

COMMISSION ON HUMAN RIGHTS

SECOND SESSION

DRAFT INTERNATIONAL COVENANT ON HUMAN RIGHTS*

(Numbering of Articles corresponds to numbering
in Part II, Chapter II of the Report of the
Working Group on the Convention (Covenant)
(Document E/CN.4/56.)

Footnote:

* The Representative of Egypt, while voting for this draft convention, wished to stress the fact that it was but a preliminary draft for submission to Governments, whose experts would have to go over it carefully and put it in correct final form. The Representative of the Union of Soviet Socialist Republics considered that the drafting of a convention is premature before the end of the work of the preparation of the text of the Declaration on Human Rights and before discussion of the opinion of the Governments on this Declaration. For these reasons, he voted against taking any decision on this draft convention.

ARTICLE I

The States parties hereto declare that they recognize the principles set forth in Part II hereof as being among the human rights and fundamental freedoms founded on the general principles of law recognized by civilized nations.

ARTICLE 2

The States parties to the present Instrument undertake to ensure:

- (a) that its laws secure to all persons under its jurisdiction, whether citizens, persons of foreign nationality or stateless persons, the enjoyment of these human rights and fundamental freedoms;
- (b) that such laws, respecting these human rights and fundamental freedoms, conform with the general principles of law recognized by civilized nations;
- (c) that any person whose rights or freedoms are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
- (d) that such remedies shall be enforceable by a judiciary whose independence is secured; and
- (e) that its police and executive officers shall act in support of the enjoyment of these rights and freedoms.

ARTICLE 3

On receipt of a request to this effect from the Secretary-General of the United Nations made under the authority of a resolution of the General Assembly, the Government of any party to this Bill shall supply an explanation as to the manner in which the law of that State gives effect to any of the said provisions of this Bill of Rights.

ARTICLE 3 A

(1) In time of war or other public emergency, a State may take measures derogating from its obligations under Article 2 above to the extent strictly limited by the exigencies of the situation.

(2) Any State party hereto availing itself of this right of derogation shall inform the Secretary-General of the United Nations fully of the measures which it has thus enacted and the reasons therefor. It shall also inform him as and when the measures cease to operate and the provisions of Article 2 are being fully executed.

ARTICLE 4

It shall be unlawful to deprive any person of his life save in the execution of the sentence of a court following his conviction of a crime for which this penalty is provided by law.

(The Representative of India stated that she was of the view that a second paragraph of this article proposed by the Working Group (document E/CN.4/56, page 6) should be omitted on the ground that it is not of general application and because every State should, in her opinion, be left free to legislate according to its own needs and the convictions of its people."

ARTICLE 5

It shall be unlawful to subject any person to any form of physical mutilation or medical or scientific experimentation against his will.

ARTICLE 6

No one shall be subjected to torture or to cruel or inhuman punishment or to cruel or inhuman indignity.

ARTICLE 7

1. No person shall be held in slavery or servitude.

2. No person shall be required to perform forced or compulsory labour in any form other than labour exacted as a punishment for crime of which the person concerned has been convicted by due process of law.

3. For the purposes of this Article, the term "forced or compulsory labour" shall not include:

(a) any service of a purely military character, or service of a non-military character in the case of conscientious objectors, exacted in virtue of compulsory military service laws;

(b) any service exacted in cases of emergency created by fire, flood, famine, earthquake, violent epidemic or epizootic disease, invasion by animals, insect or vegetable pests, or similar calamities or other emergencies threatening the life or well-being of the community;

(c) any minor communal services considered as normal civic obligations incumbent upon the members of the community provided that these obligations have been accepted by the members of the community concerned directly or through their directly elected representatives.*

(The Representative of Lebanon moved the addition of the following phrase to Article 7, paragraph 3, part (a) of the convention: "provided that the civilian service of conscientious objectors be compensated with adequate maintenance and pay." The proposal signifies by "maintenance" food, clothing and shelter; by "pay" the same pay as is received by the soldier of the lowest rank. This motion was defeated by a vote of 6 to 4, with 7 abstentions. The Representative of Lebanon wishes this amendment to be considered further in the future.)

ARTICLE 8

1. No person shall be subjected to arbitrary arrest or detention.

2. No person shall be deprived of his liberty save in the case of:

(a) the arrest of a person effected for the purpose of bringing him before a court on a reasonable suspicion of having

committed a crime or which is reasonably considered to be immediately necessary to prevent his committing a crime;

(b) the lawful arrest and detention of a person for non-compliance with the lawful order or decree of a court;

(c) the lawful detention of a person sentenced after conviction to deprivation of liberty;

(d) the lawful detention of persons of unsound mind;

(e) the parental or quasi-parental custody of minors;

(f) the lawful arrest and detention of a person to prevent his effecting an unauthorized entry into the country;

(g) the lawful arrest and detention of aliens against whom deportation proceedings are pending.

3. Any person who is arrested shall be informed promptly of the charges against him. Any person who is arrested under the provisions of sub-paragraphs (a) or (b) or paragraph 2 of this Article shall be brought promptly before a judge, and to trial within a reasonable time or to be released.

4. Every person who is deprived of his liberty shall have an effective remedy in the nature of "habeas corpus" by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

5. Every person shall have an enforceable right to compensation in respect of any unlawful arrest or deprivation of liberty.*

- (1. * The Representative of India felt that it would be desirable to add the words "and to prevent evasion of legal process" to paragraph 2 (b) in view of the procedure obtaining in most countries. She also felt that in paragraph 3 of the same article words should be added to except from provision of the first sentence of the Article offences that do not always require legal proceedings, e.g., orders in regard to aliens. 2. The Representative of the United States requested that a footnote be inserted indicating that it was the sense of the working group which drafted the article that the requirements of the paragraph could be satisfied by the bona fide provision of private remedies as well as by remedies for compensation by the State.* 3. The Representative of the United States also was not sure that the text adopted covers adequately all cases of civil arrest. She felt that paragraph 3 might not clearly give adequate safeguards to

ARTICLE 9

No person shall be imprisoned or held in servitude in consequence of the mere breach of a contractual obligation.

ARTICLE 10

Subject to any general law not contrary to the purposes and principles of the United Nations Charter and adopted for specific reasons of security or in the general interest there shall be liberty of movement and free choice of residence within the borders of each state.

Any person who is not subject to any lawful deprivation of liberty or to any outstanding obligations with regard to national service shall be free to leave any country including his own.

ARTICLE 11

No alien legally admitted to the territory of a State shall be arbitrarily expelled therefrom.

ARTICLE 12

In the determination of any criminal charge against him or of any of his civil rights or obligations, every person is entitled to a fair hearing before an independent and impartial tribunal and to the aid of a qualified representative of his own choice. No person shall be convicted or punished for crime except after public trial.

ARTICLE 13

No person shall be held guilty of any offence on account of any act or omission which did not constitute such an offence at the time when it was committed, nor shall he be liable to any greater punishment than that prescribed for such offence by the law in force at the time when the offence was committed.

Nothing in this Article shall prejudice the trial and

punishment of any person for the commission of any act which, at the time it was committed, was criminal according to the general principles of law recognized by civilized nations.

ARTICLE 14

No person shall be deprived of his juridical personality.

ARTICLE 15

1. Every person shall have the right to freedom of religion, conscience and belief, including the right, either alone or in community with other persons of like mind, to hold and manifest any religious or other belief, to change his belief, and to practise any form of religious worship and observance, and he shall not be required to do any act which is contrary to such worship and observance.

2. Every person of full age and sound mind shall be free, either alone or in community with other persons of like mind, to give and receive any form of religious teaching and to endeavour to persuade other persons of full age and sound mind of the truth of his beliefs, and in the case of a minor the parent or guardian shall be free to determine what religious teaching he shall receive.

3. The above rights and freedoms shall be subject only to such limitations as are prescribed by law and are necessary to protect public order and welfare, morals and the rights and freedoms of others.

ARTICLE 16

(The Commission decided not to elaborate a final text on this Article until it had before it the views of the Sub-Commission on Freedom of Information and of the Press and of the International Conference on Freedom of Information. The texts reproduced below have been proposed by the Drafting Committee and by the Representative of the United States respectively.)

(Drafting Committee draft)

1. Every person shall be free to express and publish his ideas orally, in writing, in the form of art or otherwise.
2. Every person shall be free to receive and disseminate information of all kinds, including both facts, critical comment and ideas by books, newspapers, or oral instruction, and by the medium of all lawfully operated devices.
3. The freedoms of speech and information referred to in the preceding paragraphs of this Article may be subject only to necessary restrictions, penalties or liabilities with regard to: matters which must remain secret in the interests of national safety; publications intended or likely to incite persons to alter by violence the system of Government, or to promote disorder or crime; obscene publications; (publications aimed at the suppression of human rights and fundamental freedoms); publications injurious to the independence of the judiciary or the fair conduct of legal proceedings; and expressions or publications which libel or slander the reputations of other persons.

(United States draft)

Every one shall have the right to freedom of information, speech and expression. Every one shall be free to hold his opinion without molestation, to receive and seek information and the opinion of others from sources wherever situated, and to disseminate opinions and information, either by word, in writing, in the press, in books or by visual, auditive or other means.*

* It should be noted that the United States draft proposal for a Convention contains a general limitation article which would be applicable to this Article and which reads as follows: "The full exercise of these rights requires recognition of the rights of others and protection by law of the freedom, general welfare and security of all."

ARTICLE 17

All persons shall have the right to assemble peaceably for any lawful purpose including the discussion of any matter, on which under Article 16 any person has the right to express and publish his ideas. No restrictions shall be placed on the exercise of this right other than those necessary for:

- (a) the protection of life or property;
- (b) the prevention of disorders; or
- (c) the prevention of the obstruction of traffic or the free movement of others.

ARTICLE 18

All persons shall be free to constitute associations, in whatever form may be appropriate under the law of the State, for the promotion and protection of their legitimate interests and of any other lawful object, including the dissemination of all information of which under Article 16 the dissemination is unrestricted. The rights and freedoms set forth in Articles 15 and 16 shall be enjoyed by such associations.

ARTICLE 19

Every person shall be entitled to the rights and freedoms set forth in this (Bill of Rights, Convention, Covenant) without distinction as to race, which includes colour, sex, language, religion, political or other opinion, property status, or national or social origin. Every person, regardless of office or status, shall be entitled to equal protection under the law against any arbitrary discrimination or against any incitement to such discrimination in violation of this (Bill of Rights, Convention, Covenant).

ARTICLE 21

1. This Bill of Rights shall be open for accession to every State member of the United Nations or party to the Statute of the International Court of Justice and to every other State whom the General Assembly of the United Nations shall, by resolution, declare to be eligible.

(Alternative United States suggestion: "It being in the interest of humanity that the rights and obligations enunciated herein shall be as wide-spread as possible, this Convention shall be open for accession by all States, whether or not members of the United Nations.")

2. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations, and as soon as two-thirds of the States Members of the United Nations have deposited such instruments the Bill of Rights shall come into force between them. As regards any State which accedes thereafter, the Bill of Rights shall come into force on the date of the deposit of its instrument of accession.

3. The Secretary-General of the United Nations shall inform all members of the United Nations and the other States referred to in paragraph 1 above of the deposit of each instrument of accession.

ARTICLE 22

In the case of a Federal State, the following provisions shall apply:

(a) With respect to any Articles of this Bill of Rights which the federal government regards as wholly or in part appropriate for federal action, the obligations of the federal governments shall, to this extent, be the same as those of parties which are not federal states;

(b) In respect of Articles which the federal government regards as appropriate under its constitutional system, in whole or in part, for action by the constituent States, Provinces or Cantons, the federal government shall bring such provisions, with a favorable recommendation, to the notice of the appropriate authorities of the States, Provinces or Cantons.

ARTICLE 23

This Bill of Rights shall apply in respect of any Colony or overseas territory of a State party hereto, or to any territory subject to the suzerainty or protection of such State, or to any territory in respect of which such State exercises a mandate or trusteeship, when that State has acceded on behalf and in respect of such Colony or territory.

The State concerned shall, if necessary, seek the consent at the earliest possible moment of the governments of all such colonies and territories to this Bill and accede on behalf and in respect of each such colony and territory immediately its consent has been obtained.

ARTICLE 24

1. Amendments to this Bill of Rights shall come into force when they have been adopted by a vote of two-thirds of the members of the General Assembly of the United Nations and ratified in accordance with their respective constitutional processes by two-thirds of the parties to this Bill.

2. When such amendments come into force they shall be binding on those parties which have ratified them, leaving other parties still bound by the provisions of the Bill which they have accepted by accession including earlier amendments which they have ratified.

ARTICLE 25

In construing the Articles of this Bill of Rights, the several Articles shall be regarded in their relation to each other.

NEW ARTICLE

Any advocacy of national, racial or religious hostility that constitutes an incitement to violence shall be prohibited by the law of the State.

NEW ARTICLE

Nothing in this Convention shall be considered to give any person or State the right to engage in any activity aimed at the destruction of any of the rights and freedoms prescribed herein.

COMMENTARY

Comment No. 1

The Representative of the United Kingdom considers that the general limitation clause proposed by the United States would be open to abuse by signatory States, and that the production of a convention rendered innocuous by such a clause would bring the convention and the United Nations into discredit. In the view of the United Kingdom the only way to achieve progress is by a fairly rightly drawn convention which will prescribe as precisely as possible the limitations permissible in respect of each separate right and freedom. While appreciating that a convention in so precise a form will not be easy to achieve, he believed that it is well within the bounds of possibility and abundantly worth the effort to achieve it. He suggested that it might be well that only a limited number of members of the United Nations would subscribe immediately to such a convention as the United Kingdom proposed, and it might not come into force for some time, but when it did come into force it would register great progress. Moreover, once such a convention was in existence, there would be certain pressure on members who had not acceded to it to begin with, to accede to it and conform with its terms.

Comment No. 2

The following comment, on Article 20 of the Convention, was submitted by the Representative of the United States. The Representatives of China and of Uruguay associated themselves with it:

"The United States believes that the Drafting Committee should seriously consider whether it is not better to have one overall limitation clause than to try to spell out every possible limitation in each article."