

COMMISSION ON HUMAN RIGHTS

DRAFTING COMMITTEE

Text of Letter from Lord Dukeston, the United Kingdom representative on the Human Rights Commission, to the Secretary-General of the United Nations

I have the pleasure of transmitting to you herewith, to be laid before the Drafting Committee of the Commission on Human Rights the following documents:

- (a) A draft International Bill of Human Rights.
- (b) A draft resolution which might be passed by the General Assembly when adopting an International Bill of Rights.

2. It is suggested that the International Bill of Rights should be prepared in the form of an instrument which would be approved by the Assembly and submitted to Governments for accession by members of the United Nations, by states parties to the Statute of the International Court of Justice, and by any other state whom the General Assembly of the United Nations shall, by resolution, declare to be eligible. The draft Bill itself requires little explanation. It is intended to contain an enumeration of the Human Rights and fundamental freedoms, provisions as regards execution and enforcement, and certain formal provisions which necessarily accompany the bringing of the Bill into force. The draft Assembly Resolution deals with a number of secondary matters which will assist in the execution of the Bill, but which should be approved in a form which will allow for relatively simple amendment and adaptation. The proposals in the resolution regarding the furnishing of information by signatory States are of considerable importance in this respect.

3. It is understood that the purpose of the Drafting Committee is to produce texts for the consideration of the Human Rights Commission, and that

/the texts

the texts submitted by the Drafting Committee, being the result of the combined efforts of its members working for this purpose, will not bind any delegation which has taken part in the work of the Drafting Committee. In submitting the attached draft Bill and Assembly Resolution the United Kingdom representative is making suggestions for the assistance of the Drafting Committee, and the draft must not be taken as representing the final views of His Majesty's Government in the United Kingdom either as regards the provisions which are contained in the United Kingdom drafts or as regards any matters which are not contained in those drafts.

DRAFT OF RESOLUTION OF GENERAL ASSEMBLY WHEN ADOPTING THE
INTERNATIONAL BILL OF RIGHTS

I.

1. Whereas it is a purpose of the United Nations to achieve international co-operation as a means of encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion; and
2. Article 13 of the Charter provides that the General Assembly shall initiate studies and make recommendations for the purpose of assisting in the realization of the said human rights and fundamental freedoms:

II.

1. Whereas, in conformity with Article 68 of the Charter, the Economic and Social Council set up a Commission to study and recommend measures for the promotion of human rights: and
2. The said Human Rights Commission has reported and recommended the acceptance by all members of an International Bill of Human Rights:

III.

1. Whereas it is also an aim of the United Nations as defined in its Charter to achieve international co-operation in solving international problems of an economic, social, cultural and humanitarian character and to achieve social progress and better standards of life in larger freedom: and

/2. It is through

2. It is through measures taken through the instrumentality of the Economic and Social Council and its organs and through specialized agencies in relationship with the United Nations that the United Nations is seeking to establish international co-operation for the achievement of this aim: and

3. It is through the international co-operation so established that the United Nations can most effectively assist the realization of the right of all persons to work, to education, to social security and similar social and economic rights, which cannot by their nature be defined in the form of legal obligations for states in an instrument such as the International Bill of Rights:

IV.

THE GENERAL ASSEMBLY EXPRESSES the opinion that human rights and fundamental freedoms can only be completely assured by the application of the rule of law and by the maintenance in every land of a judiciary, fully independent and safeguarded against all pressure, and that the provisions of an International Bill of Rights cannot be fulfilled unless the sanctity of the home and the privacy of correspondence are generally respected and unless at all trials the rights of the defense are scrupulously respected, including the principle that trials shall be held in public and that every man is presumed innocent until he is proved guilty.

V.

Considering also that the promotion of human rights and fundamental freedoms will be assisted by full and accurate information on the position in every land with regard to these matters, and that such information should be published by the United Nations under conditions which will best guarantee its objectivity.

THE GENERAL ASSEMBLY ENTRUSTS this function to the Commission for Human Rights and requests the Economic and Social Council to reconsider the terms of reference of the said Commission, having regard to the principles and directives set forth in Annex 2.

/VI.

VI.

Considering further that it is by defining human rights and fundamental freedoms and placing them under the protection of international law and the guarantee of the United Nations that the dignity and worth of the human person will be best secured.

THE GENERAL ASSEMBLY APPROVES the International Bill of Rights which forms Annex 1 to the present Resolution and recommends that all members should accept the obligations thereof.

ANNEX 1

INTERNATIONAL BILL OF HUMAN RIGHTS

Preamble

1. Whereas the peoples of the United Nations have reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person;
2. Whereas it is one of the purposes of the United Nations to achieve international co-operation in promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion;
3. Whereas all men are members of communities and as such have the duty to respect the rights of their fellow men equally with their own;
4. Whereas the just claims of the state, which all men are under a duty to accept, must not prejudice the respect of man's right to freedom and equality before the law and the safeguard of human rights, which are primary and abiding conditions of all just government;
5. Whereas the denial of human rights and fundamental freedoms endangers the general welfare and friendly relations among nations and the enjoyment of such rights and freedoms by all persons must be secured by international law and protected by the organized community of states;
6. Whereas it is expedient to define more exactly the aforesaid human rights and fundamental freedoms and to make provision for their universal observance and protection:

Now therefore the States parties to this International Bill of Rights have accepted the following provisions:

PART I

Article 1

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

/Comment to

Comment to Article 1

The phrase at the end of this Article comes from Article 38 (1) (c) of the Statute of the International Court of Justice. This phrase in the Statute of the Court is with justification considered by many commentators to represent the same principle as the phrases "law of nature" and "jus gentium" which play so great a part in the early development of international law. The conceptions both of the "law of nature" and "jus gentium" have also played a considerable part in the conception of the fundamental rights of man.

Article 2

Every state is, by international law, under an obligation to ensure:

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

Comment to Article 2

Proposals that the provisions of the Bill of Rights should be embodied in the constitutions of states parties to the Bill, or otherwise consecrated by special constitutional guarantees, are not practicable for all countries. Some countries, like the United Kingdom, have no rigid constitution and, as a matter of internal law, it is not possible to surround any provision with any special constitutional guarantee. No enactment can be given a greater authority than an Act of Parliament, and one Act of Parliament can repeal any other Act of Parliament. Therefore, the legal provisions which safeguard human rights can only have as their special

/safeguard

safeguard the solemn international obligations undertaken in this Bill, together with the firm foundation which these principles have in the deepest convictions of Parliament and the people.

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 governments of any party to this Bill will supply an explanation, certified by the highest legal authorities of the state concerned, as to the manner in which the law of that state gives effect to any of the said provisions of this Bill of Rights.

Comment to Article 2 (a) and Article 3

The expression "law" is used in this draft as equivalent to the word "droit" that is, anything a court will enforce including statute law, regulations and common or customary law.

Article 4

1. In time of war or other national 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 5

A failure by any state party hereto to fulfil the obligations under Article 2 is an injury to the community of states and a matter of concern to the United Nations as the community of states organized under the rule of law.

Comment to Article 5

This Article is meant to apply to failures of a substantial

* COMMENT: Section V of the draft resolution to which this Bill is Annex 1 is intended to provide this authority.

character. It is not intended to apply to failures of a trivial or technical character.

Article 6

1. While declaring their readiness to consider the adoption of further procedures designed to strengthen the international protection of fundamental human rights and freedoms, the states parties hereto accept the right of any of them, acting in the interests of the community of states, to bring to the attention of the General Assembly of the United Nations any violation by any of them of the provisions of this Bill of Rights as constituting a situation likely to impair the general welfare or friendly relations amongst nations and as a violation of the purposes and principles of the United Nations within the meaning of Article 14 of the Charter.

2. Any party hereto which is thus alleged to have violated the provisions of this Bill of Rights shall have the right to request the General Assembly to obtain the advisory opinion of the International Court of Justice thereon and to refrain from taking any further action on the matter until this opinion has been obtained, and if such a request is made the parties hereto agree that they are bound to support the request.

Comment to Article 6

It would be possible to insert here an additional provision under which all parties to this Bill would agree that in the event of any alleged violation of the Bill being brought before the General Assembly they would support a proposal that the matter should first be considered by a committee composed only of members of the United Nations who are parties to the Bill.

Article 7

The parties hereto agree that any one of them which is found by a Resolution of the General Assembly adopted by a two-thirds majority

/persistently

persistently to have violated the provisions of this Bill of Rights should be deemed to have violated the principles of the Charter of the United Nations and therefore be liable to expulsion from the organization under Article 6 of the Charter.

PART II

Definition of Human Rights and Fundamental Freedoms

Article 8

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

Article 9

1. No form of slavery shall be permitted.

[A text on the subject of compulsory labour will be inserted here later.]

Article 10

1. No person shall be deprived of his liberty save by an arrest which is 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 or breach of the peace.

2. Every person arrested and detained shall be brought without delay before a judge, who shall either try the case or decide, after hearing evidence, whether there is sufficient case to justify that person's trial and if so whether his liberty shall be restored to him on bail.

3. The period of detention pending trial shall not be unreasonably prolonged.

4. The preceding provisions of this Article do not apply to (i) the lawful detention of a person sentenced after conviction to deprivation of liberty or (ii) lawful detention of persons of unsound mind or (iii) the lawful custody of minors or (iv) the lawful arrest and detention of

/a person

a person to prevent his effecting an unauthorized entry into the country.

5. 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 justified.

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

Article 11

Every 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.

Comment to Article 11

There may also be other outstanding obligations such as those relating to taxation or the maintenance of dependents, of which account should be taken here.

Article 12

No person shall be held guilty of any offence on account of acts or omissions which did not constitute such an offence at the time when they were committed.

Article 13

1. Every person shall be free to hold any religious or other belief dictated by his conscience and to change his belief.

2. Every person shall be free to practice, either alone or in community with other persons of like mind, any form of religious worship and observance, subject only to such restrictions, penalties or liabilities as are strictly necessary to prevent the commission of acts which offend laws passed in the interests of humanity and morals, to preserve public order and to ensure the rights and freedoms of other persons.

3. Subject only to the same restrictions, every person of full age and sound mind shall be free 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.

Article 14

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.

Comment to Article 14

The fundamental provisions of the Bill of Rights relating to freedom of speech and information will be completed by other agreements, resulting from the work of the sub-committee on Freedom of Information and the international conference on the subject.

Comments to Article 14 (3)

(a) The provision in paragraph 3 above, recognizing the right of Governments to impose the necessary restrictions, penalties

/or liabilities

or liabilities on publications likely or intended to incite persons to alter by violence the system of Government, is to be interpreted as strictly confined to such publications as advocate the use of violence, and does not apply to publications advocating a change of government or of the system of Government by constitutional means.

(b) Some doubt is felt as to the suitability of the words "publications aimed at the suppression of human rights and fundamental freedoms" from the point of view of drafting. It may be that these words afford a wider power for the limitation of freedom of publication than is necessary or desirable. On the other hand it may be said that it would be inconsistent for a Bill of Rights whose whole object is to establish human rights and fundamental freedoms to prevent any Government, if it wished to do so, from taking steps against publications whose whole object was to destroy the rights and freedoms which it is the purpose of the Bill to establish. In the last analysis, perhaps, the best definition of a Nazi or Fascist regime is that it is a regime which does not recognize the dignity and worth of the human person and permit individuals to enjoy human rights and fundamental freedoms.

(c) In any case it will be observed that no Government is obliged by the Bill to make use of the powers of limitation which are provided in paragraph 3.

Article 15

All persons shall have the right to assemble peaceably for any lawful purpose including the discussion of any matter, on which under Article 14 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 the protection of life and property and to prevent disorders, the obstruction of traffic and of the free movement of others.

/Article 16

Article 16

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 14 the dissemination is unrestricted. The rights and freedoms set forth in Articles 13 and 14 shall be enjoyed by such associations.

Comment to Article 16

The word "associations" is here used as the widest possible term and is intended to include the creation of entities having juridical personality.

Comment to Part II

This part of this Bill will be completed by provisions prohibiting distinctions based on race, sex, language and religion. No attempt is made to draft these provisions in advance of the reports of the sub-committee on Discrimination and Minorities and also of the Commission on the Status of Women. In any case, Part II as drafted above in fact provides for absence of discrimination seeing that it uses the words "all persons". (See also Article 2 (a) of Part I: "all persons under its jurisdiction, whether citizens, persons of foreign nationality or stateless".)

PART III

Article 17

1. This Bill of Rights is submitted, for the purpose of accession thereto, to every member of the United Nations, to every state 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.

2. Accession shall be effected by the deposit of an instrument with the Secretary-General of the United Nations and the Bill of Rights shall come

/into force

into force as soon as.....* states members of the United Nations have deposited such instruments as regards those states and thereafter as regards each party on the date of the deposit of its instrument of accession.

3. Every deposit of an instrument of accession shall be accompanied by a statement that this Bill had been approved in accordance with the constitutional processes of the state concerned for the acceptance of the obligations of a treaty and by a solemn declaration made by the government of the state concerned that full and complete effect to the provisions of Part II is given by the law of that state.

4. The Secretary-General 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 18

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.

* COMMENT: The number to be given here should not be less than two-thirds of the members of the United Nations.

ANNEX 2

1. All information published by the United Nations relating to human rights should be approved by the Commission for Human Rights before publication. The Commission should be guided in this matter by the principle that accuracy and objectivity in information published is the first essential.
2. Before any information relating to the position in any particular state is published, it should be transmitted to the government of that state which should be given a reasonable time in which to make any comments thereon which it desires. If the government makes any comments and the Commission decides that publication of this information is nevertheless desirable, these comments should be published, together with the information to which they relate.
3. By careful study and selection, the Commission should endeavour to reduce the frequency of the occasions when it transmits information to governments for comments and also the volume thereof.
4. Any explanations transmitted to the Secretary-General under Part I, Article 3 of the Bill of Rights and information given to the Secretary-General under Article 4 (2) will be published automatically. Requests to governments for explanations under Article 3 of Part I shall be made on a decision of the Commission approved by the Economic and Social Council.
5. The Commission should consider the desirability of appointing an expert committee to assist it in the performance of these functions.

Comment on Annex 2

As Section V in the draft Resolution shows, it is proposed to leave to the Economic and Social Council the task of reviewing the terms of reference of the Commission on Human Rights in the light of the provisions of the Bill. Since the first task of the Commission under its existing terms of reference was the preparation of the draft Bill, it is obvious

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that when the Bill comes into operation, the Commission must act under new terms of reference which will be drawn up having particular regard to the provisions of the Bill. All that the draft Assembly Resolution does is to lay down certain provisions which must in any case be included in the future terms of reference. The Economic and Social Council would have to consider the manner in which petitions on Human Rights questions received by the Secretary-General should be dealt with and whether, and if so under what conditions, they should be passed to the Commission. Experience of the minorities procedure of the League of Nations has shown that this is a question which requires very mature consideration and that inappropriate procedure may tend to damage rather than further the advancement of Human Rights. In any case, it is suggested that provisions on these matters should not be included in the Bill itself, as such provisions should be capable of easy adaptation and amendment.
