

THE DRAFT INTERNATIONAL DECLARATION AND COVENANT ON HUMAN RIGHTS*

One of the purposes of the United Nations is "to achieve international cooperation . . . in promoting and encouraging respect for human rights and fundamental freedoms for all, without distinction as to race, sex, language, or religion". The Report of the Second Session of the Commission on Human Rights which was held in Geneva in December 1947 constitutes an important step towards this objective. For the Commission, which consists of eighteen officially designated representatives of States, elected by the Economic and Social Council, has already produced three important documents: a Draft Declaration on Human Rights, a Draft Covenant on Human Rights, and Suggestions for the International Implementation or Enforcement of the Covenant.

These Drafts and Suggestions have been forwarded to the fifty-seven Member States of the United Nations for their comments; and on May 3rd of this year the Drafting Committee of the Commission on Human Rights will modify and complete the Draft Declaration and Covenant on the basis of the comments received. The Commission itself will meet again on May 17th and will draw up its final report on the matter to the Economic and Social Council, which will discuss the whole question at length in its session in July. If this time-table is respected, the Third Session of the General Assembly, which meets in Europe in September, will have before it a Draft Declaration and Draft Covenant on Human Rights.

The Draft Declaration is meant to take the form of a resolution of the General Assembly and will not therefore have binding force in international law. The Draft Covenant on the other hand will take the form of an international treaty or convention and will be binding on States acceding to it. Both Drafts are reproduced in this issue of the Canadian Bar Review. Equally interesting, however, are the suggestions regarding the implementation or enforcement of the Covenant. These suggestions have not yet been reduced to the form of draft articles and are therefore not reproduced. The general idea underlying them is, however, that international machinery should be created which would make use of conciliatory and diplomatic as well as, ultimately, judicial measures. Benefiting from the experience of the League of Nations in the enforcement of the minorities

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treaties, the Commission has suggested that a small body of not less than five independent persons might be set up by the Economic and Social Council. This body would keep itself informed regarding the observation of the provisions of the Covenant in States parties thereto and receive petitions or communications from individuals, groups and associations, as well as from States. It would consider these communications in private session and when it was satisfied that there had been a violation of the Covenant attempt to remedy the situation by diplomatic negotiations with the State in question. Only if it failed to obtain satisfaction would the matter be referred to the Commission on Human Rights, which, acting as a kind of international Crown Prosecutor, would, after all attempts to settle the matter diplomatically had failed, bring the matter before an International Court, which might be either the present International Court of Justice or one of its chambers, or a new International Court of Human Rights. This short exposé of the suggestions of the Commission regarding implementation is an over-simplification of an extremely complicated annex to the Commission's Report which should be studied in the original. It is also necessary to add that, while these suggestions have gone forward as the suggestions of the Commission, even the Commission itself does not consider itself bound by them and the whole matter of implementation or enforcement will therefore remain vague and uncertain until after the Third Session of the Commission. Even now, however, it is possible to say that the Commission on Human Rights has already made an important contribution to the solution of a problem that has been in the forefront since the beginning of the institution of Government and that there is a legitimate reason for hoping that the General Assembly this year will adopt an instrument defining those human rights and fundamental freedoms on which there can now be international agreement and setting up international machinery for their implementation and enforcement.

The texts of the Draft Declaration on Human Rights and of the Draft Covenant on Human Rights follow:—

DRAFT INTERNATIONAL DECLARATION ON HUMAN RIGHTS

Article 1

All men are born free and equal in dignity and rights. They are endowed by nature with reason and conscience, and should act towards one another like brothers.

Article 2

In the exercise of his rights everyone is limited by the rights of others and by the just requirements of the democratic State. The individual owes duties to society through which he is enabled to develop his spirit, mind and body in wider freedom.

Article 3

1. Every one is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, (which includes colour), sex, language, religion, political or other opinion, property status, or national or social origin.

2. All are equal before the law regardless of office or status and entitled to equal protection of the law against any arbitrary discrimination, or against any incitement to such discrimination, in violation of this Declaration.

Article 4

Every one has the right to life, to liberty and security of person.

Article 5

No one shall be deprived of his personal liberty or kept in custody except in cases prescribed by law and after due process. Every one placed under arrest or detention shall have the right to immediate judicial determination of the legality of any detention to which he may be subject and to trial within a reasonable time or to release.

Article 6

Every one shall have access to independent and impartial tribunals in the determination of any criminal charge against him, and of his rights and obligations. He shall be entitled to a fair hearing of his case and to have the aid of a qualified representative of his own choice, and if he appears in person to have the procedure explained to him in a manner in which he can understand it and to use a language which he can speak.

Article 7

1. Any person is presumed to be innocent until proved guilty. No one shall be convicted or punished for crime or other offence except after fair public trial at which he has been given all guarantees necessary for his defence. 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.

2. 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.

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

Article 8

Slavery, in all its forms, being inconsistent with the dignity of man, shall be prohibited by law.

Article 9

Every one shall be entitled to protection under law from unreasonable interference with his reputation, his privacy and his family. His home and correspondence shall be inviolable.

Article 10

1. 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 general interest, there shall be liberty of movement and free choice of residence within the border of each State.

2. Individuals shall have the right to leave their own country and, if they so desire, to acquire the nationality of any country willing to grant it.

Article 11

Every one shall have the right to seek and be granted asylum from persecution. This right will not be accorded to criminals nor to those whose acts are contrary to the principles and aims of the United Nations.

Article 12

Every one has the right everywhere in the world to recognition as a person before the law and to the enjoyment of fundamental civil rights.

Article 13

1. The family deriving from marriage is the natural and fundamental unit of society. Men and women shall have the same freedom to contract marriage in accordance with the law.

2. Marriage and the family shall be protected by the State and Society.

Article 14

1. Every one has the right to own property in conformity with the laws of the State in which such property is located.

2. No one shall be arbitrarily deprived of his property.

Article 15

Every one has the right to a nationality.

All persons who do not enjoy the protection of any government shall be placed under the protection of the United Nations. This protection shall not be accorded to criminals nor to those whose acts are contrary to the principles and aims of the United Nations.

Article 16

1. Individual freedom of thought and conscience to hold and change beliefs is an absolute and sacred right.

2. Every person has the right, either alone or in community with other persons of like mind and in public or private, to manifest his beliefs in worship, observance, teaching and practice.

(Concerning the following two Articles, 17 and 18, the Commission decided not to elaborate a final text 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.)

Article 17

(1. Every one is free to express and impart opinions, or to receive and seek information and the opinion of others from sources wherever situated.)

(2. No person may be interfered with on account of his opinions.)

Article 18

(There shall be freedom of expression either by word, in writing, in the press, in books or by visual, auditive or other means. There shall be equal access to all channels of communication.)

Article 19

Every one has the right to freedom of peaceful assembly and to participate in local, national and international associations for purposes of a political, economic, religious, social, cultural, trade union or any other character, not inconsistent with this Declaration.

Article 20

Every one has the right, either individually, or in association with others, to petition or to communicate with the public authorities of the State of which he is a national or in which he resides, or with the United Nations.

Article 21

Every one without discrimination has the right to take an effective part in the Government of his country. The State shall conform to the will of the people as manifested by elections which shall be periodic, free, fair and by secret ballot.

Article 22

1. Every one shall have equal opportunity to engage in public employment and to hold public office in the State of which he is a citizen or a national.

2. Access to public employment shall not be a matter of privilege or favour.

Article 23

1. Every one has the right to work.

2. The State has a duty to take such measures as may be within its power to ensure that all persons ordinarily resident in its territory have an opportunity for useful work.

3. The State is bound to take all necessary steps to prevent unemployment.

Article 24

1. Every one has the right to receive pay commensurate with his ability and skill, to work under just and favourable conditions and to join trade unions for the protection of his interests in securing a decent standard of living for himself and his family.

2. Women shall work with the same advantages as men and receive equal pay for equal work.

Article 25

Every one without distinction as to economic and social conditions has the right to the preservation of his health through the highest standard of food, clothing, housing and medical care which the resources of the State or community can provide. The responsibility of the State and community for the health and safety of its people can be fulfilled only by provision of adequate health and social measures.

Article 26

1. Every one has the right to social security. The State has a duty to maintain or ensure the maintenance of comprehensive measures for the security of the individual against the consequence of unemployment, disability, old age and all other loss of livelihood for reasons beyond his control.

2. Motherhood shall be granted special care and assistance. Children are similarly entitled to special care and assistance.

Article 27

Every one has the right to education. Fundamental education shall be free and compulsory. There shall be equal access for higher education as can be provided by the State or community on the basis of merit and without distinction as to race, sex, language, religion, social standing, financial means, or political affiliation.

Article 28

Education will be directed to the full physical, intellectual, moral and spiritual development of the human personality, to the strengthening of respect for human rights and fundamental freedoms and to the combating of the spirit of intolerance and hatred against other nations or racial or religious groups everywhere.

Article 29

1. Every one has the right to rest and leisure.

2. Rest and leisure should be ensured to every one by laws or contracts providing in particular for reasonable limitations on working hours and for periodic vacations with pay.

Article 30

Every one has the right to participate in the cultural life of the community, to enjoy the arts and to share in the benefits that result from scientific discoveries.

Article 31

(The Commission did not take a decision on the two texts below. They are reproduced here for further consideration.)

(Text proposed by the Drafting Committee:)

(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, as far as compatible with public order, to establish and maintain schools and cultural or religious institutions, and to use their own language in the press, in public assembly and before the courts and other authorities of the State.)

(Text proposed by the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities:)

(In States inhabited by well-defined ethnic, linguistic or religious groups which are clearly distinguished from the rest of the population, and which want to be accorded differential treatment, persons belonging to such groups shall have the right, as far as is compatible with public order and security, to establish and maintain their schools and cultural or religious institutions, and to use their own language and script in the press, in public assembly and before the courts and other authorities of the State, if they so choose.)

Article 32

All laws in a State shall be in conformity with the purposes and principles of the United Nations as embodied in the Charter, in so far as they deal with human rights.

Article 33

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

DRAFT INTERNATIONAL COVENANT ON HUMAN RIGHTS

PART I

Article 1

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

Every State, party hereto, undertakes 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 Covenant shall supply an explanation as to the manner in which the law of that State gives effect to any of the provisions of this Covenant.

Article 4

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.

PART II

Article 5

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.

Article 6

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

Article 7

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

Article 8

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.

Article 9

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) of paragraph 2 of this Article shall be brought promptly before a judge, and shall be tried within a reasonable time or 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.

Article 10

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

Article 11

1. 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.

2. 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 12

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

Article 13

1. 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.

2. No person shall be convicted or punished for crime except after public trial.

Article 14

1. 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.

2. 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 15

No person shall be deprived of his juridical personality.

Article 16

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 a community with other persons of like mind, to give and receive any form of religious teaching, 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 17

(The Commission decided not to elaborate a final text on this Article until it had before it the views of the Sub-Commission on the

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.)

(Text proposed by the Drafting Committee:)

(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 facts, critical comment and ideas, by the medium of books, newspapers, oral instructions or any other lawfully operated device.)

(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.)

(Text proposed by the Representative of the United States:)

(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.)

Article 18

All persons shall have the right to assemble peaceably for any lawful purpose including the discussion of any matter on which under Article 17 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 19

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 17 the dissemination is unrestricted. The rights and freedoms set forth in Articles 16 and 17 shall be enjoyed by such associations.

Article 20

Every person shall be entitled to the rights and freedoms set forth in this 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 Covenant.

Article 21

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

Article 22

Nothing in this Covenant 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.

PART III

Article 23

1. This Covenant 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 which the General Assembly of the United Nations shall, by resolution, declare to be eligible.

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 Covenant shall come into force between them. As regards any State which accedes thereafter, the Covenant 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 24

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

(a) With respect to any Articles of this Covenant 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 favourable recommendation, to the notice of the appropriate authorities of the States, Provinces or Cantons.

Article 25

1. This Covenant shall apply in respect of any colony or overseas territory of a State party hereto, or any territory subject to the suzerainty or protection of such State, or 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.

2. 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 Covenant and accede on behalf and in respect of each such colony and territory immediately its consent has been obtained.

Article 26

1. Amendments to this Covenant 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 Covenant.

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 Covenant which they

have accepted by accession, including earlier amendments which they have ratified.

Article 27

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

THE LEGAL PERSON

Before inquiring what are the legal rights of "persons", we must know what we mean by a person and what kinds of persons there may be. In law, a man and a "person" are not synonymous words.

Mankind is made up of all human beings, whether or not members of an organized society, whatever their rank, their age or their sex.

But a person is a human being considered in relation to his place or position in society, with all the rights which assure him his position, and all the duties which his position imposes upon him. Thus, when we speak of the law of persons, we think of a man only in terms of his status, of the part he plays in society—not of the man behind the legal personality.

The word *person*, in its primitive and natural meaning, signified the mask covering the head of actors who played parts in the dramatic representations at Rome and in Greece. The plays were performed in public places and later in amphitheatres so vast that it was impossible for the actors' voices to be heard by all the spectators. So they used the art of suggestion: they covered each actor's head with a mask representing or suggesting his rôle, so contrived that the opening through which he spoke made the voice clearer and more resonant—*vox personabat* (in the sense of the voice resounding through); and hence *persona* the name given to the instrument or mask which amplified the voice.

The word *persona* came in time to be applied to the rôle itself which the actor played, because the face of the mask was likened to the age and character of him who was assumed to be speaking, and might indeed be a portrait of him.

It is in this latter sense of character, part or rôle that the word *persona* is used in law, in opposition to "man", *homo*. When it speaks of "a person", it intends only the status of a man, the rôle he plays in society—not of the individual man *qua* man. Status and person are thus correlative words.

(Translated from Toullier, *Le Droit civil français*, 4th ed., 1834, pp. 133-4)