

COMMISSION ON HUMAN RIGHTS

ANALYSIS OF VARIOUS DRAFT INTERNATIONAL BILLS OF RIGHTS
(ITEM 8 ON PROVISIONAL AGENDA)

(Memorandum by the Division of Human Rights)

The present paper deals with eighteen draft International Bills of Rights and comments thereon that have come to the attention of the Division of Human Rights. These drafts are listed in the chronological order of their publication in the Annex which also provides bibliographical details.

The paper is divided into three parts:

general observations (Section I);

a discussion of those elements of an International Bill of Rights which are substantially the same as those of national Bills (Sections II - III);

and, finally, a more elaborate discussion of those elements which are special or particular to an International Bill of Rights (Sections IV - VI).

I. GENERAL OBSERVATIONS

The various drafts differ in many respects. The great majority of them were written during World War II and in the period following the war; but some of them date back to the pre-war era. Two of the Bills were written in the United Kingdom, fifteen in the Western Hemisphere and one was adopted by the Institut de Droit International at its session of October 1929 in New York. One of them originated with a Government (Cuba), one with an inter-governmental organization (the Inter-American Juridical Committee), some with private international or national organizations, some were drafted by

international lawyers, and some by internationally-minded writers. The draft prepared by the American Law Institute was sponsored, at the last meeting of the General Assembly, by the Government of Panama; and the draft prepared by the Inter-American Juridical Committee has been brought to the attention of the United Nations by the Government of Chile.

Some of the drafts are very short, others, including commentaries, cover many pages. Dr. Alvarez' draft contains only two articles whereas the draft prepared by the Commission to Study the Organization of Peace contains twenty-two articles. As already indicated, some of the drafts are accompanied by commentaries whereas others are limited to texts of proposed articles. Some of the drafts also include elaborate introductory notes and explanations. Some of the drafts include preambles outlining the philosophy on which the draft is based whereas others do not. Some contain lists of rights only while others describe these rights in a variety of different ways.

The scope of the drafts naturally reflects the philosophy and general approach of the authors. All of them contain provisions defining the status of equality and certain elements of the status of liberty; but only the drafts written during and after World War II deal with the problem of social security.

For the most part, the drafts are formulated as catalogues of the rights of individuals but a few also enunciate the duties of the State towards individuals. Some also stress the duty of the State to protect the rights of individuals. Some of them are formulated in absolute terms, without restriction or reservation of the rights enunciated, whereas others contain general qualifications in favour of the State and the rights of others, and still others contain specific restrictions with or without reference to national law. Only two of the drafts deal with the duties of individuals as distinguished from their rights. In Professor Lauterpacht's draft, the substantive provisions are divided into two categories; one

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of which is to be enforced by both national and international law and the other by national law only. The other drafts make no such distinctions. None of the drafts contain provisions relating to the possible suspension of the Bill. Finally, the great majority of the drafts do not attempt to deal with the problem of implementation.

II. THE PREAMBLE OF THE BILL

Some of the drafts open with preambles. The principal elements of these preambles are as follows:

1. Metaphysical: In the preamble to the draft of the late Mr. H. G. Wells, it is stated that "a man comes into this world through no fault of his own" and also that "he is manifestly a joint inheritor of the accumulations of the past".
2. Legal-philosophical: The draft of the Institut de Droit International states that "the juridical conscience of the civilized world demands the recognition for the individual of rights preserved from all infringement on the part of the State".
3. Political-philosophical: The draft of the American Law Institute refers to democracy as a means of reconciling the interests of society and the individual.
4. References to national and international precedents.
5. Professor Lauterpacht's draft refers to the peace aims of the United Nations.
6. Professor Lauterpacht's draft also states that the denial of the rights of man has proved to be a danger to the peace of the world.
7. The draft of the World Government Association contains quotations from Abraham Lincoln, Woodrow Wilson and Franklin D. Roosevelt.

III. THE SUBSTANTIVE PROVISIONS OF THE BILL

The Status of Equality

Practically all the drafts define the status of equality either in a clause dealing with the persons to whom the Bill shall apply, as a specific right, or as a combination of both. Some of the drafts deal with the status of equality by prohibiting discrimination, but in most

cases the right is defined in positive terms. While some of the drafts only proclaim the principle, others prohibit in elaborate terms the practice of discrimination in specific fields of human activity, e.g. education. Some of them, in an effort to make the principle effective, also deal with indirect discrimination.

Grounds for discrimination are usually listed as race, sex, language and religion, but some of the drafts also list nationality, national origin, professed belief, colour, class, citizenship, civil status, wealth, birth, and culture. Some also refer to "other reasons". Some state the principle that all nationals of a State shall enjoy equality before the law and equal treatment in all respects by the authorities of the State, but none contain any reference to the duty of private persons or corporations to refrain from discrimination. However, one of the drafts stresses the principle of equality of opportunity in various activities and provides for national sanctions in the event of violations of this principle.

2. The Status of Liberty

The major part of the various drafts deals with the status of liberty. The rights listed are: life, personal liberty and its corollaries (prohibition of slavery and compulsory labour, sanctity of the home and secrecy of correspondence), freedom from wrongful interference, freedom of association and of assembly, freedom of speech and of opinion, freedom of information and of the press (sometimes qualified in the interests of responsibility), religious worship and nationality. Certain drafts also provide for a right to petition national authorities for redress of grievances. Three of the drafts mention a right of petition to the United Nations. Special mention is often made of such corollaries of personal liberty as fair trial, freedom from arbitrary detention and the principle of the non-retroactivity of penal laws. A few of the drafts mention the right of asylum either generally or in foreign legations. The draft of the Inter-American Juridical Committee refers to the freedom of

family relations. Many of the drafts stress, in various ways, the right of individuals to choose their rulers and to participate in Government. A majority of the drafts refer to the right to property, either in positive language or by prohibiting unlawful expropriation. Three drafts mention freedom of commerce, navigation and industry, while some also refer to the freedom of migration. Two drafts mention the duty to resist oppression. Finally, the draft of the American Bar Association mentions "freedom to teach and to receive instruction without governmental censorship, control of propaganda."

3. The Status of Social Security

Many of the drafts prepared during and after World War II devote considerable attention to the question of social security. The catalogue is a large one and mentions such rights as those to food and housing, work under suitable conditions (sometimes coupled with the duty to work), security against unemployment, disease and old age, the right to medical care, to education, to recreation and rest, and to share in the benefits of science.

IV. IMPLEMENTATION AND ENFORCEMENT OF THE INTERNATIONAL BILL OF RIGHTS

The great majority of the drafts fail to deal, probably intentionally, with the problem of implementation and enforcement. The draft of the Commission to Study the Organization of Peace says that the provisions of the International Bill of Rights "shall be deemed fundamental principles of international law and of national law of each of the signatory States to be realized by appropriate action of international and national agencies". The same draft also provides that "every State has the duty to provide effective measures for the enforcement within its jurisdiction of the rights and freedoms herein declared, and the United Nations shall take measures to carry out the provisions of the Charter to safeguard these rights and freedoms throughout the world". Similar provisions will be found in the draft of the American Association for the United Nations. The draft of the American Jewish Committee includes a clause to the effect that "no plea of sovereignty shall

ever again be allowed to permit any nation to deprive those within its borders of these fundamental rights on the claim that these are matters of national concern"; but the draft says nothing about the supervision or enforcement of the Bill. Article 20 of the draft of the Inter-American Juridical Committee states that the Bill is to be respected and enforced as part of national law by the administrative and judicial authorities in the same manner as all other laws of the State. In Article 15 of Professor Lauterpacht's draft, it is provided that "every State shall, by appropriate and constitutional means, adopt Part I of this International Bill of Rights as part of its domestic-law and constitution". Two of the drafts expressly state that signatories shall not have the right unilaterally to abrogate or modify the International Bill of Rights.

The American Federation of Labour advocates the creation of "an International Commission charged with the task of facilitation and co-ordinating the promotion and protection of the basic provisions of the International Bill of Rights." Free World, on the other hand, favours the creation of a permanent Committee on the Rights of Every Man which would be established by the General Assembly and instructed to draft an International Bill of Rights and also to assume responsibility for the supervision and enforcement of the Bill.

Professor Lauterpacht suggests that the International Bill of Rights be made "an integral part of the law of nations". The International Bill of Rights would be "placed under the guarantee of the United Nations" and its observance should "be a matter of concern to all the United Nations". He also suggests the creation of an organ to be called the High Commission for the Supervision of the International Bill of Rights. This organ would consist of "independent persons of the highest distinction". Enforcement of the Bill would, however, be a responsibility of the Council of the United Nations. It is to be noted that

Professor Lauterpacht's book was written before the adoption of the Charter. The American Association for the United Nations, on the other hand, suggests that the International Court of Justice be given jurisdiction in cases of violations of the International Bill of Rights.

V. THE INTERNATIONAL BILL OF RIGHTS AND THE PROTECTION OF MINORITIES.

Only four of the drafts studied contain express provisions for the protection of minorities. Parson's draft refers briefly to "the right of ethnic and religious minorities to enjoy equal opportunity for the development of their common humanity". A similar provision will be found in the draft of the American Association for the United Nations. The declaration of the Institut de Droit International states that "it is the duty of every State to recognize the right of every individual both to the free use of the language of his choice and to the teaching of such language". Professor Lauterpacht goes further. Article 12 (Part II) of his draft reads as follows:

"In States inhabited by a substantial number of persons of a race, language or religion other than those of the majority of the population, persons belonging to such ethnic, linguistic or religious minorities shall have the right to establish and maintain, out of an equitable proportion of the available public funds, their schools and cultural and religious institutions and to use their own language before the courts and other authorities and organs of the State."

The avowed purpose of the declaration of the Institut de Droit International was to replace the then existing Minorities Treaties by an instrument of general application. In this connection, reference may also be made to Professor Lauterpacht's remark that "the abandonment of the present system of protection of minorities, without an alternative and compensating international arrangement, would mean a disservice to the minorities, to the cause of the international protection of human rights and to international peace and progress."

VI. THE INTERNATIONAL BILL OF RIGHTS AND THE
DIPLOMATIC PROTECTION OF CITIZENS ABROAD

Not all the drafts make it clear how far their provisions apply to aliens as well as to nationals. Professor Lauterpacht provides for the protection of aliens as follows:

"Aliens shall not be denied the full and equal protection of the preceding articles of this Bill of Rights and of other rights granted to them by the law of the State in which they reside. No alien legally admitted may be expelled except in pursuance of a judicial decision or recommendation as a punishment for offences laid down by law as warranting expulsion." (Article 7, paragraph 2).

None of the drafts attempt to deal with the problem of statelessness, but four of them forbid the arbitrary withdrawal of nationality. The fact that all the drafts use the expression "man", "individual", or "person", (and not "national" or "citizen") would suggest that, in principle, all the rights and freedoms listed therein apply both to nationals and foreigners. It is interesting to note, however, that certain Latin American authors and also the Inter-American Juridical Committee emphasize the principle that an alien enjoys the same civil rights as nationals. This is obviously a reflection of the Calvo doctrine. Alvarez suggests that, in no case, should a non-national "seek to obtain rights differing from those granted to nationals, or to exercise them in a manner other than that provided for by the Constitution and the law". As a reaction to the misuse of diplomatic protection, Gutiérrez suggests that "every individual has the right to be assisted and protected by the State to which he belongs in forms established by treaties and International Law. A person making claims against a State of which he is deemed to be a member according to its laws shall not have this protection. In addition, Gutiérrez says that aliens should not interfere in the political life of the countries of their residence. The draft of the Inter-American Juridical Committee is also concerned with the same problem. Any violation of the International Bill of Rights, affecting a resident alien, shall, it says, first be "decided by the courts of the State itself". Diplomatic intervention is admitted only in cases "in which a denial of justice is alleged by the State of which the alien is a national".

ANNEX

CHRONOLOGICAL LIST OF INTERNATIONAL BILLS OF RIGHTS

1. Dr. Alejandro Alvarez: Sixth Section of a Draft on the "Fundamental Bases of Future International Laws" entitled "International Rights of the Individual and of International Associations", submitted to the Second Session of the American Institute of International Law in Havana, January 1917, (Source: Jose Matos: La segunda sesion del Instituto Americano de Derecho Internacional, Habana, p. 25 ff; English translation by the Secretariat).

2. Declaration of the International Rights of Man, adopted by the Institut de Droit International at its session of 12 October 1921, Briarcliff Lodge, Briarcliff Manor, New York. (Source: Annuaire de Droit International, Session de New-York 1929, pp. 298-300; English version in The American Journal of International Law 1941 - vol. 35 - pp. 663-664).

This Declaration was incorporated by Dr. Alejandro Alvarez (see No. 1) in Section VI of his "Projet de Declaration sur les donnees fondamentales et les grands principes du droit international de l'avenir" constituting part of his book, "La Codification du droit international", being a report submitted to the Institut de Droit International, International Law Association, Union Juridique Internationale, and Academie Diplomatique Internationale, and published in Paris 1931.

3. Declaration of the Rights of Man by H. G. Wells. (Source: The New World Order, London 1940, pp. 139-145).

4. An International Bill of Rights by the Reverend Wilfred Parsons S.J., presented at the Fifteenth Annual Conference of the Catholic Association for International Peace, 14 April 1941. (Source: America's Peace Aims. A Committee Report. The Catholic Association for International Peace, 1312 Massachusetts Avenue, N.W., Washington D.C., p. 23).

5. International Bill of Rights suggested by Rollin McNitt, Dean Emeritus of the School of Law of Southwestern University, Los Angeles, vice-president and member of the board of governors of the Lawyers Club. (Source: The Los Angeles Daily Journal, 3 June 1942).

6. International Bill of Rights. Principles of the Rights and Duties of Individuals by Irving A. Isaacs. (Source: The International Bill of Rights and Permanent Peace Concordance by Irving A. Isaacs, Boston 1943).
7. Statement of Essential Human Rights by the American Law Institute. This draft has been submitted to the United Nations by the Government of Panama. (Source: The American Law Institute. Report to the Council of the Institute and Statement of Essential Human Rights by a Committee of Advisers, Representing the Principal Cultures of the World, February 1944. See also doc. 2G/7(2) of the San Francisco Conference, and doc. E/HR/3).
8. Declaration of Human Rights submitted by the American Jewish Committee, January 1945. (Source: The Committee Reporter, January 1945).
9. An International Bill of the Rights of Man by H. Lauterpacht, New York, Columbia University Press, 1945, pp. 67-214.
10. Declaration of the International Rights and Duties of the Individual by Gustavo Gutiérrez. (Source: Gustavo Gutiérrez, La Carta Magna de la Comunidad de las Naciones, Editorial Lex, La Habana, 1945, pp. 484-489: English translation by the Secretariat.)
11. A Charter for the United Nations. Chapter I - The Rights of Every Man, recommended by Free World. (Source: Free World, May 1945, pp. 78-80).
12. Draft Declaration of the International Rights and Duties of Man and accompanying Report, formulated by the Inter-American Juridical Committee in accordance with Resolutions IX and XL of the Inter-American Conference on Problems of War and Peace held at Mexico City, 21 February - 8 March 1945, dated 31 December 1945 (published by the Committee to Study the Organization of Peace, New York 21, N.Y.). This draft has been drawn to the attention of the United Nations by the Government of Chile.
13. Draft Declaration of Human Rights submitted by the Delegation of Cuba to the General Assembly of the United Nations with covering letter of 12 February 1946, addressed to the President of the Economic and Social Council (E/HR/1, 22 April 1946). (This is a different version from that submitted by the Delegation of Cuba on 2 May 1945 to the San Francisco Conference, doc. 2G/14(g), pp. 2-10).

4. Enumeration of subjects for Consideration as to an International Bill of Rights by the American Bar Association (Chicago, Summer, 1945).
5. Bill of Rights submitted to the United Nations by World Government Association (July 1946).
6. Draft of an International Bill of Rights by the American Association for the United Nations and the American Jewish Conference (1946).
7. International Bill of Rights. Proposal submitted by the American Federation of Labour to the Secretary-General of the United Nations on 9 August 1946 (E/CT.2/2).
8. Bill of Human Rights. Text prepared by the Executive Committee of the Committee on Human Rights of the Commission to Study the Organization of Peace (published by International Conciliation, December 1946, No. 426, pp. 562-564 and Introduction, pp. 558-561). (In the same issue (pp. 551-557), an article by James T. Shotwell: "The Idea of Human Rights" reprinted from the Survey Graphic of December 1946. Cf. also two earlier studies published by the same Commission: "Human Rights and the World Order" by Quincy Wright, 1943, and Fourth Report of the Commission, Part III: International Safeguard of Human Rights, May 1944).
