

## LONDON INTERNATIONAL ASSEMBLY

REPORT OF THE THIRD COMMISSION (LEGAL COMMISSION) ON  
INDIVIDUAL RIGHTS

## I.

The Third Commission of the London International Assembly was formed on 23rd February, 1943, with Professor A.L. Goodhart as Chairman and M. Vochoz as Secretary. The following subjects were assigned to the Commission by the Assembly for examination:

"The consolidation and development of the principles of international law accepted in the last 25 years or formulated in the Atlantic Charter about:

- (a) Prohibition of aggressive wars and suppression of the right to neutrality in case of collective action.
- (b) Settlement of international disputes.
- (c) Individual rights.
- (d) Recognition of new governments."

The Commission has hitherto devoted its regular sessions mainly to the questions of individual rights. The principles which it has drawn up are contained in the enclosure ("Rights of the Individual") and are the subject of this report. It is important to note that this is only a preliminary report and that there may be other principles which can be stated in a further report.

## II.

In dealing with the question of the protection of certain fundamental rights of the individual, the Commission has dealt with this material from the strictly legal standpoint. It has been their aim to formulate these various maxims as positive legal principles. While doing this the Commission naturally took into consideration previous experience on this familiar question in different States. English, American and French law and the principles concerning the protection of minorities were the first to be considered by this Commission. At the same time the Commission did not neglect to consider proposals in this matter made de lege ferenda; and, in the first place, the proposals now drawn up by the committee of France Combattante in London, the proposals of the Institute of International Law in New York, 1929, and others.

The Commission has attempted to deal with its task in an essentially practical manner. Its guiding principle has been to limit itself to the principles concerning the protection of the individual which can be considered as being of such a fundamental nature that every civilised State wishes and must respect them in so far as it wishes to be recognised as a civilised State. In order to approach the realisation of this practical aim, the Commission has deliberately confined itself to a "basic minimum" of human rights. Certain States have undoubtedly gone further in certain directions than do the principles accepted by the Commission. But, as already mentioned, the Commission considered that carrying out its task was an appropriate occasion for stating those principles which should be accepted by every State. The importance of these few principles, which represent a basic minimum, is thus emphasised.

## III.

The following notes may be of value in calling attention to some of the points considered by the Committee (see enclosure)

- I. This Article is expressed in both positive and negative terms. It emphasises that the State is under a duty actively to

protect the life and liberty of every person within its territory, The Committee felt that it is not sufficient merely to require the State not to act in an arbitrary manner itself.

II. Logically this Article falls within the scope of Article I, but it is the usual practice to deal with these subjects separately. The prohibition against slavery has been recognised by all civilised States. The term "involuntary servitude" has been taken from the U.S.A. Constitution. The Committee reached the conclusion that it was not desirable to define this term more precisely. Attention is called to a paper on this subject written by M. Schwelb and M. Vochoo, which can be consulted at the office of the Assembly.

III. This Article has been carefully framed so as not to guarantee the institution of private property. It would be difficult, even if it were desirable, to frame any such guarantee for, at the present time, most private property is subject to the control of the State. The Article does, however, provide that private property, in so far as it exists, shall not be taken in an arbitrary manner, and that the law on this subject shall be equal for all.

IV. This Article provides for freedom of belief. It protects not only those who believe in religion, but also those who do not. It does not go as far as does the Constitution of the U.S.A., for it does not prohibit a State from supporting a religion recognised by the State.

V. This Article does not guarantee freedom of speech in all circumstances because, as has been said, no system of law can recognise the right of a man to call out "Fire" in a crowded theatre. The right is therefore stated to be subject to "the rules of public order or of good morals". The Committee also considered the question of censorship, but it reached the conclusion that it was not desirable to include a provision on this subject.

VI. The point made concerning Article V is relevant to this Article.

VII. This Article is concerned with the administration of justice. The Committee accepted the basic principle underlying the English writ of Habeas Corpus; but it felt that details of this writ could not be easily introduced into the established continental procedure.

VIII. This Article is concerned with the protection of the house against arbitrary searches. The Committee was unable to accept the suggestion that such searches should only be permitted when made under a judicial order, as the modern practice is to permit various inspectors to enter houses. It was felt that a clause requiring such searches to be made under a general law, applicable equally to all persons, would give sufficient protection.

IX. The right of every person to use the language of his choice is recognised by this Article. The Committee is, however, of the opinion that it is not inconsistent with this right to give the State the right to require that its citizens should also learn the official State language.

X. This article provides that a State shall not arbitrarily cancel citizenship on the ground of race, religion or language. The question whether further restriction should be included has been left open. The present Article does not cover cancellations such as have recently been made by Vichy, viz. all citizenships granted after a certain date.

The Committee is, however, of the opinion that it is essential to take steps to provide against the present calamity of statelessness which is now suffered by millions of people. Every man should have a right to have the nationality of some State. It is

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#### Further Object

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therefore highly desirable that international measures should be taken in order to give definite nationality to the present stateless persons and to prevent the condition of statelessness from arising.

## IV.

Further Objectives

It will be noted that in the ten rules which we are submitting to the Assembly we have not dealt with "freedom from want", with the right to education, or with the right to vote. This does not mean that we do not consider that these concepts are of the greatest importance, but we believe that they fall into a separate category and should therefore be dealt with separately. There are three main reasons for this dichotomy.

1. The rules which we have attempted to define can be stated in precise legal terms and are capable of legal enforcement. On the other hand, such a concept as "freedom from want" is the expression of an ideal objective which will require much greater elaboration before it can be put into practical form. We believe that by including in the same category such ideal objectives and the more concrete rules which we have framed, the force of the latter may be diminished. Thus they will not be regarded as constituting certain definite principles which must be recognised and enforced by every civilised State, but will be thought of as being merely ideals which may be achieved when convenient. By spreading our net too wide we may fail to catch anything.

2. By placing in the same category both precise rules and ideal objectives we may fail to recognise that the machinery for carrying them into effect is necessarily different. The legal rules which we have stated can be enforced by the Courts. It would be possible for an International Court to put them into effect tomorrow, provided that it were given the necessary powers. The history of the Supreme Court of the United States is an illustration of this. On the other hand, the ideal objectives depend for their realisation on the legislative action of the various States. It will therefore be far more difficult to put them into force.

3. The rules which we have stated here have been recognised in recent years by most of the civilised States, but unfortunately they have not always been enforced in practice. By restating them again we may hope that they will receive greater efficacy. On the other hand, the less precise ideal objectives will receive less general acceptance, and may even be regarded by some States as being impractical at the present time. By emphasising the rules which have been generally accepted we are more likely to attain our immediate objective. It will then be possible to make further advances in the future.

Although we have not attempted to deal with these wider objectives in our rules, it may be desirable for us to state briefly why we have felt that they were outside our scope.

The first objective is of a political nature, and may be stated as follows: "Every adult citizen shall be entitled to vote and to take an equal share in the conduct of government". There are two difficulties to be faced if this is to be included as a basic human right. The first is that this is an ideal which is recognised by hardly any States at the present time. Thus, for example, France has not given the vote to women, and in some of the States of the United States educational tests are provided. Even in Great Britain, which has gone further than most countries, there are certain limitations on the right to vote. Secondly, if this provision were adopted as a basic rule, it would result in making democracy compulsory for all countries. This would derogate from the principle that no form of government shall be imposed on a country from outside.

The second objective is a cultural one, and may be stated as follows: "All citizens are entitled to an education, which shall be open equally to all". Here again there are two difficulties in stating this as a basic human right. Unfortunately many countries are not in a position at present to provide universal education, and it may take some generations before they are capable of doing so. It must be remembered that universal education exists in only a limited number of countries to-day, and is of recent origin. It can hardly be desirable for us to state that a country which is not able to provide such universal education has failed to attain the basic minimum of a civilised State. The second difficulty is that educational standards vary from country to country. It would not be easy to determine what constituted a proper educational programme for all nations.

The third objective is a social one, and can be stated as follows: "Every person has the right to work, and the right to security when no work can be obtained". Here again the difficulty is that these objectives may prove difficult to achieve in the less fortunate countries. It would be undesirable to hold that they had failed to meet the standards of a civilised country because they had not been able to put the Beveridge Plan into operation. Moreover, such a term as "right to security" is so vague that it would be difficult to apply it in practice. Does it cover only bare subsistence, or does it include what we consider the necessary amenities of life? However desirable this objective may be from the social standpoint, it is too vague to be stated in legal terms. Any attempt to do so would lead us immediately into controversial politics. The Committee has been careful to avoid these by limiting itself to the less adventurous task of stating those basic rules of human rights which are generally recognised by civilised States, and which are capable of enforcement. It is hoped that this careful limitation will give additional force to these essential principles.

LI

Basic pr

- I. The State shall within its territory protect any person
- II. Slavery shall not be permitted
- III. No person shall be deprived of his property, or political rights
- IV. Every person shall have the right to private property, of which he shall not be deprived
- V. Every person shall have the right to work, and the right to security when no work can be obtained
- VI. The rights of every person shall be protected, provided that such protection is not incompatible with the rights of other persons
- VII. It is the duty of every State to ensure that its laws and institutions are such as to secure the most efficient protection of the rights of its citizens

For the purpose of this institution, the following are recognised

In particular, the prompt judgment of the police and the remedy against

Delictual and criminal law, the Courts, the effect, the remedies arising

- VIII. No house shall be searched without the authority of a general law
- IX. Every person shall have the right to relations with other persons
- X. No person shall be deprived of his citizenship



## LONDON INTERNATIONAL ASSEMBLY.

Commission IIILEGAL COMMISSION - RIGHTS OF THE INDIVIDUAL

Basic principles as formulated by the Legal Commission  
of the London International Assembly

- I. The State shall protect the life and liberty of every person within its territory, and, in particular, no State shall deprive any person of life or liberty without due process of law.
- II. Slavery shall be prohibited. Involuntary servitude shall only be permitted as a punishment for crime whereof the party shall have been duly convicted.
- III. No person shall be deprived of his property except under due process of law, nor shall a State arbitrarily confiscate private property, in particular because of the nationality, race, religion or political condition of the holder.
- IV. Every person shall be entitled to the free exercise, public or private, of any belief, religion or creed, the practice of which is not contrary to public order or good morals.
- V. Every person shall be free to speak, write or publish whatsoever he thinks fit provided that this is not contrary to the rules of public order or good morals.
- VI. The rights of public assembly and of association shall be recognised, provided that such assembly or association is not contrary to the rules of public order or good morals.
- VII. It is the duty of each State to ensure to all persons the equal and efficient protection of their rights.

For this purpose all persons shall have free access to judicial institutions functioning according to the usual standards generally recognised in civilised countries.

In particular it is the duty of the State to provide for prompt judicial supervision where any person has been detained by the police or other officials, and to make available an immediate remedy against any arbitrary detention by whomsoever imposed.

Delicts and penalties shall be defined with precision in the criminal law itself and not left to the unfettered discretion of the Courts. Criminal law can have in principle no retroactive effect, reservation being made of the necessity to meet the requirements arising from such an extraordinary circumstance as war.
- VIII. No house shall be entered or searched arbitrarily. Entry and search shall only be made in accordance with provisions made by the general law which shall be applicable to all persons equally.
- IX. Every person is entitled in his private, cultural and commercial relations to the free use of the language of his choice.
- X. No person shall be deprived of his citizenship except in accordance with general law, nor, in particular, shall any person be deprived of his citizenship because of his race, language or religion.