuring of human rights and fundamental freedoms. Similar provisions are found in the other treaties. U. S. Department of State Publication No. 2743, European Series 21.

[60] Report of New Zealand Delegation, cited, pp. 83-84.

[61] Art. 5, par. (j) of Charter, Annals, cited, p. 77.

[62] XXX, Final Act, Annals, cited, pp. 130-133.

[63] XXXI, Final Act, Annals, cited, p. 133.

"Where internationally recognized rights are concerned, juridical protection to be effective, should emanate from an international organ,

"The Ninth Conference of American States

"Recommends

"That the Inter-American Juridical Committee prepare a draft statute providing for the creation and functioning of an Inter-American Court to guarantee the rights of Man. Such draft, after being submitted to the governments of all the American States for examination and comment, shall be transmitted to the Tenth Inter-American Conference for study, if it is felt that the moment has arrived for a decision thereon."

In the Convention on Prevention and Punishment of the Crime of Genocide [64] which the General Assembly of the United Nations approved on 9 December 1948, there was provided therein, despite opposition from the Soviet bloc [65] that "Persons charged with genocide or any of the other acts enumerated in Article III shall be tried by a competent tribunal of the State in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction with respect to such contracting parties as shall have accepted the jurisdiction of such tribunal." [66] To this end the General Assembly passed a resolution [67] inviting the International Law Commission to study the desirability and possibility of establishing an international judicial organ for the trial of persons charged with genocide or other crimes over which jurisdiction will be conferred upon that organ by international, conventions. The General Assembly, in the same resolution, also requested the International Law Commission to consider the possibility of establishing a criminal chamber of the International Court of Justice.

The most recent proposal for the establishment of an international Court of human rights took place in the Council of Europe. The groundwork for the proposal was initially laid by the European Movement. In the 1948 Congress of the European Movement held at The Hague, the problem of establishing a European Court of Human Rights was emphasized in the debates. In the months that followed the Movement dealt actively with the problem. Finally, on 12 July 1949, the Movement submitted to the Committee of Ministers of the Council of Europe a "Draft Convention on Human Rights." [68]

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[64] U. N. Doc. A/760; Department of State Bulletin, Vol. XIX, No. 494, pp. 756-757.

[65] See footnote 25.

[66] Article VI of the Convention.

[67] Resolution relating to the study by the International Law Commission of the question of an international criminal jurisdiction. U. N. Doc. A/760, Annex B; Department of State Bulletin, Vol. XIX, No. 494, p. 757.

[68] European Movement and the Council of Europe, cited, pp. 114-115.

Under the draft Convention the chief supervising organs shall be a European Human Rights Commission and a European Court of Human Rights.[69] As to who may be parties before the Court the draft Convention provides that the Commission, any State party to the Convention, and any affected party, whether a natural or corporate person, may initiate proceedings.[70] The Court is to have jurisdiction to determine all cases concerning the infringement of the Convention arising out of executive, legislative or juridical acts.[71] Where there is failure to comply with a judgment of the Court the matter shall be brought before the Council of Europe which may take such action as it may consider proper.[72]

In the Strasbourg meeting of the Consultative Assembiy of the Council of Europe held in the Summer of 1949, the Assembly's legal committee voted for the creation of an international court of human rights to guarantee basic freedoms in Europe.[73] This action of the legal committee was adopted by the Assembly which voted overwhelmingly to establish such a court.[74] The Assembly made the proper recommendation to the Committee of Ministers [75] but the latest report shows that the Committee, which met in Paris in Autumn of 1949, decided to refer the proposal to a committee of experts.[76]

The foregoing instances show that the proposal to create an international court for the sole purpose of protecting human rights has engaged the attention of many responsible bodies. The idea, however, has not been free from criticisms. In the lines that follow the more salient criticisms shall be given and an attempt shall be made to answer them.

The first criticism is to the effect that the creation of an International Court of Human Rights would constitute an invasion of the domestic jurisdiction of States. As previously stated, this has been the chief argument of the Soviet Government and its bloc in opposing any kind of international implementation. With respect to the Australian proposal in particular the objection, it seems, is based on the fact that under it not only States but also individuals and groups of individuals and associations can be parties before the Court.[77] It is, therefore,

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[69] Article 7 of the draft Convention. The draft Convention is reproduced in the work cited, pp. 115-119.
[70] Articles 7 and 12 of the draft Convention.
[71] Article 13 of the draft Convention.
[72] Article 14 of the draft Convention.
[73] New York Times, Sept. 2, 1949, p. 3.
[74] New York Times, Sept. 9, 1949, p. 4.
[75] Notes Et Etudes Documentaires, No. 1,210 (Oct. 5, 1949), p. 13.
[76] New York Times, Nov. 6, 1949, Sec. 1, p. 6.
[77] Article 17 of the Draft Statute.

possible that an individual may bring a complaint against his own country for alleged violation of human rights. This feature of the Australian proposal is not found in the Statute of the present International Court of Justice whereby only States may be parties before the Court.[78]

The writer has already attempted to justify the proposition that matters concerning human rights do not fall within the exclusive domestic jurisdiction of States. The writer has also attempted to justify international implementation in general. What has heretofore been stated on the question can be said to apply with equal force to the above criticism.[79] Without conceding the validity of the criticism, it can also be said that the overseeing power of the International Court of Human Rights can be minimized by providing in the Covenant a provision that before individuals, groups of individuals or associations can bring cases before the Court, the internal juridical processes of their State must first be exhausted provided that they function without unreasonable delay. This kind of provision is found in Article 7, paragraph (c) of the "Draft Convention on Human Rights" submitted by the European Movement to the Council of Europe.

Lauterpacht, despite his well-known advocacy of human rights, is uncompromisingly opposed to the establishment of an international court to deal with questions concerning human rights. He gives several objections to the establishment of such a court. An examination of his objections reveals that they are premised on two assumptions: (1) that the International Bill of the Rights of Man shall be made part of the Constitution of each signatory State,[80] and (2) that the international court, if it is to be established, shall act as a reviewer of acts of legislatures, courts and administrative officials of the signatory States so that individuals shall have direct access to the court by way of appeal from such acts.[81] Proceeding from these assumptions he advances two principal objections: (1) that judges of the international court, not possessing requisite knowledge of the law, legal tradition and social and economic problems of individual States, cannot render satisfactory de-

[78] Article 34, par. 1 of the Statute of the International Court of Justice.

[79] In studying this problem the writer has not ignored the attitude taken by the conservative American Bar Association. The A.B.A. House of Delegates in its 1948 annual meeting expressed disapproved of the Covenant and Declaration in their present form. (34 A.B.A.J. 881; Oct. 1948).

Frank E. Holman, writing as President of the A.B.A., looks with misgiving to the possibility that the U. S. may be committed to the establishment of an international court of human rights. It seems that fundamentally his objection is based on the proposition that human rights are purely internal affairs and that the lack of human rights does not cause war. (34 A.B.A.J. 984; Nov. 1948.)

[80] H. Lauterpacht, cited, p. 179.

[81] Id., pp. 173-174.

cisions.[82] and (2) that countries which have no system of judicial review will be unwilling to accept international judicial review.[83]

The answer to Lauterpacht's objections is that the premises which he assumed are not true in the case of the Australian proposal or of the draft of the Covenant as provisionally approved by the Commission on Human Rights. Thus, under the draft of the Covenant as provisionally approved, its provisions are not to form part of the fundamental laws of the States signatory thereto but that said States are to take measures to see that their domestic laws cover the contents of the Covenant.[84] Again, it is not contemplated to give the proposed International Court of Human Rights the power to review municipal legislation, judicial decisions or administrative action, but to interpret and apply the Covenant and other treaties and conventions relating to human rights.[85] It would seem, therefore, that Lauterpacht's objections have no relevancy to the Australian proposal to create an International Court of Human Rights.

Then there are also the criticisms that the Court would draw such a vast amount of litigation that not one but many tribunals would be required[86] and that the facilities of the Court would be exploited by subversive elements for political ends.[87]

The answer to these criticism is that it is always possible to impose reasonable safeguards against unnecessary litigation. Thus in the "Draft Convention on Human Rights" submitted by the European Movement to the Council of Europe there is a provision to minimize litigation by individuals and groups of individuals. Said provision is to the effect that only the European Commission on Human Rights and the signatory States shall have unqualified access to the Court whereas other parties can do so only with the authorization of the Commission which shall be entitled to withhold such authorization without stating any reason.[88] This is in addition to the provision already mentioned that the internal juridical processes of the State must first be exhausted before resort can be had to the Court provided that such internal juridical processes function without unreasonable delay.[89]

Still another criticism to the establishment of an International Court of Human Rights is that it will increase unduly the number of inter-

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[82] H. Lauterpacht, cited, p. 179.
The Mexican Government gives identically the same objection to international implementation. See U. N. Doc. E/CN.4/82/Add.1, p. 6.
[83] H. Lauterpacht, cited, pp. 174-175.
[84] Article 2 of the Draft Covenant, E/CN.4/322/Add.2, pp. 1-2.
[85] Article 19 of the Draft Statute.
[86] H. Lauterpacht, cited, p. 174.
[87] European Movement and the Council of Europe, cited, p. 121.
[88] Article 12 of the Draft Convention on Human Rights.
[89] Article 7, par. (c) of the Draft Convention on Human Rights.

national courts. It is said that a court of genocide is proposed in one day and a different courts is proposed on another day. When, it is asked, will there be an end to the number of such courts? [90]

The answer to this criticism is that it is best to establish a court with special technical qualifications. Modern civilization has seen the specialization of men and institutions and even machinery. Thus it is only proper that disputes concerning human rights should be decided by judges chosen for this purpose rather than by those possessing only general qualifications.[91]

There is also the criticism that there is as yet no international machinery to enforce, by force if necessary, the decisions of the international court so that it will be impotent and ineffective.[92]

The answer to this criticism is that the success of the International Court of Human Rights, like the present International Court of Justice, will depend, not so much on the powers that it shall exercise, but on its moral prestige. The pressure of public opinion will insure respect for its decisions. Governments will be unwilling to be considered as violators of their people's freedoms and will usually comply with the judgment of the Court even if they disagree rather than risk the loss of popularity.[93] It is also interesting to note in this connection the observation made by the Working Group on Implementation that "cases have hitherto been rare of States deliberately going against international judicial decisions or arbitral awards." [94]

And finally, there is the argument that it is not necessary to create a new court in order to safeguard human rights. It is maintained that the present International Court of Justice can very well take care of such cases under the provisions of either Article 26 or Article 36 of its Statute.[95]

It may be said in answer to the above argument that it overlooks the fact that under the proposal to establish an International Court of Human Rights not only States but also individuals, groups of individuals and associations may be parties before the Court. This feature is one of the chief merits of the proposal because it constitutes a direct guarantee to the individuals whose rights are to be protected. To remove this feature would impair greatly the protective effect of the Covenant,

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[90] U. N. Doc. E/CN.4/53, p. 27.
[91] Id., p. 29.
[92] H. Lauterpacht, cited, pp. 176-177. See also European Movement and the Council of Europe, cited, p. 125.
[93] European Movement and the Council of Europe, cited, p. 125.
[94] U. N. Doc. E/CN.4/53, p. 32.
[95] U. N. Doc. E/CN.4/82/Add.12, p. 8.

Under the present Statute of the International Court of Justice only States may be parties before the Court.[96] To enable individuals, groups of individuals and associations to be parties before the International Court of Justice its Statute must first be amended. In view of the existence of the veto it is now more difficult to amend the Statute of the International Court of Justice than to establish a new International Court of Human Rights which can be set up notwithstanding objection by any of the permanent members of the Security Council. It can be hoped, nevertheless, that objecting States will eventually fall in line.[97]

Should the Australian proposal to establish an International Court of Human Rights be accepted in principle? It seems to the writer that the proposal should be accepted in principle. There is undoubtedly great merit in the United States-United Kingdom proposal which is predicated on the policy of doing things step by step and gaining experience in the process. The Guatemalan proposal may be said to possess the same merit. Indeed the proposal to create an International Court of Human Rights is of a revolutionary character. It is true that individuals have rarely been authorized by treaty to bring an international action against a foreign State and never against their own State.[98] But after all is said and done the real test of the effectiveness of the United Nations in the field of human rights is the establishment of such a court.[99] If human rights are worth protecting, as they undoubtedly are, then those interested in protecting them must be willing to go all the way for, as stated by the Working Group on Implementation, "either a full and effective observance of human rights is sought, or it is not. If it is sought, then the consequences of this principle must be admitted and the idea of compulsory judicial decisions must be accepted. Certain States may in fact be reluctant to subscribe to this point of view. But the others will be able to begin now to lay the foundation of a true international protection of human rights, and through their example, eventually induce the dissidents to join them." [100]

E. The Third Problem.

Should the International Court of Human Rights have the right to pronounce final and binding decisions, or merely furnish advisory opinions?

When the Working Group on Implementation considered this question it unanimously adopted an affirmative answer that the Court

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[96] Article 34, par. 1 of the Statute.
[97] U. N. Doc. E/CN.4/53, pp. 28-29.
[98] Josef L. Kunz, cited, p. 322.
[99] Josef L. Kunz, cited, p. 322.
[100] U. N. Doc. E/CN.4/53, p. 28.

would have the right to pronounce final and binding decisions.[101] And in the Australian proposal this decision of the Working Group on Implementation finds expression in a provision that a judgment of the International Court of Human Rights shall be final and without appeal.[102] The Australian proposal also permits the Court to give advisory opinions at the request of the Commission on Human Rights.[103] These features of the Australian proposal are also found in the "Draft Statute of the European Court of Human Rights." [104]

There seems to be no sound reason in creating an entirely new International Court of Human Rights if the purpose is to empower it to give only advisory opinions. Insofar as advisory opinions are desired it seems that the present International Court of Justice can very well give them.[105] As previously stated, if our purpose is to obtain a full and effective observances of human rights then the idea of compulsory judicial decisions must be accepted; anything less will not satisfy the end sought to be attained.

F. **The Fourth Problem.**

Which organ of the United Nations should be entrusted with the task of implementing the final and binding decisions of the International Court of Human Rights?

In considering this question the Working Group on Implementation decided in favor of the General Assembly in preference to the Security Council. The Working Group on Implementation preferred the General Assembly, although it only has powers of recommendation, because of the authority conferred on it by the Charter with respect to questions of economic and social cooperation.[106] It would seem that the choice of the Working Group on Implementation was eminently right. Although the writer has attempted to justify action by the United Nations on matters concerning human rights partly on the ground that their violation constitutes a threat to the peace of the world and it would, therefore, seem that the Security Council would be the best organ of the United Nations to implement the decisions of the International Court of Human Rights, yet considering the membership of the Security Council which has a per-

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101 Id., pp. 30-31.

102 Article 27 of the Draft Statute.

103 Article 29 of the Draft Statute.

104 Articles 53 and 58. See European Movement and the Council of Europe, cited, pp. 196-197.

105 Article 96 of the Charter of the United Nations provides:

"1. The General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question.

"2. Other organs of the United Nations and specialized agencies, which may at any time be so authorized by the General Assembly, may also request advisory opinions of the Court on legal questions arising within the scope of their activities."

106 H. N. Doc. E/CN.4/53, p. 32.

manent member opposed to international measures of implementation and considering also the veto which that permanent member can cast, it would be futile to entrust the task to the Security Council. The General Assembly, as a forum for world opinion, can very well undertake the task notwithstanding the opposition of some members who hold different views on the matter.

In Conclusion.

The writer realizes that his voice is feeble indeed and that it is likely to be drowned in the welter of views held on the subject. Nevertheless, he gives his opinion for what it may be worth and advocates: that an International Court of Human Rights, which shall have the power to render final and binding decisions and to which not only States but also individuals, groups of individuals and associations can be parties, should be constituted. It is only by such a Court can we give full meaning and substance to the provisions of the Charter of the United Nations on human rights, to the Declaration on Human Rights and to the Covenant on Human Rights. It is only when we establish such a Court that we can say truthfully that the rights which we hold so dear and which we are willing to preserve at all costs are genuinely protected.

AUSTRALIA: DRAFT PROPOSALS FOR AN INTERNATIONAL COURT OF HUMAN RIGHTS

E/CN.4/AC.1/27
10 May, 1948

The following proposals are intended to give effect to the decisions of the Commission's working group on implementation.

It is proposed that the following draft articles relating to the Court of Human Rights be inserted in the Covenant:

"Draft Articles for Inclusion in Covenant
International Court of Human Rights

1. There is established an International Court of Human Rights. The Court shall be constituted and shall function in accordance with the Statute of the Court, which forms an integral part of this Covenant.

2. All parties to this Covenant are ipso facto parties to the Statute of the Court.

3. (1) Each party to this Covenant undertakes to comply with the decision of the Court in any case to which it is a party.

(2) If any party fails to perform the obligations incumbent upon it under a judgment rendered by the Court, the

other party or the Commission on Human Rights may have recourse to the General Assembly of the United Nations, which may, if it deems necessary, make recommendations as to measures to be taken to give effect to the judgment.

4. The Commission on Human Rights may request the Court to give an advisory opinion on any question relating to human rights or fundamental freedoms.

5. The Court shall make an annual report to the Economic and Social Council on the working of the Court in relation to the rights and freedoms within its jurisdiction. The Court may also make other reports to the Economic and Social Council if and when it thinks proper to do so."

The following is a draft Statute of the Court. It is based to a large extent on the Statute of the International Court of Justice although it has not been thought necessary to make detailed provisions as to its procedure. It appears to us that the Court of Human Rights is a new concept and the procedure adopted by it should be as flexible as is necessary to ensure its adequate functioning in the field which is assigned to it.

DRAFT STATUTE OF THE INTERNATIONAL COURT OF HUMAN RIGHTS

Article 1

The International Court of Human Rights established by the Covenant on Human Rights shall be constituted and shall function in accordance with the provisions of the present Statute.

Organization of the Court

Article 2

The Court shall be composed of a body of independent judges, elected regardless of their nationality from among persons of high moral character who possess the qualifications required in their respective countries for appointment to the highest judicial offices.

Article 3

1. The Court shall consist of six members, no two of whom may be nationals of the same State.

2. A person who for the purposes of membership in the Court could be regarded as a national of more than one State shall be deemed to be a national of the one in which he ordinarily exercises civil and political rights.

Article 4

1. The members of the Court shall be elected by the General Assembly of the United Nations on the recommendation of the Economic and Social Council.

2. The members of the Court shall be recommended and elected from a list of candidates nominated by States Members of the United Nations, each of whom shall be entitled to nominate one candidate.

Article 5

1. The members of the Court shall be elected for nine years and may be re-elected provided however that of the judges elected at the first election, the terms of two judges shall expire at the end of three years, and the terms of two more judges shall expire at the end of six years.

2. The judges whose terms are to expire at the end of the above-mentioned periods of three and six years shall be chosen by lot to be drawn by the Secretary-General immediately after the first election has been completed.

3. The members of the Court shall continue to discharge their duties until their places are filled. Though replaced, they shall finished any cases which they may have begun.

4. In the case of resignation of a member of the Court, the resignation shall be addressed to the President of the Court for transmission to the Secretary-General. This last notification makes the place vacant.

Article 6

1. Vacancies shall be filled by the same method as that laid down for the first election.

2. A member of the Court elected to replace a member whose term of office has not expired shall hold office for the remainder of his predecessor's term.

Article 7

1. No member of the Court may exercise any political or administrative function, or engage in any other occupation of a professional nature.

2. No member of the Court may act as agent, counsel or advocate in any case.

3. Any doubt on these matters shall be settled by decision of the Court.

Article 8

1. No member of the Court can be dismissed unless, in the unanimous opinion of the other members, he has ceased to fulfill the required conditions.

2. Formal notification thereof shall be made to the Secretary-General by the Registrar.

3. This notification makes the place vacant.

Article 9

The members of the Court, when engaged on the business of the Court, shall enjoy diplomatic privileges and immunities.

Article 10

Every member of the Court shall, before taking up his duties, make a solemn declaration in open Court that he will exercise his powers impartially and conscientiously.

Article 11

1. The Court shall elect its President and Vice-President for three years; they may be re-elected.

2. The Court shall appoint its Registrar and may provide for the appointment of such other officers as may be necessary.

Article 12

The set of the Court shall be established at The Hague. This, however, shall not prevent the Court from sitting and exercising its functions elsewhere whenever the Court considers it desirable.

Article 13

1. The Court shall remain permanently in Session, except during the judicial vacations, the dates and duration of which shall be fixed by the Court.

2. Members of the Court are entitled to periodic leave, the dates and duration of which shall be fixed by the Court.

3. Members of the Court shall be bound, unless they are on leave or prevented from attending by illness or other serious reasons duly explained to the President, to hold themselves permanently at the disposal of the Court.

Article 14

A quorum of three judges shall suffice to constitute the Court.

Article 15

1. Each member of the Court shall receive an annual salary.

2. The President shall receive a special allowance.

3. The Vice-President shall receive an allowance for every day on which he acts as President.

4. These salaries and allowances shall be fixed by the General Assembly. They shall not be decreased during the term of office.

5. The salary of the Registrar shall be fixed by the General Assembly on the proposal of the Court.

6. Regulations made by the General Assembly shall fix the conditions under which retirement pensions may be given to members of the Court and to the Registrar, and the conditions under which members of the Court and the Registrar shall have their travelling expenses paid.

7. The above salaries and allowances shall be free of all taxation.

Article 16

The expenses of the Court shall be borne by the United Nations in such manner as shall be decided by the General Assembly.

COMPETENCE OF THE COURT

Article 17

1. The following may be parties in cases before the Court:

(a) States
(b) individuals
(c) groups of individuals
(d) associations, whether national or international.

2. The Court, subject to and in conformity with its rules, may request of public international organizations information relevant to cases before it, and shall receive such information presented by such organizations on their own initiative.

Article 18

1. The Court shall be open to the States or nationals of States parties to the present Statute.

2. The conditions under which the Court shall be open to other States or their nationals, shall, subject to the special provisions contained in treaties in force, be laid down by the Economic and Social Council, but in no case shall conditions place the parties in a position of inequality before the Court.

3. Where a State which is not a member of the United Nations or a national of such a State, is a party to a case, the Court shall fix the amount which that party is to contribute towards the expenses of the Court.

Article 19

1. The jurisdiction of the Court shall comprise the following:

(i) All disputes arising out of the interpretation and application of the Covenant on Human Rights referred to it by any party to such Covenant;

(ii) All disputes arising out of the interpretation and application of Articles concerning human rights in any treaty or convention between States referred to it by any party to such treaty or convention;

(iii) All matters concerning the observance of human rights by the parties to such Covenant or to any such treaty or Convention referred to it by the Commission on Human Rights.

2. In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court.

Article 20

1. The Court may refer the whole or part of a dispute which is before it, or any matter arising out of the dispute, to the Commission on Human Rights for investigation and report, and may delegate to that Commission such of the powers of the Court as the Court may deem desirable to en-

able the Commission to reach a settlement of the dispute by amicable agreement, and may at any time revoke such reference.

2. The Court may also, in relation to any matter referred to it by Commission on Human Rights, request that Commission to investigate and report to it on the matter in such respects as may be specified by the Court, and for that purpose may delegate to the Commission such of the powers of the Court as the Court may deem desirable, and may at any time revoke such request.

Article 21

The Court in reaching its decision shall apply:

(a) international conventions, whether general or particular, establishing rules expressly recognized by the contesting or interested states;
(b) international customs, as evidence of a general practice accepted as law;
(c) the general principles of law recognized by civilized nations;
(d) subject to Article 26, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law;
(e) general principles of equity and justice.

PROCEDURE

Article 22

1. The official languages of the Court shall be French and English.

2. The Court shall, at the request of any party, authorize a language other than French or English to be used by that party.

Article 23

1. The Court shall frame rules for carrying out its functions. In particular, it shall lay down its own rules of procedure, including the method of presentation of matters to the Court, the procedure to be followed in the conduct of the proceedings and the delivery and promulgation of the judgment. So far as they may be applicable, the procedures adopted by the International Court of Justice shall be followed.

2. The Court may amend such rules from time to time as occasion may require, and may, if it considers it desirable in the interest of a speedy and just determination, suspend any such rule.

Article 24

1. All questions shall be decided by a majority of the judges present.

2. In the event of an equality of votes, the President or the judge who is authorized by him to act in his place, shall have a casting vote.

Article 25

1. The judgment shall state the reasons on which it is based.

2. It shall contain the names of the judges who have taken part in the decision.

3. If the judgment does not represent in whole or in part the unanimous opinion of the judges, any judge shall be entitled to deliver a separate opinion.

Article 26

The decision of the Court has no binding force except between the parties and in respect of that particular case.

Article 27

The judgment is final and without appeal. In the event of dispute as to the meaning or scope of the judgment, the Court shall construe it upon the request of any party.

Article 28

Unless otherwise decided by the Court, each party shall bear its own costs.

ADVISORY OPINIONS

Article 29

1. The Court may give an advisory opinion on any question relating to human rights at the request of the Commission on Human Rights.

2. Questions upon which the advisory opinion of the Court is asked shall be laid before the Court by means of a written request containing an exact statement of the question upon which an opinion is required, and accompanied by all documents likely to throw light upon the question.

Article 30

The Court shall adopt rules of procedure for the purpose of carrying out its functions with respect to advisory opinions, and, in so doing, shall be guided by the provisions of the present Statute which apply in contentious cases to the extent to which it recognizes them to be applicable.

AMENDMENT

Article 31

Amendments to the present Statute shall be effected by decision of the General Assembly made by a two-thirds majority of the members present and voting.

Article 32

The Court shall have power to propose such amendments to the present Statute as it may deem necessary, through written communications to the Secretary-General, for consideration in conformity with the provisions of Article 31.