

# THE CONTRIBUTION OF LATIN AMERICAN LAWYERS TO THE DEVELOPMENT OF THE UNITED NATIONS CONCEPT OF HUMAN RIGHTS AND ECONOMIC AND SOCIAL JUSTICE

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I am delighted to have a chance of contributing to a volume of essays in honor of Thomas Buergenthal. He is one of my best students, who –after taking my class on human rights– quickly became an expert on various aspects of that topic, especially on the human rights work of regional organizations, European and inter-American. His accomplishments in this field are many and he has by now become *the* leading authority on the subject. This essay tries to deal with an important period, which is prehistoric and unknown to the present generation, and to send a thank-you note to some of the Latin American lawyers who were pioneers in this area.

## 1. A Slow Beginning

Over the last hundred years, the International Conferences of American States have slowly increased their interest in international

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human rights. The first conference, in 1890, listed as a principle of American international law the rule that "[f]oreigners are entitled to enjoy all the civil rights enjoyed by natives; and they shall be accorded all the benefits of said rights in all that is essential as well as in the form or procedure, and the legal remedies thereto, absolutely in like manner as said natives." To make clear that the foreigners were also given equality with natives and could not claim any international standards of human rights, the recommendation added the proviso that "a nation has not, nor recognizes in favor of foreigners, any other obligations or responsibilities, than those which in favor of the natives are established, in like cases, by the constitution and the laws."<sup>1</sup>

One of the first true human rights concerns of the lawyers of the Americas was the need to protect children, which at the beginning of the Twentieth Century had been completely neglected in most American countries. The First American Child Congress, held at Buenos Aires in 1916, presented a long list of recommendations to improve the lot of children. They included: amending criminal law to ensure that a child will not be treated like an ordinary criminal; establishing separate institutions for the correction of minors; preventing traffic in children and their forced prostitution; providing special schools for sickly or handicapped children; arranging for medical and dental treatment; protecting mothers during the period of lactation; prohibiting work by minors under fourteen years of age and limiting the work of minors to six hours per day.<sup>2</sup> All these rules were proposed four years *before* the League of Nations' International Labor Organi-

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1 *The International Conferences of American States, 1889-1928*, at 45 (ed. by James Brown Scott, 1931). The delegation of the United States voted against this recommendation, as it did in later conferences when similar provisions were voted upon. This was also the reason for refusal to ratify American conventions containing similar clauses. See, e.g., Convention relative to the rights of aliens, adopted in 1902 by the Second Conference. *Id.*, at 90-91. On the other hand, the United States and several Latin American countries agreed to submit to the Permanent Court of Arbitration for decision "all claims for pecuniary loss or damages" which "are of sufficient importance to warrant the expenses of arbitration." Treaty of Arbitration for Pecuniary Claims, 1902. *Id.*, at 140. See also Convention on Pecuniary Claims, 1910, *id.*, at 183.

2 *The International Conferences of the American States, First Supplement, 1933-1940* (ed. by the Carnegie Endowment for International Law, 1940), at 326.

zation was established. The next Child Congresses added other topics to this list and, after a few unsuccessful tries, an American Institute for the Protection of Childhood was established in 1927, with the task of collecting legislation, regulations and literature on the subject, and of advising countries how to improve their protection of children.<sup>3</sup>

The International Conferences of American States were from the beginning preoccupied with international sanitary regulations designed to prevent the spread of epidemic diseases. In 1923, the Fifth Conference, in addition to a resolution on principles and procedures in public health administration, recommended that the governments of America incorporate in their laws the "principle which recognizes the right of the indigent to free medical assistance from the Government," a very modern human rights principle.<sup>4</sup>

In the same year, the Conference, yielding to strong lobbying by several organizations of women, recommended the preparation for the next conference of a study of "the means of abolishing the constitutional and legal incapacities of women, for the purpose of securing, in due course, and by means of the development of adequate capacities to assume the consequent responsibilities, the same civil and political rights for women that are today enjoyed by men." In addition, the Conference suggested that "women be included on the delegations, in order that they may be able to participate in the work of future Conferences."<sup>5</sup> As a result, the Sixth Conference, in 1928, went even further and invited, "with extraordinary character, the representatives of the various feminist associations, which have requested an audience, to set forth before the Conference, at a Plenary meeting and after its agenda has been exhausted, their viewpoints on the matter of civil and political rights for women."<sup>6</sup> After that

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3 Ruth Masters, *Handbook of International Organizations in the Americas*, at 8-12 (1945).

4 *International Conferences of American States, 1889-1923*, *supra* note 1, at 236.

5 *Id.*, at 244-245.

6 *Id.*, at 324.

audience, the Conference decided to establish an Inter-American Commission of Women to take charge of the preparation of juridical information and data of any other kind that may be necessary for the next Conference to consider "the civil and political equality of women in the continent."<sup>7</sup>

The Fifth Conference pioneered also in another direction. It adopted a resolution asking for a broad program on "social problems." Supposedly relying on a principle "established in the legislation of the United States of America, to wit: human labor should not be considered a commodity or an article of commerce,"<sup>8</sup> the Conference recommended to the American Republics "the adoption of measures which may contribute to bring about harmonious relations between capital and labor, and to assure social well-being." It recommended, in particular, development of legislation relating, *inter alia*, to: protection against industrial diseases and industrial accidents, regulation of conditions of labor, especially the labor of women and children, provision of adequate housing, and establishing in each country social insurance, including insurance against accidents, sickness and disability. It suggested also negotiation of labor conventions between the American Republics, on the reciprocal treatment of workers and on certain general standards of economic and social policy.<sup>9</sup>

In 1933 an elaborate proposal for an Inter-American Labor Institute was approved by the Seventh International Conference of American States and was authorized to study more than twenty topics.<sup>10</sup> In addition, a comprehensive proposal was approved for the "improve-

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7 *Id.*, at 408. The Commission was established by the Governing Body of the Pan American Union. It was first composed of seven women, but quickly women members from other American States were added. *Id.*, at 408, n. 1. See also *id.*, at 494-506. For further developments, see Masters, *supra* note 3, at 106-110.

8 This phrase really originated in Section II of the 1919 Constitution of the International Labor Organization (originally Article 427 of the Treaty of Versailles). 1 Manley O. Hudson, *International Legislation* 228, 246 (1931).

9 *International Conferences, 1889-1928*, *supra* note 1, at 266.

10 *International Conferences, First Supplement, 1933-1940*, *supra* note 2, at 39-42.

ment of conditions of the workers," both industrial and rural.<sup>11</sup> Thereafter, a special effort was made to link the American labor institutions with the International Labor Organization (ILO).<sup>12</sup> The first Labor Conference of American States Members of the International Labor Conference was held at Santiago, Chile in 1936, adopting resolutions on social insurance, conditions of work of women, child labor, unemployment, cost of living, minimum wage, and the relations of the American countries to the International Labor Organization.<sup>13</sup> As a result of that conference, the Eighth International Conference of American States, held at Lima, Peru in 1938, adopted a strong resolution on freedom of association and freedom of expression of workers, in order to enable both workers' and employers' movements to participate in the work of the ILO.<sup>14</sup> Another resolution provided for the establishment of the principle of family income, i.e., that "labor should be compensated not only for its productive contribution, that is the result of the service rendered by the worker and the employee irrespective of the position they occupy in the broad field of society or in the smaller family group; but that, on the contrary, the 'family income,' has as its primary object to safeguard, strengthen and increase the 'human capital' of the state, developing healthy and numerous families by way of a system of compensations in accordance with the requirements of the family of the worker or the employee."<sup>15</sup> An interesting and novel concept.

One of the resolutions of the Lima Conference seems to be the first one to use the broader concept of "defense of human rights," but gave it a special humanitarian twist. It expressed concern about the wars being waged on other continents by "methods contrary to practices and regulations recognized by international law and by humane sentiments," such as the aerial bombardment of undefended cities

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11 *Id.*, at 95.

12 For detailed information, see International Labor Office, *The International Labor Code*, 1951, Vol. I, at CXXX, and Vol. II, at 625-627 (bibliography), 627-724 (documents).

13 *International Conferences, First Supplement, 1933-1940*, *supra* note 2, at 431.

14 *Id.*, at 238-239.

15 *Id.*, at 239-240.

and of non-combatant populations, resulting in the destruction of human lives and of works of art or other objects outside the scope of military operations." While rejecting war as a legitimate means of settling national controversies, the American Republics expressed the hope that, when recourse is had to war in any other region of the world, "respect be given to those human rights not necessarily involved in the conflict, to humanitarian sentiments, and to the spiritual and material inheritance of civilization."<sup>16</sup>

By this time the claims of women for their rights had had an effect and resulted in an eloquent resolution supporting them which deserves reproduction here:<sup>17</sup>

### THE LIMA DECLARATION IN FAVOR OF WOMEN RIGHTS

#### WHEREAS:

Women, representing more than half of the population in America, demand full rights as an act of the most elementary human justice;

Women have participated effectively, with a high sense of responsibility, in the historical development of all the countries of America;

In the economic order women are a factor of primary importance, not only as producers but also as controllers and directors of the basic economy of the home;

They have amply demonstrated their ability in every phase of culture and human activity;

Their high sense of responsibility as mothers entitles them to the enjoyment of all of their rights; and

The women of America, before demanding their rights, have assumed all of their responsibilities in the social order, thus setting the greatest example of conscientious patriotism,

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16 *Id.*, at 245-246.

17 *Id.*, at 250-251.

The Eighth International Conference of American States,  
AGREES:

1. To declare that women have the right:
  - a. To political treatment on the basis of equality with men;
  - b. To the enjoyment of equality as to civil status;
  - c. To full protection in and opportunity for work;
  - d. To the most ample protection as mothers.

2. To urge the governments of the American Republics, which have not already done so, to adopt as soon as possible the necessary legislation to carry out fully the principles contained in this declaration, which shall be known as "The Lima Declaration in favor of Women's Rights". (Approved December 22, 1938).

On the other hand, in accordance with the traditional American approach to that subject, the Lima Conference made clear that the "system of protection of ethnical, language or religious minorities cannot have any application whatsoever in the Americas, where the conditions which characterize the groups as minorities do not exist." Accordingly, the Conference declared that "residents who according to domestic law are considered aliens, cannot claim collectively the condition of minorities; individually, however, they will continue to enjoy the rights to which they are entitled." It added that "any official action, therefore, on the part of the Government of the countries of which such aliens are nationals, tending to interfere with the internal affairs of the country in order to regulate the status or activities of those aliens is incompatible with the sovereignty of such State."<sup>18</sup> The Third Meeting of the Ministers of Foreign Affairs of the American Republics, held at Rio de Janeiro in January 1942, after most American States became involved in the Second World War, reiterated these principles as follows: "aliens residing in an American State are subject to the jurisdiction of that State, and the Government and

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18 *Id.*, at 256.

agencies of the countries of which such aliens are nationals cannot lawfully interfere, directly or indirectly, in domestic affairs for the purpose of controlling the status or activities of such aliens."<sup>19</sup>

The Rio de Janeiro Meeting, in its resolution on post-war problems, related human rights to economic development. It noted first that collective security must be founded "not only on political institutions but also on a just, effective, and liberal economic system." To achieve it, it considered as an imperative necessity for the countries of America "to increase their productive capacity; to secure, from international trade, returns which will permit them adequately to remunerate labor and improve the standard of living of workers; to preserve the health of their people and develop their civilization and culture."<sup>20</sup>

As soon as the Second World War started in 1939, the issues of human rights became a subject not only of pronouncements of governments but also of private groups. President Franklin Delano Roosevelt started the debate with his famous Four Freedoms speech of January 6, 1941, in which he mentioned the following "essential human freedoms":<sup>21</sup>

The first is freedom of speech and expression -- everywhere in the world.

The second is freedom of every person to worship God in his own way --everywhere in the world.

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19 *The International Conferences of American States, Second Supplement, 1942-1954* (ed. by Department of Legal Affairs of the Pan American Union, 1958), at 32. The distinction between collective and individual rights of minorities finds its echo in Article 27 of the 1966 International Covenant on Civil and Political Rights which grants certain rights only to persons belonging to a minority, but not collectively to the minority. 999 *UN Treaty Series* 171 (1976).

20 *The International Conferences of American States, Second Supplement, 1942-1945*, *supra* note 19, at 35-36.

21 *The Public Papers and Addresses of Franklin D. Roosevelt: 1940* (ed. by the President), at 663, 672 (1941).



The third is freedom from want –which, translated into world terms, means economic understandings which will secure to every nation a healthy peacetime life for its inhabitants– everywhere in the world.

The fourth is freedom from fear –which, translated into world terms, means a world-wide reduction of armaments to such a point and in such a thorough fashion that no nation will be in a position to commit an act of aggression against any neighbor– anywhere in the world.

It was almost unnoticed that this speech contained also an enumeration of “the basic things expected by our people of their political and economic systems”:<sup>22</sup>

Equality of opportunity for youth and for others.

Jobs for those who can work.

Security for those who need it.

The ending of special privilege for the few.

The preservation of civil liberties for all.

The enjoyment of the fruits of scientific progress in a wider and constantly rising standard of living.

The President was not completely satisfied with this preliminary list, and asked the National Resources Planning Board to prepare an “Economic Bill of Rights” based on it. The Board revised his text in the form of specific rights, and that text was presented by the President to Congress.<sup>23</sup>

1. The right to work, usefully and creatively through the productive years.

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22 *Id.*, at 671.

23 National Resources Planning Board, *National Resources Development: Report for 1942*, at 3. See also *Roosevelt Papers, 1943* (ed. by Samuel I. Roseman, 1950), *supra* note 21, at 52-54.

2. The right to fair pay, adequate to command the necessities and amenities of life in exchange for work, ideas, thrift, and other socially valuable service.

3. The right to adequate food, clothing, shelter and medical care.

4. The right to security, with freedom from fear of old age, want, dependency, sickness, unemployment, and accident.

5. The right to live in a system of free enterprise, free from compulsory labor, irresponsible private power, arbitrary public authority, and unregulated monopolies.

6. The right to come and go, to speak or be silent, free from the spyings of secret political police.

7. The right to equality before the law, with equal access to justice in fact.

8. The right to education, for work, for citizenship, and for personal growth and happiness; and

9. The right to rest, recreation, and adventure; the opportunity to enjoy life and take part in an advancing civilization.

The Board explained that in the 1790s “the problem was freedom and the production of wealth, the building of the continent with its farms, industries, transportation and power”; 150 years later the problem is different — it is “freedom and the distribution of abundance, so that there be no unemployment while there are adequate resources and men ready to work and in need of food, clothing and shelter.” The purpose of the new declaration was to deal with this new situation.<sup>24</sup>

When President Roosevelt returned to this subject in 1944, he renamed his draft a “second bill of rights.” He linked just and durable peace to the need for “a decent standard of living for all individual men and women and children of all nations.” He pointed out that

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24 National Resources Planning Board, *supra* note 23, at 4.

"true individual freedom cannot exist without economic security and independence," and that "people who are hungry and out of a job are the stuff of which dictatorships are made." He insisted that no nation can be content "if some fraction of [its] people, — whether it be one-third or one-fifth or one-tenth — is ill-fed, ill-clothed, ill-housed and insecure." As was his habit, he revised his draft again to read as follows:<sup>25</sup>

The right to a useful and remunerative job in the industries, or shops or farms or mines of the Nation;

The right to earn enough to provide adequate food and clothing and recreation;

The right of every farmer to raise and sell his products at a return which will give him and his family a decent living;

The right of every businessman, large and small, to trade in an atmosphere of freedom from unfair competition and domination by monopolies at home or abroad;

The right of every family to a decent home;

The right to adequate medical care and the opportunity to achieve and enjoy good health;

The right to adequate protection from the economic fears of old age, sickness, accident, and unemployment; [and]

The right to a good education.

On the international scene, Roosevelt's Four Freedoms found their way into the Atlantic Charter, which promised that future peace will assure that "all the men in all the lands may live out their lives in freedom from fear and want, and that future economic cooperation

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25 President Roosevelt, Eleventh Annual Message to Congress, January 11, 1944, *Roosevelt Papers, 1944-1945* (ed. by Rosenman, 1950), *supra* note 23, at 32, 40-41; reprinted in 3 *State of the Union Messages of the President, 1790-1966*, at 2875, 2880-2881 (1966). President Truman continued his predecessor's fight for this second bill of rights, but Congress was not interested. *Public Papers of the Presidents: Harry S. Truman, 1955*, at 263; reprinted in Barton J. Bernstein and Allan J. Matusov, eds., *The Truman Administration: A Documentary History* 87, 89-90.

will secure for all "improved labor standards, economic advancement, and social security."<sup>26</sup> This document was soon endorsed by the Declaration of the United Nations, which was accepted by 47 nations. This Declaration, in addition, included in the "common program of purposes and principles," a promise "to defend life, liberty, independence, and religious freedom, and to preserve human rights and justice in their own lands as well as in other lands."<sup>27</sup> The Atlantic Charter was also welcomed by the Third Meeting of Consultation of Ministers of Foreign Affairs, held at Rio de Janeiro in January 1942, as that document included "principles which constitute a part of the heritage of the Americas."<sup>28</sup>

One Latin American statesman, Ricardo J. Alfaro, former President of Panama (1931-1932), was living then in Washington, DC, as Secretary-General of the American Institute of International Law.<sup>29</sup> He was especially interested in two projects—a declaration of the rights and duties of states and a declaration of rights of man, and since 1938 he was looking for an opportunity to get into these projects. President Roosevelt's Four Freedoms stimulated an interest in a declaration of human rights, and a sister institution, the American Law Institute decided in 1942 to explore the possibility of preparing an International Bill of Rights. Its Director, William Draper Lewis established a group of advisers composed not only of United States lawyers but including also experts from Europe, the British Commonwealth of Nations, the Americas, Russia, China and India. In

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26 5 U.S. Department of State Bulletin 125 (1941); 9 Hudson, *International Legislation*, *supra* note 8, at 3 (1950).

27 3 Charles I. Bevans, ed., *Treaties and Other Agreements of the United States of America* 697 (1969); 9 Hudson, *supra* note 26, at 1.

28 *The International Conferences of American States, Second Supplement, 1942-1954*, *supra* note 19, at 42-43. For other relevant decisions of the Rio Meeting, see *supra*, text preceding noted 20-21.

29 The Institute was organized by Professor Alejandro Alvarez of Chile and Professor James Brown Scott of the United States as a link between international law societies of the Americas. Its inaugural achievement was the adoption in 1916 of a Declaration of the Rights and Duties of Nations and the preparation for the Pan American Union in 1925 of thirty drafts for a codification of American International Law. A number of them were later approved by the international Conferences of American States. For a history of the Institute, see Masters, *supra* note 3, at 3-7.

addition to constitutional and international lawyers, and a few diplomats, specialists in other relevant disciplines (especially political and social sciences and economics) were included. Not unexpectedly, Alfaro was among the members of the group, together with Julio Alvarez del Vajo (Spain), Henri Laugier and Paul Weill (France), Percy E. Corbett (Canada), C. Wilfred Jenks (Great Britain and the International Labor Office), Angelo P. Sereni (Italy), Ludwik Rajchman (Poland), George M. Barakat (Syria), K.C. Mahindra (India), Hu Shih (China) and Karl Loewenstein, Ernst Rabel and George M. Wunderlich (German refugees).

In presenting this project to the Institute, Dr. Lewis listed possible topics to be included in the proposed draft — rights traditionally accepted in the English-speaking countries, rights of racial and other minorities, and certain rights of economic character, such as “the right to work and receiving a living wage.”<sup>30</sup> Later it was agreed to consider five topics: personal rights (religion, speech and opinion), political rights, due process (equal protection, unusual punishment), property and social rights.<sup>31</sup> In the Institute’s detailed discussion of the project in 1943, Dr. Lewis linked the project with the Atlantic Charter’s reference to “freedom from fear and want.” The project is concerned with two basic issues: to what extent the liberal elements of all countries have similar ideas of individual rights; and how the agreed rights can be “expressed in a manner acceptable to their different traditions and conditions.”<sup>32</sup> It was soon discovered that most countries have by now developed constitutional provisions similar to the United States Bill of Rights, and the only issue was finding language which would make their scope and limitation clear. It was also agreed that a modern bill of rights should include social and political rights involving “positive action by public authorities.”<sup>33</sup> Recent events have shown the necessity of including “suffi-

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30 19 American Law Institute, *Proceedings* 34, 48-51 (1942).

31 20 *id.* 36 (1943). “Social rights” were explained later as meaning “those that relate to the individual’s economic opportunity and security.” *Id.*, at 186.

32 *Id.*, at 184-185.

33 *Id.*, at 187.

cient political rights to ensure the fundamentals of democratic government" in order to prevent resurgence of Nazi ideas in the future.<sup>34</sup> Social rights –such as providing security against the incapacity to earn a living wage caused by sickness and old age– require the governments to take "positive action to see that the rights exist in fact." The problem was thus to find any language clear enough to state the duty of the government "without going into details clearly out of place in a document intended as a model for a constitution."<sup>35</sup>

The discussion that followed showed that definitional difficulties are not restricted to social rights.<sup>36</sup> On the other hand, such social rights as the rights to work or to education have been implemented by constitutions and legislation on an inter-continental scale, and any draftsman can frame a provision based on the best of them.<sup>37</sup> At the same time even the traditional rights require a variety of devices to protect them, e.g., in criminal law, against governmental abuse.<sup>38</sup> Julio Alvarez, former Foreign Minister of the Spanish Republic, emphasized the danger of granting unrestricted freedom of speech to those who, if they gain power, will deny it to others. He noted that, when some European leaders raised doubts about a broad interpretation of the provision of the Atlantic Charter that every country had the right to choose the kind of government it wanted, President Roosevelt explained that no Fascist state would be tolerated after the war.<sup>39</sup> Professor Percy E. Corbett (McGill University, Montreal) explained that it was not enough to merely state the abstract "right to work," but that it was necessary to make clear that a state has an obligation to provide employment for people seeking work and to provide procedures for the settlement of "fair pay" disputes between

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34 *Id.*, at 188.

35 *Id.*, at 189.

36 For instance, Professor Noel Thomas Dowling pointed out how difficult it was to define "freedom of speech." *Id.*, at 190, 193-197.

37 See *id.* at 199.

38 See *id.* at 200-201.

39 *Id.*, at 204-205. See also comment by Professor Karl Loewenstein (Amherst College), *id.*, at 224-229.

employers and workers. It must be understood, however, that these rights should be set out in the form of objectives and states would promise "to adopt progressively such national measures as may eventually bring these rights into effect and provide for their enforcement."<sup>40</sup>

Ricardo J. Alfaro, former President of Panama and twice Ambassador to the United States, noted that the "task of building up a world of righteousness and happiness at the conclusion of the present war is something so enormously complex and far reaching, that perhaps no single man can grasp in all their details the multifarious aspects of the situation." He pointed out that in this mighty task were involved:

the technical problems of security, of international justice, of economic intercourse, of transportation of uprooted populations, of assistance of all kinds to backward countries, of reparation of the destruction and plundering carried out by the conquerors with diabolical skill and thoroughness, of re-education of the masses that have been fanaticized with the poisonous theories of Naziism and Fascism, in an endeavor to win them over to the ways of democracy, of rehabilitation of industry, trade and communications, of feeding, clothing and housing the pitiful remnants of populations condemned by the aggressors to death by starvation and utter destitution, of control of disease and epidemics, of prevention of clandestine rearming, of reorganization of international relations, in short, of the innumerable things that must be done to counteract the thousand and one disruptions brought about by the war and to set up the new order by which the world expects to reestablish the reign of law and reason.

He acknowledged the importance of the task that the American Law Institute decided to perform as part of the formidable work of international reconstruction, and hoped that its International Bill of

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40 *Id.*, at 216-218. This proposal finds an echo in Article 2(1) of the International Covenant on Economic, Social and Cultural Rights which requires the State to take steps with a view to "achieving progressively the full realization of the rights recognized in the present Covenant."

Rights will have a powerful appeal to the minds and hearts of the people and their leaders, and will answer the question which many persons will be asking: "What will happen to *me*, where will *I* stand in the new order?" He added:

We have had Bills of Rights enacted to guarantee the individual his privileges and franchises as citizens of a certain State. We must also have a bill that will guarantee to individuals a minimum of rights as members of the human family, as citizens of the Community of States. We must bear in mind that human needs, and consequently, human rights, cannot always be confined within national frontiers; they cross national frontiers in an ever shrinking planet, and they demand fair treatment by all the governments of the earth. We intend to draw a blueprint of human liberty, human dignity and human welfare, which may have international acceptance and circulation, and which may serve as a basis for future multilateral covenants, bilateral treaties or internal constitutions. We want to formulate an International Bill of Rights which people may look upon as an expression of the conscience of civilization.

He was sure that the people of the world "will hail an International Bill of Rights as a ray of hope, as a promise that the war shall not be fought in vain, that freedom and democracy will become universal standards, that victory will mark the end of tyranny and oppression everywhere in the civilized world."

In the final paragraphs, speaking not only for himself but also reflecting the views presented by the Latin American Republics, Alfaro exhorted the Institute to adopt a broad International Bill of Rights:<sup>41</sup>

The International Bill of Rights must not be restricted to a redefinition of fundamental rights, such as were enunciated in 1776, in 1789, and in 1791. The Bill must embody the more advanced

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41 *Id.*, at 238-241.



principles of the Atlantic Charter, it must develop the four freedoms enunciated by President Roosevelt and, so far as possible, it must consider the aspirations expressed by different agencies and bodies representing the liberal thought of the present age. Our Bill should reflect the spirit of our day, the keener sense of democratic values and human brotherliness engendered by the grave perils which free peoples have faced and are still facing together. The Bill must be inspired by the thought that man may be oppressed not only by political power, but also by economic power. The Bill, therefore, must include the so-called Political and Social Rights, the rights by which the individual may secure active participation in the formation and character of his government and by which he may also be free from want and economic slavery.

So far as I am able to judge from the knowledge I have of the mentality of the Latin American republics, their attitude would accord with the ideas I have expressed regarding this magnificent project of the American Law Institute. All those countries love their political freedom and all of them are animated by the liberal spirit which we hope will illumine the world of the future.

Alfaro's view prevailed and a Statement of Essential Human Rights was prepared. The Director announced at the next session of the Institute that its Council decided that any further discussion in the Institute would not be desirable and that the Director was authorized to present to the world the draft of the Institute's Advisory Committee, the eminent members of which represented the principal cultures of the world.<sup>42</sup> The pamphlet containing the Statement was widely distributed, and the American Academy of Political and Social Science published an issue of its popular *Annals* devoted to the Statement.<sup>43</sup>

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42 21 American Law Institute, *Proceedings* 31-34 (1944).

43 Volume 243 of *The Annals* of the Academy (January 1946) was entitled *Essential Human Rights* and contained the text of the Statement with short explanatory comments on each article (at 18-26) as well as a series of essays on various aspects of the problem (at 1-17, 27-165).

The final statement of the Institute's Committee on Essential Human Rights contained both short definitions of the rights as well as of the duties of States with respect to each right. As far as the traditional freedoms of religion, opinion and speech, assembly, association and freedom from wrongful interference with a person's home, reputation, etc., were concerned, a State's duty is "to protect" these rights. Another group of rights requires positive steps to be taken. For instance, the right to a fair trial imposes a duty on the State "to maintain adequate tribunals and procedures to make the right effective." A third group of rights includes a State's duty to take such measures as may be necessary to provide a person with an opportunity to exercise these rights. For instance, a State has a duty to take such measures as may be necessary to insure reasonable wages, hours and other "conditions of work."

The text of the Statement (without explanatory comments) was as follows:

### *Preamble*

Upon the freedom of the individual depends the welfare of the people, the safety of the state and the peace of the world.

In society complete freedom cannot be attained; the liberties of the one are limited by the liberties of others, and the preservation of freedom requires the fulfillment by individuals of their duties as members of society.

The function of the state is to promote conditions under which the individual can be most free.

To express those freedoms to which every human being is entitled and to assure that all shall live under a government of the people, by the people and for the people, this declaration is made.

*Article 1. — Freedom of Religion.* Freedom of belief and of worship is the right of every one.

The state has a duty to protect this freedom.

*Article 2. — Freedom of Opinion.* Freedom to form and hold opinions and to receive opinions and information is the right of every one.

The state has a duty to protect this right.

*Article 3. — Freedom of Speech.* Freedom of expression is the right of every one.

The state has a duty to refrain from arbitrary limitation of this freedom and to prevent denial of reasonable access to channels of communication.

*Article 4. — Freedom of Assembly.* Freedom to assemble peaceably with others is the right of every one.

The state has a duty to protect this right.

*Article 5. — Freedom to Form Associations.* Freedom to form with others associations of a political, economic, religious, social or any other character for purposes not inconsistent with these articles is the right of every one.

The state has a duty to protect this right.

*Article 6. — Freedom from Wrongful Interference.* Freedom from unreasonable interference with his person, home, reputation, privacy, activities, and property is the right of every one.

The state has a duty to protect this right.

*Article 7. — Fair Trial.* Every one has the right to have his criminal and civil liabilities and his rights determined without undue delay by a fair and public trial by a competent tribunal before which he has had opportunity for a full hearing.

The state has a duty to maintain adequate tribunals and procedures to make this right effective.

*Article 8. — Freedom from Arbitrary Detention.* Every one who is detained has the right to immediate judicial determination of the legality of his detention.

The state has a duty to provide adequate procedures to make this right effective.

*Article 9. — Retroactive Laws.* No one shall be convicted of a crime except for violation of a law in effect at the time of the commission of the act charged as an offense, nor be subjected to a penalty greater than that applicable at the time of the commission of the offense.

*Article 10. — Property Rights.* Every one has the right to own property under general law. The state shall not deprive any one of his property except for a public purpose and with just compensation.

*Article 11. — Education.* Every one has the right to an education.

The state has a duty to require that every child within its jurisdiction receive education of the primary standard; to maintain or insure that there are maintained facilities for such education which are adequate and free; and to promote the development of facilities for further education which are adequate and effectively available to all residents.

*Article 12. — Work.* Every one has the right to work.

The state has a duty to take such measures as may be necessary to insure that all its residents have an opportunity for useful work.

*Article 13. — Conditions of Work.* Everyone has the right to reasonable conditions of work.

The state has a duty to take such measures as may be necessary to insure reasonable wages, hours, and other conditions of work.

*Article 14. — Food and Housing.* Every one has the right to adequate food and housing.

The state has a duty to take such measures as may be necessary to insure that all its residents have an opportunity to obtain these essentials.

*Article 15. — Social Security.* Every one has the right to social security.

The state has a duty to maintain or insure that there are maintained comprehensive arrangements for the promotion of health, for the prevention of sickness and accidents, and for the provision of medical care and of compensation for loss of livelihood.

*Article 16. — Participation in Government.* Every one has the right to take part in the government of his state.

The state has a duty to conform to the will of the people as manifested by democratic elections.

*Article 17. — Equal Protection.* Every one has the right to protection against arbitrary discrimination in the provisions and application of the law because of race, religion, sex or any other reason.

*Article 18. — Limitations on Exercise of Rights.* In the exercise of his rights every one is limited by the rights of others and by the just requirements of the democratic state.

The influence of this statement which represents the spirit of the times is often underestimated. In particular, Alfaro, acting through the Delegation of Panama, was able to have the statement included among the preparatory documents of the San Francisco Conference, and proposed that it be appended to the Charter.<sup>44</sup> When Mr. Alfaro found out that the Conference leaders considered this issue too complicated for decision at the Conference, he compromised on having instead a commission for the promotion of human rights mentioned in Article 68 of the Charter of the United Nations and on receiving a promise that the Economic and Social Council will make as its first agenda point the establishment of that commission, and

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44 This document was included among the Additional Amendments to the Dumbarton Oaks Proposals, UNCIO Doc. 2, C/7 (g) (2), 5 May 1945; it is reprinted in United Nations Information Organization, *Documents of the United Nations Information Organization (UNCIO Documents)*, Vol. 3, at 265-69 (1945).

that the Commission on Human Rights will immediately engage in drafting an International Bill of Rights. Both promises were fulfilled and under the direction of Mrs. Eleanor Roosevelt, the wife of the President who started this project, the Universal Declaration of Human Rights was prepared by 1948.

In the meantime, Alfaro was able to persuade the Inter-American Conference on Problems of War and Peace, that was meeting in Mexico City in February-March 1945, to refer to the Inter-American Juridical Committee the task to prepare a draft Declaration of the International Rights and Duties of Man.<sup>45</sup> That Committee acted promptly, and the Ninth International Conference of American States, meeting at Bogotá, Colombia, in March-May 1948, was able to adopt, in the presence of beaming Mr. Alfaro, the American Declaration of the Rights and Duties of Man, a few months ahead of the United Nations Universal Declaration. Thus, by patiently working on it, Mr. Alfaro, who in 1945 became Foreign Minister of Panama, achieved by 1948 one of his dreams in duplicate.

His other project—a Declaration of Rights and Duties of States also made some progress in the period discussed in this essay. Mr. Alfaro in 1943 started cooperating with the American and Canadian Bar Associations on a project entitled the *International Law of the Future*, which resulted in a volume of *Postulates, Principles and Proposals* on that topic.<sup>46</sup> The principles served as a basis for Article 2 of the Charter of the United Nations. In addition, thanks to Alfaro, the presentation of a Draft Declaration on the Rights and Duties of States was referred by the General Assembly of the United Nations in 1947 to the

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45 *International Conferences of the American States, Second Supplement, 1942-1954*, supra note 19, at 192.

46 *International Law of the Future: Postulates, Principles and Proposals* was published in separate editions by the American and Canadian Bar Associations, the Canadian edition including, in addition, a French version of the text. It was published also in 38 *American Journal of International Law* (1944 Supplement) at 41. The title of "International Law of the Future" incidentally coincided with that of a book by Professor Alejandro Alvarez of Chile, which was published in 1916 by the American Institute of International Law (of which Alfaro later became Secretary-General) under the title *Le Droit International de l'Avenir*.

International Law Commission. As Alfaro was elected a member of that Commission, he was able to have the document completed at the first session of the Commission in 1949.<sup>47</sup>

From the point of view of human rights, it may be noted that, among the duties of States, the Draft Declaration provides, in Article 6, that "[e]very State has the duty to treat all persons under its jurisdiction with respect for human rights and fundamental freedoms, without distinction as to race, sex, language, or religion." The comment mentions that this provision was derived from the language of a Panamanian draft presented to the earlier session of the General Assembly.<sup>48</sup> In addition, Article 7 of the Draft Declaration provides that "[e]very State has the duty to ensure that conditions prevailing in its territory do not menace international peace and order." This provision was also derived from the Panamanian draft, which in turn was based on the *International Law of the Future*, Principle 2 of which asserted that "[e]ach State has a legal duty to see that conditions prevailing in its territory do not menace international peace and order, and to this end it must treat its own population in a way which will not violate the dictates of humanity and justice or shock the conscience of mankind." To implement this provision, Proposal 10 would have authorized the Executive [later Security] Council to take in such situations "such action as it may deem necessary for the protection of the interests of the Community of States."<sup>49</sup>

The General Assembly, by Resolution 375(IV), commended the draft "to the continuing attention of Member States and jurists of all nations." It also asked Member States what future action should be taken on that document but, as few countries sent a reply, no further action was taken on that document.<sup>50</sup>

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47 *Report of the International Law Commission Covering Its First Session, 1949*, UN General Assembly, Official Records, 4th Session, Supp. No. 10 (A/925), at 8.

48 See UN Doc. A/285.

49 See *supra* note 46.

50 United Nations, *Work of the International Law Commission* (4th Edition), at 25-26 (1988).

It is amazing how many contributions Ricardo J. Alfaro was able to make in this short period to the development of international law, including human rights law. This short essay is able, however, to point to only a few highlights of his career. Other excellent Latin American lawyers have continued Alfaro's work and the Inter-American Institute of Human Rights and the Inter-American Court of Human Rights are participating in another renaissance of this important subject.