

NATIONAL COMMISSIONS ON HUMAN RIGHTS

I. INTRODUCTION

1. *Introduction*

The United Nations and its Member States both share in the obligation to promote and observe human rights for all without distinction as to race, sex, language or religion. To further these obligations, the establishment of national commissions or national committees on human rights has been widely advocated at the United Nations¹ as being one of the most effective means of achieving its aims relating to human rights. National commissions, as vehicles for synthesizing local action with international concern for human rights, offer governments a means of furthering the promotion and protection of human rights within the confines of the state's political and social systems, and provide an immediate nexus between administrations and informed public opinion. Nevertheless, the question of their establishment or non-establishment, their structure and their functions have all raised delicate political and constitutional considerations both nationally and internationally. The problem has been further compounded as the types of national commissions that have been established and the purposes they fulfill vary considerably, and no single formula has been devised to meet the political or social needs of all countries.

Traditionally, questions concerning human rights and fundamental freedoms have been reserved to the exclusive domain of national states. Domestic jurisdiction has been asserted over these matters as involving relations that exist solely between the individual and his state and accordingly outside the province and interest of other nations or international bodies. With the adoption of the Charter of the United Nations, governments gave universal recognition to the fact that human rights matters transcended state boundaries and that man's age-old struggle for freedom and individual dignity in society was an international responsibility.

Effective measures of implementing its declared standards have, for the most part, been denied the United Nations both by the terms of the Charter, and by the reluctance of Member States to establish international machinery for the implementation of human rights. A measure of international accountability is acknowledged by Member States of the United Nations who have become parties to the recently adopted Convention on the Elimination of all forms of Racial Discrimi-

1. The debate on this topic by the various United Nations organs is discussed at pages 162-168.

nation² and the International Covenants on Human Rights and the Optional Protocol.³

Provisions for their implementation, including reporting procedures are detailed in each of those instruments and they represent a major advance in the willingness of states to accept international surveillance over aspects of domestic jurisdiction which frequently have been jealously guarded by the concept of national sovereignty.

While recognition has been given to the concept of international protection of human rights, no effective program of human rights promotion and observance may be carried out by the United Nations unless it receives the active support of governments at the national level. Accordingly, the success of the standard setting activities of the United Nations depends largely upon national administrative action or legislative enactments to implement the declared rights and fundamental freedoms enunciated by the United Nations.

Because international machinery for the implementation of human rights also implies a measure of direction and restriction on the legislative and administrative functions of states, as seen in the provisions of international instruments requiring states to bring their national legislation into line with United Nations standards, these domestic measures will not take place unless there is a political climate conducive to the establishment of the declared rights. As vital and pragmatic means of fostering this climate within states and to complement the humanitarian work of the United Nations, national commissions on human rights have a most important contribution to make.

It is proposed to examine these organizations in the light of the treatment they have been accorded before the United Nations and the role they play in their country of origin.

2. *United Nations Concern with Human Rights*

During the sessions of the various United Nations organs in which the issue of establishing national commissions on human rights has been mooted, discussions have often centered on how these local bodies may best further the aims and ideals of the United Nations concerning human rights. The purposes and obligations of the Organization are articulated in its Charter and they reflect the awareness of the international community to the need of securing human rights for all men. In the discussions that led to the formulation of the Charter in 1945, the draftsmen inscribed in the very first paragraphs of the Preamble their fundamental objectives: "To save succeeding generations from the scourge of war and to reaffirm faith in fundamental human rights and in the dignity and worth of the human person." "These opening words of the United

2. By 10 April 1968, 67 governments had signed the Convention and 19 countries had lodged with the Secretary-General instruments of ratification or accession. See A/CONF 32/7 and Add. 2.
3. By 10 April 1968, 26 governments had signed the International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights and 14 governments the Optional Protocol to the International Covenant on Civil and Political Rights. See A/CONF 32/7 and Add 2.

Nations Charter not only establish the priorities of purpose and of effort to which the peoples of the United Nations are pledged, they also reflect the indissoluble link between respect for human rights and human survival itself.”⁴ Despite the seemingly self-evident nature of this link, recognition of its verity has been slow in coming about.

The emergence of human rights as a matter of national concern may be traced to historic documents like Magna Carta (1215), the American Declaration of Independence (1776), *La Déclaration des Droits de l'Homme* (1789) and a handful of treaty provisions relating to religious protection.⁵ However, it was not until early in the Nineteenth Century when states joined together in an international movement to abolish the slave trade⁶ that the first stirrings of the international conscience over matters concerning human rights was made manifest. Towards the end of the Nineteenth Century international interest in social progress and labor legislation also emerged but it was limited in scope and effect.

International concern for human rights is essentially a product of the Twentieth Century. The early decades of this Century witnessed a crystalization of international interest in the protection of human rights. Following the First World War specific provisions were included in the peace treaties by the signatory powers for the protection of minorities. In addition, the Covenant of the League of Nations, which was also concluded as a peace treaty, required of states as conditions of membership in the League, the obligations to endeavour to secure and maintain fair and humane conditions of labor for men, women and children. States Members of the League also undertook to secure the just treatment of the indigenous inhabitants of their colonies, and the system of Mandates established by the League of Nations Covenant⁷ had as an objective, the promotion of the economic, social and educational advancement of the inhabitants of the trust territories.

But it was not until the Second World War, with its appalling atrocities and totalitarian regimes which mocked the very existence of fundamental liberties across the face of the globe, that the world was eventually galvanized into organized international activity designed to protect human rights. This activity resulted in the foundation of the United Nations as an Organization whose purposes decreed “universal respect for, and observation of, human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion.”⁸

The very first Article of the United Nations Charter establishes human rights on a parity with the other fundamental purposes of preserving international peace and security and the promoting of economic

4. OPI/285 — 67-26668.

5. e.g. Augsburg (1555), Osnabruck (1648), Utrecht (1737), and the Congress of Vienna (1815). Quoted in Brierly, *The Law of Nations*, (1955) p. 292.

6. The Treaty of Vienna (1815) and the International Convention on Slavery (1890) are only two of the first, in a long line of conventions that deal with slavery.

7. Article 22.

8. Charter of the United Nations, Preamble.

and social co-operation. This designation of equal importance to respect for human rights is the touchstone of all United Nations activities; for without recognition of the dignity and worth of the human person there can be no meaningful peace or social progress in the world.

Nevertheless, the importance of the United Nations' human rights obligations have been largely overshadowed. Because of the immediacy of the problems and the political and military drama usually associated with the United Nations' peacekeeping activities, and because more tangible results may be visible in promoting economic and social co-operation, world attention has only infrequently been focussed on the United Nations' human rights purposes. Yet, seen within the broad spectrum of the Organization's activities, each facet of United Nations activity is in some measure directed towards the promotion and establishment of human rights and fundamental freedoms.

References to human rights permeate the entire Charter and in evaluating the treatment accorded to national commissions before the United Nations, these provisions must be examined at the outset. In addition to the Preamble and the first Article, Article 13 provides that one of the duties of the General Assembly is "to initiate studies and make recommendations for assisting in the realization of human rights and fundamental freedoms for all without distinction." In Chapter IX, which deals with international economic and social co-operation, Article 55 requires that the United Nations "promote universal respect for, and observance of, human rights and fundamental freedoms for all without distinction." Article 56 requires States Members "to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55." The Economic and Social Council is empowered by Article 62 to make recommendations for the sake of "promoting respect for, and observation of, human rights and fundamental freedoms for all," and Article 68 empowers it with setting up a commission on human rights. Article 76 states that one of the basic objectives of the international trusteeship system is "to encourage respect for human rights and for fundamental freedoms for all without distinction . . . and to encourage recognition of the interdependence of the peoples of the world."

Within the confines of these Charter provisions, the United Nations encourages and promotes the recognition of fundamental human rights and freedoms for all with its objective being the creation of conditions of stability and friendly relations among nations. These objectives are predicated upon respect for the principle of the dignity and worth of the human persons and the principle of the equal rights and self-determination of peoples. However, the Charter does not define what are the human rights and fundamental freedoms to which it refers, nor does it make any mention of machinery to secure their observance.

Attention must also be drawn to the in-built limitation upon the powers of the United Nations in Article 2(7) which provides: "nothing in the Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter." This provision immediately poses the issue of the competence of the United Nations to scrutinize state activities and legis-

lation with respect to human rights and to investigate allegations of breaches of human rights within states, as distinct from its general duty of encouraging respect for human rights among states. During the early years of the United Nations the purview of this Article aroused controversy, and was especially directed toward the limitations it placed on the United Nations activities in the field of human rights. Today the scope of the Article is being reduced as more and more states are prepared to concede to the United Nations some aspects of their sovereignty concerning human rights.

Nevertheless, there is still considerable reluctance on the part of Member States to entrust an international agency with the task of overseeing and implementing human rights. This reluctance rests not only on the belief that measures of implementation would result in interference in the domestic or internal affairs of states and which would be contrary to the principles and purposes of the Charter, but also on the belief that human rights problems, by their very nature, are primarily matters of domestic concern. "Apart from special cases involving mistreatment of foreigners, or large scale persecution of minorities, which have entered the domain of international law some years ago, most human rights cases have been considered for a long time as matters essentially within the domestic jurisdiction of states. Provisions on human rights are contained in practically all national constitutions and in a multitude of legislative enactments, and there is an enormous number of decisions of national courts interpreting these decisions."⁹

Perhaps it is too soon to speak of the establishment of an international *Jus Humanis* for by that term we imply that the limits of human rights have been defined and there ought to be a means of enforcing those clearly declared rights. No effective means of enforcement presently exists. Nevertheless, a most substantial body of defined and declared rights has been proclaimed by the United Nations. Norms have been established and standards have been set for the guidance of national governments, but the coercive powers of implementing and enforcing these rights at the international level are still in the embryonic stage.

A number of recently adopted United Nations Covenants and Conventions¹⁰ provide that governments ratifying those instruments shall bring their national legislation into line with the international standards. But the expression of the ideal in the international instrument will only attain reality within the Member State by governmental action. Declared human rights cannot be made effective unless observed by national states and enforced through their judicial and executive action. Because of the importance of implementing the declared standards at the local or national level, it is submitted that organizations which are established within states to further the aims and objectives of the United Nations should be encouraged and facilitated in every possible respect. It is in this connection that national commissions on human rights, duly autho-

9. Sohn, *The United Nations and Human Rights*, (18th Report of the Commission to Study the Organization of Peace) p. 42.
10. e.g. International Covenant on Economic, Social and Cultural Rights Art. 2(1) and International Covenant on Civil and Political Rights, Art. 2(2). International Convention on the Elimination of all forms of Racial Discrimination, Art. 2(c), (d).

ized by their governments and working to further the principles of the United Nations Charter, have a most important role to play.

II. UNITED NATIONS TREATMENT OF NATIONAL COMMISSIONS

The question of the establishment of national commissions on human rights has been before the United Nations for over twenty years. During that time most of the principal organs concerned with human rights in the United Nations hierarchy have considered the matter. It has been before the General Assembly, the Commission on Human Rights, the Economic and Social Council, the Commission on the Status of Women and the Third Committee (the Social, Humanitarian and Cultural Committee of the General Assembly) and each body has deliberated upon the establishment of national commissions.¹¹

This matter was first considered by the "Nuclear Commission" on Human Rights as early as 1946. In its report of 21 May 1946,¹² the "Nuclear Commission" recommended to the Economic and Social Council the first and one of the most significant of a number of resolutions to be adopted by either the Council or the General Assembly concerning national commissions on human rights. The Council noted the "Nuclear Commission's" recommendations and by Resolution 9 (II) invited "members of the United Nations to consider the desirability of establishing information groups or local human rights committees within their respective countries to collaborate with them in furthering the work of the Commission on Human Rights."¹³ Subsequently, the Secretary-General drew the attention of all Member Governments to this resolution in a letter addressed to them on 30 September 1946, and in letters of 17 and 27 May 1948 concerning the implementation of recommendations on economic and social matters.¹⁴

Replies to these letters were received from twenty-six governments,¹⁵ eleven of which reported that national commissions had been established or existing institutions utilized for the purposes envisaged by the resolution.¹⁶ The other fifteen governments¹⁷ noted the resolution and generally expressed their interest in it.

11. In addition, two of the specialized agencies, the United Nations Educational, Scientific and Cultural Organization and the Food and Agriculture Organization, have established National Commissions to further their activities. National Committees have also been set up in some countries to deal with social questions within the fields covered by the Social Commission. A detailed examination of these bodies is beyond the scope of this paper; however, the functions of the UNESCO and Social Commission national committees is analyzed in E/CN. 4/519/Add. 1.
12. Journal of the Economic and Social Council, No. 14, p. 159.
13. Journal of the Economic and Social Council, No. 29, p. 1.
14. E/CN. 4/519 p. 2.
15. E/CN. 4/38 Add. 1 and 2, E/CN. 4/166, Annexes A and B.
16. Brazil, Canada, Dominican Republic, France, Haiti, Netherlands, Norway, Poland, Siam, Turkey and United States of America.
17. Australia, El Salvado, Greece, Guatemala, Honduras, India, Liberia, Mexico, New Zealand, Nicaragua, Pakistan, Panama, Philippines, United Kingdom and Venezuela.

Council resolution 9 (II) merely invited states to consider the desirability of establishing these organizations. There was no onus or compulsion placed upon states to set up national commissions, and in each United Nations resolution concerning these bodies, the question of their establishment or non-establishment has always been left entirely to the discretion of governments. The commissions were referred to by the resolution as "information groups," passive agencies whose seemingly principal functions would be of an educational or data-collecting nature. At most, from this formulation, national commission could exercise broad powers of investigation and study, but there was no suggestion that they be given enforcement powers. The commissions were also described by the resolution as "local human rights groups designed to assist governments in furthering the work of the Commission on Human Rights." In this designation a more specific role was assigned to the commissions as they could, for instance, assist governments in the preparation of their various reports requested by the Commission. However, no other guidelines were enunciated by the resolution as to the composition, the character, or the scope of activities of these bodies.

Because of the uncertainty of function of these bodies, and as there were few national groups set up to act as models, three governments¹⁸ considered that the functions of such groups required clarification before taking any decision on their establishment.

The question of national commissions was only sporadically considered¹⁹ by the United Nations in connexion with implementation of the Covenants on Human Rights during the fourteen years following the adoption of Council resolution 9 (II). It was not until 1960, that the Commission on Human Rights took up the matter at its 16th Session, and canvassed in depth the suggestion of a former Chairman of the Commission²⁰ who submitted to it a memorandum²¹ in which he stated that national advisory committees on human rights, properly instituted and consisting of prominent personalities, would be of great assistance to governments in advising regarding standards of human rights and in solving national or local human rights problems.

It further stated that the organization, structure and functions of national advisory committees on human rights would probably differ from country to country. In designating some of the functions that national committees could play, it was suggested they might perform the following advisory functions:

- (a) study current problems of human rights on the national or local level and make recommendations to the government thereon;
- (b) advise the government on any matters, legislative or administrative, relating to the observance of human rights;

18. Australia, New Zealand and the United Kingdom.

19. It was considered at the third and fifth sessions of the Commission of Human Rights and the item was then dropped from the agenda of the Commission at its 11th Session.

20. Mr. R.S.S. Gunewardene of Ceylon.

21. E/CN. 4/791.

- (c) hold annual or periodic conferences or seminars on human rights;
- (d) make annual or periodic surveys on the observance of human rights; and
- (e) assist the government in preparing periodic reports on human rights to the United Nations and in making studies on specific rights or group rights.

However, these guidelines which were all advisory in nature and intended for the information of governments, were not included in the resolution adopted by the Commission and which formed the basis of the Economic and Social Council resolution 772 (B) (XXX). Delegates to the Commission were of the view that the functions of these bodies could not be laid down in specific terms, and whatever functions they exercised was a matter for individual government discretion. The resolution also avoided any pronouncement as to the type of body that should be established by the government and to what extent they should be non-governmental or would have an official status.²²

In the terms of resolution 772 (B) (XXX) the Council, recognizing the importance of the contributions which could be made towards the promotion of respect for and observance of human rights by bodies representing, in each country, informed opinion on questions relating to human rights, invited governments of Member States and of the specialized agencies²³ to favor, in such manner as might be appropriate, the formation of these bodies which might take the shape, *inter alia*, of local human rights committees or national advisory committees on human rights, or to encourage such bodies where they already existed. The Council further invited governments, with a view to the exchange of information and experience in regard to the functions of national commissions, including the nature and extent of their contact with governments, "to communicate to the Secretary-General all relevant information on this subject" in order that he might "prepare a report to be circulated to governments and submitted to the Commission on Human Rights at its eighteenth session."²⁴ The terms of this resolution reflect the importance which both the Commission and the Council attached to national commissions. The request for information concerning the type and functions of these bodies was designed to elicit information and experience concerning national commissions for the benefit of all governments.

- 22. For a brief report of the issues considered by the members of the Commission during discussion on the resolution, see E/3335, p. 6-7.
- 23. UNESCO and FAO have both established national commissions in many Member States. See generally, UNESCO publication, "Guide to National Commissions," and FAO publication, LP/67 of 1967. National commissions have also been set up in some countries to work in the social field. Several governments have established national committees, consisting of representatives of various ministries, and in some cases, of non-governmental organizations, in order to prepare the work of the Social Commission and bring it to the knowledge of public opinion. See E/CN. 4/519, p. 6.
- 24. See generally E/3615/Rev. 1, p. 35.

In response to the Secretary-General's *note-verbale* requesting governments to communicate relevant information on the subject, thirty-seven governments²⁵ replied.

Both the replies²⁶ and their subsequent discussion before the Commission on Human Rights, revealed the wide range of views that governments held on the question of national commissions. Despite this diversity of opinion, two main streams of thought emerged. The first involved governments²⁷ that had established national commissions and believed that they were, in principle, useful bodies. The other was that no need existed in the country concerned, as existing organizations operating within the state carried out all the functions and purposes of national commissions and that their establishment would be a duplication of facilities.²⁸ Some government replies also revealed that there were many organs both official and unofficial which could help effectively to safeguard human rights. The courts, parliament, the press and non-governmental organizations all played an important role in the protection of human rights, especially in the creation of an enlightened public opinion.²⁹ Yet, despite the unquestioned usefulness of those bodies, violations of human rights still continue, even in countries which have the most advanced systems for the protection of human rights. It is submitted that national commissions, because of their exclusive *raison d'être* to promote human rights, may help further ensure that those human rights, may help further ensure that those human rights are protected.

National Commissions on the Status of Women

One particular aspect of the United Nations work in the field of human rights concerns the status of women. And national commissions on human rights have also been established to deal with matters concerning the rights of women. Generally, these commissions are set up by governments to deal solely with the status of women or as adjuncts to existing programmes concerning the rights of women.

In July 1963, the Economic and Social Council in resolution 961 (F) (XXXVI) had called the attention of Member States of the United Nations to the value of appointing national commissions on the status of women composed of leading men and women with experience in govern-

25. The 24 countries submitting replies to the Secretary-General are listed in his report E/CN/828/Add. 1-4. (Argentina, Austria, Byelorussia, Canada, Cambodia, Republic of China, Czechoslovakia, Denmark, Dominican Republic, Finland, France, India, Iraq, Ireland, Italy, Korea, Lebanon, Pakistan, Poland, Sweden, United Kingdom and United States). The 13 states that replied subsequent to the publication of the report are listed in his note E/CN. 4/932 and Add. 1-5. (Afghanistan, Bolivia, Denmark, Hungary, Iraq, Italy, Jamaica, Japan, Lesotho, Morocco, Norway, Thailand and Yugoslavia).
26. One non-governmental body also replied, the Co-ordinating Board of Jewish Organizations (a non-governmental organization in Category B consultative status), E/CN. 4/NGO/97.
27. For instance, Argentina, Austria, France and Korea. E/CN. 4/828/Add. 1.
28. For example, the Governments of Canada, Poland and the Union of Soviet Socialist Republics expressed this view. E/CN. 4/828/Add. 1.
29. For instance, the reply of Great Britain, E/CN. 4/828/Add. 1.

ment service, education, employment, community development and other aspects of public life, to develop plans and make recommendations for improving the status of women in the respective countries.³⁰ At the 20th sessions of the Commission on the Status of Women, resolution 14 (XX) was adopted which requested the Secretary-General to address an enquiry to Member States to ascertain the number of national commissions on the status of women or similar bodies currently existing, the functions they perform and their relationship to the non-governmental organizations. In response to the Secretary-General's inquiry under that resolution, twenty-four replies³¹ were received from governments. They indicated that six³² countries had established national commissions or similar bodies as specific governmental organs relating to the status of women and to their advancement. In addition, another eight countries³³ had created specific governmental departments or sections within a department to deal with these matters.

Recent Development

In 1964, the Economic and Social Council again considered the matter and in resolution 888 (F) (XXIV) expressed its satisfaction at the fact that a number of governments submitted reports on the activities of national advisory committees on human rights and of similar bodies. Governments were invited to favor the formation of the bodies referred to in Council resolution 772 (B) (XXX), and to encourage the activities of those already in existence. The resolution proposed that such bodies could, for example, consider the situation as it exists nationally, offer advice to the government and assist in the formation of public opinion in favor of respect for human rights.

The most recent discussions concerning national commissions took place in December 1966 when the topic was canvassed before the General Assembly's Social and Humanitarian Committee (Third Committee). Proposals concerning the establishment of national commissions or committees were submitted³⁴ by the representatives of Saudi Arabia and Jamaica.³⁵

The delegation of Saudi Arabia proposal³⁶ to replace Article 40 of the then draft Covenant on Civil and Political Rights³⁷ which provided for the settlement of complaints submitted to a Human Rights Committee

30. Economic and Social Council, Official Records, thirty-sixth session, Supplement No. 1 (E/3816).

31. Summaries of the replies to the Secretary-General's questionnaire are contained in E/CN. 6/494/Add. 1. The following states replied: Afghanistan, Argentina, Australia, Austria, Canada, Republic of China, Denmark, Finland, Iran, Italy, Japan, Laos, Libya, Luxembourg, Malta, New Zealand, Norway, Poland, Singapore, Somalia, the Soviet Union, Great Britain, United States and Yugoslavia.

32. Afghanistan, China, Denmark, Poland, Great Britain and United States.

33. Argentina, Australia, Austria, Canada, Japan, Libya, Norway and United States.

34. A/6546, paras 401, 557-561 and 613-626; A/C3/SR 1414-1420, 1436, 1452-1456.

35. See generally E/CN. 4/932.

36. A/C3/L 1334.

37. A/6546.

established under draft Article 27. This proposal called for the establishment by every State of a National Committee "consisting of nine members chosen from independent and objective persons not having any official connexion with the Government of the State."³⁸ These committees were, *inter alia*, to hear complaints of individuals who claimed that any of their rights enumerated in the Covenant had been violated. The members of the committee, it was stated, "would enjoy immunity as members of a body set up under the auspices of the United Nations. They would keep a register of all complaints and alleged violations of human rights, justified or not."

After prolonged discussion in which a number of delegations³⁹ intimated that constitutional or legislative difficulties would ensue if the draft proposal were adopted, the Saudi Arabia draft was withdrawn.

The matter was subsequently raised by Jamaica in a proposal⁴⁰ that would have included a new independent article in the draft Covenant on Civil and Political Rights and which would have constituted a separate part of the Covenant. This proposal also called for the establishment of national commissions on human rights, but "in accordance with its constitutional processes," to perform certain designated functions. Members of these commissions were to be persons of "recognized competence and experience in the field of human rights," and who were to be guaranteed the independent exercise of their functions. These proposals were also subject to the criticism that their adoption would involve considerable changes in the organization of the various legislative, judicial and executive powers of the States. While the latter proposal was contingent upon national commissions fitting into the fabric of the "constitutional processes" of states, several delegations⁴¹ stated that constitutional and institutional difficulties would still arise. A number of delegations believed, however, that the proposal was worthy of further study. Although this proposal was also withdrawn, it formed the basis of General Assembly resolution 2200 (C) (XXI) which invited the Commission on Human Rights to "examine the question in all its aspects," and to report through the Economic and Social Council to the General Assembly.

These proposals envisaged broad changes, both as to the issue of the voluntary establishment of national commissions and as to their functions within states. Both proposals mandatorily called for the establishment of national commissions by governments. States that ratified the Covenant on Civil and Political Rights would have been required to establish national commissions as a means of implementation the provisions of that Instrument. Not only would governments have to set up these bodies, but they would also have to establish them according to the formulas advanced by the proposals. Because of this element of compulsion, which represented a considerable policy change from the earlier sugges-

38. A similar proposal was made by Saudi Arabia in connexion with the implementation of the Convention on the Elimination of All Forms of Racial Discrimination. A/C3/L 1297.

39. See generally A/C3/SR 1414-1420.

40. See A/C3/L 1407.

41. See A/C3/SR 1452-1456.

tions that merely recommended their establishment, several delegations⁴² objected to its inclusion in the International Covenants.

The proposed designation of specific functions of a quasi-judicial character for national commissions by these proposals was also opposed by a number of delegations.⁴³ The previous functions suggested for national commission by United Nations resolutions had only involved the recommendation of advisory powers and the performance of principally research oriented activities. The instant proposals went beyond the earlier recommendations in designating national commissions specific duties and procedures in order to help implement a particular United Nations instrument. Previously, no reference to any specific United Nations instrument had been made, for the role of these bodies had been viewed in general terms; now they were being asked to help observe detailed covenants in a particular international document.

The inclusion of these suggested provisions in the International Covenants was strongly resisted by several governments⁴⁴ as they posed constitutional and/or institutional changes of some magnitude. In view of these circumstances, the decision of the General Assembly in resolution 2200 (C) (XXI) to require further study of the matter by the Commission on Human Rights, was inevitable. For as former Secretary-General Dag Hammarskjöld said: "The United Nations cannot lay down laws for the life within any national community. These laws have to be in accordance with the will of the people as expressed in the forms indicated by their chosen constitutions."⁴⁵

Under resolution 2200 (C) (XXI), the Secretary-General was also requested to invite Member States to submit their comments on the question in order that the Commission "might take these comments into account when considering the proposals."

Pursuant to the Secretary-General's *note-verbale* inviting such comments, Member States are continuing to report⁴⁶ on the advisability of establishing national commissions on human rights in their respective countries.

III. THE ROLE OF NATIONAL COMMISSIONS

The structure, functions and organization of national commissions that have been established by governments vary considerably. This diversity of character and purpose is scarcely surprising considering the different traditions, the widely varying economic, legal and social systems that exist between states, and in view of the fact that all countries do not have the same approach to the promotion of human rights.

42. See A/C3/SR 1452-1456.

43. See A/C3/SE 1452-1456.

44. e.g. Hungary, U.S.S.R., Syria, India, Ireland and Uruguay.
See A/C3/SR 1436.

45. Quoted in A/CONF/32/L 4, p. 59.

46. See E/CN. 4/932 Add. 1-5.

However, three⁴⁷ principal types of national commissions have been established. They include official government bodies, semi-official groups and private organizations. The type of commission to be set up whether it be official or non-official, its membership, and its powers and duties, are policy decisions to be made by a particular government in the light of its needs and resources. It has not been found acceptable by Member States⁴⁸ to prescribe a standard formula detailing the elements of a single national commission that is designed to meet the requirements of all states.

The basic decision as to their establishment or non-establishment must also be left to governments. A number of delegations⁴⁹ have intimated that constitutional and legislative difficulties would arise within their countries if they attempted to establish national commissions. However, if a government does decide to establish such a body it should be afforded the widest possible choice of types of national commission from which to select to meet its particular requirements. The type selected should have terms of reference that are sufficiently flexible or which may be developed gradually in such a way that it can find its proper place in existing systems.⁵⁰

National commissions are generally creatures of government enactment or administrative decisions⁵¹ and this formal action normally determines their functions and membership. Their effectiveness largely depends upon the type of organization established and powers vested in it. Given powers and duties, the commission's efficacy will center largely upon its budget resources and upon strong and active leadership. If national commissions are to discharge their duties successfully they must be composed of men of outstanding reputation and competence⁵² in the field of human rights and have an adequate operating budget. Governments cannot guarantee the former requirement, but they may generally ensure that the latter need is met.

47. The three principal types of national commissions on human rights are paralleled by similar commissions established by UNESCO and FAO. See UNESCO Guide to National Commissions and FAO publication LP/67 of 1967.

48. As evidenced by the reaction to the Saudi Arabia and Jamaican proposals mentioned earlier.

49. See A/C3/SR 1414-1420, 1436, 1452-56 for statements by delegations for and against the establishment of national commissions.

50. See E/CN. 4/932 Add. 2, 3.

51. See Generally FAO publication LP/67, P. 3 and UNESCO Guide to National Commissions, p. 7.

52. The Italian National Advisory Committee on Human Rights "is composed of members of outstanding reputation and competence in the sphere of human rights, acting in their personal capacity; its membership has recently been increased and altered so as to include representatives of all the sectors concerned: Parliament, Government, the Judiciary, the Arts and the Press, etc." E/CN. 4/932, Add. 3, p. 4. As part of the essential features of FAO National Committees, it is suggested that their members have as a Chairman, a Cabinet Minister or some other figure of national prominence. See FAO publication LP/67, p. 3.

1. *Types*

As indicated, national commissions are generally set up by government enactment. They are, to this extent, government bodies, "but their governmental character may be accentuated or lessened according to their particular structure, which is likewise laid down by enactment and which varies with the conditions prevailing in each particular country."⁵³ The degree of independence of national commissions from direct governmental control and from supervision in policy making and action varies in accordance with their particular structure and composition.

(a) *Official*: Established by governmental decree these bodies enjoy an official status as an adjunct to an organ of the government. They may be attached to a ministry as an administrative division⁵⁴ or as an agency of a branch of the government.⁵⁵

In this type of organization, the commission usually has no independence from the government establishing it and its membership is composed of officials from government departments or who are government nominees. "Commissions of this type are to be found in countries with widely varying economic and social conditions: firstly, in economically underdeveloped countries⁵⁶ with slender resources; and secondly in countries which, though possessing greater resources, have adopted a similar system on the grounds of efficacy, of their particular conception of the role of the state, or for historical, constitutional or other reasons."⁵⁷

The establishment of official national commissions has been criticized for it has been suggested that "most abuses in the field of human rights originated with the authorities themselves. If a complaint was lodged with a committee set up by a government it was unlikely to produce any positive result."⁵⁸ There is some truth in that statement, for public authorities sometimes are the violators of human rights, either through their actions, or in their failure to prevent violations or to provide adequate means of redress should abuses occur. In these circumstances the allegations and claims of aggrieved individuals will of necessity, be directed against their government. Accordingly, a commission which is only a sounding board for governmental policies will probably not be overly sympathetic to such claims. But it must also be conceded that governments have as one of their principal functions the duty of main-

53. UNESCO Guide for National Commissions, p. 7.

54. e.g. in France one of the two national bodies dealing with human rights is a committee composed of representatives of government departments — the Human Rights Inter-departmental Advisory Committee.

55. e.g. in Austria, the Division for Women's Affairs was established within the Federal Ministry of Social Affairs. See E/CN. 6/494 Add. 1, p. 5.

56. The Dominican Republic.

57. UNESCO Guide to National Commissions, p. 7.

58. By Belgium — see E/CN. 4/SR 647, p. 2 and by Lebanon. National Committees "should not have official status, since that might make them representative more of governments than of the persons whose rights they would be called upon to defend." E/CN. 4/647, p. 8.

taining the welfare of the governed and in the balancing of state duties against individual rights, official national commissions may, if they are composed of impartial members, help tilt the scales in favour of the aggrieved individual.

Despite the general lack of autonomy of official commissions, it cannot be suggested that they should never be official, for in developing nations no progress in the field of human rights is possible without active government support. The type of commission established will largely depend upon the social development of the country and the more developed the state, the more likely it is that it will not be official in nature.⁵⁹

(b) *Semi-Official*: Some of the semi-official commissions that have been established are composed of representatives of government agencies and non-governmental organizations⁶⁰ which gives them considerable authority and provides them with ample facilities, but they retain a certain independence of action⁶¹ and in decision making. It has been suggested that the best solution to the problem of the status of national commissions "would be to have a semi-official committee including, side by side with government nominees, representatives of appropriate non-governmental organizations, where such existed, and representatives of cultural, academic, trade union and similar organizations."⁶²

(c) *Private*: Several national commissions, although they may have been established by government enactment, are composed principally of non-governmental elements and are not responsible to government departments. These commissions, whose members are mainly private⁶³ citizens or representatives of independent institutions enjoy a great deal of freedom as regards both policy and action but nevertheless work in close co-operation with their government.

2. Functions

The functions and operating methods of national commissions will of necessity be closely tied to the type of body established. In essence they should provide a unifying center in each country for all human rights activities. Like the FAO and UNESCO national commissions they may also perform advisory, liaison and executive functions. The performance of quasi-judicial and investigatorial functions poses additional problems for these functions may involve the compatibility of national commissions with constitutional standards. The power of questioning governmental decisions would, generally, have to be specifically allocated to national commissions and governments would naturally be loath to do this.

59. For instance it has been suggested by Ireland that "active state patronage could, on the other hand, be held to jeopardize the independence and freedom of action and, consequently, the *raison d'être* of such bodies." E/CN. 4/828/Add. 2, p. 2.

60. e.g. Argentina, See E/CN. 4/828.

61. Korea is an interesting example. The Korean League for the Rights of Man is not only supervised by but also fostered in its activities by the Minister of Justice. E/CN. 4/828, p. 18.

62. By Mexico. See E/CN. 4/SR 647, p. 6.

63. e.g. the Italian National Advisory Committee on Human Rights.

An illustrative list, which is by no means meant to be exhaustive, nor indicative of the priorities of possible functions for national commissions is set forth:⁶⁴ Some of the functions will of necessity be legal in nature, but it is envisaged that most of the commissions' activities will be of an advisory or educational nature.

(i) *Study and Research Groups*: These bodies could conduct surveys and studies of national human rights problems and collect and evaluate information relating to human rights. As an information and data-collecting body, national commissions may, if adequately staffed and financed, conduct both short and long-term research projects into matters concerning human rights. The type and variety of research which these bodies might engage in is almost limitless. For example, developments in the fields of electronics and computer technology are likely to have far reaching effects on the liberties of persons in technological advanced societies, as are the rapidly evolving biological techniques for "human design."

(ii) As advisory boards they might submit reports and opinions of an advisory nature to governments, to the executive and to individuals on matters relating to the protection and promotion of human rights. In defining violations of human rights and suggesting remedial measures for them, national commissions may submit to the authorities a blue print for future action. In most states the constitutional system provides that the judiciary is to be the sole reviewer of legislation, and judicial and administrative decisions. The establishment of national commissions oiced not derogate from the courts' authority nor conflict with judicial procedures. For instance, a report submitted to the authorities that suggested amendments to be made in existing legislation would at best be of persuasive value. The report would not affect the constitutionality or validity of such legislation. In addition, the authorities would be under no obligation to consult a national commission or regard its decisions as binding: All that could be admitted would be the principle that consideration should be given to the opinions or wishes that the commission might feel called upon to express.

(iii) Perform educational services in arranging conference, seminars and training programs on matters dealing with human rights.

(iv) Assist governments in the preparation of their periodic reports on human rights which are to be submitted to the United Nations or to the specialized agencies. National commissions may serve as clearing houses for all information relating to human rights.

(v) Hear and investigate complaints concerning the infringement of human rights. The allocation of investigatorial functions to national commissions would provide them with a powerful weapon in the battle to safeguard individual rights. Given power to subpoena witnesses and documents they might usefully complement and assist the other state bodies concerned with human rights. National commissions may "constitute a unique resource for securing information based on the experience and insight of persons with first-hand knowledge of problems in every

64. A list of functions which national commissions might perform is also detailed in E/CN. 4/519 pp. 8-11.

part of the country.”⁶⁵ However, all states may not wish to give the commissions such broad powers and it is submitted that no limitation should be imposed upon governments’ discretion in this matter.

(vi) Act as a lobby to exert pressure on the government, to ratify appropriate United Nations treaties and to bring its legislation into conformity with United Nations standards. As a pressure group, national commissions may bring information and data to the attention of elected representatives to secure the passage of legislation promoting human rights⁶⁶ and to help bring into force those instruments not yet ratified by a sufficient number of states.

(vii) Bring to the attention of the authorities violations of human rights when they occur and provide legal aid where no such aid exists.

(viii) Act as a liaison between the United Nations, international and local non-governmental organizations, other national commissions and private groups interested in human rights.⁶⁷ As a means of ensuring that the standard setting and other United Nations human rights activities are enjoyed at the local level, national commissions may help provide effective links between the international body and its component parts. Close links may also be maintained between the various⁶⁸ local human rights organizations to ensure that there is no duplication of activity.

(ix) Maintain regular contacts with experts in particular human rights fields. In order to carry out research and study projects that the national commission may plan, suitably qualified consultants may be required for the effective implementation of those projects.

(x) Provide information services in the form of publications, reports, periodicals, etc. on human rights and help to further distribute United Nations publications and material. The more widespread the United Nations work in the field of human rights becomes known, the greater are the chances of implementing its declared standards. It is only by having an informed public opinion that human rights are protected. The arousing of general interest in the United Nations work through the media of mass communications (press, radio, television, films) is an invaluable service that national commissions may also perform.

(xi) Sponsor ceremonies for the observance for Human Rights Day.

(xii) Submit reports concerning its activities, findings and recommendations to the government.

Whether some or all of these functions are allocated to national commissions by governments, it is submitted that in carrying out any of these tasks, national commissions could do much towards establishing favourable conditions for the realization of all human values.

65. E/CN. 4/932/Add. 2, p. 5.

66. As does the *Oesterreichische Liga Fuer Menschenrechte*, E/CN. 4/828, p. 4.

67. For instance, Bar Associations, the Press and Trade Unions.

68. Co-ordination of activities with the UNESCO, FAO and Social Commission national committees is essential for their effective operation.

Whatever functions a particular national commission undertakes, the success or failure of its mission will largely depend upon the help and support it receives from the government or from the competent government organs. In the developing countries, as indicated, without governmental support few successes in the field of human rights could ever be achieved. In the developed countries, governmental supervision or control of national commissions may not be welcomed. But advances in the cause of human rights are very largely dictated by governmental action and close co-operation between the authorities and national commissions is essential if the cause of human rights is to be effectively served.

IV. IMPLEMENTATION OF HUMAN RIGHTS

Effective implementation of human rights is one of the most vital tasks facing the world community today. In order that the already large and respectable body of declared minimum standards may be universally enjoyed, procedures and institutions must be established, or existing ones supplemented, to ensure the implementation of those rights.

It is now time for a shift in emphasis in the field of human rights. The efforts spent in declaring and enunciating substantive rights, which have now been largely formulated, should be redirected into improving the effectiveness of implementation techniques and machinery. As institutions which readily lend themselves to these tasks, national commissions may play an invaluable part in helping to bring about the adoption of international standards at the local level and greatly assist in supplementing the existing international implementation machinery. Not only may they help ensure that governments enact the substantive provisions contained in international instruments, but they might also aid in the international surveillance of the application of the rights contained within those instruments. Seen simply within the context of the implementation techniques contained in the International Covenants on Human Rights, it is evident that national commissions may aid in this invaluable task.

The principal types of international implementing methods are: reporting, state complaints or applications against other states with a view to conciliation by a court⁶⁹ or by third parties; and individual or group petitions with a view to conciliation.⁷⁰ Each of these methods is utilized by the Covenants, but to be effectively executed, the implementation procedures require active support at the national or local level. So far as reporting procedures are concerned, the Covenants, looking to the already developed system of periodic reporting⁷¹ which has been established by the United Nations, have incorporated provisions for reporting by States Parties on the implementation of their standards when they

69. As in the European Convention on Human Rights.

70. For a full description of these methods see Golsong, *Implementation of International Protection of Human Rights*. Recueil des cours de l'Academie de Droits International de la Haye (Leyde) 110: 7-151, 1963 (m).

71. Since 1956, there has been a system of reporting by Member States on the steps that they have taken to give effect to United Nations instruments. In 1965, pursuant to Council resolution 1074 C (XXXIX) States were invited to supply information on a continuing three year cycle covering in the first year, civil and political rights; in the second, economic, social and cultural rights; and in the third year, freedom of information.

come into effect. The International Covenant on Civil and Political Rights provides for the establishment of a human rights committee of eighteen elected members serving in their personal capacity⁷² to consider the reports submitted by States Parties.⁷³ These reports⁷⁴ are to provide information on the measures States Parties "have adopted which give effect to the rights recognized (in the Covenant) and on the progress made in the enjoyment of those rights." In addition, the reports are to indicate "the factors and difficulties, if any, effecting the implementation of the ... Covenant."

In the preparation of these reports, national commissions may greatly assist in providing information on the three specified areas the reports are to concentrate upon. The measures adopted by States Parties to give effect to the enumerated rights, whether it be in the form of legislative decree or administrative decision, might be noted by the commissions and brought to the Government's attention, in order that it might report upon these measures to the Committee. Similarly, "the factors and difficulties," if any, which are experienced in implementing the provisions of the Covenant might also be noted and transmitted to the relevant authorities. Governments are notoriously loath to admit the existence of defects in the fabric of their social, legal or political systems, and national commissions may provide a little more perspective in these matters, where they exist, to governments. Even if a government does not choose to report on the matter, it will at least have had its attention drawn to what may be unknown difficulties.

The International Covenant on Economic, Social and Cultural Rights also makes provision for reporting procedures for its international implementation, and, in fact, these are the only implementing procedures included in that Covenant.

State Parties undertake to submit reports on the measures which they have adopted and the progress made in achieving the observance of the rights recognized in the Covenant.⁷⁵ The reports, however, are submitted to the Secretary-General for transmissions to the Economic and Social Council and the specialized agencies. In furnishing the reports, which are to be made in stages, States Parties will follow a program to be established by the Council and they may indicate factors and difficulties affecting the degree of fulfilment of the Covenant's obligations.⁷⁶ Again, in the compilation of these reports, national commissions might aid or assist governments in their production.

Another possible function of national commissions could be envisaged in connexion with the system of complaints under the Covenants. Under this system, states may complain that other states are not fulfilling the terms of their mutual treaty obligations. The International Covenant on Civil and Political Rights provides an optional state-to-state complaint system only after a complaining state has declared that it recognized in

72. Article 28(1).

73. Article 28(2).

74. Article 40.

75. Article 16(1).

76. Article 17.

regard to itself the competence of the Committee. An elaborate mechanism is then provided whereby the complaint may be settled by the Committee,⁷⁷ or if no solution is reached by an *ad hoc* conciliation commission.⁷⁸

National Commissions may bring to the attention of their governments violations of human rights which might be caused by another government and in this event, a political or diplomatic settlement may be necessary.

Some of the potentially most far-reaching provisions in the International Covenants are contained in the Optional Protocol to the Covenant on Civil and Political Rights where provision is made for petitions or communications from individuals or from groups. States Parties to the Protocol recognize the competence of the Human Rights Committee "to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of any of the rights set forth in the Covenant."⁷⁹

These individuals may submit written communications to the Committee only after they have exhausted all domestic remedies.⁸⁰ The Committee is to bring the communications submitted to it the attention of the State Party concerned which must, within six months, submit written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by it.⁸¹ The Committee considers individual communications, in closed meetings, and forwards its views to the State Party concerned and to the individual.

It is in the assistance of individuals who have exhausted all local remedies and who still believe that they have been the victim of a violation of their human rights that national commissions might also play an invaluable role.

The implementation methods of the Covenant envision a measure of international supervision over states' sovereignty as governments have now realized that human rights matters must be universally implemented. However, the future of international implementation of human rights requires more than the repetition of the machinery existing under the Covenants. Innovations and improvements in this machinery must be made, and it is submitted that national commissions readily lend themselves to furthering international implementation of human rights.

V. CONCLUSION

The assumption by the international community that human rights matters are so important that they transcend state boundaries, has been borne out with the acceptance by states of international standards of human rights. In addition, states have also come to accept a measure of international supervision and accountability for their actions concerning these rights.

77. See Articles 41 and 42.

78. See Article 42.

79. Preamble to the Optional Protocol.

80. Protocol Article 2.

81. Protocol Article 4.

The experience of the last thirty years has revealed that it has not been sufficient to leave the observance of human rights to states on a purely national basis and that there has to be some degree of international supervision. But the measures accorded to international bodies to supervise these rights have, for the most part, been comparatively weak and the resistance to the extension of international implementation powers has been quite strong. It is submitted that this trend is likely to continue for some time, due partly to the delicate nature of the relations involved between governments and their governed, and partly to the shield of national sovereignty which Article 2, para 7 of the Charter gives to states. It is further submitted that national commissions may play an invaluable role in aiding both administrations and individuals in the promotion and protection of human rights. Similarly, by helping to translate into action at the local, the most fundamental level, the practical application of the defined and declared international standards, national commissions can help create a national climate of opinion that is conducive to the international implementation of human rights.

Perhaps there has been a tendency on the part of the international community to consider human rights too abstractly. The adoption of international human rights instruments by the United Nations, although very salutary, does not of itself ensure the application or the enjoyment of their provisions.

The effective reduction of abstract concepts of human rights to reality can only be done within a legal framework. As catalysts in this reduction process, national commissions may help in the assimilation of international norms and standards into individual legal systems. The legal framework that bounds the enjoyment of human rights is national legislation, which is expected to reflect the principal values, *mores* and interests of society. In order to effect legislative change it is necessary to influence public opinion, and it is in this area of opinion shaping and changing that national commissions might exert considerable suasion and pressure to bring about change.

Within any society, the human rights standards that are formulated are ultimately moulded by informed public opinion. Generally, the human rights standards which are expected are those of the educated segment of society, but in many countries, the very existence of fundamental rights is unknown to large sections of the populace. Accordingly, one of the priority tasks of national commissions is to educate and raise the level of expectations of the community at large in the field of human rights. And to do this,, national commissions must have an effective influence on public and published opinion.

If, as has been suggested, national commissions are established and their membership is both highly respected and widely representative with sufficient influence to help shape public opinion, they can aid immeasurably in improving the quality of all men's lives.

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