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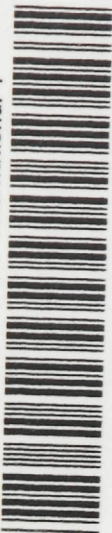
DRAFT DECLARATION OF THE INTERNATIONAL RIGHTS
AND DUTIES OF MAN AND ACCOMPANYING REPORT.

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J. P. Humphrey.

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, February
21—March 8, 1945.

Published by
COMMISSION TO STUDY THE ORGANIZATION OF PEACE
Research Affiliate of
AMERICAN ASSOCIATION FOR THE UNITED NATIONS, INC.
45 East 65th Street, New York 21, New York

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PREFATORY NOTE

The long and careful study given by the Commission to Study the Organization of Peace to the problem of human rights has led it to believe that no more important task lies ahead of the United Nations than the formulation of the "human rights and fundamental freedoms" to which the Charter makes reference in its Preamble and in four separate Chapters.

To this end the Commission has already issued several reports and statements on the international safeguard of human rights, and has called the attention of the American people to the urgency of the problem.

It is therefore with much satisfaction that the Commission now undertakes to print in more readily available form the "Draft Declaration of the International Rights and Duties of Man", recently submitted by the Inter-American Juridical Committee to the American States through the Pan American Union. Dr. Charles G. Fenwick, a member of the Commission, is United States Representative on the Inter-American Juridical Committee.

The draft was prepared at the request of the American States at the time of the Conference in Mexico City in 1945, and it has obviously a wider application than merely to the regional group of the American States. While the articles of the draft are formulated in greater detail than is customary in a national "bill of rights", it is believed by the Juridical Committee that the more elaborate statement, accompanied by an official report, will enable the American Governments and the public at large to understand better the scope of the rights set forth and their practical application under modern conditions.

CLARK M. EICHELBERGER

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Draft Declaration of the International Rights and Duties of Man

Article I

RIGHT TO LIFE

Every person has the right to life. This right extends to the right to life from the moment of conception; to the right to life of incurables, imbecils and the insane. It includes the right to sustenance and support in the case of those unable to support themselves by their own efforts; and it implies a duty of the state to see to it that such support is made available.

The right to life may be denied by the state only on the ground of conviction of the gravest of crimes, to which the death penalty has been attached.

Article II

RIGHT TO PERSONAL LIBERTY

Every person has the right to personal liberty.

The right to personal liberty includes the right to freedom of movement from one part of the territory of the state to another, and the right to leave the state itself. It includes also freedom to establish a residence in any part of the territory, subject only to the restrictions that may be imposed by general laws looking to the public order and security of the state.

The right to personal liberty includes the inviolability of the domicile of the individual and of his personal correspondence.

The state may restrict this right only to the extent necessary to protect the public health, safety, morals and general welfare, in accordance with subsequent provisions of this Declaration.

The right of the state to call upon the services of the individual in time of emergency or to meet the necessities of national defense shall not be regarded as a limitation upon the fundamental right to personal liberty, but merely as a temporary restriction operating during the existence of the national need.

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

Article III

RIGHT TO FREEDOM OF SPEECH AND OF EXPRESSION

Every person has the right to freedom of speech and of expression. This right includes freedom to form and to hold opinions and to

give expression to them in private and in public, and to publish them in written or printed form.

The right to freedom of speech and of expression extends to the use of whatever means of communication are available: freedom to use the postal service, the public utilities of telegraph, telephone and radio communication; freedom to use the graphic arts, the theater, the cinema and other agencies for the dissemination of ideas.

The right to freedom of speech and of expression includes freedom of access to the sources of information, both domestic and foreign.

The right to freedom of speech and of expression includes the special and highly privileged right to freedom of the press.

The only limitations which the state may impose upon this freedom are those prescribed by general laws looking to the protection of the public peace against slanderous or libellous defamation of others, and against indecent language or publications, and language or publications directly provocative of violence among the people.

Censorship of the press is prohibited, whether by direct or indirect means, and all limitations imposed in the interest of public order shall only be applied subsequently to the publication of the material alleged to be of the offensive character described in the law. Censorship of the cinema may be in advance of publication, taking into account the particular form of publication and the necessity of protecting the public against matters offensive to accepted standards of conduct. The state may not retain a monopoly of radio broadcasting so as to deny to the individual the opportunity for the free expression of opinion through that instrumentality of communication.

Article IV

RIGHT TO FREEDOM OF RELIGIOUS WORSHIP

Every person has the right to freedom of religious belief and worship.

This right includes freedom of religious worship in public as well as in private; freedom of religious worship by groups as well as by individuals; freedom to maintain churches and other places of public worship and to assemble in them without restraint; freedom of parents to educate children in their particular religious belief; freedom of religious propaganda in spoken or written form.

The only restrictions which the state may place upon the right of freedom of religious worship are those called for by the requirements of public health, safety and good morals; and all such restrictions must be in accordance with general laws and administered without discrimination.

A distinction is recognized between strictly religious activities and other activities of an economic or financial character associated with the maintenance of religious worship but not forming an essential

part of it. These economic or financial activities may be regulated by the state in accordance with the general laws governing such activities.

Article V

RIGHT TO FREEDOM OF ASSEMBLY

Every person has the right to assemble peaceably with others as a means of giving expression to views upon matters of common interest.

The state has the duty to permit the use of public places for purposes of general assembly. It has the right to be informed of meetings to be held in public places, to designate convenient localities, and to impose conditions upon the use of such places in the interest of the public order and safety. Similar conditions may be imposed upon assemblies in public and in private buildings. But the conditions imposed by the state upon the holding of public meetings must not be such as to impair substantially the right itself to hold such meetings; and no conditions shall be required for the assembly of small groups of persons whether in public or in private places.

The right of assembly includes the right to hold public parades, subject to the same restrictions to which assemblies are subject.

Article VI

RIGHT TO FREEDOM OF ASSOCIATION

Every person has the right to associate with other persons for the protection and promotion of legitimate interests.

The state has the right to adopt regulations governing the activities of associations, provided they are applied without discrimination against a particular group, and provided they do not impair substantially the right of association.

Article VII

RIGHT TO PETITION THE GOVERNMENT

Every person has the right, whether exercised by individual action or in conjunction with others, to petition the government for redress of grievances or to petition in respect to any other matter of public or private interest.

The publication of such petitions shall not be made a ground for penalizing in any way, directly or indirectly, the person or persons making the petition.

Article VIII

RIGHT TO OWN PROPERTY

Every person has the right to own property.

The state has the duty to cooperate in assisting the individual to attain a minimum standard of private ownership of property based upon the essential material needs of a decent life, looking to the maintenance of the dignity of the human person and the sanctity of home life.

The state may determine by general laws the limitations which may be placed upon the ownership of property, looking to the maintenance of social justice and to the promotion of the common interest of the community.

The right of private property includes the right to the free disposal of property, subject, however, to limitations imposed by the state in the interest of maintaining the family patrimony.

The right of private property is subject to the right of the state to expropriate property in pursuance of public policy, just compensation being made to the owner.

Article IX

RIGHT TO A NATIONALITY

Every person has the right to a nationality.

No state may refuse to grant its nationality to persons born upon its soil of parents who are legitimately present in the country.

No person may be deprived of his nationality of birth unless by his own free choice he acquires another nationality.

Every person has the right to renounce the nationality of his birth, or a previously acquired nationality, upon acquiring the nationality of another state.

Article X

RIGHT TO FREEDOM OF FAMILY RELATIONS

Every person has the right to be free from interference in his family relations.

It is the duty of the state to respect and to protect the reciprocal rights of husband and wife in their mutual relations.

Parents have a primary right of control over their children during minority, and they have a primary obligation to maintain and support them.

It is the duty of the state to assist parents in the maintenance of adequate standards of child welfare within the family circle, and to promote as far as possible the ownership of individual homes as a means of fostering better family relations.

The state may restrict the control of parents over their children only to the extent that the parents themselves are unable to perform their duties towards their children or actually fail to do so. Where necessary, the state must itself provide for their protection and support.

Article XI

RIGHT TO BE FREE FROM ARBITRARY ARREST

Every person accused of crime shall have the right not to be arrested except upon warrant duly issued in accordance with the law, unless the person is arrested *flagrante delicto*. He shall have the right

to a prompt trial and to proper treatment during the time he is in custody.

Article XII

RIGHT TO A FAIR TRIAL

Every person accused of crime shall have the right to a fair public hearing of the case, to be confronted with witnesses, and to be judged by established tribunals and according to the law in force at the time the act was committed. No fines shall be imposed except in accordance with the provisions of general laws; and no cruel or unusual punishments.

Article XIII

RIGHT TO PARTICIPATE IN ELECTIONS

Every person, national of the state, has the right to participate in the election of the legislative and executive officers of the government in accordance with the provisions of the national constitution. The practical exercise of this right may, however, be conditioned by the duty of the person to show that he is competent to understand the principles upon which the constitution is based. The constitution of the state shall provide for a government of the people, by the people and for the people.

This right presupposes the right to form political parties.

No person shall be denied the right to hold public office, or to be appointed to any of the public services of the state of which he is a national, upon grounds of race or religion or sex or any other arbitrary discrimination; and the administration of the public services of the state shall, in respect to appointments and terms and conditions of service, be without favor or discrimination.

Article XIV

RIGHT TO WORK

Every person has the right to work as a means of supporting himself and of contributing to the support of his family.

This right includes the right to choose freely a vocation, in so far as the opportunities of work available make this possible, as well as the right to transfer from one employment to another and to move from one place of employment to another. Associated with the right to work is the right to form labor and professional unions.

Every person has the duty to work as a contribution to the general welfare of the state.

The state has the duty to assist the individual in the exercise of his right to work when his own efforts are not adequate to secure employment; it must make every effort to promote stability of employment and to insure proper conditions of labor, and it must fix minimum standards of just compensation.

The state has the right, in time of emergency, to call upon the services of the individual in cases where such services are necessary to meet an urgent public need.

Article XV

RIGHT TO SHARE IN BENEFITS OF SCIENCE

Every person has the right to share in the benefits accruing from the discoveries and inventions of science, under conditions which permit a fair return to the industry and skill of those responsible for the discovery or invention.

The state has the duty to encourage the development of the arts and sciences, but it must see to it that the laws for the protection of trademarks, patents and copyrights are not used for the establishment of monopolies which might prevent all persons from sharing in the benefits of science. It is the duty of the state to protect the citizen against the use of scientific discoveries in a manner to create fear and unrest among the people.

Article XVI

RIGHT TO SOCIAL SECURITY

Every person has the right to social security.

The state has the duty to assist all persons to attain social security. To this end the state must promote measures of public health and safety and must establish systems of social insurance and agencies of social cooperation in accordance with which all persons may be assured an adequate standard of living and may be protected against the contingencies of unemployment, accident, disability and ill-health and the eventuality of old age.

Every person has the duty to cooperate with the state according to his powers in the maintenance and administration of the measures taken to promote his own social security.

Article XVII

RIGHT TO EDUCATION

Every person has the right to education.

The right of children to education is paramount.

The state has the duty to assist the individual in the exercise of the right to education, in accordance with the resources of the state. The opportunities of education must be open to all upon equal terms in accordance with their natural capacities and their desires to take advantage of the facilities available.

The state has the right to fix general standards to which educational institutions must conform, provided that these standards are in accord with other fundamental rights and are the same for public and for private schools.

The right to education involves the right to teach, subject to the restrictions which accompany the right to education.

Article XVIII
RIGHT TO EQUALITY BEFORE THE LAW

All persons shall be equal before the law in respect to the enjoyment of their fundamental rights. There shall be no privileged classes of any kind whatsoever.

It is the duty of the state to respect the fundamental rights of all persons within its jurisdiction and to protect them in the enjoyment of their rights against interference by other persons.

In all proceedings in relation to fundamental rights the state must act in accordance with due process of law and must assure to every person the equal protection of the law.

All restrictions imposed upon fundamental rights must be such only as are required by the maintenance of public order; and they must be general in character and applicable to all persons within the same class.

Article XIX
RIGHTS AND DUTIES CORRELATIVE

Rights and duties are correlative; and the duty to respect the rights of others operates at all times as a restriction upon the arbitrary exercise of rights.

Article XX
**INCORPORATION OF DECLARATION INTO
MUNICIPAL LAW**

The provisions of this Declaration shall be a part of the law of each individual state, to be respected and enforced by the administrative and judicial authorities in the same manner as all other laws of the state.

The provisions of this Declaration shall not be abrogated or modified except in accordance with the terms of an inter-American agreement or an agreement of the United Nations binding upon the American States.

Article XXI
PROCEDURE IN CASES INVOLVING ALIENS

In the case of aliens alleging violation of the foregoing fundamental rights by the state in which they are resident, the complaint shall be decided first by the courts of the state itself; and in cases in which a denial of justice is alleged by the state of which the alien is a national, the case, failing diplomatic settlement, shall be submitted to an International Court, the statute of which shall be included as an integral part of the instrument in which the present Declaration is to be adopted.

Rio de Janeiro, December 31, 1945

(S) Francisco Campos

(S) F. Nieto del Rio

(S) Charles G. Fenwick

(S) A. Gómez Robledo

REPORT ACCOMPANYING THE DRAFT DECLARATION OF THE INTERNATIONAL RIGHTS AND DUTIES OF MAN

I. Circumstances under which the Juridical Committee has undertaken the preparation of a Declaration of the International Rights and Duties of Man

1. The Inter-American Conference on Problems of War and Peace, by Resolution XL of the Final Act of the Conference,* proclaimed the adherence of the American Republics to the principles established by international law for safeguarding the essential rights of man and declared their support of a system of international protection of these rights. At the same time the Conference requested the Inter-American Juridical Committee to prepare a draft Declaration of the International Rights and Duties of Man, to be submitted through the Pan American Union to the American Governments for such comments as they might deem pertinent, in order that the Com-

*The full text of the Resolution is as follows:

INTERNATIONAL PROTECTION OF THE ESSENTIAL RIGHTS OF MAN

Whereas:

The Declaration of the United Nations has proclaimed the need for establishing international protection of the essential rights of man;

In order to make such protection effective it is necessary to define these rights, as well as the correlative duties, in a declaration to be adopted as a convention by the States;

International protection of the essential rights of man would eliminate the misuse of diplomatic protection of citizens abroad, the exercise of which has more than once led to the violation of the principles of non-intervention and of equality between nationals and aliens, with respect to the essential rights of man,

The Inter-American Conference on Problems of War and Peace
Resolves:

1. To proclaim the adherence of the American Republics to the principles established by international law for safeguarding the essential rights of man, and to declare their support of a system of international protection of these rights.

2. To request the Inter-American Juridical Committee to prepare a draft Declaration of the International Rights and Duties of Man, which shall be submitted, through the Pan American Union, to all the Governments of the Continent, which in turn shall submit, within a maximum period of six months, the comments they deem pertinent, in order that the Committee may prepare a final draft of such inter-American instrument.

3. To request the Governing Board of the Pan American Union, after the Committee has prepared this draft and others entrusted to it by this Conference, to convoke the International Conference of American Jurists in order that the Declaration may be adopted as a convention by the States of the Continent.

mittee might prepare a final draft of the document for formal, adoption as an inter-American convention.

2. By Resolution IX of the same Conference, dealing with the reorganization of the inter-American system, the Governing Board of the Pan American Union was called upon to prepare a draft charter for the improvement and the strengthening of the Pan American system. The draft charter is to proclaim the adherence of the American Republics to certain fundamental principles of international law to be set forth in a Declaration of the Rights and Duties of States and in a Declaration of the International Rights and Duties of Man, to be attached as an annex to the charter. Provision was further made that the text of the second Declaration should be the text prepared by the Inter-American Juridical Committee in fulfillment of the request contained in Resolution XL. The date of December 31 was fixed for the submission of the draft charter to the American Governments.

II. Background of the demand for the adoption of a Declaration of the International Rights and Duties of Man

1. Prior to the recent war international law left to each State complete control over the relations between the State and its citizen body. The right of humanitarian intervention was recognized by international law in broad terms; but this was limited to extreme cases in which a government might treat a religious or racial minority with such cruelty as to shock the conscience of the world. Such interventions, which took place but rarely, were based upon the vindication of the moral obligations of civilized people, and they did not involve any relation between the offensive acts and the maintenance of peace.

2. With the outbreak of the recent war, however, it came to be realized that totalitarian governments which denied to their peoples the traditional rights of freedom of speech and of the press and of assembly were in themselves a menace to the peace of the nations. For the denial of these rights made it possible for a government to instill into its people false ideas of the policies of other states and to create sentiments of hatred which formed the psychological basis of future aggression. In its Preliminary Recommendation on Post-War Problems, submitted to the American Governments on September 6, 1942, the Juridical Committee, in commenting upon the factors which contributed to the breakdown of international law and order in 1939, pointed out the ways in which a fanatical spirit of nationalism was able to make its propaganda of racial supremacy effective by shutting off the sources of public information through a rigorous censorship of the press and a government monopoly of broadcasting. "Thus the very wells of thought were poisoned," said the Committee, "and political leaders who were promoting false theories of

nationalism were able to strengthen their hold upon the loyalty of the people thus deceived as to the true attitude of other countries." In reference to the social factors contributing to the breakdown of law and order, the Committee pointed out the relation between economic insecurity and the susceptibility of a people to propaganda in favor of the use of force as a means of remedying a desperate situation when other less drastic remedies appeared inadequate.

3. The Atlantic Charter, signed on August 14, 1941, by President Roosevelt and Prime Minister Churchill, made reference only to the economic aspect of the problem of human rights. The fifth of the principles set forth in the Charter expresses the desire 'to bring about the fullest collaboration between all nations in the economic field with the object of securing, for all, improved labor standards, economic advancement, and social security.' The sixth principle looks forward to the establishment of a peace which will assure that all men in all lands may live out their lives in "freedom from fear and want."

4. The Declaration by the United Nations, signed on January 1, 1942, announced that the Governments signatory of the Declaration had subscribed to the Atlantic Charter as "a common program of purposes and principles," and that they were convinced that victory over their enemies was essential to defend life, liberty and religious freedom "and to preserve human rights and justice in their own lands as well as in other lands." The Declaration thus proclaimed that the protection of human rights in all countries was one of the results which it was hoped might be obtained from victory over the Axis Powers.

5. The protection of the fundamental rights of men in every land may thus be regarded from two distinct points of view. In the first place it is an essential condition of friendly cooperation between nations. A people denied the fundamental right of freedom of speech and of the press and of access to the sources of information cannot cooperate effectively with the peoples of other states because they have no direct contacts with them, no way of obtaining an unbiased understanding of their points of view, no assurance that the policies ascribed to them represent their true attitudes.

In the second place the protection of the fundamental rights of man within each state is part of the larger objective of developing the individual human being as a free, self-reliant and responsible member of the international community. The conception of the state as a cooperative commonwealth, in which the resources of the community must be used to raise the standard of living and to provide a decent subsistence for all of its members has come to dominate modern political thought. Until recent years it was believed that the democratic state adequately fulfilled its purpose if it left to its citizens the freedom necessary for each individual to take advantage of the opportunities of earning a livelihood which appeared to be available to all

where no restraints were put by the state. But the growth of modern industrialism, accompanied by higher conceptions of social obligation, has made the earlier doctrines of extreme individualism no longer applicable. At the same time the organization of the economic life of the state has been found to be necessary to secure equality of opportunity for all and to bring the rewards of labor more into conformity with the contribution of labor to the national welfare.

In addition to the recognition of the changed conditions of modern economic and social life, the conception of democracy has been extended to include a recognition of the moral worth of the individual human being and a realization that man cannot attain his full moral stature under conditions of malnutrition, disease, bad housing and sanitation, and other hurtful surroundings. Respect by man for the rights of other men can only be expected when the individual himself is in possession of the essential conditions of a decent life. Mutual cooperation by the peoples of the world in the attainment of peace and justice will in the future be dependent in large part upon the development within each separate national community of a citizen body characterized by the personal dignity and moral responsibility of each individual member of the group.

III. Specific measures looking to the International Promotion of Fundamental Human Rights

1. In the fall of 1944, delegates of the United States, Great Britain, the Soviet Union and China, having in mind the fulfillment of the pledges of the Moscow Conference of November, 1943, met in Washington and formulated the Dumbarton Oaks Proposals for the establishment of a general international organization for the maintenance of peace and security. Provision was made in Chapter IX of the Proposals, dealing with arrangements for international economic and social cooperation, that the Organization "should facilitate solutions of international economic, social and other humanitarian problems and promote respect for human rights and fundamental freedoms."

2. The submission of the Dumbarton Oaks Proposals to the American Governments for their observations brought forth a number of suggestions looking to the formulation of a specific declaration of rights and duties after the manner of the traditional constitutional guarantees. The Government of Mexico recommended that the Proposals should be amended so as "to incorporate essential human rights in a Declaration of the International Rights and Duties of Man, which, together with a similar declaration of the rights and duties of states, should appear as an annex to the Charter." On its part the Juridical Committee, in its Preliminary Comments and Recommendations upon the Dumbarton Oaks Proposals, suggested

that a specific obligation should be imposed upon each state to keep open the channels of communication and information with other countries in order to promote mutual understanding. This obligation would be one element of an "international bill of rights," which the Committee believed it desirable to include in the Charter.

3. The Conference on Problems of War and Peace, which met in Mexico City on February 21, 1945, gave an additional impulse to the demand for the international protection of human rights and the formulation of a specific declaration setting forth the rights to be protected and the duties accompanying them. Projects were presented by a number of the delegations to the Conference. The Project (No. 24) presented by the Cuban delegation recited the principles upon which a declaration of the rights of man should be based, followed by an enumeration of the substantive rights of person and property both of citizens and of aliens which should be recognized, as well as their procedural rights in cases coming before the national courts. A separate project (No. 27) presented by the same delegation was directed towards the special protection which should be given to the Jews, proposing the creation of a free and democratic state within fixed boundaries.

The project (No. 30) presented by the Mexican Delegation was preceded by an elaborate exposition of motives giving the philosophical and historical background of the problem, followed by a resolution calling upon the Inter-American Juridical Committee to formulate a draft of the proposed declaration of the International Rights and Duties of Man for submission to the American Governments. A special feature of the Mexican project was the suggestion that the Declaration, "by establishing a minimum standard of civilized justice", might do away with the necessity of the diplomatic protection of citizens abroad which had led frequently to the violation of the principle of nonintervention. To this end the project recommended the creation of an inter-American organ which would have the special duty of watching over the regulation and practical application of the principles which were to be proclaimed in the declaration.

The Uruguayan Delegation presented a project (No. 83) characterized by the prominence given to economic rights and social security. A project of the Brazilian Delegation (No. 136), without making specific reference to a declaration of human rights, put stress upon the necessity of raising the standard of living and improving the economic and social condition of the people.

As has been pointed out above, the Resolution (XL) adopted by the Conference on the basis of these several projects, leaves to the Juridical Committee the formulation of the draft of the proposed declaration.

4. The provisions of the Charter of the United Nations looking to the promotion of fundamental rights enlarge upon those of the

Dumbarton Oaks Proposals, reflecting the widespread conviction of the close relation between the protection of fundamental rights and the objective of international peace and justice. The preamble of the Charter, declared to be an integral part of it, proclaims the determination of the peoples of the United Nations "to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women of the nations large and small." Chapter I includes among the "Purposes" of the United Nations to achieve international cooperation "in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion." Chapter IV gives to the General Assembly, among other powers, that of making recommendations for the purpose of "assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion." Chapter IX, dealing with economic and social cooperation, proclaims the obligation of the United Nations to promote "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion." Chapter X, dealing with the Economic and Social Council, provides that the Council may "make recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all", and that to that end among others it may prepare draft conventions for submission to the General Assembly and may call international conferences. The Council is instructed "to set up commissions in economic and social fields and for the promotion of human rights."

These several amendments to the Dumbarton Oaks Proposals were in large part the result of the efforts of delegations representing the American States. A joint amendment to the Purposes of the Organization was introduced by the delegation of Brazil, the Dominican Republic, Ecuador and Mexico. The delegations of Cuba and of Panama both proposed the immediate adoption of a formal Declaration of the Rights and Duties of the Individual. The Uruguayan delegation proposed that the essential human liberties and rights should be defined in a special "Charter of Mankind", to be formulated by a Technical and Juridical Commission and to be submitted to the consideration of the Assembly within a period of six months. The chairman of the United States delegation, although holding that it was not feasible to formulate an enumeration of human rights at the Conference, expressed the belief that the commission on human rights of the Economic and Social Council should promptly undertake to prepare an international bill of rights which could be accepted by all the member nations as an integral part of their own systems of law.

The reiterated emphasis thus put in the Charter upon the promotion of respect for the fundamental rights of man clearly indicates an

intention on the part of the signatory powers not to rest content with the mere proclamation of general principles, but to bring about the practical application of the principles in the relations of the states. The report of the sixth meeting of the Committee in charge of arrangements for social and economic cooperation indicates that it was the general opinion of the members of the Committee, in line with the position taken by a number of the American delegations, that the Assembly of the Organization, when it was constituted, should be called upon to draft a formal declaration of human rights.

IV. Declarations previously elaborated by private associations

1. The Institut de Droit International, at its session of October 12, 1929, held at Briarcliff Manor, New York, adopted a "Declaration of the International Rights of Man". The preamble of the Declaration recites "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"; and it proclaims "the equal right of every individual to life, liberty and property" and the full and entire protection of the right without discrimination, the right to the free practice of religion, the right to the free use by the individual of the language of his choice, the right of nationals to be admitted to educational institutions and to the exercise of professions and of economic activities, and the right to retain nationality.

Progressive as was the proposal however, the Declaration adopted by the Institute of International Law failed to attain practical results. The nations were not yet ready in 1929 to take collective action in the matter. It required the experience of the series of acts of aggression by totalitarian governments to bring about a realization by democratic governments that the adoption of a declaration of the rights of man was not merely an ideal of humanitarian conduct but a necessary condition of international peace.

2. In 1943 the American Law Institute appointed a committee of lawyers and political scientists representing the principal cultures of the world to draft a statement of the rights believed to be essential to make the freedom of the individual effective. The draft prepared by the committee consists of a series of eighteen articles dealing in turn with freedom of religion, freedom of opinion, freedom of speech, freedom of assembly, freedom to form associations, freedom from wrongful interference, fair trial, freedom from arbitrary detention, retroactive laws, property rights, education, work, conditions of work, food and housing, social security, participation in government, equal protection, and limitations on the exercise of rights. A preamble preceding the statement declares that "upon the freedom of the individual depends the welfare of the people, the safety of the state and

the peace of the world", and that it is the function of the state to promote conditions under which the individual can be most free. The list of fundamental freedoms thus includes not only the traditional rights of man against interference by the state, but the newer rights arising from the changed conditions of economic life and the necessity of affirmative action on the part of the state to enable the individual to be free in a highly industrialized and interdependent economic society.

3. After several years of study the Commission to Study the Organization of Peace, which had been established immediately after the outbreak of war in Europe, presented its report dealing with the "International Safeguard of Human Rights", constituting Part III of the Fourth Report of the Commission. In this report the Commission deals first with the significance of human rights in international organization, with the proposed United Nations Conference on Human Rights, with existing international measures for safeguarding human rights, and with the methods of making international standards effective. The report advocated the creation by the United Nations of a special Commission on Human Rights vested with powers of investigation and advice, whose function it would be to develop standards of human rights and measures for their effective safeguard. The Commission would be a quasi-autonomous body of experts, with its own permanent secretariat, submitting recommendations to the general international organization but not dominated by it. At the same time the report recognizes that the protection of human rights is to be effected with due regard for and utilization of the legal system and habits of each country. The Commission on Human Rights would be the "bridge" between international standards and agencies on the one hand and the legal system of each nation on the other. The report expresses the belief that "national legal machinery can be an effective means for carrying out a nation's international duties and for vindicating rights which may accrue to an individual under international law."

4. The General Conference of the International Labor Organization, meeting in its twenty-sixth session in Philadelphia, adopted on May 10, 1944, a declaration of aims and purposes under the name of the "Philadelphia Charter". The Conference reaffirmed the fundamental principles upon which the Organization was based, that labor is not a commodity, that freedom of expression and association are essential to sustained progress, that poverty anywhere constitutes a danger to prosperity everywhere, and that the war against want calls for both national action and international cooperation. On the basis of the principle of its Constitution, that lasting peace can be established only if it is based on social justice, the Conference affirmed that: "All human beings irrespective of race, creed or sex, have the right to pursue their material well-being and their spiritual development in

conditions of freedom and dignity, of economic security and equal opportunity." The attainment of these ends must be the central aim of national and of international policy, and all specific measures, particularly those of an economic and financial character, must be judged in the light of this fundamental objective.

V. Scope of an "International Bill of Rights"

1. In the light of the various documents, both public and private, to which reference has been made, it is clear that the rights to be included in the proposed "Declaration of the International Rights and Duties of Man" must be not only the traditional political rights already recognized in the national constitutions of the great majority of states but the newer economic and social rights of a positive character which have come to be recognized within recent years as a necessary inference from the conception of the democratic state as a cooperative commonwealth seeking the general welfare of all its members.

2. The traditional political rights of man must be reexamined so as to take into account the changed conditions of the present day and to permit the formulation of these fundamental rights in more specific terms than has hitherto been attempted. The great historical proclamations of human rights, the English Magna Charta, the American Declaration of Independence, the French Declaration of the Rights of Man and of Citizen, which have become part of the inheritance of the civilized world have lost none of their theoretical value; they are landmarks in the development of democratic government. The principles they set forth were incorporated into the earliest constitutions of the Latin American states. But the rights they proclaimed were necessarily formulated in broad terms, applicable to the conditions of the times. The guarantees of human rights contained in the later constitutions of the American States in like manner reflect the circumstances which called them forth and the ideals that prevailed at the particular epoch. The Juridical Committee has sought to interpret these provisions so as to bring them as far as possible into harmony and, while preserving their substance, to adapt them to present needs and thus give them renewed vitality.

In view of the widespread denial of these political rights by totalitarian governments of recent years it may be well to restate the basic theory underlying them. The state is not an end in itself, it is only a means to an end; it is not in itself a source of rights but the means by which the inherent rights of the individual person may be made practically effective. Man is, indeed, by his very nature a social being; he finds in the state the opportunity for the development of his moral and material interests; but he does not thereby endow the state with a mystical personality of its own which justifies it in promoting its own power and prestige at the expense of the rights which

are fundamental to the maintenance of the dignity and worth of the individual man himself. As expressed in the Declaration of the Social Principles of America, adopted by the Conference on Problems of War and Peace at Mexico City, "man must be the center of interest of all efforts of peoples and governments." Not only, therefore, are particular governments bound to respect the fundamental rights of man, but the state itself is without authority to override them. The individual man is the ultimate basis of law, and he may claim his essential rights against the state itself as well as against the particular officers of the government.

3. The theory underlying the newer body of economic and social rights is the broad principle of distributive justice. A generation or more ago states had but a limited understanding of the obligations of the community to promote the welfare of its individual citizens. The rights of the individual were rights against the interference of the state, not rights to the active assistance of the state. But within more recent years it has come to be understood that the individual can not always by his own efforts attain the standard of living adequate to the development of his human personality. The complicated economic life of modern states has made the old doctrine of *laissez faire* no longer adequate. At the same time the concept of the democratic state as a cooperative commonwealth whose objective is the general welfare of all of its members has come to be more clearly understood. The relation between spiritual development and standards of material welfare has come to be more generally recognized. The Charter of the United Nations expresses the determination to promote social progress and better standards of life in larger freedom. Thus the fundamental rights of the individual may be regarded as growing with the growth of civilization, taking on new forms with the newer ideals of social justice.

VI. Analysis of Detailed Rights and Duties

There is no uniformity in the various classifications of fundamental rights that have been followed in the constitutions of states or in the draft declarations submitted by private associations or individual writers. While it would appear desirable to list the various rights in the order of their importance, this cannot be done in any rigid way in view of the fact it would be difficult to obtain agreement upon the relative importance of particular rights; and at the same time the exercise of one right is as a rule associated in practice with the exercise of another right. It is, however, feasible to distinguish between the older body of political rights, directed against the interference of the state with the liberty of the individual, and the newer body of economic and social rights which call for affirmative action on the part of the state. Moreover, the older body of political rights permits

a distinction between the normal rights of the individual to the enjoyment of certain freedoms and the special rights of persons accused of crime. The fundamental right of equality before the law is put at the end because it is a right which qualifies all other rights.

Article I

Right to Life

Every person has the right to life. This right extends to the right to life from the moment of conception; to the right to life of incurables, imbecils and the insane. It includes the right to sustenance and support in the case of those unable to support themselves by their own efforts; and it implies a duty of the state to see to it that such support is made available.

The right to life may be denied by the state only on the ground of conviction of the gravest of crimes, to which the death penalty has been attached.

Comment

The first of the fundamental rights of man, both in order of logic and of importance, is obviously the right to life itself.

The Declaration of Independence of the United States in proclaiming certain inalienable rights of man affirms that among them are "life, liberty, and the pursuit of happiness".

The right to life might, indeed, be implied, as being the necessary assumption of the existence of all other rights. Without the right to life, the right to liberty, to property, to equality would obviously have no meaning. But in view of recent denials of the right in certain of its specific applications, it seems desirable to reaffirm it as separate and distinct in itself.

The Declaration extends the right to life to unborn children, in keeping with the civil law of most countries. It proclaims the right to life of persons who, by reason of mental or physical defects, are unable to enjoy other fundamental rights and must, for the protection of the community at large, be confined within institutions. The Declaration calls upon the state to support such persons; and by implication it thus condemns the so-called "humanitarian" termination of the lives of such persons. Man may not, without his express consent, be utilized for scientific experiments which put his life in certain or possible danger.

The Declaration recognizes that the right to life of a particular person may be lost in consequence of certain criminal acts of the gravest character. It leaves the individual state free, therefore, to impose the death penalty upon persons convicted of such crimes. A number of states are of the opinion that the imposition of the death penalty involves an element of moral degradation on the part of the state itself. Upon this the Juridical Committee passes no opinion, limiting

itself to the statement that the right to life does not protect a person against punishment prescribed for the gravest of crimes.

Article II

Right to Personal Liberty

Every person has the right to personal liberty.

The right to personal liberty includes the right to freedom of movement from one part of the territory of the state to another, and the right to leave the state itself. It includes also freedom to establish a residence in any part of the territory, subject only to the restrictions that may be imposed by general laws looking to the public order and security of the state.

The right to personal liberty includes the inviolability of the domicile of the individual and of his personal correspondence.

The state may restrict this right only to the extent necessary to protect the public health, safety, morals and general welfare, in accordance with subsequent provisions of this Declaration.

The right of the state to call upon the services of the individual in time of emergency or to meet the necessities of national defense shall not be regarded as a limitation upon the fundamental right to personal liberty, but merely as a temporary restriction operating during the existence of the national need.

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

Comment

The right to personal liberty, taken in the broad sense of Article II, might, like the right to life, be held to be included in other fundamental rights proclaimed in subsequent articles. In view, however, of historical traditions and of the pre-eminence given to "liberty" in the constitutions of the American States, it is believed desirable to assert the right in a general form, leaving to subsequent articles the definition of special phases of the right and the limitations to which it is of necessity subject.

Intimately associated with the right to personal liberty is the right to freedom of movement from one part of the state to another, and freedom to establish a residence in any part of the national territory, and to leave the national territory itself. The draft Declaration recognizes that restrictions may be placed upon freedom of movement in the interest of the public order and security, but these must be imposed by general laws applicable to all persons alike. It is also recognized that in times of emergency, when, in accordance with Article XIV, the state has the right to call upon the services of its citizens, restrictions may be put upon freedom of movement; but these must be of a temporary character, terminating with the national need which called them forth.

The Declaration asserts that the right to personal liberty includes the inviolability of the domicil of the individual. In accordance with the established traditions of the American States the domicil of a person may not be entered without a warrant duly issued by the authorities designated by law, stating the purpose for which entrance is required. Not only may the person occupying the premises not be arrested without a warrant, but the domicil itself may not be searched except for the specific purpose stated in the warrant, and articles or goods may not be seized except in accordance with the warrant. The state has, however, the right to make provision by general laws for cases of public emergency, in which the public safety overrules the right of the individual.

Intimately associated with the personal liberty of the individual is the inviolability of his personal correspondence. The authorities of the state, entrusted with the public service of the mails, must respect absolutely the correspondence entrusted to them for delivery from one person to another. Censorship of the mails is forbidden, except during the emergency of war; and violations of the regulations of the postal service must, in respect to sealed correspondence, be punished on the basis of other evidence than that obtainable by violating the secrecy of the correspondence during transit from the sender to the receiver.

Article III

Right to Freedom of Speech and of Expression

Every person has the right to freedom of speech and of expression.

This right includes freedom to form and to hold opinions and to give expression to them in private and in public, and to publish them in written or printed form.

The right to freedom of speech and of expression extends to the use of whatever means of communication are available; freedom to use the postal service, the public utilities of telegraph, telephone and radio communication; freedom to use the graphic arts, the theater, the cinema and other agencies for the dissemination of ideas.

The right to freedom of speech and of expression includes freedom of access to the sources of information, both domestic and foreign.

The right to freedom of speech and of expression includes the special and highly privileged right to freedom of the press.

The only limitations which the state may impose upon this freedom are those prescribed by general laws looking to the protection of the public peace against slanderous or libellous defamation of others, and against indecent language or publications, and language or publications directly provocative of violence among the people.

Censorship of the press is prohibited, whether by direct or indirect means, and all limitations imposed in the interest of public

order shall only be applied subsequently to the publication of the material alleged to be of the offensive character described in the law. Censorship of the cinema may be in advance of publication, taking into account the particular form of publication and the necessity of protecting the public against matters offensive to accepted standards of conduct. The state may not retain a monopoly of radio broadcasting so as to deny to the individual the opportunity for the free expression of opinion through that instrumentality of communication.

Comment

The right to freedom of speech and of expression is a broad one, susceptible of being sub-divided into a number of separate freedoms which, for greater clarity, are here brought together as parts of one whole. Thus it includes freedom of opinion, freedom of propaganda, freedom of the press, freedom of communication and freedom of access to the sources of information. Each of these separate freedoms is so closely associated with the others as to justify including them under one general head.

Freedom of opinion, taken in the restricted sense of freedom to hold opinions, is obviously beyond the control of the state. But freedom to hold opinions would be of little value unless the person has access to the sources of information upon which valid opinions may be based. In this respect freedom of opinion and freedom of information are parts of a single freedom.

Freedom of speech is one of the traditional rights guaranteed in the constitutions of all democratic countries. It is not limited to freedom of oral expression but includes freedom to disseminate opinions in written or printed form. Like freedom of opinion, it implies freedom of access to the sources of information, both domestic and foreign, and freedom to use whatever means of communication are available.

The term "freedom of expression" extends to the use of all methods of disseminating ideas and opinions, such as the theater, the cinema, and radio presentations of ideas or of events.

The Declaration emphasizes that freedom of speech and of expression includes freedom of access to the sources of information, both domestic and foreign. The importance of freedom of information is clearly brought out in Resolution XXVII of the Conference on Problems of War and Peace, in which the American Republics recognize the obligation to guarantee to their peoples "free and impartial access to sources of information."* Doubtless no other restriction upon

*The full text of this resolution is as follows:

FREE ACCESS TO INFORMATION
WHEREAS:

The American Republics have repeatedly expressed their firm desire to assure a peace that will defend and protect the fundamental rights of man

human freedom operated with greater effectiveness to create the national fanaticism which was in large part responsible for the recent war than the closing of the channels of information both within the fascist-ruled countries and between them and other countries. As the text of the above Resolution makes clear, the closing of the channels of information made it possible for the governments of those countries to poison the minds of their peoples and to prepare them psychologically to support the acts of aggression which those governments had planned to commit. It is clear that in the future the hope of friendly cooperation between peoples will depend in large part upon the interchange of information between them, removing misunderstanding and promoting a realization of common interests. Many publicists make this one of the first conditions of a permanent peace.

The constitutions and the laws of many states signalize "freedom of the press" as a separate and distinct right, surrounded by special safeguards and subject to special conditions. In point of practical im-

everywhere and permit all peoples to live free from the evils of tyranny, oppression, and slavery;

The progress of mankind depends on the supremacy of truth among men;

Truth is the enemy of tyranny, which cannot exist where truth prevails, so that those who would erect tyrannies are constrained to attempt its suppression or to raise barriers against it;

Freedom of expression of thought, oral and written, is an essential condition to the development of an active and vigilant public opinion throughout the world to guard against any attempt at aggression;

One of the most pernicious acts against humanity is the method employed by totalitarian governments in isolating their people from the influence of foreign information, depriving them of access to the truth about international affairs, as well as creating obstacles abroad to an exact knowledge of internal conditions in their countries;

It is one of the fundamental lessons of the present world war that there can be no freedom, peace, or security where men are not assured of free access to the truth through the various media of public information,

The Inter-American Conference on Problems of War and Peace

RECOMMENDS:

1. That the American Republics recognize their essential obligation to guarantee to their people, free and impartial access to sources of information.

2. That having this guarantee in view, they undertake, upon the conclusion of the war, the earliest possible abandonment of those measures of censorship, and of control over the services of press, motion picture and radio, which have been necessary in wartime to combat the subversive political tactics and espionage activities of the Axis states.

3. That the Governments of the American Republics take measures, individually and in cooperation with one another, to promote a free exchange of information among their peoples.

4. That the American Republics, having accepted the principle of free access to information for all, make every effort to the end that when a juridical order in the world is assured, there may be established the principle of free transmission and reception of information, oral or written, published in books or by the press, broadcast by radio or disseminated by any other means, under proper responsibility and without need of previous censorship, as is the case with private correspondence by letter, telegram, or any other means in time of peace.

portance the public press, with its permanent character and its established political, economic and social connections, is still the most important agency for the expression of public opinion and for the education of the people in matters of current interest. Its responsibilities, unfortunately, have not always been so adequately maintained as its rights have been defended. So vital has the service of the public press become that it has acquired in most countries a highly privileged character, giving to it the status of an institution rather than a mere medium for the expression of the views of a particular person.

But neither freedom of speech nor any of the freedoms associated with it have ever been regarded as absolute and unqualified freedoms. They have been described as "inherent and inalienable" only in the relative and qualified form in which they have been asserted and recognized. As in the case of other rights, the right to freedom of speech and of expression must be exercised with due respect for the rights of others and for the common good of the community and the maintenance of public order and safety.

The specification of the limitations to which the right to freedom of speech and of expression is subject will be a matter for determination by the law of each individual state, subject to the condition that the limitations must not be such as to impair substantially the right itself. It is universally recognized that freedom of speech may not be made a justification for the slanderous or libellous defamation of others. Here the principle of the mutuality of rights and duties comes into play, and the individual in maintaining his own right to freedom of speech must respect the equal right of others to the enjoyment of their personal reputation and peace.

In like manner the right to freedom of speech must not be made a justification for language or publications directly provocative of violence among the people. Incitement to violence is contrary to the principle of democratic government. It is only justifiable where fundamental rights are being violated by a government and there is no opportunity for redress by judicial measures.

Nor may freedom of speech be made an excuse for the dissemination of subversive propaganda, as practised by the Axis Powers at the very time they were closing the channels of information in their own country. Resolution VII of the Conference on Problems of War and Peace recognizes that the dissemination of totalitarian doctrines in this continent would endanger the American democratic ideal, and it provides measures for the elimination of centers of subversive influence.

The Juridical Committee recognizes that it is not always possible to draw a sharp line marking the limitations of freedom of speech in relation to the maintenance of public order. Each state must draw the line for itself, provided only that the restrictions which it imposes in

the interest of public order do not impair the right itself of free expression.

The draft Declaration prohibits absolutely the censorship of the press by means of the previous submission of publications for approval. This does not relieve the press of the responsibility for the publication of libellous attacks upon private persons or upon public officers, nor does it protect the press against the consequences of the publication of statements known to be false. It does, however, make the offensive character of particular statements in the public press a matter for judicial determination in accordance with fixed laws.

The draft Declaration recognizes that the cinema may be regulated by special laws looking to the protection of the public against the presentation of matter contrary to accepted standards of public morality. The reason for more restrictive control in the case of the cinema than in the case of the press is due to the fact that the cinema makes a more graphic appeal to the imagination of the spectators and is therefore capable of provoking more lasting reactions. In consequence the state may, if it deems it desirable, require the submission of films for approval in advance of exhibition.

Within recent years the use of radio broadcasting has become one of the most important means for the expression of ideas and for the spread of propaganda of every kind. A number of states have brought the instrumentalities of broadcasting under the direct control of the state. In the case of totalitarian governments radio broadcasting has been used in many cases as a means of spreading false propaganda directly hurtful to the maintenance of peaceful relations with other states. In consequence of these abuses the Juridical Committee believes it desirable to insert a special prohibition against the use of a government monopoly of radio broadcasting so as to deny to individuals and associations the use of that instrument for the free expression of opinion.

Article IV

Right to Freedom of Religious Worship

Every person has the right to freedom of religious belief and worship.

This right includes freedom of religious worship in public as well as in private; freedom of religious worship by groups as well as by individuals; freedom to maintain churches and other places of public worship and to assemble in them without restraint; freedom of parents to educate children in their particular religious belief; freedom of religious propaganda in spoken or written form.

The only restrictions which the state may place upon the right of freedom of religious worship are those called for by the requirements of public health, safety and good morals; and all such restrictions

must be in accordance with general laws and administered without discrimination.

A distinction is recognized between strictly religious activities and other activities of an economic or financial character associated with the maintenance of religious worship but not forming an essential part of it. These economic or financial activities may be regulated by the state in accordance with the general laws governing such activities.

Comment

Like freedom of speech and of the press, freedom of religious worship is one of the traditional rights guaranteed in the constitutions of democratic states. Religious beliefs have from the earliest times taken a strong hold upon men, and the intensity of the conviction has frequently led one religious group to attempt to protect its belief by oppressing and persecuting other religious groups. Some of the darkest pages of history are those describing religious wars, such as the Thirty Years War which terminated with the Peace of Westphalia. With the colonization of the New World and the development of independent states the principle of religious toleration came to be generally accepted; and it slowly changed from an abstract theory to a practical rule of conduct, respected and enforced by the law.

The Declaration includes freedom of religious belief as well as the external manifestation of belief in acts of worship. While it is obvious that freedom of belief, like freedom of opinion in other matters, is beyond the reach of direct interference by the state, yet it is believed desirable to assert the right because of the efforts that have been made from time to time to stamp out belief by indirect measures, such as control over the sources of public information. These indirect measures find their condemnation under other articles of the Declaration, but it is believed desirable to proclaim freedom of belief, or "freedom of conscience," as a right in its own name.

The Declaration sets forth the collateral rights which must necessarily accompany freedom of religious belief and worship if the freedom is to be given practical application. The right of public as well as of private worship must be respected; and the right of worship by organized groups as well as by individuals. Organized groups must have the right to maintain churches as permanent places of public worship, and they must have the right to assemble in such places without the necessity of obtaining the prior consent of the state on each occasion of public worship. The property laws of the state must not be such as to interfere with the control of religious groups over their places of public worship.

Freedom of religious belief and worship clearly includes freedom to spread the faith of the particular religious group. Parents must have freedom to educate their children in their own religious beliefs; organ-

ized groups must have the right to teach in public as well as in private; there must be freedom to distribute printed material in the form of religious propaganda, and freedom to use the other forms of communication to which reference has been made in connection with freedom of speech and of expression. Resolution XLI of the Conference on Problems of War and Peace reaffirms "the principle, recognized by all of the American States, of equality of rights and opportunities for all men, regardless of race or religion."

But freedom of religious worship, if it is to be respected and defended by the state, must conform to the laws of the state enacted for the protection of the public health, safety, morals and general welfare. Religious observances which involve a danger to the public health may therefore be regulated so as to remove the menace. Practices contrary to good morals cannot be justified on the ground that they are the manifestations of religious beliefs.

The determination of the necessary restrictions upon the freedom of religious worship must fall, primarily, to each separate state; but the restrictions imposed must be in accordance with general laws and must be administered without discrimination, and they must not be such as to limit substantially the right itself.

One of the practical problems relating to freedom of worship at the present day is the distinction which must be drawn between strictly religious activities and other activities of an economic or financial character associated with the maintenance of religious worship but not forming an essential part of it. The exact line between the two classes of activities can only be drawn when specific cases are presented to each state for determination. But it is believed desirable to recognize in the Declaration the fact that the distinction exists, and that the determination of it in particular instances must be such as to maintain on the one hand the principle of the freedom of religious worship and on the other hand the right of the state to regulate the normal economic and financial life of the people.

Organized religious groups, while maintaining their right to uphold moral principles, have on their part the duty to refrain from interfering in the conflicts of political parties.

Article V

Right to Freedom of Assembly

Every person has the right to assemble peaceably with others as a means of giving expression to views upon matters of common interest.

The state has the duty to permit the use of public places for purposes of general assembly. It has the right to be informed of meetings to be held in public places, to designate convenient localities and to impose conditions upon the use of such places in the interest of the public order and safety. Similar conditions may be imposed upon

assemblies in public and in private buildings. But the conditions imposed by the state upon the holding of public meetings must not be such as to impair substantially the right itself to hold such meetings; and no conditions shall be required for the assembly of small groups of persons whether in public or in private places.

The right of assembly includes the right to hold public parades, subject to the same restrictions to which assemblies are subject.

Comment

The right to freedom of assembly is among the rights guaranteed in the constitutions of democratic states. It is a right without which men could not act collectively for the protection of their other rights or for the promotion of their common interests.

From time to time despotic governments have sought to deny this right in order to prevent the citizen body from asserting control over their policies, and for this reason the right to assembly has generally been considered in connection with meetings for political purposes. The scope of the right is, however, as broad as the interests which men may seek to promote by public action.

The right of public assembly depends for its exercise upon the right to use public parks and other open spaces as well as public and private buildings that may be available for such gatherings. At the same time the state has the right to regulate the use of such places in order to protect the interests of the public at large and in order to insure that the right of assembly may not be the occasion for acts of violence. For this reason it is recognized that the state has the right to be informed of meetings to be held in public places, to designate particular localities as appropriate places of assembly, and to impose restrictions in the interest of the maintenance of law and order. The Declaration emphasizes that the conditions imposed by the state upon the holding of public meetings must not be such as to impair substantially the right itself to hold such meetings. The requirement of a license in advance of the holding of the meeting should not apply to groups so small as to make the danger to the public safety negligible.

The right of assembly does not carry with it the right to give public expression to views which incite to violence and constitute a clear and present menace to the safety of the state. The rights of freedom of speech and of assembly are not to be exercised in furtherance of systems of government which are based upon principles which involve a denial of the fundamental rights of man.

Article VI

Right to Freedom of Association

Every person has the right to associate with other persons for the protection and promotion of legitimate interests.

The state has the right to adopt regulations governing the activities of associations, provided they are applied without discrimination against a particular group, and provided they do not impair substantially the right of association.

Comment

The right of free association is closely connected with the right of assembly; but in as much as it presents special problems of its own and is separately proclaimed in the constitutions of many of the American States, the Juridical Committee believes it desirable to proclaim it as a distinct right. While it is true that the line between assembly and association cannot always be sharply drawn, yet there are substantial differences between the character of the restrictions which the state may impose upon the exercise of the two rights, justifying their consideration under separate articles.

The right of association has presented itself in different forms at different epochs, according to the conditions of the time and the need felt by groups of persons to protect or to promote their special interests. At the present day associations are formed for innumerable objectives, and they vary in nature from small groups which have no juridical personality to large and powerful bodies which exert an important influence in the political, economic and social life of the state. Political parties are in many states, without being actually a part of the government itself, a dominant force in the determination of national policies. Associations of manufacturers, chambers of commerce, trade unions, and agricultural associations have come to exercise a far-reaching influence over the economic life of the country in the particular field in which they exercise their activities. Cooperative organizations function in certain countries almost after the manner of independent municipalities. Organizations for the attainment of social and other objectives are of the widest variety. The great majority of individuals at the present day look to these various organizations for the protection and promotion of their special personal interests as well as their interests as members of the community at large.

In consequence where a century or more ago the emphasis was upon the right to form associations, it is now rather upon the right of the state to regulate the great associations which have come almost to rival the state in the extent of their power and in the loyalty of their members. Clearly the public welfare must at all times take priority over the claims of a section of the people or a particular economic or social class. The state must at all times have the right, while observing the fundamental rights of man, to intervene to protect the public interest against the interest of a smaller group.

Hence the draft Declaration recognizes the right of the state to adopt regulations governing the activities of associations. These regu-

lations must obviously be applied equally to all associations within a given class, and they must not be so exacting as to impair substantially the right itself of association. The chief problem in this connection is to determine the responsibility of the officers of the association for the acts of the group and the degree of public liability which the association must assume for the acts of its members in accordance with the statutes of the organization.

The draft Declaration does not go so far as to assert that the fundamental right of association carries with it the right to form associations based upon the principle of corporate as distinct from personal responsibility. But it is the practice of all states to permit the formation of private companies on the basis of corporate responsibility, and there is no question that the state may subject such bodies to special regulations looking to the determination of the responsibility of the officers of the association and to the protection of the public in dealing with the associations.

Article VII

Right to Petition the Government

Every person has the right, whether exercised by individual action or in conjunction with others, to petition the government for redress of grievances or to petition in respect to any other matter of public or private interest.

The publication of such petitions shall not be made a ground for penalizing in any way, directly or indirectly, the person or persons making the petition.

Comment

The right to petition the government whether for the redress of grievances or for the promotion of public or private interests is as equally well established as the right of assembly and the right of association. In the Bill of Rights of the United States Constitution the right of assembly and the right of petition are set forth as parts of a single right. In the constitutions of other American States, however, they are proclaimed as separate rights. The Juridical Committee finds it desirable, for greater clarity, to treat the two rights separately.

The right of petition may be exercised by individuals as well as by groups. Its specific purpose is to call public attention to conditions which it has not been found possible to remedy through the action of national or local governments. Hence it is essential that the right of petition should be accompanied by the right to publish the text of the petition in any form which may bring it to the attention of the public at large. The draft Declaration provides, therefore, that such publication shall not be made a ground for penalizing in any way, directly or indirectly, the person or persons making the petition.

Article VIII

Right to Own Property

Every person has the right to own property.

The state has the duty to cooperate in assisting the individual to attain a minimum standard of private ownership of property based upon the essential material needs of a decent life, looking to the maintenance of the dignity of the human person and the sanctity of home life.

The state may determine by general laws the limitations which may be placed upon the ownership of property, looking to the maintenance of social justice and to the promotion of the common interest of the community.

The right of private property includes the right to the free disposal of property, subject, however, to limitations imposed by the state in the interest of maintaining the family patrimony.

The right of private property is subject to the right of the state to expropriate property in pursuance of public policy, just compensation being made to the owner.

Comment

The right to own property, stated in broad and general form, finds direct or indirect expression in the constitutions of almost all countries. It is a right so deeply implanted in man's nature that the older constitutional provisions generally assume its existence and limit themselves to a prohibition against any action on the part of the state which would deprive a person of life, liberty and property without due process of law. The Juridical Committee finds it preferable to state the right in positive form, implying thereby a prohibition against the interference of the state with the normal exercise of the right.

The American States, heirs of Roman and of Anglo-Saxon law, have from the time of their establishment looked upon the right of private property as something sacred, and have directed their legislation to protecting property, both real and personal, in respect to ownership and use, inheritance and transfer, contracts, taxes, and other commercial and public relations.

The problem of the limitations to be placed upon the right to own property is a relatively modern one. The state has always been recognized as having the right of eminent domain, in accordance with which it may expropriate private property for necessary public uses, paying just compensation. But in these cases the right of private ownership was never questioned. In recent years, however, it has come to be recognized that property has a "social function." Theories of distributive justice have been advanced, putting stress upon the need of securing to every person an adequate amount of private property for the maintenance of a proper standard of living. The accumulation

of large fortunes has led many states to believe that democracy and equality were impossible in the presence of such great disparity between rich and poor. Income and inheritance taxes have been resorted to in order to correct these disparities. Many states have insisted upon the public ownership of property in the form of public utilities serving the essential needs of the people. These conditions have led to important changes in the application of the right to own property, without, however, questioning the right itself.

On the other hand in certain countries policies of collective ownership have been advanced which appear to deny the fundamental principle of the right of private property. Whether in due time the practical application of these policies will be modified so as to recognize the right of small holdings of land is a question for the future to decide. Thus far none of the American States have accepted the theories upon which these policies are based, nor have they indicated any intention of denying the right to own property in the restricted sense in which the draft Declaration proclaims the right as fundamental.

In the presence of the divergent views as to the character and scope of the limitations that may or should be placed upon the right of private property, the Juridical Committee has found it desirable to set forth a minimum standard of private ownership, which should not only be respected by the state in the case of persons already in possession, but should be regarded as a social objective in the case of persons who have not as yet attained that standard.

As defined in the draft, the minimum standard of private ownership should be based upon the essential material needs of a decent life. The whole Declaration of International Rights and Duties derives its inspiration from the conception of the human being as having an inherent dignity and worth which must be given the fullest possible opportunity for expression. The possession of property is essential to the development of the physical and moral qualities of man. In special cases where a person is unable by his own efforts to attain the standard necessary to a decent life, the draft Declaration recognizes that the state must cooperate with him in attaining it. In doing so the state draws upon its own resources; and since these resources are the resources of the people as a whole the measures taken by the state may be said to be measures of distributive justice, and property may be said to be fulfilling its social function.

The Juridical Committee does not attempt to fix, even approximately, a maximum standard of private ownership. It is now generally recognized that the broad interpretation earlier given to the rights of property in relation to industrial enterprises represents an entirely different conception of property from that which is associated with the needs of a decent life and the development of the personality of the individual human being. It is a domestic question how far each state may believe it desirable to go in limiting the amount of

personal and real property which the individual person may own in order to prevent abuses of private ownership. The economic and the social conditions of each state vary, and no general rule can be laid down in the matter. "Social justice," as the term is now being used, admits of widely varying interpretations, based upon the extent to which the state believes that the general welfare will be promoted by encouraging private initiative in certain cases and by controlling it in other cases.

The draft Declaration lays down that the right of private property includes the right to the free disposal of property. A possible exception might be the limitations imposed by the state upon property which the state itself has contributed to the promotion of a higher standard of living, or the limitations imposed upon the transfer of the family patrimony.

Article IX

Right to a Nationality

Every person has the right to a nationality.

No state may refuse to grant its nationality to persons born upon its soil of parents who are legitimately present in the country.

No person may be deprived of his nationality of birth unless by his own free choice he acquires another nationality.

Every person has the right to renounce the nationality of his birth, or a previously acquired nationality, upon acquiring the nationality of another state.

Comment

The problem of statelessness is a relatively modern one. Before the first World War few states found it a matter of national policy to deny nationality of birth to persons born upon their soil, or born of parents of the nationality of the state. Few states also were disposed to refuse naturalization to persons long resident in their territories who could meet the general standards of citizenship, except where racial divergences were such as to make amalgamation too difficult.

But within more recent years certain states have undertaken to deprive of their nationality persons belonging to racial minorities in spite of birth upon the soil of the country. States have also deprived of their nationality persons born upon their soil but later resident abroad, as well as persons guilty of political and other crimes. Naturalized persons are frequently deprived of their nationality when it is no longer possible for them to reacquire their previous nationality.

The result has been that the number of stateless persons has greatly increased; and in many cases these persons, being aliens in the country of their refuge, are unable to obtain the full protection of the law. The hardships to which such persons have been subjected would alone be incompatible with the principle of the dignity of the human

being. But in many cases they have been the victims of serious injustice on the part of the administrative and judicial authorities of the state of refuge.

The draft Declaration goes no further than to prescribe that a state may not refuse its nationality to persons born upon its soil. This obviously limits the right to a nationality somewhat narrowly, and it does not give protection to persons who happen to be in a country other than that of their birth. But as a practical matter such persons will, if they are minors, be protected by the nationality of their parents, and if adults they will be able to acquire nationality by the process of naturalization. The Juridical Committee does not find the time appropriate for the formulation of a general rule in respect to the conflict between *jus soli* and *jus sanguinis*; nor does it believe it convenient to impose upon states an absolute obligation to permit the naturalization of all persons residing in their territories without consideration of the circumstances under which they have come within the territory.

On the other hand it will be observed that the draft Declaration as a whole has been formulated in favor of "persons" without specification of nationality or alienage; so that in the course of time, when the principles of the Declaration have become established rules of conduct in inter-American relations, aliens will receive the same protection as nationals in their fundamental rights, and the inconveniences and, on occasion, the injustices attending the lack of a nationality will largely disappear. Under present conditions, however, the Juridical Committee believes it desirable to assert the right to a nationality as a separate and distinct right.

At the same time the Juridical Committee recommends to the American States that special measures be adopted to meet the cases of refugees who, in consequence of territorial changes or political conditions in other continents, are unable or unwilling to return to the country of which they are nationals but do not wish to become naturalized in the country of their refuge. It is anticipated that prompt action will be taken by the General Assembly of the United Nations for the protection of such persons. Following the first World War the League of Nations made provision for the issuance of "Nansen passports" to take care of refugees who were temporarily without a nationality or who were unable to obtain the protection of the government of the state of which they were actually nationals. A similar system of international protection might be adopted to meet the existing conditions.

The right of a person to renounce the nationality of his birth is generally accepted in the law of the American States. Without the right of expatriation a man's personality becomes subordinated to the policy of the state of which he happens by accident of birth to be a national. While it is recognized that the state may make the pay-

ment of just debts, whether public or private, a condition of leaving the country, it may not create conditions which substantially impair the right of expatriation. The state exists for man, not man for the state; and it is a violation of the fundamental right to personal liberty to deny to a man the right to become a member of another state-group which is willing to receive him as one of its nationals.

Article X

Right to Freedom of Family Relations

Every person has the right to be free from interference in his family relations.

It is the duty of the state to respect and to protect the reciprocal rights of husband and wife in their mutual relations.

Parents have a primary right of control over their children during minority, and they have a primary obligation to maintain and support them.

It is the duty of the state to assist parents in the maintenance of adequate standards of child welfare within the family circle, and to promote as far as possible the ownership of individual homes as a means of fostering better family relations.

The state may restrict the control of parents over their children only to the extent that the parents themselves are unable to perform their duties towards their children or actually fail to do so. Where necessary, the state must itself provide for their protection and support.

Comment

The sacredness of the family as a moral and social unit is universally recognized among the American States, following the Christian traditions of nineteen centuries. The unity of family life is not a creation of the state; it is a condition arising out of the very nature of man. So deeply rooted is the conception of the sacredness of family relations in the juridical inheritance of the American States that there has been no occasion for the assertion of a fundamental right of man in this connection in the various bills of rights of the different constitutions.

But within recent years new theories of the dominant rights of the totalitarian state have been accompanied by indirect, and at times even direct, attacks upon the family circle. Secret-service police have invaded the home and have not hesitated to separate husband and wife. Children have been taken forcibly from parents and have been educated in doctrines hostile to the beliefs of their parents. Children have been taught that their duty to the state is the highest of all duties, superseding religious belief and family affection and loyalty. The conception of the mystical entity of the state has been made an object of devotion almost amounting to worship, and violations of the tradi-

tional standards of morality and justice have been justified as means looking to the promotion of the interests of the state. Repulsive as such principles are to the great majority of the people of the American States, it is believed necessary to be on guard against them in view of the extent to which they have already obtained a hearing among certain minority groups, fostered by propaganda from foreign sources. In consequence the draft Declaration emphasizes at once the mutual rights of husband and wife and the primary right of control of parents over their children during minority, accompanied by a primary obligation to maintain and support them.

The state on its part has both rights and duties in relation to the integrity of the family circle. Its rights are limited to intervention between parents and their children in the exceptional cases where parents are unable to perform their duties to their children or actually fail to do so in spite of the assistance offered by the state. The duties of the state are more far-reaching; and it is one of the significant features of inter-American cooperation in the field of social relations that emphasis has been placed upon the necessity of strengthening the bond of family unity and of assisting parents in the maintenance of adequate standards of child welfare. Resolution LV of the Conference on Problems of War and Peace, entitled "Charter for Women and Children", proclaims in its preamble that "the family is the primary social institution for the formation of the mind and character of children", and it recommends the prompt approval of earlier agreements, declarations and recommendations on behalf of women, children and the family. Resolution LVI, dealing with "Social Questions", speaks of the family as "the greatest moulding force of the mind and character of youth", and it recommends measures for conserving the family and promoting its welfare. The Declaration of the Social Principles of America of the same Conference declares that "the family, as a social unit, is a fundamental institution for whose moral stability, economic improvement, and social welfare the State should take the necessary measures." The proposal has been made in some American states to create a special "family suffrage" emphasizing the larger responsibilities of the father of a family.

Under the inspiration of these ideals the draft Declaration proclaims the duty of the state to assist parents in maintaining adequate standards of child welfare within the family circle, and at the same time the duty to promote as far as possible the ownership of individual homes. Article VIII of the draft Declaration expresses the necessity of private ownership as a means of maintaining the dignity of the human person and the sanctity of home life; and the Juridical Committee believes it desirable to reaffirm in the present Article the close relationship between the ownership of homes and the strengthening of the bond of family life.

Article XI

Right to Be Free from Arbitrary Arrest

Every person accused of crime shall have the right not to be arrested except upon warrant duly issued in accordance with the law, unless the person is arrested *flagrante delicto*. He shall have the right to a prompt trial and to proper treatment during the time he is in custody.

Comment

Provisions for the protection of persons accused of crime are to be found in the constitutions and fundamental laws of all of the American States. Their necessity has unhappily not yet disappeared. Arbitrary arrest without just cause is frequently resorted to by dictatorial governments in cases involving alleged political offenses. Since the right to personal liberty affirmed in Article II of the draft Declaration is obviously dependent upon observance of the laws of the state prohibiting certain acts as crimes, it is of first importance that a person shall not be deprived of his liberty upon the pretense of the commission of crime for which there is no foundation in fact.

In consequence the draft Declaration provides that a person may not be arrested for alleged commission of crime unless a warrant for his arrest has been sworn out before a duly appointed officer of the law. Such a warrant, following the established traditions, should name the person, designate the offense of which he is accused, and specify the place of detention to which he is to be taken awaiting trial. An exception to the provisions is recognized in cases where violence is being committed or the offender is taken *flagrante delicto*. In such cases protection against arbitrary arrest is to be found in the presence of witnesses to the offense. Under conditions of the present day it is not desirable to require that the warrant should be in the hands of the officer making the arrest; otherwise the difficulty of arresting fugitives would be greatly increased. The posting of copies of the warrant in public places is sufficient.

The right of persons accused of crime to a prompt trial is well established in the jurisprudence of the American States. Historically, it is perhaps the most necessary protest of man against arbitrary conduct on the part of governments. The fundamental right to personal liberty would be of little value if a person could be detained indefinitely in prison awaiting trial. Hence the importance attached to the writ of *habeas corpus*, by which a friend of the accused could obtain from the court an order fixing a date for a hearing of the case before the judicial authorities. The Constitution of Peru, Article 56, presents a good example of this provision, requiring that "the detained person must be brought, within twenty-four hours or in the interval of time allowed for distance, before the proper court, which shall order his release or issue a warrant of imprisonment in the period which the law

indicates". Similar provisions are to be found in the constitutions of other American States.

The requirement that the accused person shall receive proper treatment during the time he is in custody continues to be as necessary as the provision for a prompt trial. The torture of prisoners as a means of obtaining evidence either of their own conduct or that of others is repulsive to every humane sentiment. No declaration of fundamental rights would be complete without a prohibition against the use of physical and mental torture both during the investigations conducted to determine whether a person shall be put on trial or during the time of the trial itself.

Article XII

Right to a Fair Trial

Every person accused of crime shall have the right to a fair public hearing of the case, to be confronted with witnesses, and to be judged by established tribunals and according to the law in force at the time the act was committed. No fines shall be imposed except in accordance with the provisions of general laws; and no cruel or unusual punishments.

Comment

For reasons of greater emphasis the Juridical Committee has chosen to formulate the rights of persons accused of crime in two separate articles, distinguishing between the right of freedom from arbitrary arrest and the right to a fair trial. Like the first, the second right finds its place in the constitutions or fundamental laws of all of the American States. While the details of criminal procedure must obviously be left to the individual state, there are certain essential conditions of a fair trial which it is believed necessary to enumerate. No trial could be regarded as fair which condemned a person after a secret hearing only. Publicity in the presentation of evidence is essential to the protection of the accused against arbitrary condemnation. A fair trial obviously calls for judicial procedure before established courts previously possessed of jurisdiction over the offense of which the person is accused.

The retroactive operation of criminal laws is expressly prohibited by the constitutions of most of the American States, and impliedly by all. The Constitution of the United States forbids the passage by the Congress of *ex post facto* laws, which have been interpreted as laws imposing a punishment for acts not punishable at the time they were committed, or imposing an additional punishment to that already prescribed, or changing the rules of evidence to the detriment of the accused. The Constitution of Peru of 1933 states explicitly that: "No one shall be condemned for an act or omission which, at the time it is committed, is not described expressly and unequivocally as a punishable offense."

The prohibition of cruel and unusual punishments is directed against methods of torture which prolong the physical suffering of the convicted person and violate the dictates of humanity.

Article XIII

Right to Participate in Elections

Every person, national of the state, has the right to participate in the election of the legislative and executive officers of the government in accordance with the provisions of the national constitution. The practical exercise of this right may, however, be conditioned by the duty of the person to show that he is competent to understand the principles upon which the constitution is based. The constitution of the state shall provide for a government of the people, by the people and for the people.

This right presupposes the right to form political parties.

No person shall be denied the right to hold public office, or to be appointed to any of the public services of the State of which he is a national, upon grounds of race or religion or sex or any other arbitrary discrimination; and the administration of the public services of the state shall, in respect to appointments and terms and conditions of service, be without favor or discrimination.

Comment

Stated as a general principle, it is clear that the right to participate in the election of the officers of government and thus indirectly in the determination of the policies of the government is essential to the enjoyment of true liberty. The Declaration of Independence of the United States asserts the great rule of democracy, that governments derive their just powers from the consent of the governed. Governments are the agents of the people for the formulation and the execution of their collective will. A government not based upon the will of the people is not its agent but its master. The freedom of the individual person must, indeed, be subject to restrictions imposed by law in the interest of protecting the freedom of others and promoting the general welfare. But unless the individual can participate in the determination of these restrictions his fundamental liberty may be no more than an abstraction.

The practical application of the principle of government by consent of the governed creates, however, numerous difficulties. Government by the consent of the governed implies that the persons participating in the election of the officers of the government understand the general objectives of the constitution and the means which it provides for making the will of the people practically effective. While it is true that every man has human rights to protect and that the necessity of protecting them may be greater in proportion to his moral and material needs, yet it is clear that unless the person is competent to under-

stand the processes of government he may actually by his vote defeat his own best interests.

It is the recurrent problem of democratic government to determine where the line is to be drawn between the abstract right of suffrage, as an instrument of choosing the officers of the government, and the practical ability of a particular person to use the right of suffrage to his own advantage and that of the community at large. The draft Declaration leaves it to each separate state to determine the restrictions which must be placed upon the exercise of the right of suffrage. These restrictions must, however, be applied, in accordance with the terms of Article XVIII, to all persons without discrimination; they must be expressed in general laws, and they must make it possible for a person who has been disqualified at one time to remove later the grounds of his disqualification.

The American States have on numerous occasions affirmed the necessity of equal treatment of women in the determination of the qualifications for suffrage. The Eighth International Conference of American States, held at Lima in 1938, declared the agreement of the American States that, among other rights, women had the right to political treatment on the basis of equality with men, and it urged the governments which had not already done so to adopt the necessary legislation to carry the principle into effect. Resolution XXVIII of the Conference on Problems of War and Peace, entitled "Rights of Women in the Americas", recommends that the governments of the American Republics implement the declaration adopted at Lima by modifying their legislation, subject to conditions prevailing in their respective countries, so as to abolish any existing discrimination by reason of sex.

Acting in pursuance of the position thus taken in regard to the equal status of women in the political life of the state, the draft Declaration uses the word "persons" to describe those entitled to participate in the election of the officers of government. At the same time the draft Declaration specifically repudiates any discrimination in respect to eligibility to public office upon grounds of race or religion or sex, and it likewise repudiates any such discrimination in respect to appointments to the civil service or the terms or conditions of such appointments.

The Juridical Committee understands that the principle laid down in Article XIII, that the administration of the public services of the state shall, in respect to appointments and terms of service, be without favor or discrimination, implies that the government in power must not use the means at its disposal to coerce or to obstruct the free expression of the popular will.

The draft Declaration does not enter into the problem of colonial government, with its special conditions of backward peoples who, from lack of traditions of law and order and justice and from in-

experience in self-government, are not believed to be ready to assume the status of democratic states. The American States have no colonies and therefore no problems of colonial control. This problem must be left to the action of the General Assembly of the United Nations.

It is important to emphasize here that the right to participate in the election of the officers of government implies an obligation on the part of the citizen not only to vote when the occasion calls for it, but to vote with a realization of the civic duty he is performing in helping to determine, directly or indirectly, the policies of the government and the conditions which will promote the welfare of the people as a whole. The state is not the mere aggregate of so many individual citizens; it is the historical expression of those various social groups within which man has found the opportunity for the development of his highest faculties. It embodies a cultural inheritance from which the individual draws deeply for the sustenance of his moral and material needs. Man cannot hope to reap the benefits of the civilization which organized social life makes possible unless within the range of his powers he makes on his part the fullest possible contribution to the development of the great objectives of the state, law and order and justice and the promotion of the general welfare.

Article XIV

Right to Work

Every person has the right to work as a means of supporting himself and of contributing to the support of his family.

This right includes the right to choose freely a vocation, in so far as the opportunities of work available make this possible, as well as the right to transfer from one employment to another and to move from one place of employment to another. Associated with the right to work is the right to form labor and professional unions.

Every person has the duty to work as a contribution to the general welfare of the state.

The state has the duty to assist the individual in the exercise of his right to work when his own efforts are not adequate to secure employment; it must make every effort to promote stability of employment and to insure proper conditions of labor, and it must fix minimum standards of just compensation.

The state has the right, in time of emergency, to call upon the services of the individual in cases where such services are necessary to meet an urgent public need.

Comment

The right to work falls, as has been seen, within the newer group of social and economic rights. This does not mean, however, that it is any the less fundamental; but merely that it has awaited the circum-

stances of modern times to be formulated in specific terms. As a fundamental right of the human being the right to work is as old as the mandate that man must earn his bread by the sweat of his brow. During the last quarter of the eighteenth century, when the political rights of man came to be asserted in formal declarations, occasional voices were heard insisting upon the close relation between political rights and economic and social conditions. But the proposals advanced had chiefly in mind the duty of the state to come to the relief of the poor and the aged, not the right of an able man to earn his livelihood by labor which he was competent to perform but for which there was no demand in the market. In the year 1848 the framers of the new French Constitution discussed at length the insertion of the right to work among the rights to be guaranteed to the citizen, but they came to the conclusion that it was inappropriate to do so because a guarantee was believed to imply an action at law, which it was not feasible to grant in the case of the right to work.

But in more recent years the existence of cyclical unemployment upon a vast scale has led to the assertion of a fundamental right of man to work as the basis of a duty on the part of the state to regulate private industry so as to avoid as far as possible the recurrent business cycles with mass unemployment in times of depression, and at the same time the duty on the part of the state itself to provide opportunities of labor which will enable persons to earn a livelihood by their own efforts. It is beneath the dignity of the human person to be continuously the object of charity and state aid; and at the same time it is demoralizing for him to remain in idleness.

In an address early in 1943 President Roosevelt spoke of the acceptance, as self-evident, of a "second bill of rights"; and he included as first in the list "the right to a useful and remunerative job in the industries, or shops or farms or mines of the nation". In the Philadelphia Charter, adopted by the General Conference of the International Labor Organization on May 17, 1944, the Conference laid down the principle that "all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity", and it proceeded to elaborate a detailed program for the attainment of this "fundamental objective".*

*Section III of the Philadelphia Charter reads as follows:

The Conference recognizes the solemn obligation of the International Labor Organization to further among the nations of the world programs which will achieve:

- (a) full employment and the raising of standards of living;
- (b) the employment of workers in the occupations in which they can have the satisfaction of giving the fullest measure of their skill and attainments and make their greatest contribution to the common well-being;
- (c) the provision, as a means to the attainment of this end and under

The practical application of the right to work obviously presents many difficulties, so that both the right of the individual and the corresponding duty of the state can only be stated in general terms. The duty of the state to assist the individual in the exercise of his right to work must encroach as little as possible upon the right to personal liberty. The principle of the free choice of a vocation and of freedom to transfer from one employment to another must be respected, without at the same time making it impossible for the state to meet the problem of unemployment on a large scale. Above all, the duty of the state to promote stability of employment, to insure proper conditions of labor and to fix minimum standards of just compensation must not lead to such a regimentation of the economic life of the country as to convert the state into a totalitarian government and to sacrifice personal liberty to the right to work.

Each state must obviously determine for itself the measures that are feasible and manner in which the balance between the right of personal liberty and the right to work is to be maintained. In the "Economic Charter of the Americas", adopted by the Conference on Problems of War and Peace, the American States expressed their aspiration that an economic program may be developed which will enable their peoples to achieve higher levels of living, affirming at the same time the necessity of preserving and strengthening "the freedom of action in the economic field that underlies the institutions of political and personal liberty." The two pillars, it is said, upon which a positive economic program can be built which will satisfy the desire of the American peoples are "rising standards of living and the economic liberty that will encourage full production and employment."

The draft Declaration can do no more than proclaim certain broad principles, recognizing that the objective can only be attained by degrees and in different ways according to the circumstances with which each state is confronted.

The draft Declaration affirms the duty of the individual not only to

adequate guarantees for all concerned, of facilities for training and the transfer of labor, including migration for employment and settlement;

(d) policies in regard to wages and earnings, hours and other conditions of work calculated to ensure a just share of the fruits of progress to all, and a minimum living wage to all employed and in need of such protection;

(e) the effective recognition of the right of collective bargaining, the co-operation of management and labor in the continuous improvement of productive efficiency, and the collaboration of workers and employers in the preparation and application of social and economic measures;

(f) the extension of social security measures to provide a basic income to all in need of such protection and comprehensive medical care;

(g) adequate protection for the life and health of workers in all occupations;

(h) provision for child welfare and maternity protection;

(i) the provision of adequate nutrition, housing and facilities for recreation and culture;

(j) the assurance of equality of educational and vocational opportunity.

contribute his own work to the general development of the resources of the state but to be ready to respond to the call of the state in times of emergency and when the need of national defense arises. Rights and duties are reciprocal between man and the state, as between man and man.

Article XV

Right to Share in Benefits of Science

Every person has the right to share in the benefits accruing from the discoveries and inventions of science, under conditions which permit a fair return to the industry and skill of those responsible for the discovery or invention.

The state has the duty to encourage the development of the arts and sciences, but it must see to it that the laws for the protection of trade-marks, patents and copyrights are not used for the establishment of monopolies which might prevent all persons from sharing in the benefits of science. It is the duty of the state to protect the citizen against the use of scientific discoveries in a manner to create fear and unrest among the people.

Comment

The principle upon which Article XV of the draft Declaration proceeds is that the democratic state is a cooperative commonwealth, in which the opportunities for discovery and invention are the result of many generations of progressive effort, and that each generation is the heir of the civilization which preceded it and as such is entitled to share collectively in the benefits which its men of greater genius are able to draw from the conditions placed at their disposal. At the same time the Article recognizes the necessity of rewarding the industry and skill of the discoverer or inventor and thus of encouraging the patient study and research which may lead to new advances in the field of science.

Here, as in the case of the right to work, a balance must be sought between the encouragement of individual initiative by the grant of patents and copyrights and the protection of the public against the abuse of the special privileges thus granted. The duty of the state to protect the individual against monopolies in the exploitation of the natural resources of the state is recognized in the legislation of all of the American States; and it is equally the duty of the state to control the use of trade-marks and patents so as to prevent similar monopolies in the production or distribution of the articles thus protected against competition.

The last sentence of the article, referring to discoveries which create fear and unrest among the people, is obviously directed against the recent discovery of the means of making atomic energy available for destructive purposes. Here the protection to be given by the state to its nationals will be contingent upon the cooperation of other

states in taking similar action. In the presence of this newest discovery of science it may be said that the first and foremost international right of man is now no longer the right to his own personal existence or to his personal liberty and other associated rights, but rather his right to the existence of the civilization of which he is a part, and without which life would be intolerable even if he himself personally survived destruction. The "freedom from fear" which the Atlantic Charter contemplated as one of the results of the peace to be established after the war takes on a larger meaning in the light of the newly-discovered means of carrying the devastation of war to its logical extreme.

Article XVI

Right to Social Security

Every person has the right to social security.

The state has the duty to assist all persons to attain social security. To this end the state must promote measures of public health and safety and must establish systems of social insurance and agencies of social cooperation in accordance with which all persons may be assured an adequate standard of living and may be protected against the contingencies of unemployment, accident, disability and ill-health and the eventuality of old age.

Every person has the duty to cooperate with the state according to his powers in the maintenance and administration of the measures taken to promote his own social security.

Comment

The assertion of the right of every person to social security is based upon the maintenance of the dignity of the human being under all of the adverse contingencies that may happen to him, without fault on his part, during the course of his life. From the beginning of the Christian era it has been recognized that the more prosperous members of the community were under an obligation to give of their excess goods to the support of those in need. Without minimizing the moral obligation of the individual Christian it is now recognized that the state has the duty to organize its resources and to use its public agencies so as to assure the protection hitherto inadequately afforded. The individual person, being a member of the state, has in that capacity a right to social security not as a gratuitous concession but as a partner in the cooperative commonwealth of the state.

The American States, both individually and collectively, have recognized the necessity of making provision for social security. A number of the constitutions of the individual American States are outstanding examples of detailed provisions for social security in all of its specific forms. Numerous resolutions have been adopted by inter-

American conferences in favor of cooperation for the promotion of specific aspects of social security, and numerous agencies have been created to put the provisions of the resolutions into effect. The International Conference of American States held at Santiago in 1923 adopted a series of resolutions in respect to public health administration, and it recommended that social problems be included in the programs of future conferences. Thereafter the conferences held at Habana in 1928, at Montevideo in 1933, at Buenos Aires in 1936, and at Lima in 1938 extended progressively the scope of the broad objective of the promotion of the public health, safety, morals and general welfare of the inter-American community. To the resolutions of these conferences must be added the resolutions of the regular technical conferences on public health and on the protection of women and children and of the working classes.

In his address of January 7, 1941, President Roosevelt described "freedom from want" as meaning, when translated into world terms, "economic understandings which will secure to every nation a healthy peacetime life for its inhabitants everywhere in the world." The Inter-American Conference on Social Security, held at Santiago, Chile, in September, 1942, adopted a series of resolutions, defining comprehensively the various aspects of social security and proposing specific measures for putting into effect "a continental program" of cooperation for the attainment of the objectives of social security. The Declaration of Mexico, adopted at the Conference on Problems of War and Peace, proclaims that: "Economic cooperation is essential to the common prosperity of the American Nations. Want among any of their peoples, whether in the form of poverty, malnutrition, or ill-health, affects each of them and consequently all of them jointly." The Declaration of the Social Principles of America, adopted at the same Conference, recognizes international cooperation in the solution of social problems as one of the essential objectives of the future international organization, and emphasizes the necessity of "integrated programs of social security" as a means of protecting the worker against the risks inherent in the loss of wages resulting from reasons beyond his control.

These inter-American declarations and resolutions have now been supplemented by the provisions of the Charter of the United Nations. Article 55 of the Charter, dealing with International Economic and Social Cooperation, provides that the United Nations shall promote:

- a. Higher standards of living, full employment, and conditions of economic and social progress and development;
- b. Solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and
- c. universal respect for, and observance of, human rights and funda-

mental freedoms for all without distinction as to race, sex, language, or religion.

It will be observed that Article XVI of the draft Declaration submitted by the Juridical Committee deals with the right to social security in the broad sense, applicable not merely to the so-called "working classes" but to all members of the community. While the provisions of the article naturally find their application chiefly among the manual workers, the purpose of the article is to extend protection to all in need, without discrimination in respect to economic or social background.

The duty of the individual on his part to cooperate with the state to the extent of his ability in the maintenance and administration of the measures taken to promote social security might well be implied from the principle of membership in a cooperative community. It is believed, however, desirable to proclaim it specifically in order to make clear that the state is not to be looked upon as an eleemosynary institution to which the individual may look for relief without contributing his own fair share to its resources.

Article XVII

Right to Education

Every person has the right to education.

The right of children to education is paramount.

The state has the duty to assist the individual in the exercise of the right to education, in accordance with the resources of the state. The opportunities of education must be open to all upon equal terms in accordance with their natural capacities and their desire to take advantage of the facilities available.

The state has the right to fix general standards to which educational institutions must conform, provided that these standards are in accord with other fundamental rights and are the same for public and for private schools.

The right to education involves the right to teach, subject to the restrictions which accompany the right to education.

Comment

The right to education is, like other economic and social rights, based upon the right of the individual to share in the benefits of civilized life, in so far as the state of which he is a member may be able to make them available. No argument is needed to show that the illiterate person cannot participate fully in the political, economic and social life of the state. He cannot take advantage of many of the opportunities of cultural and material development offered to him, and he cannot in his turn contribute as effectively as he otherwise might to the common welfare. Education is essential to the fullest

development of the human personality; and the conception of the democratic state as a cooperative commonwealth justifies at once the assertion of a right on the part of the individual to an education and the duty of the state to assist him in his effort to attain it.

Taking into account the diversities of their resources it is clear that the American States are not in the same position in respect to their ability to assist the individual in obtaining an adequate education. Hence the draft Declaration formulates both the right of the individual and the duty of the state in broad terms, leaving it to each state to give effect to it in accordance with the resources which it has at its disposal. But whatever resources are at the disposal of the separate states, they must be made available to all upon equal terms. Equality of opportunity is, as will be emphasized in connection with the general right of equality, fundamental in the administration of educational systems. Obviously the practical results of the measures taken by the state will depend upon the capacities of individual persons as well as upon their desire to take advantage of the facilities of education which the state may be in a position to offer them.

The draft Declaration asserts that the state has not only the duty to assist the individual in the exercise of his right to an education but that it has the right to fix general standards to which educational institutions must conform. This right of the state does not extend so far as to give it a monopoly of educational activities, nor does it justify the establishment of standards which would have the practical effect of denying the right to maintain private educational institutions. The state has, however, the right to see to it that the education given in private institutions is upon substantially the same scientific level as that given in the institutions maintained by the state. While parents have the right to educate their children they must exercise that right in conformity with the right of the state to see that children receive an adequate education.

Article XVIII

Right to Equality before the Law

All persons shall be equal before the law in respect to the enjoyment of their fundamental rights. There shall be no privileged classes of any kind whatsoever.

It is the duty of the state to respect the fundamental rights of all persons within its jurisdiction and to protect them in the enjoyment of their rights against interference by other persons.

In all proceedings in relation to fundamental rights the state must act in accordance with due process of law and must assure to every person the equal protection of the law.

All restrictions imposed upon fundamental rights must be such only as are required by the maintenance of public order; and they

must be general in character and applicable to all persons within the same class.

Comment

The right to equality before the law is implied in the very existence of fundamental rights, indeed, it might be said to be the theoretical basis upon which other fundamental rights rest. The Declaration of Independence of the United States of 1776, which has been the inspiration of so many other bills of rights, declares: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain inalienable rights, that among these are life, liberty and the pursuit of happiness." The Declaration of the Rights of Man and of Citizen, proclaimed by the leaders of the French Revolution in 1789, states in its first article that: "Men are born and remain free and equal in rights." Equality before the law is the first right proclaimed in the constitutions of Argentina, Brazil, Chile, Cuba and other American States.

As a practical juridical principle, equality before the law relates both to the substance of rights and to the protection to be given them by the executive agencies of the state. Every person has an equal claim to respect for the dignity of his human personality; every person has the same right to life, to liberty, and to other derivative rights as is possessed by every other person. To the extent that the individual has the capacity to exercise these rights he may do so without any legal restraints that are not equally imposed by the law upon other persons. There shall be no privileged classes to whom special laws apply.

Equality before the law thus implies equality of opportunity; it implies the absence of any obstacles arbitrarily placed by the law in the way of the development by the individual man of whatever talents he may possess, of whatever ability he may have in any of the various fields of human endeavor. The Declaration of Mexico, adopted at the Conference on Problems of War and Peace, proclaims that "Among the rights of man, the first is equality of opportunity to enjoy all the spiritual and material blessings offered by civilization, through the legitimate exercise of his activity, his industry, and his ingenuity." The resolution (XLI) on Racial Discrimination, adopted at the same Conference, proclaims "the principle, recognized by all the American States, of equality of rights and opportunities for all men, regardless of race or religion." Equality before the law does not deny the existence of actual inequalities of mental and physical capacity in different persons; but it does assure that the law will not add arbitrary restraints to those imposed by nature. The project presented by the Cuban delegation to the Conference on Problems of War and Peace condemns discriminations based upon sex, race, religion, color, language or any other ground and calls for

a guarantee of complete equality of opportunity in the exercise of the various economic, professional and industrial activities. The denial of political and civil rights to persons convicted of crime is obviously not a denial of equality before the law, since such persons, by their violation of the law, have themselves created the unequal situation in which they find themselves.

Equality before the law means equality not merely in relation to the substance of human rights but in relation to the protection to be afforded when the right is violated by others. The draft Declaration proclaims it to be the duty of the state to respect on its part the fundamental rights of all persons and at the same time to assure to all the people the enjoyment of their rights without interference by others. The preamble of the project presented by the Cuban delegation to the Conference on Problems of War and Peace quotes with approval the provisions of the Fourteenth Amendment of the Constitution of the United States, that no state shall "deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws," as well as the interpretation put upon them by the Supreme Court of the United States, that the Amendment is applicable to every person without distinction of race, color or nationality, and that "the equal protection of the laws is a pledge of the protection of equal laws."

But the equality before the law is not to be taken so rigidly as to defeat the purpose of the right itself, which is to maintain the dignity of the human personality under diverse economic and social conditions. Classifications may be established where the unequal capacities of persons make it necessary to place burdens where burdens can best be borne and to make discriminations where discriminations are necessary to prevent equality from resulting in injustice. The exemption of small homes from taxation is to overlook a formal inequality in order to promote greater actual equality. The imposition of progressive surtaxes may serve to distribute the burden of taxation so that it will fall with equal weight upon persons of unequal capacity to carry the burden. The draft Declaration merely lays down the broad rule that the restrictions imposed upon fundamental rights must be such only as are required by the maintenance of public order, and that they must be general in character and applicable to all persons within the same class.

To what extent does the principle of equality before the law extend to aliens temporarily or permanently resident in the state? The draft Declaration, with one exception, uses the word "persons" to describe those to whom the rights set forth in the Declaration are to apply. The right to participate in elections refers to "Every person, national of the state," instead of to "Every person." Political rights are regularly denied to aliens without any suggestion of unjust dis-

crimination; for these rights involve the determination of national policies in which only those who owe primary allegiance to the state may justly be permitted to share. Aliens could scarcely claim as a fundamental right to participate so intimately in the life of the state when their connection with it is to a greater or less degree uncertain.

With this exception the draft Declaration makes no distinction between nationals and aliens in respect to fundamental rights. In respect to other rights, less-than-fundamental, the state remains free to adopt special legislation regulating the participation of aliens in the economic and social life of the state. Clearly the state must not impose such rigid regulations as to place the alien at such a disadvantage with respect to nationals as to amount to a denial of his fundamental rights. Thus the state may, for reasons of national security, deny to the alien the right to work in certain specified occupations or in certain specified localities, leaving open to him other opportunities of useful labor. So also the state may prohibit the ownership by aliens of mines, oil deposits and water-power; but it may not prohibit the ownership of a family patrimony, proclaimed in Article VIII as a fundamental right.

It is admitted that no rigid line can be drawn between fundamental and less-than-fundamental rights; and a measure of latitude must be left to the state in determining which of the civil rights of nationals may be restricted in their application to aliens. The burden of proving that particular restrictions are arbitrary and unreasonable must, as in other cases, fall upon the complainant. The Habana Convention on the Status of Aliens lays down the broad rule that "States should extend to foreigners, domiciled or in transit through their country, all individual guarantees extended to their own nationals, and the enjoyment of essential civil rights without detriment, as regards foreigners, to legal provisions governing the scope of the usages for the exercise of such rights and guarantees." The Bustamante Code, attached to the Convention on Private International Law signed at the same Habana Conference, makes provision for the enjoyment by foreigners of the same civil rights as are granted to nationals, subject, however, to the right of each state, "for reasons of public order," to deny to aliens the exercise of certain civil rights, or to subject them to special conditions. Aliens belonging to the contracting states are also entitled by the Code to "identical individual guarantees" with those of nationals, except as limited in each state by the constitution and the laws. The draft Declaration now clarifies the above rules by assuring the equal protection of the law to nationals and aliens alike in respect to the rights set forth in the Declaration as fundamental.

Article XIX

Rights and Duties Correlative

Rights and duties are correlative; and the duty to respect the rights of others operates at all times as a restriction upon the arbitrary exercise of rights.

Comment

The broad principle that rights and duties are correlative is, like the principle of equality before the law, an essential condition of the practical enjoyment of human rights. The right of one implies a corresponding duty on the part of others to respect his right, and he is under a similar duty to respect their rights. The primary function of the state is to adjust the rights of one to those of another and to prescribe remedies for the violation of rights. The draft Declaration merely repeats an obvious and necessary condition of law and order without which claims of right would have no meaning.

The duties of the individual both in relation to other individuals and to the community as a whole are thus logical inferences to be drawn from the rights which he possesses. If a reassertion of fundamental human rights is at times necessary, as it is believed to be today, it must be made with due regard to the duties which accompany the rights. As a member of the democratic state man must be prepared to cooperate in the protection of the rights of others with an insistence only second to that with which he demands protection for his own rights. His personal right to life is no greater than that of others. His liberty must be a liberty which permits others to be equally free.

Article XX

Incorporation of Declaration into Municipal Law

The provisions of this Declaration shall be a part of the law of each individual state, to be respected and enforced by the administrative and judicial authorities in the same manner as all other laws of the state.

The provisions of this Declaration shall not be abrogated or modified except in accordance with the terms of an inter-American agreement or an agreement of the United Nations binding upon the American States.

Article XXI

Procedure in Cases Involving Aliens

In the case of aliens alleging violation of the foregoing fundamental rights by the state in which they are resident, the complaint shall be decided first by the courts of the state itself; and in cases in which a denial of justice is alleged by the state of which the alien is

a national, the case, failing diplomatic settlement, shall be submitted to an International Court, the statute of which shall be included as an integral part of the instrument in which the present Declaration is to be adopted.

Comment

These articles of the draft Declaration deal respectively with the enforcement of the provisions of the Declaration, the first of the two being of a general character applicable to nationals and to aliens alike, and the second being directed to the special cases involving alleged violations of the provisions of the Declaration in their application to aliens. Both of them will be dealt with in Section VIII of this report.

VII. Political ideals and practical possibilities

1. All of the great declarations of human rights, from the Declaration of Independence of the United States down to the Atlantic Charter, including the bills of rights incorporated into the Constitutions of the other American Republics, are to a greater or less extent idealistic in character, that is, they set up a standard which the state must regard as its ultimate objective and which it must seek to attain by the means available to it.

It would seem that there should be no substantial obstacles to putting into effect the political rights of the individual. For these are largely a matter of non-interference on the part of the government with the normal activities of the people. It is true that the state must intervene to protect the rights of one individual in relation to another and to insure the fulfillment of the duties accompanying rights; but this need not call for any effort on the part of the state which is not already within its reach.

On the other hand the newer economic and social rights of man call for the active cooperation of the state in bringing its material resources to the aid of those who are unable to enjoy their rights by their own unaided efforts. Here the cooperation of the state will obviously depend not merely upon the extent of its material resources but upon its ability to organize its resources and to distribute its aid effectively among its people in accordance with the degree of their need. It is not to be expected, therefore, that the objective proclaimed by a declaration of rights and duties can be attained by the mere passage of social legislation of the most advanced character. Time will be required in all cases, more time in some cases than in others, before the ideal of social justice can be reached. Each state can only keep before it the ideal and take such measures as are practically available to it.

2. It is contemplated that in respect to the economic and social

rights of man and the corresponding duties imposed upon the state that international cooperation will come to the aid of those states which are unable to raise the social conditions of their peoples up to the level contemplated. Provision for such international cooperation is made in inter-American agreements as well as in the Charter of the United Nations. Human rights and fundamental freedoms are said in the Charter to be a matter of common concern to the Organization and an objective to be attained by the action of the entire body. To a certain extent, as yet undetermined, international cooperation must seek to overcome the disparities between states in the same way in which the individual state itself must seek to overcome the disparities between its citizens. Here also progress towards the ideal must of necessity be by degrees, and the attainment of the objective must be conditioned by what is practically feasible under the circumstances.

VIII. Administration of an International Standard of Fundamental Rights

1. While a literal interpretation of the mandate given to the Juridical Committee by Resolution XL of the Mexico City Conference might suggest that the function of the Committee was limited to the draft of a Declaration of the International Rights and Duties of Man without reference to the part which the Declaration is to play in the inter-American system, the Juridical Committee is of the opinion that the administrative aspects of the problem of protecting human rights come properly within its competence, thus leading it to consider the ways and means by which the Declaration may be made practically effective.

As pointed out above, Resolution IX of the Mexico City Conference, makes provision for the preparation of a draft charter for the reorganization, consolidation and strengthening of the Pan American system. The Resolution prescribes that this charter shall first of all proclaim the recognition by the American Republics of international law as the rule of their conduct, together with a pledge to observe the standards set forth in a Declaration of the Rights and Duties of States and in a Declaration of the International Rights and Duties of Man which the Juridical Committee has been instructed to prepare. The two Declarations are to appear as an annex to the charter, so that, without amending the charter, the Declarations may be revised from time to time according to need.

For this reason the Juridical Committee comes to the conclusion that it is appropriate to include in its report a consideration of the administration of the international standard of the fundamental rights and duties of man. This aspect of the problem is, indeed, the most difficult of all.

The American Republics have indicated in the above Resolution that the principles of the proposed Declaration are to become "the effective rule of their conduct." Does this imply anything more than that the principles are to be incorporated into the domestic law of the individual state and that they are to be administered upon the same basis as the enactments of national legislatures? The Declaration is referred to in the Resolution as a "definition of the fundamental principles of international law." Resolution XL, which deals specifically with the proposed Declaration, proclaims the adherence of the American Republics to the principles established by international law for safeguarding the essential rights of man and declares their support of a system of international protection of these rights. What meaning is to be ascribed to the words "international protection"? Does the phrase imply that a violation of the principles set forth in the Declaration becomes a matter of concern for the inter-American community as a whole?

Throughout their growth and development during the past three hundred years or more, the rules of international law have been put into effect by the action of the individual state. The international community has never been organized to the extent of creating executive agencies for the enforcement of its rules. The Charter of the United Nations does, indeed, single out one vital principle of law, the principle that force shall not be used in the settlement of international disputes, and it establishes a central agency for the enforcement of that principle. The other rules of law, however, continue to be left for execution to the individual states, and upon each of them individually falls the obligation to give effect to the rules by the adoption of such domestic legislation as may be necessary to accomplish the purpose.

While the rules of international law constitute a direct obligation for all states, yet the relation of these rules to the domestic law of the individual state is a matter for separate adjustment by each state in accordance with its national constitution. In some states international law becomes automatically part of the law of the land, so that the national courts must give effect to it in the same manner in which they give effect to the acts of the national legislature. In other states a special act of the national legislature may be necessary to bring the rule of international law into effect. In either case, however, the rule of international law, once it has come into effect, is of paramount obligation, and no state may plead the provisions of its national constitution or laws as an excuse for failure to carry it out. Attention may be called here to Resolution XIII of the Conference on Problems of War and Peace, in which the need is proclaimed for all states to strive toward the incorporation of the essential principles of international law into their constitutions and other municipal law.

3. It is clear that the enforcement of the provisions of a Declaration of the International Rights and Duties of Man must form a very

intimate part of the national legislation and administration of each separate state. Under present conditions it is agreed that the obligations assumed under such a Declaration must be carried out by the organs of each separate state acting in pursuance of its own constitution. In order to insure the more effective enforcement of the Declaration in accordance with the provisions of domestic law, the Juridical Committee suggests that an article be added to the convention contemplated in Resolution XL of the Mexico City Conference more or less to the following effect:

The provisions of this Declaration shall be a part of the law of each individual state, to be respected and enforced by the administrative and judicial authorities in the same manner as all other laws of the state.

The provisions of this Declaration shall not be abrogated or modified except in accordance with the terms of an inter-American agreement or an agreement of the United Nations binding upon the American States.

4. While the primary responsibility for the fulfillment of the obligations of the Declaration of the International Rights and Duties of Man must fall upon each individual state in relation to its own people, the Juridical Committee is of the opinion that the conventional form to be given to the Declaration, in accordance with the terms of Resolution XL, justifies the creation of an Inter-American body with advisory functions in respect to the protection of fundamental rights within each state. The Juridical Committee ventures to suggest that this body be designated as the Inter-American Consultative Commission on the Rights of Man, and that it be constituted as a subsidiary of the Inter-American Economic and Social Council created by the Conference on Problems of War and Peace, to which is to be entrusted the task of carrying out the recommendations of the International Conferences of American States. The commission might be composed of a small body of members, appointed by States designated for that purpose by the Governing Board of the Pan American Union at the suggestion of the Economic and Social Council.

The functions of this Consultative Commission on the Rights of Man would be the promotion of respect for human rights and fundamental freedoms in accordance with the provisions of the Declaration to be adopted by the American States. It should serve as a central agency for the study of the practical problems involved in the protection of human rights. It should be competent to submit recommendations on the basis of reports sent to it by the Economic and Social Council or on the basis of its own direct investigations. The recommendations of the Commission should be submitted not to particular governments but to the American Governments as a body through the intermediation of the Economic and Social Council. Only with the consent of the Council should the Commission address itself to a particular government in connection with a specific case.

A special function of the Consultative Commission would be to maintain contact with the Commission on Human Rights to be established by the Economic and Social Council of the United Nations. The American States are at the same time members of the inter-American regional system and members of the larger Organization of the United Nations, so that it will be necessary to coordinate the work of their respective Commissions on Human Rights and prevent conflicts both in respect to the principles to be applied and the measures for the promotion of rights. It is possible that the Declaration of Rights adopted by the American States may include a more comprehensive protection than the other members of the United Nations are as yet ready to put into effect; but that possibility should not prevent the independent adoption of an inter-American declaration. The prior adoption of an inter-American declaration might, on the other hand, serve as a model for the international declaration and thus facilitate the promotion of "human rights and fundamental freedoms" in accordance with the terms of the Charter.

5. The Juridical Committee has not found it desirable to enter into the question of the measures to be taken to assure the fulfillment by each state of the obligations contained in the Declaration. As has been observed above, the instrument embodying the Declaration will be part of the municipal law of each state, to be put into effect by the executive and judicial agencies of the state. In cases involving nationals the decision of the highest court of the state to which appeal may be taken under the constitution would normally be final. The possibility of grave and persistent violations of the Declaration by a particular government is, however, not to be dismissed; and it is obvious that if such violations of fundamental rights were systematic in character, indicating a fixed policy on the part of the legislative or administrative officers, rendering recourse to the courts ineffectual and making popular resistance impossible, they could not be overlooked by the other members of the community without bringing the whole inter-American system into disrepute. Such an extreme situation, if unhappily it should arise, would be beyond the competence here assigned to the Commission on Human Rights. The American States have accepted the principle of common consultation in the presence of threats to the peace; and it would be for them to determine whether the violations of the Declaration were of such a character as to disturb their friendly relations and to *amount in fact* to a threat to the peace, and hence to justify recourse to the procedure accepted for such situations.

6. The Juridical Committee has given the most careful consideration to the difficult question of the inclusion of aliens in the broad term "persons". On the one hand it is clear that the primary purpose of the proposed Declaration of the International Rights and Duties of Man is to protect the rights of persons within the jurisdiction of

the state of which they are nationals. The vast majority of the population of a state are nationals of the state; and the significant feature of the Declaration is that it is now attempted for the first time to extend the protection of international law to nationals of the individual state. As has been explained earlier in the report, this objective is based partly upon the necessity of protecting the international community against the evil effects of totalitarian government seeking to dominate the minds as well as the bodies of the individual citizens, and partly upon the humanitarian idealism which has accompanied the recognition of the need of a more closely organized international community.

But the very fact that the protection of man as man is contemplated in the Declaration makes it impossible to limit the Declaration to citizens or nationals of the different states. With the exception of special political rights, aliens resident in the state must be equally entitled to enjoy the "human rights and fundamental freedoms", the promotion of which is made one of the purposes of the Charter of the United Nations. To set aside "aliens" as a separate class, entitled to special rights different from those of nationals of the state, would be to deny the "human" character of the rights laid down for nationals and the "fundamental" and "essential" character of the freedoms proclaimed in behalf of nationals themselves.

The inclusion of aliens in the term "persons" raises, however, the issue of the effect of the adoption of the Declaration upon the practice of the diplomatic protection of citizens abroad. For many years this practice has been a source of controversy and friction within the inter-American community. If, now, the Declaration is to define more specifically the rights of aliens and to extend them perhaps into new fields, it becomes imperative to confront the problem of the diplomatic protection of aliens and seek a constructive solution for it. The Juridical Committee recognizes the obligation thus imposed upon it, and it is of the opinion that the present draft Declaration must be followed by a detailed study of the problem of diplomatic protection in all of its phases. For the moment, however, it is only possible to formulate a single article, drawn up in general terms, looking to the segregation of cases involving aliens and proposing a special method of protecting them.

In the resolution (XL) of the Conference on Problems of War and Peace, in which the Conference requested the Juridical Committee to prepare the present draft Declaration, it is stated in the preamble that "international protection of the essential rights of man would eliminate the misuse of diplomatic protection of citizens abroad, the exercise of which has more than once led to the violation of the principles of non-intervention and of equality between nationals and aliens, with respect to the essential rights of man." The use of the words "eliminate the misuse" would seem to indicate not the

complete elimination of diplomatic protection, but the abuses with which it has been attended in the past, as pointed out in the paragraph quoted. Nothing is said, however, with respect to the practical ways and means by which the Declaration of the International Rights and Duties of Man is to be made a substitute for the existing rules of international law upon the subject of the diplomatic protection of aliens. Some light, however, is thrown upon the subject by the project of resolution presented to the Conference by the Mexican delegation, in which the Governing Board of the Pan American Union is called upon to study the inclusion in the reorganized inter-American system of an "organ specially designed to watch over the regulation and the practical application of the principles proclaimed in the Declaration." In the report accompanying the project reference is similarly made to the "organization of an international mechanism" having the same object. In as much as the Mexican project appears to have exercised an important influence upon the adoption of Resolution XL, the Juridical Committee has given special study to the constructive proposals contained in it.

The Juridical Committee is of the opinion that the abuses attending the diplomatic protection of citizens abroad have been due chiefly to the unilateral character of the procedure by which such protection has been carried out; and that the most practical remedy consists in the substitution of procedure before an international court in accordance with established principles of law. It is therefore proposed that in cases in which aliens may allege violation of the rights secured to them by the Declaration, when adopted in juridical form, the complaint shall be decided, as under existing law, first by the courts of the state itself. In accordance with the provisions of Article XX, each state may determine whether there may be an appeal from the decision of its local courts to the highest court of the state or to a special court appointed for the particular purpose of hearing such claims.

In the great majority of cases it is to be expected that the decision of the courts of the state will settle the matter definitively. But in the exceptional cases in which the state of which the alien is a national has ground to believe that there has been a denial of justice the case shall, failing settlement by direct negotiation between the parties, be submitted to an international body, as contemplated in the Mexican project. The statute of this international body, designated in the draft Declaration as an International Court, would have to be drawn up separately and made an integral part of the instrument which the American States may decide upon as the proper legal form to be given to the proposed Declaration.

The Juridical Committee recognizes that the purpose announced in the preamble of Resolution XL, of eliminating "the misuse of diplomatic protection of citizens abroad", calls for a more exhaustive study

of what constitutes denial of justice than it has been possible to undertake within the limits of the problem here considered by the Committee. For this reason the Committee would recommend that the competence of the International Court proposed in Article XXI be limited for the time being to cases directly involving fundamental rights, and should not extend to cases involving claims made in connection with contracts for public works or for personal service, or claims made in connection with public loans. Nor should cases involving claims for indemnity resulting from internal disturbances, international wars or transfers of territory come within the competence of the proposed court. The solution of these issues must await the adoption of more specific rules of international law with respect to diplomatic protection than are as yet generally recognized.

The study of this question, so intimately related to the peace of the American States, the Juridical Committee proposes to undertake in due course. But in so far as the objectives of the present Declaration of the International Rights and Duties of Man are concerned, the Committee is of the opinion that the solution proposed in Article XXI is a constructive one, and that it will materially aid in attaining the purpose proclaimed in the preamble of the Resolution.

In submitting the present draft Declaration the Juridical Committee has sought to reconcile conflicting points of view and to formulate as specific and detailed a declaration as was possible under the circumstances. If a Declaration of the International Rights and Duties of Man is to accomplish its purpose it must not be content with mere generalizations and abstractions. On the other hand it must limit itself to fundamental and essential rights, which may be taken as a present minimum of protection. Resolution IX of the Conference at Mexico City, on the Reorganization, Consolidation and Strengthening of the Inter-American System, contemplates that the two Declarations of the rights and duties of states and the rights and duties of man shall appear as an annex to the charter of the Pan American system, so that the two Declarations "may be revised from time to time to adapt them to the requirements and aspirations of international life."

The Juridical Committee now awaits the comments which the American Governments may deem it pertinent to make upon the proposed draft, in order that it may then proceed to prepare the final draft contemplated by Resolution XL.

Rio de Janeiro,
December 31, 1945.

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