

6051-12.

THE AMERICAN LAW INSTITUTE

MEMORANDUM

in re

PROJECT

MODEL INTERNATIONAL BILL OF RIGHTS

December 6, 1941.

A. CHARACTER OF PROJECT

It is not necessary here to emphasize the need for constructive thinking and public education on post-war problems if we are not again to lose the peace as we did after the first World War.

The Institute has decided to attempt to produce a draft of a model International Bill of Rights for public education and for possible use in the peace settlement or post-war arrangements because we believe that the recognition of the minimum protection of the individual from arbitrary governmental action is essential if the peace established is to have a reasonable chance of permanency. As we see it the post-war problems fall into three groups: economic problems, the problems of post-war international organization, and those that relate to the protection of the individual against arbitrary action by the state.

We feel that the next essential step in the progressive development of democracy is the recognition that there can be expressed basic concepts of the rights of the individual (subject of course to growth modification in the future) which each nation should recognize and maintain irrespective of the form of their government, whether republican, monarchical or totalitarian.

To illustrate the essential character of this development we need to refer only to one of the most difficult, indeed perhaps the most difficult, of the problems that will beset the Peace Table; the question of minorities. Nearly all the difficulties which beset that subject are interwoven with and can only be settled by a recognition of the essential rights of the individual the maintenance and development of which are

involved in the present struggle.

The post-war economic problems and international organization problems are not primarily legal problems; indeed, the economic problems are distinctly non-legal. There are already organizations doing preparatory educational work along these lines. But the problem of the statement of the basic principles of individual rights is primarily legal; though this is not to assert that the members of the lawyer class are the only persons that should be concerned in their expression. The Executive Committee of the Institute feels, therefore, that it is the duty of the Institute to undertake the task of developing a draft of a model International Bill of Rights, and this because of our membership, our prestige gained by successful constructive work and our long experience in developing by group discussion statements of law, especially our experience in developing such statements by groups composed not merely of lawyers but of experts in other social sciences.

In the task now proposed we recognize that the group which will develop the preliminary draft of an International Bill of Rights as well as the larger group which will be called on to make criticisms and suggestions must not only be composed of lawyers and of representatives of work in the political sciences and history, but also of those whose cultural background has been that of western continental Europe and Latin America. It is a model Bill of Rights not merely for the United States, but a draft which to be useful should be acceptable in content and expression to those of democratic instincts whose education has been in other than the common law and the constitutional systems of the English-speaking peoples.

Explanatory Statement

First Step: Preparation of First Draft.

The advisers should consist of approximately ten persons, available for working in this country as a group and so selected that within the group there would be a first-hand knowledge of the legal constitutional concepts and practices of the English-speaking, European, and Latin-American countries.

In this connection the presence in the United States of eminent statesmen, jurists, and scholars of Latin America and the European Continent offers a unique opportunity for securing the active participation in the work of representatives of political and legal institutions and traditions other than our own (see note at the end of this Memorandum).

Two of the advisers should act as Reporters; that is, persons to prepare, as far as practical jointly, drafts and other material to be submitted to conferences of the group. The Reporters will probably not be changed during the progress of the work; but it is probable that individual advisers will be asked to prepare special parts of the accompanying material.

The Director of the Institute as its executive officer would be responsible to the Council for the effective progress of the work; he would preside at all conferences of the advisers and his office would act as a clearing house for all correspondence relating to the work.

The time for the preparation of the first draft depends on the necessary number of conferences of the advisers. It is impossible to give

an exact estimate, but our experience in group development of legal statements and accompanying material leads us to say that an adequate first draft with necessary accompanying material, after an introductory conference of advisers, could be prepared in six additional meetings of the advisers covering a period of eight months; each conference would be called to consider successive preliminary drafts and other material prepared by the Reporters.

Second Step: The Submission of the First Draft to a Group of Consultants.

The group of consultants should be selected during the period that the advisory group is engaged in the development of the first draft. They should not be confined to persons present in the United States and should represent diverse disciplines and as many countries as possible. The number should not be fixed in advance; but seventy-five to one hundred is all that it would be possible to deal with effectively. If they are carefully selected, our experience indicates that we would receive considered replies from approximately eighty per cent.

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The Institute has found in the past when dealing with similar consulting groups that their appointment serves two purposes:

- (1) the presentation to the advisers of suggestions and points of view that had theretofore escaped their attention;
- (2) the stimulation of an interest in a considerable group of important persons and a feeling on their part that they had shared in the development of the completed work.

Third Step: The Preparation of a Second Draft.

If the suggestions and criticisms from the consultants and others are properly arranged and digested and distributed to the advisers, one conference of the advisers, lasting three or four days, should be sufficient to produce a second draft.

It may be that for the purpose of preparing this second draft there should be added to the advisory group a few (not more than five or six) of available consultants who had made especially significant written comments.

Fourth and Fifth Steps: The Submission of the Draft to the Council of the Institute and to a Meeting of Members.

Under the by-laws of the Institute nothing can be published as an official Institute statement that has not received the approval both of our Council and a meeting of the members.

To secure the necessary educational effect, the approval of the Council and of the members of the Institute should and will be more than a formal matter. The consideration of both bodies, especially that of our Council, will be thorough and will probably result in some amendment of the second draft. We have found that this step, which is much more than a formal consideration of the completed work of experts, results not only in a better understanding and heightened interest in the work, but that the few changes made, sometimes merely in form of expression, result in distinctly increasing the acceptability of the completed work.

C. BUDGET FOR BILL OF RIGHTS WORK

Salary of Reporters	\$ 7000.
Advisory Assistance	8550.
Stenographic Assistance	2400.
Printing	4500.
Traveling	5685.
Miscellaneous	<u>1000.</u>
	<u>\$29135.</u>

Explanation of items

"Salary of Reporters"

This provides \$3500 for two Reporters. They would have to continue working until the model Bill of Rights was adopted by the Institute and published.

"Advisory Assistance"

Honoraria for eight conferences, eight advisers, \$75 each	\$4800.
Honoraria to 65 consultants, \$50 each	3250.
Honoraria to certain advisers for preparing special parts of accompanying material	<u>500.</u> \$8550.

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PARTIAL AND TENTATIVE LIST OF LATIN AMERICANS
AND EUROPEANS AT PRESENT IN THE UNITED STATES
WHO COULD BE INVITED TO PARTICIPATE AS ADVISERS
OR CONSULTANTS IN THE FORMULATION OF THE MODEL
INTERNATIONAL BILL OF RIGHTS.

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2. Ricardo J. Alfaro, Panamanian; former President of Panama and former Minister in Washington. Eminent jurist and statesman.
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4. Jorge Basadre, Peruvian; Director of the National Library of Peru. Eminent historian and jurist. Now at Swarthmore University.

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10. Hersch Lauterpacht; authority on international law, especially on the relationship between internal or domestic and international law. May be reached at Wellesley College.
11. Count Carlo Sforza, Italian; Prime Minister of Italy before Mussolini's advent. Now in New York or Chicago.
12. Giuseppe Borgese, Italian; eminent publicist and authority on political problems in Europe. Now at the University of Chicago.
13. Ludwik Rajchman, Polish; head of the health section of the League of Nations; knows Far East intimately; was on inter-allied economic council up to the fall of France. Now in Washington.

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B. PLAN OF WORK

Summary of Plan

The plan of work which we desire to follow would consist of the following steps:

- I. the preparation of a first draft of an International Bill of Rights together with informational, explanatory, and supporting material;
- II. the submission of the first draft to a numerous and widely dispersed group of consultants for their criticisms and suggestions;
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THE AMERICAN LAW INSTITUTE

MEMORANDUM

in re

PROJECT

MODEL INTERNATIONAL BILL OF RIGHTS

December 6, 1941.

A. CHARACTER OF PROJECT

It is not necessary here to emphasize the need for constructive thinking and public education on post-war problems if we are not again to lose the peace as we did after the first World War.

The Institute has decided to attempt to produce a draft of a model International Bill of Rights for public education and for possible use in the peace settlement or post-war arrangements because we believe that the recognition of the minimum protection of the individual from arbitrary governmental action is essential if the peace established is to have a reasonable chance of permanency. As we see it the post-war problems fall into three groups: economic problems, the problems of post-war international organization, and those that relate to the protection of the individual against arbitrary action by the state.

We feel that the next essential step in the progressive development of democracy is the recognition that there can be expressed basic concepts of the rights of the individual (subject of course to growth modification in the future) which each nation should recognize and maintain irrespective of the form of their government, whether republican, monarchical or totalitarian.

To illustrate the essential character of this development we need to refer only to one of the most difficult, indeed perhaps the most difficult, of the problems that will beset the Peace Table; the question of minorities. Nearly all the difficulties which beset that subject are interwoven with and can only be settled by a recognition of the essential rights of the individual the maintenance and development of which are

involved in the present struggle.

The post-war economic problems and international organization problems are not primarily legal problems; indeed, the economic problems are distinctly non-legal. There are already organizations doing preparatory educational work along these lines. But the problem of the statement of the basic principles of individual rights is primarily legal; though this is not to assert that the members of the lawyer class are the only persons that should be concerned in their expression. The Executive Committee of the Institute feels, therefore, that it is the duty of the Institute to undertake the task of developing a draft of a model International Bill of Rights, and this because of our membership, our prestige gained by successful constructive work and our long experience in developing by group discussion statements of law, especially our experience in developing such statements by groups composed not merely of lawyers but of experts in other social sciences.

In the task now proposed we recognize that the group which will develop the preliminary draft of an International Bill of Rights as well as the larger group which will be called on to make criticisms and suggestions must not only be composed of lawyers and of representatives of work in the political sciences and history, but also of those whose cultural background has been that of western continental Europe and Latin America. It is a model Bill of Rights not merely for the United States, but a draft which to be useful should be acceptable in content and expression to those of democratic instincts whose education has been in other than the common law and the constitutional systems of the English-speaking peoples.

B. PLAN OF WORK

Summary of Plan

The plan of work which we desire to follow would consist of the following steps:

- I. the preparation of a first draft of an International Bill of Rights together with informational, explanatory, and supporting material;
- II. the submission of the first draft to a numerous and widely dispersed group of consultants for their criticisms and suggestions;
- III. the preparation of a second draft by the group of advisers enlarged by the addition of a selected number of the group of consultants;
- IV. the submission of the second draft to the Council of the Institute for discussion and, if necessary, amendment;
- V. the submission by the Council of the draft as approved by them to a meeting of members of the Institute for discussion and final action.

Explanatory Statement

First Step: Preparation of First Draft.

The advisers should consist of approximately ten persons, available for working in this country as a group and so selected that within the group there would be a first-hand knowledge of the legal constitutional concepts and practices of the English-speaking, European, and Latin-American countries.

In this connection the presence in the United States of eminent statesmen, jurists, and scholars of Latin America and the European Continent offers a unique opportunity for securing the active participation in the work of representatives of political and legal institutions and traditions other than our own (see note at the end of this Memorandum).

Two of the advisers should act as Reporters; that is, persons to prepare, as far as practical jointly, drafts and other material to be submitted to conferences of the group. The Reporters will probably not be changed during the progress of the work; but it is probable that individual advisers will be asked to prepare special parts of the accompanying material.

The Director of the Institute as its executive officer would be responsible to the Council for the effective progress of the work; he would preside at all conferences of the advisers and his office would act as a clearing house for all correspondence relating to the work.

The time for the preparation of the first draft depends on the necessary number of conferences of the advisers. It is impossible to give

an exact estimate, but our experience in group development of legal statements and accompanying material leads us to say that an adequate first draft with necessary accompanying material, after an introductory conference of advisers, could be prepared in six additional meetings of the advisers covering a period of eight months; each conference would be called to consider successive preliminary drafts and other material prepared by the Reporters.

Second Step: The Submission of the First Draft to a Group of Consultants.

The group of consultants should be selected during the period that the advisory group is engaged in the development of the first draft. They should not be confined to persons present in the United States and should represent diverse disciplines and as many countries as possible. The number should not be fixed in advance; but seventy-five to one hundred is all that it would be possible to deal with effectively. If they are carefully selected, our experience indicates that we would receive considered replies from approximately eighty per cent.

As the consultants would not meet in a body, each consultant on receiving a copy of the first draft should be requested to make a written reply within a limited period of time. A small honorarium as a token of appreciation should be given for a carefully considered reply.

The Institute has found in the past when dealing with similar consulting groups that their appointment serves two purposes:

- (1) the presentation to the advisers of suggestions and points of view that had theretofore escaped their attention;
- (2) the stimulation of an interest in a considerable group of important persons and a feeling on their part that they had shared in the development of the completed work.

Third Step: The Preparation of a Second Draft.

If the suggestions and criticisms from the consultants and others are properly arranged and digested and distributed to the advisers, one conference of the advisers, lasting three or four days, should be sufficient to produce a second draft.

It may be that for the purpose of preparing this second draft there should be added to the advisory group a few (not more than five or six) of available consultants who had made especially significant written comments.

Fourth and Fifth Steps: The Submission of the Draft to the Council of the Institute and to a Meeting of Members.

Under the by-laws of the Institute nothing can be published as an official Institute statement that has not received the approval both of our Council and a meeting of the members.

To secure the necessary educational effect, the approval of the Council and of the members of the Institute should and will be more than a formal matter. The consideration of both bodies, especially that of our Council, will be thorough and will probably result in some amendment of the second draft. We have found that this step, which is much more than a formal consideration of the completed work of experts, results not only in a better understanding and heightened interest in the work, but that the few changes made, sometimes merely in form of expression, result in distinctly increasing the acceptability of the completed work.

Ⓔ. BUDGET FOR BILL OF RIGHTS WORK

Salary of Reporters	\$ 7000.	4000	3000
Advisory Assistance	8550.	2000	6550
Stenographic Assistance	2400.	1200	2000
Printing	4500.	2700	1685
Traveling + hotel	5685.	4000	(Javelin, etc.)
Miscellaneous	1000.	500	of which 1000
	<u>\$29135.</u>	<u>15000</u>	13235

Explanation of items

"Salary of Reporters"

This provides \$3500 for two Reporters. They would have to continue working until the model Bill of Rights was adopted by the Institute and published.

"Advisory Assistance"

Honoraria for eight conferences, eight advisers, \$75 each	\$4800.
Honoraria to 65 consultants, \$50 each	3250.
Honoraria to certain advisers for preparing special parts of accompanying material	<u>500.</u> \$8550.

"Stenographic Assistance"

Stenographic assistance to Reporters	\$2000.
Extra assistance in executive office	<u>400.</u> \$2400.

"Printing"

Development of first draft and supporting material: 35 copies, 200 pages, for each of seven conferences	\$2100.
Sending draft and supporting material to consultants: 200 copies, 200 pages	600.
Sending draft to Council: 200 copies, 200 pages	600.
Sending draft to Annual Meeting: 1600 pages, 200 pages	<u>1200.</u> \$4500.

"Traveling"

This provides for preliminary conference of two days and seven additional conferences of four days (8 advisers, 2 Reporters, Director, stenographer)*; (also includes six consultants to one conference); provides for attendance of Reporters to Council and Annual Meetings.

* on basis of 2 from Boston, 3 from Philadelphia, 2 from Chicago, 4 from Washington, and 1 from New York

PARTIAL AND TENTATIVE LIST OF LATIN AMERICANS
AND EUROPEANS AT PRESENT IN THE UNITED STATES
WHO COULD BE INVITED TO PARTICIPATE AS ADVISERS
OR CONSULTANTS IN THE FORMULATION OF THE MODEL
INTERNATIONAL BILL OF RIGHTS.

Latin Americans

1. Esteban Gil-Borges, Venezuelan; former Chief Justice and former Minister of Foreign Affairs; author of works on history and philosophy of law. Was in exile in the United States during the dictatorship of Gomez. Now in Washington on an official mission for the Venezuelan government.
2. Ricardo J. Alfaro, Panamanian; former President of Panama and former Minister in Washington. Eminent jurist and statesman.
3. Octavio Beeche, Costa Rican; former Minister of Foreign Affairs; author of works on constitutional and civil law. Now in Washington on mission for his government.
4. Jorge Basadre, Peruvian; Director of the National Library of Peru. Eminent historian and jurist. Now at Swarthmore University.

Europeans

1. Halvdan Koht, Norwegian; former Minister of Foreign Affairs of Norway; professor of history at the University of Oslo. Now in Washington.
2. Arnold Raestad, Norwegian; former Governor of the Bank of Norway, specialist in the field of international law.
3. Pierre Cot, Frenchman; former member of the French Cabinet. Now in Washington.

4. Henri Rocillon, Frenchman; distinguished authority in the field of arts and letters. Now at Dumbarton Oaks.
5. Henri Bonnet, Frenchman; Director of the Paris Institute of Intellectual Cooperation. Now in New York or Chicago.
6. Henry Laugier, Frenchman; eminent scientist. Now in Canada.
7. Hans Kelsen, Austrian; great authority on the history and philosophy of law. Now at Harvard University.
8. Thomas Mann, German; now at Princeton University.
9. Julio Alvarez del Vayo, Spanish; Secretary of State for the Spanish Republic during the civil war. May be reached at the Free World Association, 55 West 42nd Street, New York.
10. Hersch Lauterpacht; authority on international law, especially on the relationship between internal or domestic and international law. May be reached at Wellesley College.
11. Count Carlo Sforza, Italian; Prime Minister of Italy before Mussolini's advent. Now in New York or Chicago.
12. Giuseppe Borgese; Italian; eminent publicist and authority on political problems in Europe. Now at the University of Chicago.
13. Ludwik Rajchman, Polish; head of the health section of the League of Nations; knows Far East intimately; was on inter-allied economic council up to the fall of France. Now in Washington.