THE RULE OF LAW and HUMAN RIGHTS

Principles and Definitions

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Principles and Definitions

as elaborated at the Congresses and Conferences held under the auspices of the International Commission of Jurists, 1955-1966.

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INTRODUCTION

While, by the beginning of the 20th century, some states had come to accept the Rule of Law as the basis of organised society, it still remained largely undefined and it was certainly not universally applied. The vast political, social and economic upheavals that followed two world wars led to a realisation that the principles of the Rule of Law required clearer definition and were indeed of universal application.

The ending of colonial rule, the spread of universal education, rapid scientific progress, rapid transmission of ideas through mass media of communication, swifter transportation and the reaction against arbitrary government and the horrors of war awakened world leaders to the need for concerted action to protect Human Rights under the Rule of Law. These are the factors which led to the adoption of the Charter of the United Nations and subsequently of the Universal Declaration of Human Rights of 1948 ¹.

The Universal Declaration of Human Rights, formulated by the United Nations with care and deliberation, sets out the common standards that should apply to human society, irrespective of race, colour, sex, language, birth or other status. In effect it sets forth the attributes of a democratic system and, with respect to the function of the Rule of Law, states:

It is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the Rule of Law.

Other historical documents such as the Magna Carta (1215), the American Declaration of Independence (1776) and La Déclaration des Droits de l'Homme (1789) made important impacts on the ebb and flow of the battle for personal liberty but none had been as specific and widely accepted as the Universal Declaration of Human Rights. The provisions and ideals of the Charter and of the Universal Declaration have now been reflected in many international conventions, national constitutions and laws and have been relied upon by judicial authorities. Those provisions of the Declaration which are justiciable may well be regarded as now forming part of the customary law of nations.

It was in this era that the International Commission of Jurists undertook the task of defining the requirements of the Rule of Law.

¹ See Appendix A, p. 61.

It did so by means of studies and of discussions at congresses and conferences, seminars and colloquia in different regions of the world; the conclusions reached were published in Reports and in the publications of the Commission. However, these conclusions were not always conveniently classified or readily available. The purpose of the present handbook is to correlate, in a convenient form, these conclusions with each other and with the provisions of those great international instruments that lay down the accepted standards for the application of the Rule of Law and the protection of human rights: The Universal Declaration of Human Rights, the European Convention on Human Rights, the European Social Charter, the Genocide Convention, the Hague and Geneva Conventions, the I.L.O. Conventions, and the Convention on Racial Discrimination.

Part I is in effect a compendium of the conclusions of the congresses and conferences of the International Commission of Jurists. These are grouped, as far as possible, under the subject matter to which they relate. Part II provides a cross-reference index to the I.C.J. conclusions and to the provisions of the principal relevant international instruments in so far as they relate to human rights. In the Appendices will be found the text of the Universal Declaration and of the final statements of the I.C.J. congresses and conferences as well as a list of the principal international conventions referred to in Part II.

It is the hope of the Secretariat of the Commission that this handbook will assist lawyers in finding conveniently the standards that have been so carefully elaborated by the Commission over the years and the relevant international instruments.

The Evolution of the Rule of Law through the Commission

Law, as all other human institutions, is never static. Within the changing pattern of human relations resulting from progressive social and economic advancement, the concept of the Rule of Law undergoes such adaptation and expansion as is necessary to meet new and challenging circumstances.

It is in this context that the International Commission of Jurists, through its congresses and conferences, approached its task. It was recognised from the outset that the Rule of Law embraced a broader conception of justice than the mere application of legal rules whatever they might happen to be in any particular state at any given time. It has also been the aim to emphasize the lawyer's social responsibility to contribute to the promotion and understanding of the Rule of Law.

From the first international congress sponsored by the International Commission of Jurists, which was held in Athens in 1955, there emerged the new dynamic concept of the Rule of Law. The Act

of Athens ², which crystallized the deliberations of that congress, described the Rule of Law as springing "from the rights of the individual developed through history in the age-old struggle of mankind for freedom; which rights include freedom of speech, press, worship, assembly and association and the right to free elections to the end that laws are enacted by the duly elected representatives of the people and afford equal protection to all".

The first important step in the development of the dynamic concept of the Rule of Law was taken in January 1959 at the Congress of Delhi, held under the aegis of the International Commission of Jurists. This congress, having re-affirmed the principles expressed in Athens, proceeded by the Declaration of Delhi ³ to:

"recognize that the Rule of Law is a dynamic concept for the expansion and fulfilment of which jurists are primarily responsible and which should be employed not only to safeguard and advance the civil and political rights of the individual in a free society, but also to establish social, economic, educational and cultural conditions under which his legitimate aspirations and dignity may be realized."

The African Conference on the Rule of Law, held in Lagos, Nigeria in 1961, reaffirmed the basic principles underlying the Rule of Law as ennunciated in New Delhi. One important aspect of the Lagos Conference was the recognition that these principles were universal in their application. The Law of Lagos ⁴ laid down that the Rule of Law can be fully realized only under a system of government established by the will of the people.

The next important step in the process of definition and application of the Rule of Law was taken at the International Congress of Jurists, held in Rio de Janeiro (Petropolis) in December 1962. This congress considered such problems as how to balance the freedom of the executive to act effectively with the protection of the rights of the individual, and what safeguards should be introduced against the abuse of power by the executive. The Resolution of Rio ⁵, which summarized the conclusions of the congress, emphasized that the protection of the individual from unlawful or excessive interference by government is one of the foundations of the Rule of Law.

The Commission has always stressed the vital importance of an independent judiciary to the proper functioning of the Rule of Law. It has given equal emphasis to the essential role which lawyers must be required to play in any system under the Rule of Law. The following statement was included in the conclusions of the Congress of Rio:

² See Appendix B, p. 65.

⁸ See Appendix C, p. 66.

⁴ See Appendix D, p. 67.

⁵ See Appendix E, p. 68.

"In a changing and interdependent world, lawyers should give guidance and leadership in the creation of new legal concepts, institutions and techniques to enable man to meet the challenge and the dangers of the times and to realize the aspirations of all people."

While the earlier congresses and conferences of the International Commission of Jurists focussed attention on the political, administrative and legal aspects of the Rule of Law, the Conference of Bangkok, held in February 1965, emphasized its social, economic, educational and cultural aspects. The Declaration of Bangkok ⁶ recognized that the Rule of Law and representative government were often endangered by hunger, poverty and unemployment and that therefore lawyers should commit their skills and techniques to the elimination of these evils. The conference also concerned itself with the basic requirements of representative government under the Rule of Law and the role which the lawyer was expected to play in a developing society.

By laying stress on social and economic problems, the conclusions and resolutions of Bangkok marked an important step forward in the definition and elaboration of the principles underlying the Rule of Law, but it was necessary to examine how these conclusions and resolutions could be put into practical effect and more particularly how the average citizen could be made to understand and appreciate the significance of the Rule of Law and what it meant to his personal freedom and advancement. The Ceylon Colloquium on the Rule of Law was therefore organized and held in February 1966 as a follow-up to the Bangkok Conference.

The Declaration of Colombo ⁷ stressed the duty of lawyers to bring to the attention of all members of the community the practical relevance of the Rule of Law in their daily life and aspirations. Besides the methods by which the Rule of Law could be adequately introduced to the average citizen, the colloquium considered such matters as problems arising from the nationalization of property and examined how the citizen could be provided with an informal and prompt means of redress of his grievances in his dealings with the administration.

The Act of Athens, the Declaration of Delhi, the Law of Lagos, the Resolution of Rio, the Declaration of Bangkok and the Declaration of Colombo crystallize in summary form the conclusions of the congresses and conferences held under the aegis of the International Commission of Jurists.

Seán MacBride Secretary-General

⁶ See Appendix F, p. 69. ⁷ See Appendix G, p. 70.

PART I

PRINCIPLES OF THE RULE OF LAW

CHAPTER 1

ESSENTIAL REQUIREMENTS OF A SOCIETY UNDER THE RULE OF LAW

I. Minimum conditions of a juridical system in which fundamental rights and human dignity are respected 9

The minimum conditions of a juridical system in which fundamental rights and human dignity are respected must be the following:

1. Personal security must be guaranteed. No one may be arrested or detained without a judicial decision or for preventive purposes. The residence is inviolable. No one can be expelled from his residence, deported, or exiled except in the case of a court decision with final validity, based on a restrictively interpreted legal provision.

No one can be compelled against his will by threats, pressure or other measures to spy on the political or intellectual attitudes of his fellow citizens. All generalized systems of denunciation for the purpose of persecuting any political opposition are prohibited.

- 2. No fundamental right may be interpreted as implying the authorization for any state or for any one of its organs to issue legislative provisions, to undertake an activity or to commit an act having as its purpose the restriction or suppression of that fundamental right. Consequently, everyone has the right to freedom of opinion and expression; this implies the right not to be molested or persecuted for holding opinions and not to be forced to express an opinion contrary to conviction.
- 3. Everyone must be guaranteed freedom of expression through all media of communication, particularly the press. There must be no legislative or administrative provisions encroaching upon this freedom.

This freedom presupposes the possibility of receiving and imparting all information or ideas by any means of expression, regardless of the fact that the information may have originated abroad.

Censorship must be prohibited. Systematic interference with radio broadcasts must also be prohibited.

⁹ Congress of Athens, Committee on Public Law, Resolution V.

- 4. The private life of persons being inviolable, secrecy of mails must be guaranteed. No one must be persecuted for opinions expressed in correspondence.
- 5. Freedom of religion must be guaranteed. Religious faiths, the internal organization and worship of the different cults must be respected provided the public order and morals are not violated.
- 6. Right to education must be guaranteed to all without any discrimination. School instruction must be given in the spirit of international understanding, of respect for the dignity and fundamental rights of man. The teaching staff of the universities must not be molested by legislative or administrative measures taken to its detriment.
- 7. Everyone is entitled to freedom of assembly and peaceful association and particularly to become a member of a political party of his own choice. No political party must be put in a preponderant position in the state apparatus through legislative or administrative provisions.
- 8. (a) Everyone is entitled to take part either directly, or through freely chosen representatives, in the direction of the public life of his country.
- (b) The will of the people is the basis of the authority of public powers. This will must be expressed by free elections; all direct or indirect pressure exercised on the voters to the end to force them to express their opinion publicly is prohibited. The right to present candidates must belong to all political parties and to all political organizations. No measure should be taken during the elections which would permit the divulging of the personality of the voter or the contents of a ballot.

The authority of the state must be exercised in conformity with the general will expressed by such free elections.

(c) The independence of the judiciary and the guarantee of its impartiality are the indispensable conditions of a free and democratic state.

The legislative power must be effectively exercised by an appropriate organ, freely elected by the citizens. The laws and other legal measures taken by the legislative cannot be abolished or restricted by a governmental measure.

Persons in the employ of the state or its public services must exercise their functions in the service of the community and not of a political party or political organization. They have the particular obligation of loyalty towards the state. In the exercise of their functions they must not receive directives from a political party or any other organization.

- 9. The recognition of the right to self-determination being one of the greatest achievements of our era and one of the fundamental principles of international law, its non-application is emphatically condemned.¹⁰
- 10. (i) Justice demands that a people or an ethnic or political minority be not deprived of their natural rights and especially of the fundamental rights of man and citizen or of equal treatment for reasons of race, colour, class, political conviction, caste or creed;
 - (ii) It is the duty of public authorities to respect those principles;
- (iii) Discrimination based on race and colour is contrary to justice, the Charter of the United Nations, and the Universal Declaration of Human Rights, and is abhorrent to the conscience of the civilized world. ¹¹

II. Basic requirements of representative government under the Rule of Law 12

- 1. The Rule of Law can only reach its highest expression and fullest realization under representative government.
- 2. By representative government is meant a government deriving its power and authority from the people, which power and authority are exercised through representatives freely chosen and responsible to them.
- 3. Free periodic elections are therefore important to representative government. Such elections should be based on universal and equal adult suffrage and should be held by secret ballot and under such conditions that the right to vote is exercised without hindrance or pressure. Where a legislature is elected by districts, there should be a periodic re-distribution of seats or districts so as to ensure as far as practicable that each individual vote has the same value. It is also necessary to ensure that election expenses of candidates are regulated in such a manner and to such an extent as may be necessary to ensure that elections are both free and fair.
- 4. No adult citizen should by reason of race, colour, sex, language, religion, political or other opinion, national or social origin, wealth, education, status or birth be deprived of the right to be a candidate at any election, to seek votes, or to cast his vote for any candidate.
- 5. Freedom of expression through the press and other media of communication is an essential element of free elections and is also necessary to ensure the development of an informed and responsible electorate.

¹⁰ Congress of Athens, 1955, Committee on Public Law, Resolution III.

¹¹ Congress of Athens, 1955, Final Resolution. ¹² Conference of Bangkok, 1965, Committee I.

- 6. Representative government implies the right within the law and as a matter of accepted practice to form an opposition party or parties able and free to pronounce on the policies of the government, provided their policies and actions are not directed towards the destruction of representative government and the Rule of Law.
- 7. Illiteracy is an impediment to representative government reaching its highest expression and fullest realization. It is therefore the duty of the state to provide compulsory free education for all children and free education for all illiterate adults up to such standard as is necessary ultimately to remove such impediment.
- 8. To enable representative government to yield the best results, the people should not only be literate, but should have a proper understanding and appreciation of the principles of democracy, the functions of the different branches of the government and the rights and duties of the citizen vis-à-vis the state. Civic education through schools and through all mass media of communication is therefore a vital factor for ensuring the existence of an informed and responsible electorate.
- 9. It is essential for the effective operation of the Rule of Law that there should be an efficient, honest and impartial civil service.
- 10. The guarantee of individual freedom and dignity within the framework of a representative government requires that:
- (1) In a state in which the Rule of Law prevails there should be effective machinery for the protection of fundamental rights and freedoms, whether or not these rights and freedoms are guaranteed by a written constitution.
- (2) In countries where the safeguards afforded by well-established constitutional conventions and traditions are inadequate, it is desirable that the rights guaranteed and the judicial procedures to enforce them should be incorporated in a written constitution.
- (3) While governments should of their own volition refrain from action infringing fundamental rights and freedoms, the ultimate determination as to whether the law or an executive or administrative act infringes those rights and freedoms should be vested in the courts.
- (4) The ultimate protection of the individual in a society governed by the Rule of Law depends upon the existence of an enlightened, independent and courageous judiciary, and upon adequate provision for the speedy and effective administration of justice.

CHAPTER 2

THE LEGISLATURE AND THE RULE OF LAW 18

- 1. The function of the legislature in a free society under the Rule of Law is to create and maintain the conditions which will uphold the dignity of man as an individual. This dignity requires not only the recognition of his civil and political rights but also the establishment of the social, economic, educational and cultural conditions which are essential to the full development of his personality.
- 2. (1) In many societies, particularly those which have not yet fully established traditions of democratic legislative behaviour, it is essential that certain limitations on legislative power referred to in Clause III hereof should be incorporated in a written constitution, and that the safeguards therein contained should be protected by an independent judicial tribunal; in other societies, established standards of legislative behaviour may serve to ensure that the same limitations are observed, and a lawyer has a positive interest, and duty to assist, in the maintenance of such standards of behaviour within his particular society, notwithstanding that their sanction may be of a political nature.
- (2) To implement the principles set forth in the preceding Clause I it is essential that the powers of the legislature be fixed and determined by fundamental constitutional provisions or conventions which:
 - (a) guarantee the organisation of the legislature in such a way that the people, without discrimination among individuals, may directly, or through their representatives, decide on the content of the law;
 - (b) confer on the legislature, especially with regard to the matters set out in Clause I, the exclusive power of enacting general principles and rules as distinct from detailed regulations thereunder;
 - (c) provide for control, by the representatives of the people, over the exercise by the executive of such subordinate legislative functions as are necessary to give effect to legislation; and
 - (d) organise judicial sanctions enforcing the principles set out in this Clause, and protect the individual from encroachments on his rights under Clause III. The safeguards contained in the

¹³ Congress of Delhi, 1959, Committee I.

- constitution should not be indirectly undermined by devices which leave only the semblance of judicial control.
- 3. (1) Every legislature in a free society under the Rule of Law should endeavour to give full effect to the principles enunciated in the Universal Declaration of Human Rights.
- (2) The governments of the world should provide the means whereby the Rule of Law may be maintained and furthered through international or regional agreements on the pattern of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on November 4, 1950, or otherwise. Such agreements should provide an opportunity of appeal to an international body for a remedy against denial of the rights implicit in the Rule of Law in any part of the world.
- (3) Every legislature should, in particular, observe the limitations on its powers referred to below. The failure to refer specifically to other limitations, or to enumerate particular rights is not to be construed as in any sense minimizing their importance.

The legislature must:

- (a) not discriminate in its laws in respect of individuals, classes of persons, or minority groups on the ground of race, religion, sex or other such reasons not affording a proper basis for making a distinction between human beings, classes, or minorities;
- (b) not interfere with freedom of religious belief and observance;
- (c) not deny to the members of society the right to elected responsible government;
- (d) not place restrictions on freedom of speech, freedom of assembly or freedom of association;
- (e) abstain from retroactive legislation;
- (f) not impair the exercise of fundamental rights and freedoms of the individual;
- (g) provide procedural machinery ("procedural due process") and safeguards whereby the abovementioned freedoms are given effect to and protected.
- 4. (1) The principles stated in the foregoing Clauses represent the proper aspirations of all men. Every legislature and every government should endeavour to give full effect to the foregoing principles, not only in relation to their own countries, but also in relation to any territories under their administration or protection, and should take steps to abrogate any existing laws which are inconsistent therewith.
- (2) The legislatures and the governments of the world should advance by every means in their power the ultimate and universal application of the principles here enunciated.

THE EXECUTIVE AND THE RULE OF LAW

L. The Executive

A. Need for and limitations on effective governmental powers 14

The Rule of Law depends not only on the provision of adequate safeguards against abuse of power by the executive, but also on the existence of *effective government* capable of maintaining law and order and of ensuring adequate social and economic conditions of life for the society.

The following propositions relating to the executive and the Rule of Law are accordingly formulated on the basis of certain conditions which are either satisfied, or in the case of newly independent countries still struggling with difficult economic and social problems are in the process of being satisfied. These conditions require the existence of an executive invested with sufficient power and resources to discharge its functions with efficiency and integrity. They require the existence of a legislature elected by democratic process and not subject, either in the manner of its election or otherwise, to manipulation by the executive. They require the existence of an independent judiciary which will discharge its duties fearlessly. They finally call for the earnest endeavour of government to achieve such social and economic conditions within a society as will ensure a reasonable standard of economic security, social welfare and education for the mass of the people.

In the light of the foregoing the following propositions have been agreed upon.

1. In modern conditions and in particular in societies which have undertaken the positive task of providing welfare services for the community it is recognized that legislatures may find it necessary to delegate power to the executive or other agencies to make rules having a legislative character.

The grant of such powers should be within the narrowest possible limits and should carefully define the extent and purpose of delegated legislation and should provide for the procedure by which it can be brought into effect.

¹⁴ Congress of Delhi, 1959, Committee II.

Public emergency threatening the life of a nation may require extensive delegation of powers. Even in such cases, however, the Rule of Law requires that every attempt be made by the legislature to define as carefully as possible the extent and purpose of the grant of such delegated powers, and the procedure by which such delegated legislation is to be brought into effect.

In no event shall fundamental human rights be abrogated by means of delegated legislation.

- 2. To ensure that the extent, purpose and procedure appropriate to delegated legislation are observed, it is essential that it should be subject to ultimate review by a judicial body independent of the executive.
- 3. Judicial review of delegated legislation may be usefully supplemented by procedure for supervision by the legislature or by a committee or a commissioner of the legislature or by other independent authority either before or after such delegated legislation comes into effect.
- 4. In general, the acts of the executive which directly and injuriously affect the person or property or rights of the individual should be subject to review by the courts.
- 5. The judicial review of acts of the executive may be adequately secured either by a specialized system of administrative courts or by the ordinary courts. Where specialized courts do not exist it is essential that the decisions of *ad hoc* administrative tribunals and agencies, if created (which include all administrative agencies making determinations of a judicial character), should be subject to ultimate review by ordinary courts.

Since this supervision cannot always amount to a full re-examination of the facts, it is essential that the procedure of such ad hoc tribunals and agencies should ensure the fundamentals of fair hearing including the right to be heard, if possible, in public, to have advance knowledge of the rules governing the hearing, to adequate representation, to know the opposing case, and to receive a reasoned judgment.

Save for sufficient reason to the contrary, adequate representation should include the right to legal counsel.

- 6. A citizen who suffers injury as a result of illegal acts of the executive should have an adequate remedy either in the form of a proceeding against the state or against the individual wrongdoer, with the assurance of satisfaction of the judgment in the latter case, or both.
- 7. Irrespective of the availability of judicial review to correct illegal action by the executive after it has occurred, it is generally desirable to institute appropriate antecedent procedures of hearing, enquiry or consultation through which parties whose rights or interests will be

affected may have an adequate opportunity to make representations so as to minimize the likelihood of unlawful or unreasonable executive action.

8. It will further the Rule of Law if the executive is required to formulate its reasons when reaching its decisions of a judicial or administrative character and affecting the rights of individuals and at the request of a party concerned to communicate them to him.

B. Human rights and government security 15

- 1. The exigencies of modern society necessitate the practice of the legislature delegating to the executive the power to make rules having the force of legislation.
- 2. The power of the executive to make rules or regulations having legislative effect should derive from the express mandate of the legislature; these rules and regulations should be subject to approval by that body. The object and scope of such executive power should be clearly defined.
- 3. The judiciary should be given the jurisdiction to determine in every case upon application whether the circumstances have arisen or the conditions have been fulfilled under which such power is to be or has been exercised.
- 4. Every constitution should provide that, except during a period of emergency, legislation should as far as possible be delegated only in respect of matters of economic and social character and that the exercise of such powers should not infringe upon fundamental human rights.
- 5. The proclamation of a state of emergency is a matter of most serious concern as it directly affects and may infringe upon human rights. The dangers of survival of the nation such as arise from a sudden military challenge may call for urgent and drastic measures by the executive which by the nature of things are susceptible only to a posteriori legislative ratification and judicial review. In any other case, however, it is the parliament duly convened for the purpose that should declare whether or not the state of emergency exists. Wherever it is impossible or inexpedient to summon parliament for this purpose, for example during parliamentary recess, the executive should be competent to declare a state of emergency, but in such a case parliament should meet as soon as possible thereafter.
- 6. Real danger exists when the citizenty, whether by legislative or executive action, or abuse of the judicial process, are made to live as if in a perpetual state of emergency.

¹⁵ Conference of Lagos, 1961, Committee I.

- 7. In all cases of the exercise of emergency powers, any person who is aggrieved by the violation of his rights should have access to the courts for determination whether the power has been lawfully exercised.
- 8. The principles set out in this chapter must be maintained at all times, except in a period of national emergency duly declared by the state, or in exceptional circumstances and for limited periods in coping with public calamity or necessity, directly affecting the life or livelihood of the people. At such times, certain of those principles may have to be temporarily relaxed. This relaxation is justified only to the extent actually required and should be confined to the executive agencies directly concerned. In no case should fundamental human rights and the dignity of the individual be disregarded.

The conditions under which an emergency may be declared should be formulated in a law which determines the authority capable of proclaiming it, as well as the relevant procedures, duration and appropriate methods of control.

- C. Preventive detention in periods of emergency 16
- 1. Save during a period of public emergency threatening the life of the nation, no person of sound mind shall be deprived of his liberty except upon a charge of a specific criminal offence, and preventive detention without trial shall be contrary to the Rule of Law.
- 2. During such period of public emergency, legislation often authorizes preventive detention of an individual if the executive finds that public security so requires. Such legislation should provide the individual with safeguards against continuing arbitrary confinement by requiring a prompt administrative hearing and decision upon the need and justification for detention, with a right to judicial review as to the need and justification for such detention and with the right to representation by counsel at all stages. It should be required that any declaration of public emergency by the executive be forthwith reported to, and be subject to ratification by, the legislature. Moreover, both the declaration of public emergency and any consequent detention of individuals should, except in time of war, be effective only for a specified and limited period of time (not exceeding six months).
- 3. Extension of the period of public emergency should be effected by the legislature only after careful and deliberate consideration of the necessity therefor. Finally, during any period of public emergency the executive should only take such measures as are reasonably justifiable for the purpose of dealing with the situation which exists during that period.

¹⁶ Conference of Bangkok, 1965, Committee I, cl. xi.

- 4. Even where the preventive detention of an individual is permitted by law by reason of a public emergency threatening the life of the nation, it is essential that the executive should not act arbitrarily and that it should forthwith supply the person detained with the grounds for his detention and particulars thereof.
- 5. Where it is necessary in order to prevent hardship, the state should support the dependents of a person placed under preventive detention.

D. Control by the courts and the legislature over executive action

The existence of effective safeguards against the possible abuse of power by the Executive is an all-important aspect of the Rule of Law. Judicial and legislative control of the executive are such safeguards.

(i) Judicial control 17

- 1. Judicial control must be effective, speedy, simple and inexpensive.
- 2. The exercise of judicial control demands full independence of the judiciary and complete professional freedom for lawyers.
- 3. Judicial control over the acts of the executive should ensure that:
 - (a) the executive acts within the powers conferred upon it by the constitution and such laws as are not unconstitutional;
 - (b) whenever the rights, interests or status of any person are infringed or threatened by executive action, such person shall have an inviolable right of access to the courts and unless the court be satisfied that such action was legal, free from bias and not unreasonable, be entitled to appropriate protection;
 - (c) where executive action is taken under a discretionary power, the courts shall be entitled to examine the basis on which the discretion has been exercised and if it has been exercised in a proper and reasonable way and in accordance with the principles of natural justice;
 - (d) the powers validly granted to the executive are not used for a collateral or improper purpose.
- 4. In establishing the purpose for which a power has been used it should be for the court to decide on evidence whether any claim not to disclose state documents is reasonable and justified.
- 5. When the infringement complained of is one affecting human rights, the courts should be entitled to take into consideration at least as an element of interpretation and as a standard of conduct in civilized communities the provisions of the Universal Declaration of Human Rights adopted by the General Assembly of the United Nations.

¹⁷ Congress of Rio, 1962, Committee II A.

- 6. It is considered to be necessary that at least in cases involving human rights there should be an international court to which final recourse might be had by an individual whose rights have been infringed or threatened. Such an international tribunal would be a World Court of Human Rights, its writ effective in any jurisdiction.
- 7. The first step in this direction could be regional conventions with optional clauses analogous to the European Convention for the Protection of Human Rights and Fundamental Freedoms and the Inter-American Draft Convention on Human Rights, and regional courts analogous to the European Court of Human Rights. Close liaison between such regional courts would have to be established in order to develop a common case law.

(ii) Legislative control 18

- 1. The complexity of modern society may necessitate the delegation of legislative power by the legislature to the executive, particularly where requirements of fair practice demand frequent changes or where the legislature cannot reasonably be expected to deal with technical details.
- 2. The enactments by which such legislative powers are delegated should carefully define the extent, purpose and where necessary duration of delegated legislation and should provide for the procedure by which it can be brought into effect.
- 3. Delegated legislation should always be fair and reasonable and should be drafted in clear form. In no circumstances should it deviate from general principles of legislation or from the directions laid down by the legislature.
- 4. To ensure that the executive should loyally discharge its legislative mandate, the legislature should entrust appropriate organs, such as standing committees, with the task of scrutinizing all delegated legislation and reporting to it at fixed intervals the results of their scrutiny.
- 5. Attention is called to the powers of the legislature to exercise control through its right to appropriate public money. Such control can be strengthened by a high and independent official, like a controller or auditor-general, appointed by parliament, who exercises control over expenditure of public money.

(iii) Control through the institution of an ombudsman

1. Creation of the office of ombudsman

A high official, such as the ombudsman in the Scandinavian countries and in New Zealand, should be appointed by the legislature for a fixed period. He should be entirely independent of the executive,

¹⁸ Congress of Rio, 1962, Committee II B, cl. 1-5.

be responsible only to the legislature and be remunerated directly by it. He should be entitled and under an obligation to act either on his initiative or on complaints from any individual. He should have full access to all government documents and files. He should have the power of summoning and examining witnesses as in a court of law. His reports should be made at least once a year and should be given due publicity. 19

In the light of the experience gained in Scandinavia and New Zealand, it is recommended that nations should examine the possibility of adopting the ombudsman concept as a means of facilitating the correction of administrative errors and minimizing the possibility of maladministration.

While adaptation to local circumstances will be necessary, it is understood that the basic principles underlying such a concept are: the complete independence of the office from the executive; its full and untrammelled power, including access to files and the hearing of witnesses, to investigate complaints against administrative actions of the executive; and the limitation of its power to recommendations addressed to competent legislative and executive organs. 20

The need for an ombudsman

It is vital to the wellbeing of every society that administration by the executive should be, and should by the ordinary citizen be felt to be, efficient, fair and humane. When the ordinary citizen has in this respect a grievance, or a sense of grievance, the legal remedies available to him in the courts of law are, in many countries, not always adequate or appropriate.

Even if, as is urgently necessary, control of executive action by the courts were strengthened, by simpler and more effective remedies, by more general insistence on fair procedures in the administrative process, by appeals from administrative decisions on points of law, by the award of damages in appropriate cases and by the provision of legal aid and advice in civil and criminal cases, there would still remain a gap in the machinery for the redress of grievances of the individual against administrative acts or omissions.

This gap should be filled by an authority which is able to act more speedily, informally and with greater regard to the individual justice of a case than is possible by the ordinary legal process of the courts. It should not be regarded as a substitute for, or rival to, the legislature or the courts but as a necessary supplement to their work, using weapons of persuasion, recommendation and publicity rather than compulsion.

19 Ibid. cl. 6.

²⁰ Conference of Bangkok, 1965, Committee II, cl. xiv.

3. The practicability of the institution

It is clear that the problems to be faced in introducing the ombudsman principle in large countries are of a different character from those found in small countries which are homogenous in nature such as Sweden or Denmark.

Whether there should be one ombudsman or several would depend on the constitutional structure of the countries concerned and the size and distribution of their population. It is however always necessary to build up the authority and prestige of the institution by centering it around one man who commands universal respect. The institution should also be adapted to meet the special problems created by racial, religious and linguistic groupings and their relative strength in a particular country or in a particular area. It is necessary that the ombudsman should enjoy the confidence of all sections of the population. While the full benefits of the ombudsman concept could only be realised in parliamentary democracies, there is considerable value in the existence of an independent office to supervise the administration and redress the grievances of citizens in regimes which do not have a parliamentary system of government.

4. His appointment and tenure of office

Whether the ombudsman is appointed by the executive or by the legislature or in some other appropriate manner, it is essential that he should enjoy the confidence of all parties in the legislature and of the various sections of the community.

He should enjoy the same security of tenure and salary as that of a judge of the highest court. The ombudsman should have the power of appointment, removal and disciplinary control over his staff. He should be able to report to the legislature if he considers that the staff made available to him is insufficient to carry out his duties.

The scope of his supervisory powers

The ombudsman's powers should be declared and defined in the Act constituting the office, and persons, departments and other organisations which are within his jurisdiction should be enumerated in the Act.

The ombudsman's power of investigation should not extend to the head of state and judges, or to matters of discipline in the armed forces.

The ombudsman should have the power to require full disclosure of documents except in respect of such matters as security, defence, international relations and cabinet papers. He should have the power to summon witnesses and the power to enter any public building for the purpose of carrying out his duties.

It is desirable that the powers of the ombudsman should where practicable extend to local authorities as well as to the organs of central or state governments.

6. Procedure

The ombudsman should deal not only with complaints lodged by any aggrieved person but also take up any matter on his own initiative.

In the case of any grievance where there is a remedy in the ordinary courts or by administrative action, the ombudsman should have the discretion to decide whether he should insist on the exhaustion of all available remedies or proceed with the investigation. The ombudsman need not be bound by the rules of evidence and may follow any reasonable procedure which he deems appropriate. He shall however give the department affected and any person against whom a complaint is directed a fair opportunity to present its or his case. On reaching a conclusion in the matter, the ombudsman should invite the department concerned to redress the grievance, if any. Failing redress, the ombudsman should report on the matter to the legislature either immediately or in the annual report and recommendations which he makes to the legislature. His report should be printed and given wide publicity.

The above conditions are subject to adaptation to suit the constitutional requirements of each country. 21

II. Administrative Law

- A. Human rights and aspects of administrative law 22
- 1. It is recognized and agreed that legislation authorizing administrative action by the executive should not be discriminatory with respect to race, creed, sex or other such reasons and any such discriminatory provisions contained in legislation are considered contrary to the Rule of Law.
- 2. While recognizing that inquiry into the merits of the propriety of an individual administrative act by the executive may in many cases not be appropriate for the ordinary courts, it is agreed that there should be available to the person aggrieved a right of access to:
 - (a) a hierarchy of administrative courts of independent jurisdiction; or
 - (b) where these do not exist, to an administrative tribunal subject to the overriding authority of the ordinary courts.

²¹ Ceylon Colloquium, 1966, Committee III.

²² Congress of Rio, 1962, Committee II, cl. 1-4.

- 3. The minimum requirements for such administrative action and subsequent judicial review as recommended in paragraph 2 above are as follows:
 - (a) that the full reasons for the action of the executive be made known to the person aggrieved; and
 - (b) that the aggrieved person shall be given a fair hearing; and
 - (c) that the grounds given by the executive for its action shall not be regarded as conclusive but shall be objectively considered by the court.
- 4. It is desirable that, whenever reasonable in the prevailing circumstances, the action of the executive shall be suspended while under review by the courts.

B. Procedures utilized by administrative agencies and executive officials23

- 1. To maintain the Rule of Law there must be on the one hand effective government capable of maintaining order and promoting social and economic development, and on the other adequate safeguards against the abuse of state power. Today all societies face the need for adjustment to the requirements of technological change and of social and economic development. In various areas of activity the executive branches are compelled to deal with problems for the solution of which no adequate machinery may exist and which may constantly require governmental and legislative intervention for the good of society and of the individuals within it. A major dilemma confronting government and citizens alike is how to balance the freedom of the executive to act effectively with the protection of the rights of the individual. It is the duty of all states in coping with this dilemma to preserve and advance the Rule of Law while undertaking measures of social and economic development.
- 2. The first guarantee of good administration and of the protection of the individual is the procedural framework used by the executive in making decisions affecting his rights. Judicial procedure for protection of the individual has evolved over a long period, but in modern societies the executive acts through various agencies which have no uniform rules of procedure and in which the Rule of Law is inadequately safeguarded. The conclusions which follow set out the principles and procedures which should be observed.
- 3. In nearly every country one type of action of administrative agencies and executive officials is in the nature of adjudication, and the decisions made are similar to judicial decisions. Whatever variations

²⁸ Congress of Rio, 1962, Committee I.

in procedure may be appropriate to this kind of executive action, there are certain fundamental principles that must be followed if the Rule of Law is to be preserved. These are:

- (1) adequate notice to the interested parties of the nature and purpose of the proceedings;
- (2) adequate opportunity for them to prepare the case, including access to relevant data;
- (3) their right to be heard, and adequate opportunity for them to present arguments and evidence, and to meet opposing arguments and evidence;
- (4) their right to be represented by counsel or other qualified person;
- (5) adequate notice to them of the decision and of the reasons therefor;
- (6) their right of recourse to a higher administrative authority or to a court.
- 4. To ensure the independence of the members of the administrative bodies which customarily render decisions similar to judicial decisions, and to protect them from undue interference, such members must not be removable during their term of office, except for good cause and by due process of law.
- 5. Decisions taken by the executive not involving adjudication may still vitally affect the freedom and interests of individuals. Therefore, it is necessary that in these cases certain minimum safeguards for the Rule of Law be preserved.

Regarding the adoption of administrative regulations and decisions of broad scope, it is desirable that the administration secure expert advice when necessary, consult organizations representing citizens or groups interested in the contemplated measures, and give an opportunity to interested individuals to present their views.

Regarding individual decisions, the procedure in all cases where the administration is about to impose sanctions on a citizen or to take measures liable to affect detrimentally his vital interests should include the following:

- (a) notification of the contemplated measure and the reasons for its adoption;
- (b) right of access to the relevant data;
- (c) right to be heard;
- (d) notice of the decision.
- 6. It is essential that effective publication be made promptly of all decisions of a legislative character made by the executive, so that interested parties may be advised of measures adopted affecting their interests.

- 7. The fundamental principles referred to above should not be left to the discretion of governments, but should be clearly formulated and adopted in all countries in the most appropriate manner (Constitution, law, decree, administrative code, etc.).
- 8. It is desirable that states should prepare and adopt international conventions providing a right of appeal to individuals and interested groups before an international tribunal to guarantee, in exceptional as well as in normal circumstances, the protection of the prescribed rights.

CHAPTER 4

THE CRIMINAL PROCESS AND THE RULE OF LAW

I. Fundamental principles of penal law 24

1. Every person accused of an offence has the right to be considered innocent so long as his guilt has not been proven in conformity with the law in the course of public proceedings which assure all the guarantees necessary for his defence.

Every accused must have at least the right:

- (a) to be immediately informed, on all points and in a language comprehensible to him, of the nature and the grounds of the charge brought against him;
- (b) to be accorded the possibility and sufficient time for the preparation of his defence;
- (c) to defend himself or to obtain the assistance of a defence counsel of his own choice, and, should he not dispose of the means of remunerating such counsel, to be assisted gratuitously by a defence counsel ex officio if the seriousness of the charge or the interests of justice so require;
- (d) to examine or cause to be examined, in his presence, the witnesses for the prosecution, and to obtain the subpoena and the hearing of witnesses for the defence under the same conditions as apply to witnesses for the prosecution and according to the ordinary rules of procedure;
- (e) to ask for the gratuitous assistance of an interpreter when he does not understand the language in which debates are conducted or is unable to express himself in the language of the court. Only the factual situation alone, such as it may appear as the result of judicial debate, may be decisive in the condemnation of the accused.
- 2. Since a free defence presupposes the liberty of the defence counsel, every lawyer called to represent an accused in a criminal matter must be permitted to prepare freely and integrally a defence corresponding to the requirements of justice, to communicate with the accused, and to plead, free of influence or hindrance by reason of instructions from an official organ or party.

²⁴ Congress of Athens, Committee on Criminal Law, Resolution I.

The lawyer must be exempted from any claim for damages, either personal or professional, based on his assurance of a proper defence not offending the dignity of the court.

3. No person shall be liable to prosecution for an act or omission which, at the time of its commission, was not punishable in either national or international law.

The principle of legality of offences and punishments must be respected even in political and economic matters. It is not admissible to create accusations and sanctions on the simple basis of analogy with other penal provisions.

- 4. Everyone has the right to liberty and security. No one shall be arbitrarily arrested, detained or deported. A person may be deprived of his liberty in the following cases only, and in accord with the methods and forms of procedure legally prescribed:
 - (a) when he is regularly arrested or detained for the purpose of compelling him to execute an obligation imposed on him by law;
 - (b) when he is regularly arrested or detained for the purpose of assuring his appearance before the competent jurisdiction, insomuch as sufficient proof is available that the accused has committed a punishable offence and insofar as measures for public security and the administration of justice so require;
 - (c) when the person regularly arrested is a minor, the arrest being ordered for the purpose of supervised education or in view of bringing him before the competent authority.
 - (d) when the person is detained because he risks to spread a contagious disease, or because of mental illness, alcoholism, intoxication or vagrancy;
 - (e) when he is regularly arrested or detained for the purpose of preventing him from entering illegally on national territory, or because he is the object of a procedure for expulsion or extradition.
 - (f) when he is legally detained after conviction by a competent court.

Every person arrested must, without delay and in a language comprehensible to him, be informed of the grounds for his arrest and of the charges brought against him.

Every person arrested and detained while awaiting trial must, without delay, be brought before a judge or an official authorized to exercise judicial functions. He has the right to be judged within a reasonable lapse of time or to be released during the procedure; the release may be subordinated to the deposit of bail to guarantee appearance before the court.

Whoever is deprived of his liberty by arrest or detention has the right to demand a procedure by which a judicial authority may be called upon to determine without delay the legitimacy of the detention, and to order his release if it appears that such detention has not been effected in conformity with the law.

Any person victimized by arrest or detention in violation of these guarantees has the right to be indemnified.

5. No person may be subjected to torture in any form whatsoever, nor to cruel, inhuman or degrading treatment.

No person, deposing as witness or as the accused before an organ of preliminary investigation or official inquest, shall be subjected to physical or psychological pressure and compelled to make specific statements or a confession.

A witness or an accused may refuse to give evidence before an organ of the police or the prosecution, and may demand a hearing before a judge regarding the merits of the case. Even before a court, the accused is not obliged to make statements on the merits of the case which concern him directly.

6. No person shall be subjected to cruel or inhuman punishment. Every punishment must be determined within the bounds established by law. All the circumstances, both personal and those of fact, must be taken into consideration in order to arrive at an equitable sanction. The punishment must not be inflicted exclusively for purposes of general intimidation, nor must it be imposed in a particularly severe manner for the purpose of utilizing convicted persons as an advantageous source of manual labour.

The recourse to appeal, provided for by ordinary procedure, must be extended to every accused or convicted person.

The execution of the punishment must also be humane; prisoners' labour should not be exploited. Discipline within prisons must be assured, but it cannot be realized through methods which are cruel or detrimental to the health of the prisoners.

Every prisoner has the right to demand from the competent authority an accurate inquest when he is of the opinion that these principles have been violated or when he feels that he is otherwise being treated unjustly. No penalty must be imposed on him by reason of a request or complaint of this nature.

II. The criminal process and the Rule of Law 25

The rights of the accused in criminal trials, however elaborately safeguarded on paper, may be ineffective in practice unless they are supported by institutions, the spirit and tradition of which limit the

²⁵ Congress of Delhi, 1959, Committee III.

exercise of the discretions, whether in law or in practice, which belong in particular to the prosecuting authorities and to the police. Bearing that qualification in mind, an attempt has been made to answer the question: If a citizen of a country which observes the Rule of Law is charged with a criminal offence, to what rights would he properly consider himself entitled? This question has been considered under the heads which follow. It is for each country to maintain and develop in the framework of its own system of law the following rules which are regarded as the minimum necessary to ensure the observance of the Rule of Law.

1. Certainty of the criminal law

It is always important that the definition and interpretation of the law should be as certain as possible, and this is of particular importance in the case of the criminal law, where the citizen's life or liberty may be at stake.

2. Retroactive legislation

Certainty cannot exist in the criminal law where the law, or the penalty for its breach, is retrospective. Retroactive legislation, especially in criminal matters, is inconsistent with the Rule of Law.

3. The presumption of innocence

The application of the Rule of Law involves an acceptance of the principle that an accused person is assumed to be innocent until he has been proved to be guilty. An acceptance of this general principle is not inconsistent with provisions of law which, in particular cases, shift the burden of proof once certain facts creating a contrary presumption have been established. The personal guilt of the accused should be proved in each case.

4. Arrest and accusation

- (1) The power of arrest, whether in flagrante delicto or not, ought to be strictly regulated by law, and should only be exercisable on reasonable suspicion that the person concerned has committed an offence.
- (2) On any arrest the arrested person should at once be told the grounds of his arrest.
- (3) On any arrest the arrested person should at once and at all times thereafter be entitled to the assistance of a legal adviser of his own choice, and on his arrest should at once be informed of that right in a way which he would clearly understand.
- (4) Every arrested person should be brought, within as short a period as possible, fixed by law, before an appropriate judicial authority.
- (5) After appearing before such judicial authority, any further detention should not be in the hands of the police.

5. Detention pending trial

- (1) No person should be deprived of his liberty except in so far as may be required for the purposes of public security or the administration of justice.
- (2) Every arrested person should have a right, renewable at reasonably short intervals, to apply for bail to an appropriate judicial authority. He should be entitled to bail on reasonable terms unless either:
 - (a) the charge is of an exceptionally serious nature, or
 - (b) the appropriate judicial authority is satisfied that, if bail is granted, the accused is not likely to stand his trial, or
 - (c) the appropriate judicial authority is satisfied that, if bail is granted, the accused is likely to interfere with the evidence, for example with witnesses for the prosecution, or
 - (d) the appropriate judicial authority is satisfied that, if bail is granted, the accused is likely to commit a further criminal offence.

6. Preparation and conduct of defence

The Rule of Law requires that an accused person should have adequate opportunity to prepare his defence and this involves:

- (1) That he should at all times be entitled to the assistance of a legal adviser of his own choice, and to have freedom of communication with him.
- (2) That he should be given notice of the charge with sufficient particularity.
- (3) That he should have a right to produce witnesses in his defence and to be present when this evidence is taken.
- (4) That, at least in serious cases, he should be informed in sufficient time before the trial of the nature of the evidence to be called for by the prosecution.
- (5) That he should be entitled to be present when any evidence for the prosecution is given and to have the witnesses for the prosecution cross-examined.

7. Minimum duties of the prosecution

The duty of the prosecution should be fairly to place the relevant evidence before the court, and not to obtain a conviction at all costs. If the prosecution has evidence favourable to the accused which it does not propose to use, it should put such evidence at the disposal of the accused or his legal adviser in sufficient time to enable him to make proper use of it.

8. The examination of the accused

No one should be compelled to incriminate himself. No accused person or witness should be subject to physical or psychological

pressure (including anything calculated to impair his will or violate his dignity as a human being).

Postal or telephone communications should not be intercepted save in exceptional circumstances provided by law and under an order of an appropriate judicial authority.

A search of the accused's premises without his consent should only be made under an order of an appropriate judicial authority.

Evidence obtained in breach of any of these rights ought not to be admissible against the accused.

9. Trial in public

The Rule of Law requires that criminal trials should ordinarily take place in public. The proper existence of exceptions to this rule is, however, recognized. The nature of these exceptions should be laid down by law and their application to the particular case should be decided by the court.

Criminal trials should be open to report by the press but it is not compatible with the Rule of Law that it should be permissible for newspapers to publish, either before or during a trial, a matter which is likely to prejudice the fair trial of the accused.

10. Retrial

After a final conviction or acquittal no one should be tried again on the same facts, whether or not for the same offence.

11. Legal remedies, including appeals

Every conviction and sentence and every refusal of bail should be challengeable before at least one higher court.

It is essential that there should be adequate remedies for the breach of any of the rights referred to above. The nature of those remedies must necessarily depend on the nature of the particular right infringed and the system of law which exists in the country concerned. Different systems of law may provide different ways of controlling the activities of the police and of the prosecuting and enquiring authorities.

12. Punishment

The Rule of Law does not require any particular penal theory but it must necessarily condemn cruel, inhuman or excessive preventive measures or punishments, and supports the adoption of reformative measures wherever possible.

III. Personal liberty and the criminal process 26

- 1. The courts and magistrates shall permit an accused person to be or to remain free pending trial except in the following cases which are deemed proper grounds for refusing bail:
 - (a) in the case of a very grave offence;
 - (b) if the accused is likely to interfere with witnesses or impede the course of justice;
 - (c) if the accused is likely to commit the same or other offences;
 - (d) if the accused may fail to appear for trial.
- 2. The power to grant bail is a judicial function which shall not be subject to control by the executive. Although a court should hear and consider the views and representations of the executive, the fact that investigation of the case is being continued is not a sufficient ground for refusing bail. Bail should be commensurate with the economic means of the accused and, whether by appeal or independent application, a higher court should have the power to release provisionally an accused person who has been denied bail by the lower court.
- 3. After conviction and pending review, the trial or appellate court should have discretionary power to admit the convicted person to bail subject to the grounds set forth in paragraph 6 above.
- 4. It is recommended that greater use be made of the summons requiring appearance in court to answer a criminal charge in place of arrest and the consequent necessity for bail and provisional release.

²⁶ Conference of Lagos, 1961, Committee II, cl. 6-9.

THE JUDICIARY AND THE RULE OF LAW

I. The judiciary under the Rule of Law

- 1. An independent judiciary is an indispensable requisite of a free society under the Rule of Law. Such independence implies freedom from interference by the executive or legislature with the exercise of the judicial function, but does not mean that the judge is entitled to act in an arbitrary manner. His duty is to interpret the law and the fundamental principles and assumptions that underlie it. It is implicit in the concept of independence set out in the present paragraph that provision should be made for the adequate remuneration of the judiciary and that a judge's right to the remuneration settled for his office should not during his term of office be altered to his disadvantage.
- 2. There are in different countries varying ways in which the judiciary are appointed, re-appointed (where re-appointment arises) and promoted, involving the legislature, executive, the judiciary itself, in some countries the representatives of the practising legal profession, or a combination of two or more of these bodies. The selection of judges by election and particularly by re-election, as in some countries, presents special risks to the independence of the judiciary which are more likely to be avoided only where tradition has circumscribed by prior agreement the list of candidates and has limited political controversy. There are also potential dangers in exclusive appointment by the legislature, executive, or judiciary, and where there is on the whole general satisfaction with the calibre and independence of judges it will be found that either in law or in practice there is some degree of co-operation (or at least consultation) between the judiciary and the authority actually making the appointment.
- 3. The principle of irremovability of the judiciary, and their security of tenure until death or until a retiring age fixed by statute is reached, is an important safeguard of the Rule of Law. Although it is not impossible for a judge appointed for a fixed term to assert his independence, particularly if he is seeking re-appointment, he is subject to greater difficulties and pressure than a judge who enjoys security of tenure for his working life.

²⁷ Congress of Delhi, 1959, Committee IV, cl. i-vi.

- 4. The reconciliation of the principle of irremovability of the judiciary with the possibility of removal in exceptional circumstances necessitates that the grounds for removal should be before a body of judicial character assuring at least the same safeguards to the judge as would be accorded to an accused person in a criminal trial.
- 5. The considerations set out in the preceding paragraph should apply to: (1) the ordinary civil and criminal courts; (2) administrative courts or constitutional courts, not being subordinate to the ordinary courts. The members of administrative tribunals, whether professional lawyers or laymen, as well as laymen exercising other judicial functions (juries, assessors, justices of the peace, etc.) should only be appointed and removable in accordance with the spirit of these considerations, in so far as they are applicable to their particular positions. All such persons have in any event the same duty of independence in the performance of their judicial function.
- 6. It must be recognized that the legislature has responsibility for fixing the general framework and laying down the principles of organization of judicial business and that, subject to the limitations on delegations of legislative power which have been dealt with elsewhere, it may delegate part of this responsibility to the executive. However, the exercise of such responsibility by the legislature including any delegation to the executive should not be employed as an indirect method of violating the independence of the judiciary in the exercise of its judicial functions.

II The responsibility of the judiciary for the protection of the rights of the individual in society 28

- 1. In a free society practising the Rule of Law, it is essential that the absolute independence of the judiciary be guaranteed. Members of the legal profession in any country have, over and above their ordinary duties as citizens, a special duty to seek ways and means of securing in their own country the maximum degree of independence for the judiciary.
- 2. It is recognised that in different countries there are different ways of appointing, promoting and removing judges by means of action taken by the executive and legislative powers. It is not recommended that these powers should be abrogated where they have been universally accepted over a long period as working well.
- 3. In respect of any country in which the methods of appointing, promoting and removing judges are not yet fully settled, or do not ensure the independence of the judiciary, it is recommended:

²⁸ Conference of Lagos, 1962, Committee III, cl. 1-5.

- (a) that these powers should not be put into the hands of the executive or the legislature, but should be entrusted exclusively to an independent organ such as the Judicial Service Commission of Nigeria or the Conseil supérieur de la magistrature in the African French-speaking countries;
- (b) that in any country in which the independence of the judiciary is not already fully secured in accordance with these principles, they should be implemented immediately in respect of all judges, especially those having criminal jurisdiction.
- 4. It is recommended that all customary, traditional or local law should be administered by the ordinary courts of the land, and emphasized that for so long as that law is administered by special courts, all the principles enunciated here and at New Delhi, for safe-guarding the Rule of Law, apply to those courts.
- 5. The practice whereby in certain territories judicial powers, especially in criminal matters, are exercised by persons who have no adequate legal training or experience, or who as administrative officers are subject to the control of the executive, is one which falls short of the Rule of Law.

THE LEGAL PROFESSION AND THE RULE OF LAW

I. The legal profession under the Rule of Law²⁹

- 1. It is essential to the maintenance of the Rule of Law that there should be an organized legal profession free to manage its own affairs. But it is recognized that there may be general supervision by the courts and that there may be regulations governing the admission to and pursuit of the legal profession.
- 2. Subject to his professional obligation to accept assignments in appropriate circumstances, the lawyer should be free to accept any case which is offered to him.
- 3. While there is some difference of emphasis between various countries as to the extent to which a lawyer may be under a duty to accept a case it is conceived that:
 - (1) wherever a man's life, liberty, property or reputation are at stake he should be free to obtain legal advice and representation; if this principle is to become effective, it follows that lawyers must be prepared frequently to defend persons associated with unpopular causes and minority views with which they themselves may be entirely out of sympathy;
 - (2) once a lawyer has accepted a brief he should not relinquish it to the detriment of his client without good and sufficient cause;
 - (3) it is the duty of a lawyer which he should be able to discharge without fear of consequences to press upon the court any argument of law or of fact which he may think proper for the due presentation of the case by him.
- 4. Equal access to law for the rich and poor alike is essential to the maintenance of the Rule of Law. It is, therefore, essential to provide adequate legal advice and representation to all those threatened as to their life, liberty, property or reputation who are not able to pay for it. This may be carried out in different ways and is on the whole at present more comprehensively observed in regard to criminal as opposed to civil cases. It is necessary, however, to assert the full implications of the principle, in particular in so far as "adequate" means legal advice

²⁹ Congress of Delhi, Committee IV, cl.vii-x.

or representation by lawyers of the requisite standing and experience. This is a question which cannot be altogether dissociated from the question of adequate remuneration for the services rendered. The primary obligation rests on the legal profession to sponsor and use its best effort to ensure that adequate legal advice and representation are provided. An obligation also rests upon the State and the community to assist the legal profession in carrying out this responsibility.

II. The responsibility of the bar for the protection of the rights of the individual in society 30

- 1. To maintain the respect for the Rule of Law it is necessary that the legal profession should be free from any interference.
- 2. (a) In countries where an organised bar exists, the lawyers themselves have the right to control the admission to the profession and the discipline of the members according to rules established by law.
- (b) In countries where an organised bar does not exist, the power to discipline lawyers should be exercised by the judiciary in consultation with senior practising lawyers and never by the executive.
- 3. All steps should be taken to ensure equal access to law for both rich and poor, especially by a provision for and an organisation of a system of legal aid in both criminal and civil matters.

III. The role of lawyers in a changing world 31

1. In a changing and interdependent world, lawyers should give guidance and leadership in the creation of new legal concepts, institutions and techniques to enable man to meet the challenge and the dangers of the times and to realize the aspirations of all people.

The lawyer today should not content himself with the conduct of his practice and the administration of justice. He cannot remain a stranger to important developments in economic and social affairs if he is to fulfil his vocation as a lawyer: he should take an active part in the process of change. He will do this by inspiring and promoting economic development and social justice. The skill and knowledge of lawyers are not to be employed solely for the benefit of clients, but should be regarded as held in trust for society.

2. It is the duty of lawyers in every country, both in the conduct of their practice and in public life, to help ensure the existence of a responsible legislature elected by democratic process and an indepen-

³¹ Congress of Rio, 1962, Committee III.

⁸⁰ Conference of Lagos, 1961, Committee III, cl. 6-7.

dent, adequately remunerated judiciary, and to be always vigilant in the protection of civil liberties and human rights.

- 3. Lawyers should refuse to collaborate with any authority in any action which violates the Rule of Law.
- 4. Lawyers should be anxiously concerned with the prevalence of poverty, ignorance and inequality in human society and should take a leading part in promoting measures which will help eradicate those evils, for while they continue to exist, civil and political rights cannot of themselves ensure the full dignity of man.
- 5. Lawyers have a duty to be active in law reform. Especially where public understanding is slight and the knowledge of lawyers is of importance, they should review proposed legislation and present to the appropriate authorities programmes of reform.
- 6. Lawyers should endeavour to promote knowledge of and to inspire respect for the Rule of Law, and an appreciation by all people of their rights under the law.
- 7. If lawyers are to discharge their obligations under the Rule of Law they will need to exercise individual initiative and to act through every available organization, including in particular self-governing lawyers' associations. Such associations must be entirely free of interference and control by the executive.
- 8. The Rule of Law requires lawyers of competence and integrity who are available to, and do in fact represent the whole community regardless of racial, religious, political, geographical or other differences. Lawyers should be numerous and diverse enough to serve the needs of the community and to ensure that every person can obtain adequate representation by a lawyer of his own choice.

Individual lawyers and their associations have the duty to work with judges, other officials and community organizations to provide indigent persons with adequate legal service.

9. The Rule of Law requires an authority which has the power to, and does in fact, exact proper standards for admission to the legal profession and enforces discipline in cases of failure to abide by a high standard of ethics. Those functions are best performed by self-governing democratically organized lawyers' associations, but in the absence of such associations the judiciary should act instead. Discipline for violations of ethics must be administered in substantially the same manner as courts administer justice. Associations exercising those functions must be open to all qualified lawyers without discrimination based on race, religion or political persuasion. Lawyers' associations should encourage reciprocal agreements or other procedures to eliminate the requirement of citizenship as a prerequisite to the right to practise law.

- 10. (i) In order to ensure adequate representation, it may be essential in some cases to allow lawyers from foreign countries to appear.
- (ii) Lawyers' associations must take all necessary steps to ensure the representation of clients whose causes may be unpopular
- 11. It is essential to the Rule of Law that the client be free to discuss all matters with his lawyer without fear of disclosure by the lawyer, either voluntarily or by compulsion.
- 12. In an interdependent world, the lawyer's responsibilities extend beyond national boundaries. They require his deep concern for peace, and support for the principles of the United Nations and the strengthening and development of international law and organizations. The lawyer should also promote an increased application of arbitration, adjudication and other legal procedures in the settlement of disputes among nations. Finally, the lawyer should support the negotiation and conclusion of international conventions and agreements on human rights and fundamental freedoms, thus leading to the day when the universality of the Rule of Law may be achieved. 13. At all times the lawyer should strive to be a visible example of the ideals of his profession—integrity, competence, courage and dedication to the service of his fellow men.

IV. The role of the lawyer in a developing country 32

Preamble

Law and lawyers are instruments of social order. Without law, the evolution of mankind to its present stage of development would not have been possible. Through the law, society is preserved and man is enabled to live and love and labour in peace from generation to generation.

The law is not negative and unchanging. It should be not a yoke, but a light harness holding society loosely but firmly together, so that it may move freely forward. Order is important, but it must be an evolving order; the law must be firm yet flexible, and capable of adapting itself to a changing world. This is especially so in a developing country.

Poverty, lack of opportunity and gross inequality in the Region ³³ require leaders who understand the need for evolutionary change, so that every citizen may look to a future in which each may realise his full potential as an individual in a free society. The great need of the peoples of the Region requires action, lest freedom be utterly forfeited.

³² Conference of Bangkok, 1965, Committee III.

³³ The South East Asian and Pacific Region, with which the Bangkok Conference was primarily concerned.

Beset by threats from the right or left, the statesman must find means to advance the economic and social development of his country and countrymen, whilst preserving or establishing the institutions and the freedoms which are the cornerstones of a free society under the Rule of Law.

These problems require the lawyer to play a vital role in their solution. They cannot be solved by lawyers alone. But the life of man in society and his relationships with others are the subjects of the lawyer's special knowledge and study; in many parts of the Region lawyers are particularly well equipped to see these problems in perspective, and to devise solutions.

The lawyer must look beyond the narrower confines of the law, and gain understanding of the society in which he lives, so that he may play his part in its advancement. The inspiration of the lawyers of the world, with the ideals set forth in this Chapter under the heading "The Role of Lawyers in a Changing World", 34 could play a large part in moulding free societies of the future, able to promote the full dignity of man, and to withstand the perils and dangers of the changing times.

With particular reference to developing societies it can be stated that:

- 1. The lawyer has a deep moral obligation to uphold and advance the Rule of Law in whatever sphere he may be engaged or in which he has influence, and he should fulfil that obligation even if it brings him into disfavour with authority or is contrary to current political pressures. He can give effect to many of the principles underlying the Rule of Law in his daily work; for the rest, it is his responsibility as a citizen in a developing community to apply them for the benefit of society and his fellow-men.
- 2. An indispensable aspect of the maintenance of the Rule of Law is the availability of lawyers to defend the civil, personal and public rights of all individuals and the readiness to act for those purposes resolutely and courageously. Such a readiness involves the obligation to take an active part in implementing and making effective schemes of legal aid for the poor and destitute.
- 3. The lawyer should endeavour:—
- (i) to secure the repeal or amendment of laws which have become inappropriate or unjust or out of harmony with the needs and aspirations of the people;
- (ii) to review proposed legislation and delegated legislative enactments, and to ensure that they are in accord with the Rule of Law;

³⁴ See pp. 34-36.

(iii) to ensure that the law is clear and readily accessible;

(iv) to promote legislation establishing the legal framework which will enable a developing society to advance, and its members to attain their full dignity as human beings.

- 4. The lawyer should assist in the work of administration; he should insist, nonetheless, that it be executed with respect for the rights of the individual and otherwise according to law, and strive to assure judicial review of all administrative acts which affect human rights.
- 5. Lawyers must bring to bear in the field of international relations the underlying principles of respect for law, coupled with a concern for all mankind, particularly the poor, the weak, the illiterate, and the oppressed.
- 6. Lawyers should be actively concerned with legal education and the provision of adequate incentives for teachers of law, and do their utmost to implement the principles enunciated hereafter in Chapter VII, as being particularly relevant in the context of the Rule of Law in developing societies. The Rule of Law, as a dynamic concept, requires that legal education should bear a realistic relation to the social and economic conditions obtaining in developing societies, so that future lawyers may be better equipped to perform their role in a constructive manner.
- 7. Lawyers should endeavour to enlist the aid of their professional associations to secure the acceptance by their members of the ideals set forth above.

CHAPTER 7

THE ROLE OF LEGAL EDUCATION IN A CHANGING SOCIETY 35

1. Introduction

To keep the action of the executive within the limits of the Rule of Law, it is necessary for all branches of the legal profession—judges, teachers and practitioners—to play a significant role in the community. This is particularly important in communities where there is a rapid and profound process of change. For the legal profession to be able to perform its social function satisfactorily it is necessary that the teaching of law should lay special emphasis on three points:

(1) reveal the processes through which law can evolve, promoting orderly and significant changes in the social and economic organization of society leading to improved standards of living;

(2) stress the study of the principles, institutions and proceedings that are related to the safeguarding and promotion of the rights of individuals and groups:

(3) imbue students with the principles of the Rule of Law, making them aware of its high significance, emphasizing the need of meeting the increasing demands of social justice, and helping develop in the student the personal qualities required to uphold the noble ideals of the profession and secure the effective enforcement of law in the community.

For the achievement of these ends, it is considered indispensable that:

(1) in the countries which do not yet have faculties of law or other institutions especially designed for the training of jurists, there should be priority for the establishment thereof;

(2) the faculties of law do not restrict their activities only to the education of practitioners, judges and law teachers, in numbers they deem sufficient to meet social requirements, but that they also supply training in the principles and practice of law to public officials, managers in private business, leaders of professional or trade unions, journalists and publicists. Furthermore, faculties of law should pursue, to the extent permitted by

³⁵ Congress of Rio, 1962, Committee IV.

the stage of development reached by each particular community, a campaign for the public dissemination of the basic principles related to the Rule of Law. These activities must be carried out with a view to acquainting the people with the principles of the Rule of Law in addition to similar activities being pursued at other levels of education, both public and private;

(3) it is not enough that faculties of law and other institutions specially engaged in the teaching of law endeavour to attain the highest levels of technical preparation of students. They must also make a special effort to shape their characters, to develop their sense of social responsibility and to strengthen their moral discipline: these requirements will have to be all the more keenly met in communities where there are no other organizations to serve those ends.

2. Legal studies

It is accepted that law schools should organize their courses so as to contribute as much as possible to the recognition and implementation of the Rule of Law. The nature of these arrangements will differ according to the speed of social changes within a particular country and according to the extent of pre-legal education available, but some general conclusions may be drawn.

There are two interdependent factors: the content of courses and teaching methods. What follows is in no sense a suggested complete curriculum for law students. Obviously important subjects for the establishment of the Rule of Law are those which stress the content of human freedoms and the protection of the individual from arbitrary action: constitutional and administrative law, criminal law and international legal studies. The importance of procedural safeguards for human rights makes the study of procedural law indispensable. Students must be instructed both in general legal principles and in reasoning on specific legal problems. All courses must be taught with emphasis on their social, economic, political and historical background.

A reference should be made regularly to other legal systems and comparisons drawn between them so as to allow a more precise evaluation of the merits and defects of the students' own legal system.

Law schools should be an active forum for all matters of legal interest and not merely function for the training of law students. They should therefore organize discussions of topics relating to legal reform which concern the area served by them. They should provide refresher courses in new developments of law.

3. Students of law

Admission to faculties of law presupposes a certain level of

academic achievement and of preparation for legal studies. This requirement is satisfied either by completing prescribed pre-legal studies or by passing an entrance examination. It is recognized that in developing societies some modification of these requirements may be necessary in order to assure an early supply of needed personnel.

There must be no discrimination on account of race, nationality, religion, sex, political beliefs or social or economic position, either with regard to a student's admission or during his course of studies. All reasonable means (such as grants and loans) must be used to ensure that no student is denied admission to a law school or prevented from completing his legal training because the student lacks financial resources; there must be no arbitrary demands of a financial nature made on students at any time.

4. Teachers of law

Teachers of law must be appointed and continue to hold their appointments without regard to consideration of race, nationality, religion, sex, political beliefs or social or economic position. All law faculties, whether state or private, should appoint their own teachers, preferably in open competition, or take an active part in the process of appointment. When making appointments, law faculties should attach importance not only to technical or scholarly competence, but also to the following qualities: moral integrity, civic spirit and sense of social responsibility. Teachers of law should be given adequate remuneration and enjoy security of tenure so that their freedom of expression is not impaired.

In those countries where faculties of law are controlled by the state there is a special need for protecting the independence of the teaching staff by firm guarantees such as faculty appointments by open competition, security of tenure and the recognition of the traditional academic freedoms.

There is no objection to law teachers participating in public activities, including the holding of public office; it could sometimes be advantageous. But academic freedom must not be compromised and these activities must not lead to the introduction of improper influence into university life.

It is desirable that exchange of teachers on a national as well as on an international level should take place regularly.

Finally, law schools should provide facilities for training teachers of law and should assist them in improving their qualifications and experience.

5. Regulation of the teaching of law

Legal education should be controlled by faculties of law themselves, free from any influence foreign to the interest of scholarship and

education. Members of the teaching staff should have a major share in such control.

The power of regulating the teaching of law should be used in such a way that freedom of teaching and research be firmly guaranteed. Furthermore, law schools should be responsive to the needs of developing societies.

Faculties of law controlled by the state should enjoy a wide measure of autonomy in administrative and academic matters and should be entitled to apply their financial resources as they think fit for purposes of legal education. It would be desirable if their resources were obtained not from their pupils but from general taxes paid by the community which would thus be made aware of its contribution to the promotion of the Rule of Law. Those who support private faculties of law serve equally the same generous purpose.

Faculties of law are advised to pay very close attention to the pertinent recommendations of the specialized agencies of the United Nations and associated regional agencies.

CHAPTER 8

ECONOMIC AND SOCIAL DEVELOPMENT

I. The state and the right of the individual to property ³⁶

- 1. In our time the state undertakes to an ever-increasing extent planning and responsibility with the aim of serving the public well. However, a democratic state, no matter how far its planning and socialization extends, should ensure that it does not put itself above the law and that the private sector is not unjustly discriminated against or destroyed.
- 2. The right to own property is a fundamental human right and should be recognized in law and in practice without any discrimination.
- 3. In the case of expropriation or restrictions on use of private property, adequate compensation, of which the persons entitled may freely dispose, should be awarded. Confiscation of property through court judgments should not be used as a means of expropriation.
- 4. In accordance with the principles of justice the state should be subject to the law in the same way and to the same extent as owners of private property or private enterprises.
- 5. It is the elementary and imperative duty of the legislator to define unequivocally that category of persons to whom a certain law shall apply.
- 6. A nubile citizen's right to choose a spouse should be free and unlimited. Political, party, racial, or class considerations should not be taken into account in matters of marriage and divorce.
- 7. Parents should not be deprived of the right to the custody and education of their children on the ground that the political and/or economic views of the parents do not find favour with the state.

³⁶ Congress of Athens, Committee on Civil and Economic Law.

II. Economic and social development within the Rule of Law 37

Introduction

The Rule of Law requires the establishment and observance of certain standards that recognize and foster not only the political rights of the individual but also his economic, social and cultural security. It is endangered by the continued existence of hunger, poverty and unemployment, which tend to make a truly representative form of government impossible and promote the emergence of systems of government opposed to the principles of the Rule of Law. The lasting and effective way of reaching the social and economic goals necessary to the smooth operation of the Rule of Law is by methods and procedures that conform to its principles. In consonance with the Universal Declaration of Human Rights, the economic, social and cultural rights of the individual include the right to work, to free choice of employment, toprotection against unemployment, to just and favourable conditions of work and remuneration which will ensure to the worker and his family an existence worthy of human dignity, to security and social protection, and to the satisfaction and enrichment of his intellectualand cultural faculties;

In the light of the foregoing, the following principles can be stated:

1. Some of the economic, social and cultural standards set forth above have already been given legal force and sanction by constitutional and statutory provisions; however, there is a need progressively to enact the appropriate legislation and to develop the legal institutions and procedures whereby these standards may be maintained and enforced within the Rule of Law.

Economic, social and cultural rights should also be safeguarded on the international level by relevant conventions of the United Nations and its specialized agencies. Governments are urged to co-operate in the framing of such conventions and to ratify them.

2. It is essential to economic and social development under the Rule of Law that inequality of opportunity arising from birth or wealth, and discrimination arising from ethnic, religious, linguistic, regional or communal factors be overcome.

Political, racial, social, religious and other types of intolerance impede the unified effort required for economic progress. Governments should therefore promote and encourage a spirit of tolerance among all sections of the community.

³⁷ Conference of Bangkok, 1965, Committee II.

- 3. It is recognized in general, and more particularly in the case of the developing countries, that in order to achieve greater economic and social benefits for the individual some measure of intervention in property rights may become necessary, but such intervention should never be greater than is absolutely necessary in the public interest and should be subject to safeguards afforded by the Rule of Law.
- 4. The land problem is one of the most fundamental and complicated problems. Consideration to appropriate land reform programmes must therefore be given high priority.
- 5. While no specific methods of land reform can be suggested by the Committee which are uniformly appropriate for all communities, it is recognized that such methods may properly include qualification of the right to own or to succeed to land, provision for the maximum utilization of land, facilities for the granting of credit on advantageous terms, the issuance of land titles, the strengthening of the right of association of rural people for their political, economic, social and cultural advancement, and support for rural development in general. These and other measures of land reform must, however, conform to the principles and procedures of the Rule of Law.
- 6. Sound economic planning is essential to the social and economic development of all countries, but the Rule of Law requires that both the ends and the means embodied in such planning derive from and reflect the ideas, the needs and the aspirations of the people themselves.
- 7. To inspire confidence and to reduce the possibility of maladministration, especially in regard to capital investment in public economic development projects, it is recommended that full accounts on such projects be the subject of independent and expert examination, and that reports thereon be regularly submitted to the legislature.
- 8. Nationalization of private enterprises by a democratically elected government when necessary in the public interest is not contrary to the Rule of Law. However, such nationalization should be carried out in accordance with principles laid down by the legislature and in a manner consistent with the Rule of Law, including the payment of fair and reasonable compensation as determined by an independent tribunal. The same considerations should apply to other governmental action taken with similar purpose and effect.
- 9. It is in accord with the Rule of Law to adopt, when necessary in the interest of public welfare, fair and reasonable measures with respect to price control, state trading, control of private trade and anti-trust legislation.
- 10. In every developing country it is desirable in the interest of social and economic peace that there be legal machinery for the peaceful

settlement of labour disputes. It is recommended that, where necessary, states which have ratified the relevant conventions of the International Labour Organisation implement the same by appropriate legislation.

11. The effective operation of the Rule of Law in developing countries requires an efficient administration, adequately equipped to cope with vast and complex social and economic problems.

Corruption among public officials not only undermines confidence in the public service, but it is a positive hindrance to economic and social progress. It also leads to miscarriage of justice, thereby affecting the operation of the Rule of Law. These considerations apply with at least equal force to ministers and members of the government.

It is essential, particularly in multi-racial or multi-religious developing societies, that the appointment, promotion, dismissal and disciplinary control of public servants be determined without discrimination on religious, racial, linguistic or other grounds which may be extraneous to the proper functioning of the public service.

- 12. In order to minimize infringements of the rights and freedoms of the individual, particularly in developing countries where far-reaching administrative decisions are necessary, such decisions affecting these rights and freedoms should be supported by stated reasons and be subject to review.
- 13. Full observance of the Rule of Law requires that the government be liable for wrongs committed by it or its servants in the execution or the purported execution of public duties.

III. Nationalization of property and the Rule of Law³⁸

Introduction

- 1. The public interest may sometimes require the nationalization of property for the public benefit or in order that the legitimate right of man to social justice and equality may be realized.
- 2. The basic freedoms include the right of the individual to acquire, hold and dispose of property subject only to such reasonable restrictions as may be necessary in the public interest.

1. Definition of nationalization

(i) Nationalization of property is a category of acquisition of private property to which special rules apply.

³⁸ Ceylon Colloquium, 1966, Committee II.

(ii) By nationalization is meant the acquisition for a public purpose of a private enterprise or property consisting of the means of production, distribution or exchange by or under the authority of the legislature in order that the enterprise or such property should thereafter be publicly owned or controlled.

2. Circumstances in which nationalization is permissible

- (i) Nationalization must be for a *bona fide* public purpose, commensurate with that purpose, and must not be for the benefit of particular individuals.
- (ii) Nationalization must be carried out without discrimination between persons.
- (iii) Nationalization and the procedure for assessment of compensation therefor must be in accordance with local law conforming with the principles herein declared, but in no circumstances must such local law involve the arbitrary or unjust treatment of the individual.

3. Protection of rights of persons affected

- (i) It must not be forgotten that nationalization affects not only the owner of an enterprise but also the employees, the consumers of the goods produced or services rendered by the enterprise, and the general public, who become its owners, sharing its profits or suffering its losses. There is the danger, furthermore, that nationalization may lead to the undue growth of state power and bureaucracy, to the creation of monopoly situations with their consequent evils, to inefficiency and to political interference and political appointments, with consequent adverse effects on the individual citizen. It follows that nationalization, if it is to be in accord with the Rule of Law, must be effected in such a way that the legitimate interests of all persons concerned may be properly safeguarded, and that the dangers referred to may be avoided.
- (ii) The legislation by which nationalization is effected should provide for the following matters in particular:
 - (a) The payment of compensation which is reasonably fair, expeditious, and effective in all the circumstances of the case, to the owners of enterprises or property, employees and all other persons who may be adversely affected; such compensation must be assessed without undue delay by an independent tribunal observing proper judicial procedures;
 - (b) Alternative employment for any employees who may become unemployed by reason of such nationalization;

- (c) The setting up of an independent statutory body to which a consumer may bring his complaints, such body to be empowered to investigate and report thereon to the legislature;
- (d) Effective periodic review of the accounts and affairs of nationalized industries by the legislature;
- (e) Appropriate protection for the legitimate interests of employees;
- (f) Protection against the dangers inherent in the undue growth of State power and bureaucracy, monopoly situations, political interference and the risks of inefficient management.
- (iii) The problems of preserving human rights and human dignity within nationalized industries should be one of the tasks of those engaged in the promotion of the Rule of Law.

CHAPTER 9

THE RULE OF LAW AND THE LAYMAN 39

Introduction

- 1. The observance of the Rule of Law depends on an understanding and acceptance by public servants and members of the public of what is implied by the term "Rule of Law";
- 2. The present time is appropriate for embarking upon a programme designed to promote a wider understanding and observance of the Rule of Law;
- 3. All judges, legislators, lawyers, officials and other persons connected with the enactment, execution and enforcement of law should in the observance of the Rule of Law act in such a manner as to be an example to the rest of the community in this respect;
- 4. Respect for the Rule of Law is best ensured where the law recognises the economic and social needs of the people.

Means of disseminating the Rule of Law

- 1. Bearing in mind both the lack of public understanding as to the function and purpose of legal procedures and the often cumbersome nature and many shortcomings of legal systems and procedures, the International Commission of Jurists and its National Sections should constantly review the best means of dealing with such matters as:
 - (a) What is described as "the law's delays";
 - (b) The convenience of litigants and witnesses;
 - (c) The method of appointing judges and judicial officers;
 - (d) The importance of an independent and competent judiciary;
 - (e) The need to ensure that no suspicion of bias or other improper motive will attach to members of the Judiciary or to court officials;
 - (f) The need to ensure that exhorbitant costs (including court fees) do not penalise persons who have recourse to the courts;

³⁹ Ceylon Colloquium, 1966, Committee I.

- (g) The provision of an adequate number of judges and judicial officers;
- (h) The provision of adequate facilities for the conduct of judicial business (i.e. court premises, consulting rooms, clerical assistance, etc.);
- (i) Methods of simplifying legal formalities including the methods of serving court documents and of drawing court orders;
- (j) Methods of determining and of enforcing a code of ethics for lawyers and judges;
- (k) Methods of ensuring adequate legal education.
- 2. The provision of free legal aid or the extension of existing legal aid schemes to ensure that justice is neither denied nor delayed by reason of inadequate financial means should be implemented.
- 3. National Sections should take steps in accordance with the need of each particular country to publicise the work of the International Commission in the languages of their respective countries.
- 4. As the reform of the law is primarily the responsibility of the lawyer, a committee for law reform should be established by each National Section in order to see that the law conforms to the needs of society.
- 5. Each National Section should take effective steps for the purpose of disseminating information regarding the work of the International Commission of Jurists, using as much as possible all the mass media of communication available in each country.
- 6. (a) (i) The publication of school text-books concerned with the Rule of Law at the secondary school and university level should be undertaken. These publications may be undertaken profitably in cooperation with national educational authorities and with other international bodies, such as UNESCO. (ii) The study of the legal system and the Rule of Law should be made part of the school curriculum in such courses as civics and government;
 - (b) National Sections of the Commission should, if conditions permit, seek to establish school and student groups connected with the observance of the Rule of Law. Where such conditions do not exist, National Sections should take steps to provide information about the Rule of Law to schools and already existing student groups;
 - (c) Information concerning the Rule of Law should be provided to all institutions and organisations considered suitable by the National Sections, including religious groups, where practicable and necessary.
- 7. While membership of National Sections of the International

Commission of Jurists should be confined primarily to persons engaged in the pursuit or study of law, members of the public interested in the promotion of the Rule of Law may be admitted at the discretion of National Sections, to full or associate membership.

- 8. The public should be invited to participate in the activities of the National Sections.
- 9. National Sections should promote the observance of Human Rights Day in each year and on that occasion emphasize the work of the International Commission of Jurists in the effective protection of human rights through the Rule of Law.
- 10. Steps should be taken to acquaint the public and public authorities with the constructive role the lawyer can and does play in the adjudication and settlement of disputes.

PART II

GUIDE TO HUMAN RIGHTS PROVISIONS

1. INTRODUCTION

The table set out in the following pages enumerates the various civil, political, social, economic and cultural rights and freedoms which are widely recognized and defined, and the accepted limitations on them, with a short description in column 1 of the nature of each right. The order followed is that adopted in the Universal Declaration of Human Rights. Column 2 provides a reference to the relevant Conclusions of the ICJ conferences and congresses as consolidated in Part I. Column 3 gives the relevant article of the Universal Declaration of Human Rights which is reproduced in Appendix A, while Column 4 refers to international conventions relevant to particular rights. A list of the conventions, with their full title and date of adoption, is given in Appendix I at pages 73-75.

In choosing conventions of the International Labour Organisation for inclusion in this guide, no attempt has been made to be exhaustive. The list is limited to conventions of a general nature, and the choice was inevitably to some extent arbitrary. When a convention has been followed by a revised convention on the same subject, reference is given only to the revised convention, though the earlier convention remains in force for states which have ratified it and may indeed remain open to ratification.

2. CIVIL RIGHTS

Rights	ICJ Conclusions	Universal Declaration	International Conventions*
Protection of civil rights under Rule of Law indispensable to dignity of man, and should not be encroached upon	p. 8: 10 p. 9: 1, 2 p. 10: 3 p. 13: 4	Preamble (p.61)	GE4: 47
PERSONAL FREEDOM Freedom of the individual and his right to personal liberty	p. 5: 1 p. 24: 4 p. 26: 4 p. 27: 5 p. 29	1, 3, 4, 9 (p. 62)	EC: 5 GE1: 12, 46 GE2: 28 GE3: 3, 13, 14, 21 GE4: 3, 27, 34, 41-44, 49, 78
EQUALITY AND FREEDOM FROM DISCRIMINATION Equality in society and before the law — everyone is entitled to fundamental human rights and liberties without discrimination	p. 7: 10, 4 p. 10: 3, 4 p. 19: 1 p. 33: 4 p. 39: 9 p. 40: 3, p. 41: 4 p. 42: 2 p. 46: 11	1, 2, 6, 7 (p. 62)	EC: 14 GE1: 12 GE2: 12 GE3: 3, 16 GE4: 3 ILO C. 100 C. 107 C. 111 C. 117 C. 118 UNESCO CD
LIFE The right of the individual to life, liberty and security of person	p. 5: 1 p. 24: 4 p. 26: 4 p. 27: 5 p. 29	3 (p. 62)	EC: 2 HC: 23 GE1: 12 GE2: 12 GE3: 3, 13 GE4: 3, 32, 68 CG

^{*} For the full title of the Conventions listed see Appendix I at pp. 73-75.

Rights	ICJ Conclusions	Universal Declaration	International Conventions*
SLAVERY		4 (p. 62)	EC: 4
Freedom from slavery		· (p*)	GE3: 49-57
and servitude			GE4: 40, 51
			ILO C. 29; C. 105
			•
PUNISHMENT	p. 25: 5, 6	5 (p. 62)	EC: 3
Freedom from	p. 28: 12	-	HC: 23
inhuman punishment			GE1: 12
and torture			GE2: 12
			GE3: 3, 13, 17,
			87, 88, 98
			GE4: 3, 32, 68,
			76, 118, 119
•	•		-
LEGAL STANDING		6 (p. 62)	EC: 1
OF INDIVIDUAL			GE3: 3, 14
The right to			GE4: 80
recognition as a person			
before the law	, etc.		
PROTECTION	p. 33: 4	7 (p. 62)	EC: 14
OF THE LAW	p. 34: 3	. (p. 02)	GE1: 12
The right of all	p. 37: 2		GE2: 12
to equal protection	p. 5 2		GE3: 3, 16
of the law without			GE4: 3
discrimination			
LEGAL REMEDY	p. 12: 4, 6	8 (p. 62)	EC: 13
INCLUDING REMEDY			HC: 23
AGAINST THE STATE	p. 15: 3		GE3: 3(d)
The right to an	p. 16: 6		GE4: 66-67, 73
effective remedy by	p. 28: 11		
courts for breaches of	p. 46: 13		
fundamental legal rights	p. 48(c)		
AD DECE	F. 1	0 (~ (2)	EC. 5
ARREST,	p. 5: 1	9 (p. 62)	EC: 5
DETENTION AND EXILE	pp. 14-15 p. 24: 4		GE4: 68
Freedom from	p. 24: 4 p. 26: 4		
arbitrary arrest,	p. 20: 4 p. 27: 5		
detention or exile	p. 27: 3 p. 29		
detellation of exite	p. 43		

^{*} For the full title of the Conventions listed see Appendix I at pp. 73-75.

Rights	ICJ Conclusions	Universal Declaration	International Conventions*
BAIL Right to bail on criminal charges	p. 24: 4 p. 27: 5 p. 29		
LEGAL REPRESENTATION AND LEGAL AID Right to equal opportunity to receive legal assistance	p. 12: 5 p. 20: 3 p. 23: 1, 2 p. 26: 4 p. 27: 6 p. 33: 3, 4 p. 34: 3 p. 35: 8 p. 36: 10, 11 p. 37: 2		EC: 6(3c) GE3: 105 GE4: 72
FAIR PUBLIC HEARING OR TRIAL, ACCESS TO COURTS The right to a fair and prompt public hearing before the Courts in both civil and criminal matters, and before tribunals or courts in relation to administrative decisions and labour disputes	p. 5: 1 p. 12: 4, 6 p. 14: 2 p. 15: 3 p. 16: 7 p. 19: 2 p. 20: 3 p. 23: 1 p. 24: 4 p. 28: 11	8, 10 (p. 62)	EC: 6 GE3: 84, 105-107 GE4: 72-75
STATE OF EMERGENCY Rights of individual during a state of emergency	p. 14: 8 p. 14: C		EC: 15 GE1: 12 GE2: 12 GE3: 3 GE4: 3
PRESUMPTION OF INNOCENCE Right to be presumed innocent until tried and found guilty, and no liability to incriminate oneself	p. 23: 1 p. 26: 3	11(1) (p. 62)	EC: 6(2)

^{*} For the full title of the Conventions listed see Appendix I at pp. 73-75.

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Rights	ICJ Conclusions	Universal Declaration	International Conventions*
RETROACTIVE LEGISLATION Prohibition of retroactive legislation particularly in criminal law	p. 10: 3 p. 24: 3 p. 26: 2	11(2) (p. 62)	EC: 7 GE3: 85 GE4: 65, 67
PRIVACY The right to privacy of person, family, home and communications	p. 5: 1 p. 6: 4 p. 27: 8 p. 36: 11 p. 43: 5, 6	12 (p. 63)	EC: 8 GE3: 76 GE4: 25, 107, 108, 112, 116
REPUTATION Freedom from attacks on honour or reputation		12 (p. 63)	
MOVEMENT AND RESIDENCE Freedom of movement and residence and to leave a country	p. 5: 1	13 (p. 63)	ESC: 18, 19 GE3: 21, 118-119 GE4: 35-37, 79, 132-134 ILO C. 48 C. 97
ASYLUM Right to political asylum		14 (p. 63)	GE4: 44
NATIONALITY Right to possess and to change nationality		15 (p. 63)	
MARRIAGE Right to marry and to protection of family by state	p. 43: 6	16 (p. 63)	EC: 12 GE4: 25, 26, 50
PROPERTY Right to own property and to fair compensation for compulsory acquisition	p. 43: 1, 2 p. 45: 3, 5, 8 p. 47: 2, 3	17 (p. 63)	ECP: 1; HC: 23 GE3: 18, 58-68 GE4: 53, 97-98, 114

^{*} For the full title of the Conventions listed see Appendix I at pp. 73-75.

Rights	ICJ Conclusions	Universal Declaration	International Conventions*
RELIGION, CONSCIENCE AND THOUGHT Right to complete freedom of religion, conscience and thought in all respects and to manifest the same	p. 6: 5 p. 10: 3	18 (p. 63)	EC: 9 GE3: 34-37 GE4: 27, 58, 86 93
OPINION, EXPRESSION AND SPEECH Right to freedom of opinion and expression and to manifest the same	p. 5: 2, 3 p. 7: 5 p. 10: 3	19 (p. 63)	EC: 10 GE4: 25, 107, 108, 112
FREEDOM OF PRESS Freedom of the press	p. 5: 3 p. 7: 5	19 (p. 63)	EC: 10 GE4: 25, 107, 108, 112
ASSEMBLY AND ASSOCIATION Right to freedom of peaceful assembly and association	p. 6: 7 p. 8: 6 p. 10: 3	20, 23(3) (pp. 63-64)	EC: 11 ESC: 5, 6 ILO C. 87 C. 98 GE3: 80

3. POLITICAL RIGHTS

PARTICIPATION IN GOVERNMENT AND PUBLIC SERVICE The right of an individual to participate in the government and public service of his own country on an	21(1) and (2) (p. 63)	EC Preamble (4
equal basis		

^{*} For the full title of the Conventions listed see Appendix I at pp. 73-75.

Rights	ICJ Conclusions	Universal Declaration	International Conventions*
REPRESENTATIVE GOVERNMENT The will of the people to be the authority of the government	p. 6: 8 pp. 7-8 p. 9: 2	21(3) (p. 64)	EC Preamble (4) GE3: 79-81 GE4: 102-104
VOTE The right of universal and equal suffrage	p. 6: 8 p. 7: 3	21(3) (p. 64)	
ELECTIONS The right of free periodic elections for representative government	p. 6: 8 p. 7: 3	21(3) (p. 64)	ECP: 2 GE3: 79 GE4: 102
OPPOSITION PARTY The right to form opposition parties free to pronounce on governmental policies	p. 6: 7, 8 p. 8: 6		

4. ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Unimpeachable right of all individuals to social security and the economic, social and cultural rights indispensable to his dignity	p. 9: 1 p. 11 p. 34: III p. 35: 4 p. 36: IV pp. 44-46	22, 28, 30 ESC: 12-14 (pp. 63, 64) ILO C. 102
EMPLOYMENT The right to work and free choice of employment; right to just and favourable remuneration		23 (p. 64) ESC: 1-4 ILO C. 26 C. 88 C. 95 C. 96 C. 117

^{*} For the full title of the Conventions listed see Appendix I at pp. 73-75.

Rights	ICJ Conclusions	Universal Declaration	International Conventions*
VOCATION, WORK AND PRIVATE ENTERPRISE Right to determine own vocation, and to practise it free from interference or discrimination	p. 43: 2, 3 p. 45: 6-9	23 (p. 64)	ESC: 18
HUNGER, POVERTY IGNORANCE AND UNEMPLOYMENT Right to equal full opportunities to achieve a minimum standard of living and to eradicate such elements as hunger, poverty, ignorance and unemployment	p. 8: 7 p. 35: 4	22, 25 (pp. 63, 64)	ESC: 4, 12-14 OILO C. 2 C. 44 C. 102
TRADE UNIONS Right to form and join trade unions and rural associations	p. 45: 5, 10	23 (4) (p. 64)	ESC: 5, 6 ILO C. 87 C. 98
REST AND LEISURE The right to reasonable working hours and to holidays		24 (p. 64)	ESC: 2 ILO C. 1 C. 47 C. 52 C. 79 C. 89 C. 90
STANDARD OF LIVING Right to a minimum standard of living and to the benefit and protection of social welfare services, for the		25 (p. 64)	ESC: 3, 4, 7, 8, 11-17 ILO C. 59 C. 79 C. 89 C. 90 C. 102

^{*} For the full title of the Conventions listed see Appendix I at pp. 73-75.

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Rights	ICJ Conclusions	Universal Declaration	International Conventions*
individual and his family			C. 103
EDUCATION AND STUDY Right to receive education including civic and legal education and the standards thereof, and to choice of education	p. 6: 6 p. 8: 7, 8	26 (p. 64)	ECP: 2 ESC: 9, 10 UNESCO
CULTURAL RIGHTS Right to participate freely in cultural life		27(1) (p. 64)	
CREATIVE WORK AND COPYRIGHT Right to benefit of creative production		27(2) (p. 65)	Paris C. Berne C. Copyright C.
5. L	IMITATIONS O	N RIGHTS	
PROTECTION OF THE RIGHTS AND FREEDOMS OF OTHERS	p. 24: 4 p. 26: 4 p. 28: 8 p. 29: 1	29 (p. 65)	EC: 2(2), 5, 8(2), 9(2), 10(2), 11(2), 17
PUBLIC MORALITY ORDER AND WELFARE	p. 24: 4 p. 26: 4 p. 28: 5 p. 29: 1 p. 45: 3, 8, 9	29 (p. 65)	EC: 2(2), 4(3), 5, 8(2), 9(2), 10(2), 11(2)
IN STATES OF EMERGENCY—	p. 11: 1 p. 13: 5		EC: 4 (3c), 15

pp. 14-15

PUBLIC SECURITY

^{*} For the full title of the Conventions listed see Appendix I at pp. 73-75.

APPENDIX A

UNIVERSAL DECLARATION OF HUMAN RIGHTS

PREAMBLE

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in cooperation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

Now, Therefore,

THE GENERAL ASSEMBLY

proclaims

THIS UNIVERSAL DECLARATION OF HUMAN RIGHTS as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration

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constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

- Article 1. All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.
- Article 2. Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

- Article 3. Everyone has the right to life, liberty and security of person.
- Article 4. No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.
- Article 5. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.
- Article 6. Everyone has the right to recognition everywhere as a person before the law.
- Article 7. All are equal before the lax and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.
- Article 8. Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.
- Article 9. No one shall be subjected to arbitrary arrest, detention or exile.
- Article 10. Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.
- Article 11. (1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.
- (2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

- **Article 12.** No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.
- Article 13. (1) Everyone has the right to freedom of movement and residence within the borders of each state.
- (2) Everyone has the right to leave any country, including his own, and to return to his country.
- Article 14. Everyone has the right to seek and to enjoy in other countries asylum from persecution.
- (2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.
 - Article 15. (1) Everyone has the right to a nationality.
- (2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.
- Article 16. (1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
- (2) Marriage shall be entered into only with the free and full consent of the intending spouses.
- (3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.
- Article 17. (1) Everyone has the right to own property alone as well as in association with others.
 - (2) No one shall be arbitrarily deprived of his property.
- Article 18. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.
- Article 19. Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.
- **Article 20.** (1) Everyone has the right to freedom of peaceful assembly and association.
 - (2) No one may be compelled to belong to an association.
- Article 21. (1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
 - (2) Everyone has the right of equal access to public service in his country.

(3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

- Article 22. Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.
- Article 23. (1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
- (2) Everyone, without any discrimination, has the right to equal pay for equal work.
- (3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
- (4) Everyone has the right to form and to join trade unions for the protection of his interests.
- Article 24. Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.
- Article 25. (1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
- (2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.
- Article 26. (1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.
- (2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.
- (3) Parents have a prior right to choose the kind of education that shall be given to their children.
- Article 27. (1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

- (2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.
- Article 28. Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.
- Article 29. (1) Everyone has duties to the community in which alone the free and full development of his personality is possible.
- (2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.
- (3) These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.
- Article 30. Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

APPENDIX B

ACT OF ATHENS

We free jurists from forty-eight countries, assembled in Athens at the invitation of the International Commission of Jurists, being devoted to the Rule of Law which springs from the rights of the individual developed through history in the age-old struggle of mankind for freedom; which rights include freedom of speech, press, worship, assembly and association and the right to free elections to the end that laws are enacted by the duly elected representatives of the people and afford equal protection to all,

Being concerned by the disregard of the Rule of Law in various parts of the world, and being convinced that the maintenance of the fundamental principles of justice is essential to a lasting peace throughout the world,

Do solemnly Declare that:

- 1. The State is subject to the law.
- 2. The Governments should respect the rights of the individual under the Rule of Law and provide effective means for their enforcement.
- 3. Judges should be guided by the Rule of Law, protect and enforce it without fear or favour and resist any encroachments by governments or political parties on their independence as judges.

4. Lawyers of the world should preserve the independence of their profession, assert the rights of the individual under the Rule of Law and insist that every accused is accorded a fair trial.

And we call upon all judges and lawyers to observe the principles and Request the International Commission of Jurists to dedicate itself to the universal acceptance of these principles and expose and denounce all violations of the Rule of Law.

Done at Athens this 18th day of June 1955.

APPENDIX C

DECLARATION OF DELHI

This International Congress of Jurists, consisting of 185 judges, practising lawyers and teachers of law from 53 countries, assembled in New Delhi in January 1959 under the aegis of the International Commission of Jurists, having discussed freely and frankly the Rule of Law and the administration of justice throughout the world, and having reached conclusions regarding the legislative, the executive, the criminal process, the judiciary and the legal profession, which conclusions are annexed to this Declaration.

Now solemnly

Reaffirms the principles expressed in the Act of Athens adopted by the International Congress of Jurists in June 1955, particularly that an independent judiciary and legal profession are essential to the maintenance of the Rule of Law and to the proper administration of justice;

Recognizes that the Rule of Law is a dynamic concept for the expansion and fulfilment of which jurists are primarily responsible and which should be employed not only to safeguard and advance the civil and political rights of the individual in a free society, but also to establish social, economic, educational and cultural conditions under which his legitimate aspirations and dignity may be realized;

Requests the International Commission of Jurists

- 1. To employ its full resources to give practical effect throughout the world to the principles expressed in the conclusions of the Congress.
- 2. To give special attention and assistance to countries now in the process of establishing, reorganizing or consolidating their political and legal institutions.
- 3. To encourage law students and the junior members of the legal profession to support the Rule of Law.
- 4. To communicate this Declaration and the annexed conclusions to governments, to interested international oragnizations, and to associations of lawyers throughout the world.

This Declaration shall be known as the Declaration of Delhi.

Done at Delhi this 10th day of January 1959.

APPENDIX D

LAW OF LAGOS

The African Conference on the Rule of Law consisting of 194 judges, practising lawyers and teachers of law from 23 African nations as well as 9 countries of other continents,

Assembled in Lagos, Nigeria, in January 1961 under the aegis of the International Commission of Jurists,

Having discussed freely and frankly the Rule of Law with particular reference to Africa, and

Having reached conslusions regarding Human Rights in relation to Government security, Human Rights in relation to aspects of criminal and administrative law, and the responsibility of the Judiciary and of the Bar for the protection of the rights of the individual in society,

NOW SOLEMNLY

Recognizes that the Rule of Law is a dynamic concept which should be employed to safeguard and advance the will of the people and the political rights of the individual and to establish social, economic, educational and cultural conditions under which the individual may achieve his dignity and realize his legitimate aspirations in all countries, whether dependent or independent,

Reaffirms the Act of Athens and the Declaration of Delhi with special reference to Africa and

Declares

- 1. That the principles embodied in the Conclusions of the Conference which are annexed hereto should apply to any society, whether free or otherwise, but that the Rule of Law cannot be fully realized unless legislative bodies have been established in accordance with the will of the people who have adopted their Constitution freely;
- 2. That in order to maintain adequately the Rule of Law all Governments should adhere to the principle of democratic representation in their Legislatures;
- 3. That fundamental human rights, especially the right to personal liberty, should be written and entrenched in the Constitutions of all countries and that such personal liberty should not in peacetime be restricted without trial in a Court of Law:
- 4. That in order to give full effect to the Universal Declaration of Human Rights of 1948, this Conference invites the African Governments to study the possibility of adopting an African Convention of Human Rights in such a manner that the Conclusions of this Conference will be safeguarded by the creation of a court of appropriate jurisdiction and that recourse thereto be

made available for all persons under the jurisdiction of the signatory States; 5. That in order to promote the principles and the practical application of the Rule of Law, the judges, practising lawyers and teachers of law in African countries should take steps to establish branches of the International Commission of Jurists.

This Resolution shall be known as the Law of Lagos.

Done at Lagos this 7th day of January 1961.

APPENDIX E

RESOLUTION OF RIO

This International Congress of Jurists, of judges, lawyers in private and government practice, and teachers of law from 75 countries, has assembled in December 1962 in Brazil under the aegis of the International Commission of Jurists.

The Congress has reached these conclusions. It considers that the protection of the individual from unlawful or excessive interference by government is a foundation of the Rule of Law. The Congress has observed with concern that the rights of the individual have been trespassed upon or ignored in many places in the world and that in many cases this arises from the over-reaching by the Executive unrestrained by an independent Judiciary. Accordingly the Congress, having discussed appropriate measures to remove improper and excessive encroachment by government on the rights of the individual in the field of executive action,

NOW SOLEMNLY

Adopts the Conclusions annexed to this Resolution and reaffirms the Act of Athens and the Declaration of Delhi adopted by earlier International Congresses of Jurists which were again sanctioned in the Law of Lagos by the African Conference on the Rule of Law; and accordingly

Calls upon the International Commission of Jurists to give its attention to the following matters which were of concern in the debates of this Congress:

- 1. The conditions in varying countries relating to the independence of the Judiciary, its security of tenure and its freedom from control, direct or indirect, by the Executive;
- 2. The encouragement of the establishment of International Courts of Human Rights on a regional basis;
- 3. The role and responsibility of lawyers in a changing world to concern themselves with the prevalence of poverty, ignorance and inequality in so many parts of the world, and to inspire and promote economic development and social justice;

- 4. The improvement of legal education so that the understanding of the Rule of Law in the best traditions of the Bench and of the Bar is inculcated in those entering the profession of the law;
- 5. The continuance of its important work in investigating and reporting on violations of the Rule of Law wherever they occur;

And accordingly and by way of emphasis calls upon the Commission to examine and report upon the conditions affecting the independence of the Judiciary which is the first indispensable condition of the existence of the Rule of Law in any country.

This resolution shall be known as the Resolution of Rio.

Done this 15th day of December 1962.

APPENDIX F

DECLARATION OF BANGKOK

This Conference of 105 jurists from 16 countries of the South-East Asian and Pacific Region, assembled in Bangkok from February 15th to 19th, 1965, under the auspices of the International Commission of Jurists has reached these conclusions:

It considers that, given peace and stability, there are no intrinsic factors in the Region which make the ultimate establishment, maintenance and promotion of the Rule of Law incapable of attainment; that the Rule of Law can only reach its highest expression and fullest realization under a representative government freely chosen by universal adult suffrage; and that the Rule of Law requires effective machinery for the protection of fundamental rights and freedoms;

It recognizes that the Rule of Law and representative government are endangered by hunger, poverty and unemployment; that, in order to achieve social, economic and cultural development, sound economic planning is essential; that, in particular, measures of land reform to assure fairer distribution and its most economic utilization may be necessary; that successful planning depends on the maintenance of administrative efficiency and the elimination of corruption at political and administrative levels; that proper means of redress should be available where administrative wrongs are committed; and that, in the light of the experience gained in Scandinavia and New Zealand, consideration should be given to the Ombudsman concept as a means of individual redress and the improvement of administration;

It affirms that lawyers should be a vital and courageous element in a developing community; and that they should always be conscious of the social, economic and cultural aspirations of the people to the realization of which they should commit their skills and techniques;

It believes that the conclusion of a Regional Convention on Human Rights among States in the Region should be considered as a means of making an important contribution to individual human rights and to the solution of national, racial, religious and other minority issues; and that the establishment of the office of United Nations High Commissioner for Human Rights would be a valuable immediate measure to safeguard effectively human rights in accordance with the Universal Declaration of Human Rights;

It reaffirms the Act of Athens, the Declaration of Delhi, the Law of Lagos and the Resolution of Rio;

AND NOW SOLEMNLY

Adopts the Conclusions and Resolutions annexed to this Declaration. This Declaration shall be known as the Declaration of Bangkok. Done at Bangkok, this 19th day of February, 1965.

APPENDIX G

DECLARATION OF COLOMBO

This Conference of lawyers from the Asian and Pacific Region assembled in Colombo at the invitation of the Ceylon Section of the International Commission of Jurists from January 10th to 13th, 1966,

Having taken into account and affirmed the Act of Athens, the Declaration of Delhi, the Law of Lagos, the Resolution of Rio and the Declaration of Bangkok promulgated by previous Assemblies of the International Commission of Jurists;

BELIEVING

- 1. That the Rule of Law, if it is to be fully effective, must be understood and accepted not only by lawyers but also by every member of the community;
- 2. That nationalization, as one of the problems involved in the achievement of social and economic justice, must be governed by the principles of the Rule of Law:
- 3. That it is essential to the Rule of Law that on the one hand the citizen should have confidence in the efficiency and fairness of public officials and have prompt means of redress for legitimate grievances and that on the other hand the conduct of public officials should be vindicated when criticized without justification;
- 4. That the protection of Human Rights on the International, Regional and National levels can only be effectively achieved through the machinery and principles of the Rule of Law;

SOLEMNLY DECLARES

- 1. That it is the duty of lawyers to bring to the attention of all members of the community the practical relevance of the Rule of Law in their daily life and aspirations, to devote their labours to the improvement of those aspects of law and procedure which justifiably incur the criticism of the general public, to explain those features inherent and necessary in the legal system, the importance of which is not sufficiently understood, and generally through all means of publicity to secure the co-operation of every element of the community in the realization of the Rule of Law;
- 2. That nationalization is not an end in itself but has to be considered in the light of the social and economic benefits it may bring to the community, the fairness of the method of assessment and the adequacy of the compensation offered to former owners, the interests of the workers in the undertaking nationalized and of the consumers involved, and the machinery set up to ensure proper supervision and control of the nationalized activities;
- 3. That a Parliamentary Commissioner for Administration or Ombudsman provides an informal and prompt means of drawing attention to the grievances of citizens in their dealings with the administration, of securing redress of such grievances by the weapons of publicity, persuasion and recommendation and generally of ensuring the highest standards of efficient and fair administration;
- 4. That on the international level the countries of the Asian and Pacific Region should be encouraged to press for an enforcible Covenant of Human Rights and for the setting up of a United Nations High Commissioner for Human Rights, on the regional level for Regional Conventions of Human Rights and on the national level for the more effective entrenchment of Human Rights in national constitutions;

AND TO THIS END has reached the detailed Conclusions which accompany this Declaration.

APPENDIX H

RESOLUTIONS ADOPTED AT CONGRESSES AND CONFERENCES OF THE INTERNATIONAL COMMISSION OF JURISTS *

- 1. Final Resolution of the Congress of Athens, requesting the I.C.J. to formulate a statement of the principles of Justice under Law and to endeavour to secure their recognition.
- 2. Resolution of the Committee on Public Law of the Congress of Athens, requesting the I.C.J. to appoint a Committee to examine means of preventing violations of human rights.
- 3. Resolution of the Committee on Public Law of the Congress of Athens, requesting the I.C.J. to examine the apartheid situation.
- 4. Request of the Committee on Human Rights and Government Security of the Lagos Conference, that the I.C.J. should examine the Rule of Law and Human Rights in Africa.
- 5. Resolution of the Committee on the Role of the Lawyer in a Developing Country of the Bangkok Conference, requesting the I.C.J. to consider the feasibility of the establishment of a South-East Asian and Pacific Law Institute.
- 6. Resolution of the Advisory Group on Human Rights of the Bangkok Conference suggesting that the I.C.J. consider the establishment of a study group to advise on the implementation of a Regional Convention on Human Rights for the South-East Asian and Pacific Region.
- 7. Resolution of the Fourth Committee of the Ceylon Colloquium on national, regional and international measures for the protection of human rights.
- 8. Resolution of the Fourth Committee of the Ceylon Colloquium proposing the establishment of a Council of Asia and the Pacific.

^{*} Resolutions the text of which is reproduced in Part I of this Handbook are not included in this list.

APPENDIX I

CONVENTIONS REFERRED TO IN PART II.

PART 1: INTERNATIONAL CONVENTIONS OTHER THAN THOSE ADOPTED BY THE ILO

Abbre- viation	Title	Sponsoring Organisation	Date
GC	Convention on the Prevention and Punishment of the Crime of Genocide	UNO	1948
CD	Convention on the Elimination of all Forms of Racial Discrimination	UNO	1965
UNESCO	Convention against Discrimination in Education	UNESCO	1960
EC	European Convention for the Protection of Human Rights and Fundamental Freedoms	Council of Europe	1950
ECP	First Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms	Council of Europe	1952
ESC	European Social Charter	Council of Europe	1961
НС	Hague Convention (IV) respecting the Laws and Customs of War on Land	Hague Peace Conference	1907
GE1	Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field	International Committee of the Red Cross	1949
GE2	Geneva Convention for the Amelioration of the Wounded, Sick and Shipwrecked Members o the Armed Forces at Sea	International Committee of the Red Cross	1949
GE3	Geneva Convention relative to the Treatment of Prisoners of War	International Committee of the Red Cross	1949
GE4	Geneva Convention relative to the Protection of Civilian Persons in Time of War	International Committee of the Red Cross	1949

Abbre- viation	Title	Sponsoring Organisation	Date
Paris C	Convention for the Protection of Industrial Property	International Union for the Protection of Industrial Property	1883
Berne C	Convention for the Protection of Literary and Artistic Works	International Union for the Protection of Literary and Artistic Works	1886
Copy- right C	Universal Copyright Convention	UNESCO	1952
ILO	International Labour Organisation Conventions, listed in Part 2		

PART 2: CONVENTIONS ADOPTED BY THE INTERNATIONAL LABOUR ORGANISATION

No.	Subject	Da te	No. of ratifi- cations
1.	Hours of Work (Industry)	1919	31
2.	Unemployment	1919	43
26.	Minimum wage-fixing machinery	1928	73
29.	Forced Labour	1930	93
44.	Unemployment provision	1934	12
47.	Forty-hour week	1935	4
48.	Maintenance of migrants' pension rights	1935	8
52.	Holidays with pay	1936	41
59.	Minimum age (industry) (Revised)	1937	21
7 9.	Night Work of Young Persons (Non-industrial		
	occupations)	1946	14
87.	Freedom of Association and Protection of the		
	Right to Organise	1948	70
88.	Employment service	1948	46
89.	Night Work (Women) (Revised)	1948	44
90.	Night Work of Young Persons (Industry)		
	(Revised)	1948	29
95.	Protection of Wages	1949	58
96.	Fee-charging Employment Agencies (Revised)	1949	28

97.	Migration for Employment (Revised)	1949	25
98.	Right to organise and collective bargaining.	1949	7 6
100.	Equal remuneration	1951	50
102.	Social security (minimum standards)	1952	16
103.	Maternity protection (revised)	1952	10
105.	Abolition of forced labour	1957	73
107.	Indigenous and Tribal Populations	195 7	20
111.	Discrimination (employment and occupation)	1958	53
117.	Social policy (basic aims and standards)	1962	10
118.	Equality of treatment (social security)	1962	13
122.	Employment policy	1964	2

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