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COMMISSION ON HUMAN RIGHTS

DRAFTING COMMITTEE

INTERNATIONAL BILL OF RIGHTS

DOCUMENTED OUTLINE

TEXTS

UNITED KINGDOM DRAFT INTERNATIONAL BILL OF HUMAN RIGHTS

Textual Comparison of the Draft International Bill of Human Rights submitted by the Delegation of the United Kingdom to the Drafting Committee of the Commission on Human Rights, and the Draft Outline of an International Bill of Rights.

(Prepared by the Division of Human Rights)

/PREAMBLE

PREAMBLE (Draft Outline prepared by the Division of Human Rights)

The Preamble shall refer to the four freedoms and to the provisions of the Charter relating to human rights and shall enunciate the following principles:

1. that there can be no peace unless human rights and freedoms are respected;
2. that man does not have rights only; he owes duties to the society of which he forms part;
3. that man is a citizen both of his State and of the world;
4. that there can be no human freedom or dignity unless war and the threat of war is abolished.

UNITED KINGDOM DRAFT BILL

PREAMBLE

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

/rights

rights and fundamental freedoms and to make provision for their universal observance and protection.

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

.....ARTICLE 3 (Draft Outline prepared by  
the Division of Human Rights)

Everyone has the right to life. This right can be denied only to persons who have been convicted under general law of some crime to which the death penalty is attached.

UNITED KINGDOM DRAFT BILL

Part II - ARTICLE 8

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

.....ARTICLE 6 (Draft Outline prepared by the  
Division of Human Rights)

No one shall be deprived of his personal liberty save by a judgment of a court of law, in conformity with the law and after a fair public trial at which he has had an opportunity for a full hearing, or pending his trial which must take place within a reasonable time after his arrest. Detention by purely executive order shall be unlawful except in time of national emergency.

UNITED KINGDOM DRAFT BILL

Part II - ARTICLE 10

1. No person shall be deprived of his liberty save by an arrest which is affected for the purpose of bringing him before a court on a reasonable suspicion of having committed a crime or which is reasonably considered to be immediately necessary to prevent his committing a crime or breach of the peace.

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

/3. The

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

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

5. Every person who is deprived of his liberty shall have an effective remedy in the nature of "habeas corpus" by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not justified.

.....ARTICLE 7 (Draft Outline prepared by  
the Division of Human Rights)

Every one shall be protected against arbitrary and unauthorized arrest. He shall have the right to immediate judicial determination of the legality of any detention to which he may be subject.

UNITED KINGDOM DRAFT BILL

Part II - ARTICLE 10

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

.....ARTICLE 8 (Draft Outline prepared by  
the Division of Human Rights)

Slavery and compulsory labour are inconsistent with the dignity of man and therefore prohibited by this Bill of Rights. But a man may be required to perform his just share of any public service that is equally incumbent upon all, and his right to a livelihood is conditioned by his duty to work. Involuntary servitude may also be imposed as part of a punishment pronounced by a court of law.

UNITED KINGDOM DRAFT BILL

Part II - ARTICLE 9

No form of slavery shall be permitted.

(A text on the subject of compulsory labour will be inserted here later.)

.....ARTICLE 10 (Draft Outline prepared by  
the Division of Human Rights)

The right of emigration and expatriation shall  
not be denied.

UNITED KINGDOM DRAFT BILL

Part II - ARTICLE 11

Every person who is not subject to any lawful deprivation of liberty  
or to any outstanding obligations with regard to national service shall,  
be free to leave any country including his own.

Comment to Article 11

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

.....ARTICLE 14 (Draft Outline prepared by  
the Division of Human Rights)

There shall be freedom of conscience and belief  
and of private and public religious worship.

UNITED KINGDOM DRAFT BILL

Part II - ARTICLE 13

1. Every person shall be free to hold any religious or other belief  
dictated by his conscience and to change his belief.
2. Every person shall be free to practice, either alone or in community  
with other persons of like mind, any form of religious worship and observance,  
subject only to such restrictions, penalties or liabilities as are strictly  
necessary to prevent the commission of acts which offend laws passed in the  
interests of humanity and morals, to preserve public order and to ensure the  
rights and freedoms of other persons.
3. Subject only to the same restrictions, every person of full age and sound  
mind shall be free to give and receive any form of religious teaching and to  
endeavour to persuade other persons of full age and sound mind the truth of  
his beliefs, and in the case of a minor the parent or guardian shall be free

/to determine

to determine what religious teaching he shall receive.

.....ARTICLE 16 (Draft Outline prepared by  
the Division of Human Rights)

There shall be free and equal access to all sources  
of information both within and beyond the borders of the  
State.

UNITED KINGDOM DRAFT BILL

Part II - ARTICLE 14

Paragraph 2. Every person shall be free to receive and disseminate  
information of all kinds, including both facts, critical comment and ideas  
by books, newspapers, or oral instruction, and by the medium of all lawfully  
operated devices.

3. The freedoms of speech and information referred to in the preceding  
paragraphs of this Article may be subject only to necessary restrictions,  
penalties or liabilities with regard to: matters which must remain secret  
in the interests of national safety; publications intended or likely to  
incite persons to alter by violence the system of Government, or to promote  
disorder or crime; obscene publications; (publications aimed at the  
suppression of human rights and fundamental freedoms); publications injurious  
to the independence of the judiciary or the fair conduct of legal  
proceedings; and expressions or publications which libel or slander the  
reputations of other persons.

Comment to Article 14

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

Comments to Article 14 (3)

(a) The provision in paragraph 3 above, recognizing the right of  
Governments to impose the necessary restrictions, penalties or  
liabilities on publications likely or intended to incite persons  
to alter by violence the system of Government, is to be interpreted

/as strictly

as strictly confined to such publications as advocate the use of violence, and does not apply to publications advocating a change of government or of the system of Government by constitutional means.

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

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

.....ARTICLE 17 (Draft Outline prepared by  
the Division of Human Rights)

Subject only to the laws governing slander and libel,  
there shall be freedom of speech and of expression by any  
means whatsoever, and there shall be reasonable access to all  
channels of communication. Censorship shall not be permitted.

UNITED KINGDOM DRAFT BILL

Part II - ARTICLE 14

Paragraph 1. Every person shall be free to express and publish his ideas orally, in writing, in the form of art, or otherwise.

.....

Paragraph 3. The freedoms of speech and information referred to in the preceding paragraphs of this Article may be subject only to necessary  
/restrictions,

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.....ARTICLE 19 (Draft Outline prepared by  
the Division of Human Rights)

There shall be freedom of peaceful assembly.

UNITED KINGDOM DRAFT BILL

Part II - ARTICLE 15

All persons shall have the right to assemble peaceably for any lawful purpose including the discussion of any matter, on which under Article 14 any person has the right to express and publish his ideas. No restrictions shall be placed on the exercise of this right other than those necessary for the protection of life and property and to prevent disorders, the obstruction of traffic and of the free movement of others.

.....ARTICLE 20 (Draft Outline prepared by  
the Division of Human Rights)

There shall be freedom to form associations for purposes not inconsistent with this Bill of Rights.

UNITED KINGDOM DRAFT BILL

Part II - ARTICLE 16

All persons shall be free to constitute associations, in whatever form may be appropriate under the law of the state, for the promotion and protection of their legitimate interests and of any other lawful object, including the dissemination of all information of which under Article 14 the dissemination is unrestricted. The rights and freedoms set forth in Articles 13 and 14 shall be enjoyed by such associations.

Comment to Article 16

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

..... ARTICLE 26 (Draft Outline prepared by the  
Division of Human Rights)

Paragraph 2

Nor shall anyone be convicted of crime unless he has violated some law in effect at the time of the act charged as an offence, nor be subjected to a penalty greater than that applicable at the time of the commission of the offence.

UNITED KINGDOM DRAFT BILL

Part II - ARTICLE 12

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

..... ARTICLE 27 (Draft Outline prepared by the  
Division of Human Rights)

There shall be access to independent and impartial tribunals for the determination of rights and duties under the law.

Every one has the right to consult with and to be represented by counsel.

UNITED KINGDOM DRAFT BILL

Part I - ARTICLE 2

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

.....

(b) that any person whose rights or freedoms are violated should have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity:

(c) that such remedies shall be enforceable by a judiciary whose independence is secured:....

..... ARTICLE 45 (Draft Outline prepared by the  
Division of Human Rights)

No one shall suffer any discrimination whatsoever because of race, sex, language, religion, or political creed. There shall be

/full

full equality before the law in the enjoyment of the rights enunciated in this Bill of Rights.

UNITED KINGDOM DRAFT BILL                      Comment to Part II - (ARTICLES 8 TO 16)

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

..... ARTICLE 47 (Draft Outline prepared by the  
Division of Human Rights)

It is the duty of each member State to respect and protect the rights enunciated in this Bill of Rights. The State shall, when necessary, co-operate with other States to that end.

UNITED KINGDOM DRAFT BILL    Part I - ARTICLE 2

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

(a) that its laws secure to all persons under its jurisdiction, whether citizens, persons of foreign nationality or stateless, the enjoyment of these human rights and fundamental freedoms:

.....

(d) that its police and executive officers should act in support of the enjoyment of these rights and freedoms.

Comment to Article 2

Proposals that the provisions of the Bill of Rights should be embodied in the constitutions of states parties to the Bill, or otherwise consecrated by special constitutional guarantees, are not practicable for all countries. Some countries, like the United Kingdom, have no rigid

/constitution

constitution and, as a matter of internal law, it is not possible to surround any provision with any special constitutional guarantee. No enactment can be given a greater authority than an Act of Parliament, and one Act of Parliament can repeal any other Act of Parliament. Therefore, the legal provisions which safeguard human rights can only have as their special safeguard the solemn international obligations undertaken in this Bill, together with the firm foundation which these principles have in the deepest convictions of Parliament and the people.

.....ARTICLE 48 (Draft Outline prepared by the  
Division of Human Rights)

The provisions of this International Bill of Rights shall be deemed fundamental principles of international law and of the national law of each of the member States of the United Nations. Their observance is therefore a matter of international concern and it shall be within the jurisdiction of the United Nations to discuss any violation thereof.

UNITED KINGDOM DRAFT BILL

Part I - ARTICLE 1

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

Comment to Article 1

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

Part I - ARTICLE 3

On receipt of a request to this effect from the Secretary-General of  
/the United Nations,

the United Nations, made under the authority of a resolution of the General Assembly, the government of any party to this Bill will supply an explanation, certified by the highest legal authorities of the state concerned, as to the manner in which the law of that state gives effect to any of the said provisions of this Bill of Rights.

Comment to Article 2 (a) and Article 3

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

Part I - ARTICLE 5

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

Comment to Article 5

This article is meant to apply to failures of a substantial character. It is not intended to apply to failures of a trivial or technical character.

Part I - ARTICLE 6

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

2. Any party hereto which is thus alleged to have violated the provisions of this Bill of Rights shall have the right to request the General Assembly

/to obtain

to obtain the advisory opinion of the International Court of Justice thereon and to refrain from taking any further action on the matter until this opinion has been obtained, and if such a request is made the parties hereto agree that they are bound to support the request.

Comment to Article 6

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

Part I - ARTICLE 7

The parties hereto agree that any one of them which is found by a Resolution of the General Assembly adopted by a two-thirds majority persistently to have violated the provisions of this Bill of Rights should be deemed to have violated the principles of the Charter of the United Nations and therefore be liable to expulsion from the organization under article 6 of the Charter.

ARTICLE .....Emergency

UNITED KINGDOM DRAFT BILL

Part I - ARTICLE 4

1. In time of war or other national emergency, a state may take measures derogating from its obligations under Article 2 above to the extent strictly limited by the exigencies of the situation.
2. Any state party hereto availing itself of this right of derogation shall inform the Secretary-General of the United Nations fully of the measures which it has thus enacted and the reasons therefor. It shall also inform him as and when the measures cease to operate and the provisions of Article 2 are being fully executed.

/METHOD

METHOD OF ADOPTION OF THE BILL OF HUMAN RIGHTS

UNITED KINGDOM DRAFT BILL

Part III - ARTICLE 17

1. This Bill of Rights is submitted, for the purpose of accession thereto, to every member of the United Nations, to every state party to the Statute of the International Court of Justice and to every other state whom the General Assembly of the United Nations shall, by resolution, declare to be eligible.
2. Accession shall be effected by the deposit of an instrument with the Secretary-General of the United Nations and the Bill of Rights shall come into force as soon as ..... states members of the United Nations have deposited such instruments as regards those states and thereafter as regards each party on the date of the deposit of its instrument of accession.
3. Every deposit of an instrument of accession shall be accompanied by a statement that this Bill had been approved in accordance with the constitutional processes of the state concerned for the acceptance of the obligations of a treaty and by a solemn declaration made by the government of the state concerned that full and complete effect to the provisions of Part II is given by the law of that state.
4. The Secretary-General shall inform all members of the United Nations and the other states referred to in paragraph 1 above of the deposit of each instrument of accession.

AMENDMENTS TO THE BILL OF HUMAN RIGHTS

UNITED KINGDOM DRAFT BILL

Part III - ARTICLE 18

1. Amendments to this Bill of Rights shall come into force when they have been adopted by a vote of two-thirds of the members of the General Assembly of the United Nations and ratified in accordance with their respective constitutional processes by two-thirds of the parties to this Bill.
2. When such amendments come into force they shall be binding on those parties which have ratified them, leaving other parties still bound by the provisions of the Bill which they have accepted by accession including earlier amendments which they have ratified.