

For the Rule of Law

THE REVIEW



INTERNATIONAL COMMISSION OF JURISTS

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The International Commission of Jurists

It was to realise the lawyer's faith in justice and human liberty under the Rule of Law that the International Commission of Jurists was founded.

The Commission has carried out its task on the basis that lawyers have a challenging and essential role to play in the rapidly changing ecology of mankind. It has also worked on the assumption that lawyers on the whole are alive to their responsibilities to the society in which they live and to humanity in general.

The Commission is strictly non-political. The independence and impartiality which have characterised its work for more than fifteen years have won the respect of lawyers, international organisations and the international community.

The purpose of *The Review* is to focus attention on the problems in regard to which lawyers can make their contribution to society in their respective areas of influence and to provide them with the necessary information and data.

In its condemnation of violations of the Rule of Law and of laws and actions running counter to the principles of the Universal Declaration of Human Rights and in the support that it gives to the gradual implementation of the Law of Human Rights in national systems and in the international legal order, *The Review* seeks to echo the voice of every member of the legal professions in his search for a just society and a peaceful world.

Box 16

Human Rights in the World

American Convention on Human Rights

A New Instrument for the International Protection of the Individual

*Recognising that the essential rights of man are not derived from one's being a national of a certain state, but are based upon attributes of the human personality, and that they therefore justify international protection in the form of a Convention reinforcing or complementing the protection provided by the domestic law of the American states.*¹

The outstanding characteristic of the American Convention on Human Rights is the provision that it makes for individual petition. There will now be a second area of the world in which the ordinary individual can have his fundamental rights enforced where his own legal system has failed to give him an adequate remedy. Thus, when the requirements set out in the Convention are satisfied—and these are dealt with in the present commentary—the individual who considers that his fundamental rights have been infringed will be able to go outside his national frontiers and appeal to a supranational body at the regional level.

The organ responsible for hearing individual petitions is the Inter-American Commission on Human Rights whose competence in the matter is automatically recognised by States Parties to the Convention.² The Convention sets up a second organ, the Inter-American Court of Human Rights with optional jurisdiction. In other words, its jurisdiction will depend upon a State's acceptance of it in accordance with the Convention.

The importance of this new human rights system is considerable. There now exists in the Americas a relatively simple machinery which will not only give the individual an effective *remedy*, but also

¹ From the Preamble to the American Convention (the text of which has been reproduced in full on pages 44-62 below). The Convention was adopted at a Conference in Costa Rica on November 22nd last year. The States which may be parties are the Members of the Organisation of American States.

² In the case of applications made by one State against another (which are not dealt with in this article), the Commission cannot act unless its competence has been recognised by both parties (*Article 45*).

tend to *prevent* violations of his rights, since its mere presence will certainly be a restraining influence on government officials where the rights of the individual are involved.

A further aspect which should be mentioned here is that another large body of States have come to recognise the individual as a subject of international law; this is of tremendous importance to legal theory and is beginning to be felt in international practice.

Admissibility

Under Article 44, as soon as a State ratifies or otherwise adheres to the Convention, it is bound to recognise the competence of the Commission to receive petitions containing denunciations or complaints of violations of the Convention. A petition may be lodged by 'any person or group of persons, or any non-governmental entity legally recognised in one or more member states' of the Organisation of American States.

Before the merits of the case can be studied by the Commission and perhaps eventually the Inter-American Court, a petition must be declared admissible by the Commission. In order to be admissible, it must satisfy a number of requirements which, for the purposes of this study, can be grouped into those *of form* and those *of substance*.

A. Requirements of Form

1. In the case of individual petitions, the petition must contain the description (name and address etc.) and signature of the person or persons lodging it or of the legal representative in the case of a non-governmental entity (*Article 46(1)(d)*).
2. The petition must state the facts which amount to a violation of one of the rights in the Convention (*Article 47 (b)*).
3. The petition must not be manifestly groundless or out of order (*Article 47 (c)*).
4. The petition must not be substantially the same as one already examined by the Commission or another international organisation (*Article 47 (d)*); the Convention clearly wishes to avoid there being a kind of appeal system between the various forms of international machinery. (Thus the Commission cannot, for instance, be used as a body of appeal against a decision of the Human Rights Committee set up by the Covenant on Civil and Political Rights).

B. Requirements of Substance

1. All domestic remedies must have been exhausted (*Article 46 (1) (a)*).

Linked with this requirement there is another of a more formal nature which lays down a time limit for the lodging of a petition: six

months from the date on which the person alleging violation of his rights was notified of the final decision of his national courts or other authorities (*Article 46(1)(b)*).

There are three exceptions to the normal exhaustion of local remedies rule. These exceptions are vital to the effective working of a supra-national system and will certainly be relied on in the majority of cases. The three exceptions are:

(a) When 'the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated' (*Article 46 (2) (a)*).¹

Any State which ratifies the Convention and whose legislation does not afford due process of law would also be in breach of Article 2(1), under which it undertakes to adopt such legislative or other measures as may be necessary to ensure the exercise of the rights and freedoms in the Convention.

This exception will be particularly relevant in the case where a partial or total breakdown of the constitutional system occurs in a State.

(b) When 'the party alleging a violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them' (*Article 46(2)(b)*). This provision, covering denial of justice, is of obvious practical importance.

(c) When 'there has been unwarranted delay in rendering a final judgment under the aforementioned remedies' (*Article 46(2)(c)*).

2. The subject of the petition must not be pending before another international procedure for settlement (*Article 46(1)(c)*). The reason for this requirement is similar to that which has already been commented on in connection with the formal requirements; it is also intended to avoid a situation in which two systems of international protection are simultaneously dealing with the same case.

Procedure

If the requirements of form and substance are satisfied, the Commission will declare the petition admissible. The real procedure under the Convention will then begin. Here four different phases or situations can be distinguished:

¹ It is interesting to note that the *European Commission of Human Rights* has recently considered such an exception to the Exhaustion of Local Remedies Rule to be implicit in the European Convention. In the case against Greece last year, although the Rule had not been complied with, the Commission held that the Applications were not inadmissible since the remedies available in Greece were inadequate. This was so even where the individual's right of appeal had not been suspended; for, as a result of a number of occurrences, the independence of the Judiciary had been seriously compromised. See *The Review* No. 4 (December 1969) 'Judicial Application of the Rule of Law', pp. 39-45.

A. The Commission will ask the government of the State against which the petition is brought to furnish information on the subject within a reasonable period. After this period has elapsed or when the information has been received, the Commission will ascertain whether the grounds of the petition still exist. If they do not, the record will be closed.

B. If the case is not closed the Commission will, having notified the parties, look into the facts alleged in the petition. It may request the parties for relevant information and will hear or receive any oral or written statements which the parties may like to make. If it considers it necessary, the Commission may carry out an investigation and enter the territory of a particular State. It shall then 'request, and the States concerned shall furnish to it, all necessary facilities' (*Article 48(1)(d)*).

As soon as it has examined the facts, the Commission will place itself at the disposal of the parties with a view to reaching a friendly settlement. If such a settlement occurs the procedure ends; the Commission will then draw up a report containing a brief statement of the facts and of the solution reached. The report will be transmitted to the parties concerned, to the States Parties to the Convention and to the Secretary-General of the Organisation of American States for publication.

C. In serious and urgent cases, the procedure set out above may be departed from. In such cases, provided the petition fulfills all the formal requirements of admissibility, the Commission may immediately carry out an investigation with the consent of the States in whose territory a violation is alleged to have been committed (*Article 48(2)*).

D. If a friendly settlement is not reached, as mentioned above, the Commission will draw up a report containing a statement of the facts, any arguments that the parties may have made and any proposals or recommendations that the Commission feels necessary. It will also state the Commission's conclusions.

The report will be transmitted to the parties who will not be free to publish it.

E. Once the report has been transmitted, there follows a period of three months during which two principal situations can arise:

1. The case is finally settled.
2. The case is taken to the Inter-American Court by the Commission or by the State or States concerned. This can only happen, of course, when the jurisdiction of the Court has been accepted, either beforehand or in relation to the particular case (*Articles 61 & 62*).

If the case is neither settled nor submitted to the Court, the Commission may, by the vote of an absolute majority of its members, set forth its opinion and conclusions on the case. It will

then make any appropriate recommendations and prescribe a period within which the State concerned is to take the measures necessary to remedy the situation.

At the end of this period, the Commission will decide whether such measures have been taken and whether or not to publish its report. With the publication of its report, the proceedings before the Commission terminate.

At the beginning of this article, it was said that a petition from an individual could finally reach the Court. This is true even though only the Commission and States can bring cases before it and individuals have no direct access to it. Such a situation can arise in two ways:

A. When the Commission or the State concerned decides to submit the matter to the Court, following the Commission's first report.

B. Where the Commission requests the Court to act in cases of extreme seriousness and urgency, in accordance with Article 63.¹

Such situations can of course only arise in relation to States which have accepted the Court's jurisdiction in general or for the particular case.

Conclusion

This article is intended to describe in outline the procedure for individual petitions provided for in Part II of the Convention entitled *Means of Protection*.

It is not difficult to appreciate the importance of this system which the American States have adopted and the immense potential that the Convention offers for the protection of fundamental rights. In practice much will depend upon the vigour and firmness with which the Commission exercises its powers. Its first moves in applying the new Convention will be decisive, since they will provide the bench marks for future action.

It is also essential that the general public in the American continents are made aware not only of the rights which the various countries will be bound to respect and implement when they ratify the Convention, but also of the international machinery through which they can enforce those rights.

The efficacy of this system will also depend on the goodwill of the States Parties and on their willingness to provide the necessary facilities. During the Inter-American Conference held in San José, Costa Rica, at the end of which the Convention was adopted, the attitude of most States was extraordinarily constructive. It is reasonable then to hope that their intentions will be given practical effect by an early ratification of the Convention, so that their 'Pact of San José' may come into force as soon as possible.

¹ See page 59 below.

Malawi - Criminal Jurisdiction

In the past the Commission has criticised retrogressive legislation in Malawi—in particular, the Forfeiture Act 1966, which enabled President Banda to confiscate the property of his political opponents, the Penal Code (Amendment) Act 1965, which allowed the execution of convicted persons to take place in the presence of members of the public, and the statutes permitting detention without trial.¹ It is now necessary to comment on the recent Acts governing criminal jurisdiction.

New legislation enacted by the Parliament of Malawi confers jurisdiction on a local court to try cases of homicide; a local court may be empowered to try murder cases and to pass the death sentence. The High Court of Malawi will have no power of supervision or control over the proceedings initiated in the local courts. In addition, President Banda is empowered by law to deny a person, convicted by a local court a right of appeal to a High Court. It is to be remembered that the justices who sit in local courts are not qualified lawyers; in the majority of cases they have no proper legal training at all.

In 1966, a Presidential Commission was appointed to enquire into criminal justice in Malawi. There had been difficulties in the administration of criminal justice largely arising from defects in police investigation and the conduct of prosecutions. The Presidential Commission made a series of recommendations both as to the jurisdiction of the courts and as to criminal procedure and evidence. The general effect of their recommendations was to ensure that accused persons were given a fair, speedy and impartial trial, account being taken of the special requirements in Malawi. None of the recommendations provide a basis for the recent Local Courts (Amendment) Act and its other related legislation. The Report of the Presidential Commission was laid before Parliament and unanimously approved in April 1967.

One may well ask why the Parliament of Malawi, which had accepted reasonable proposals to deal with criminal procedure, has now decided to regress. The answer lies in the Limbe murder trials. After a number of ritual murders in the Limbe area, five persons appeared before the High Court charged with murder but were

¹ See ICJ *Bulletin*, No. 27, p. 20.

acquitted, the court finding that there was no case for them to answer. Their acquittal was highly embarrassing to the Government since a rumour had been circulating that agents of the Government were responsible for the murders, the purpose of which, it was said, was to send the blood of the victims to South Africa in return for money to build the new capital at Lilongwe. Mr Aleke Banda, the Finance Minister, when introducing the Local Courts (Amendment) Bill is reported to have said that it was now time for Malawians themselves to deal with cases in which African tradition and superstitions were the main factors, and that the local courts were best suited to deal with such cases. Because of the wide-spread belief in witchcraft in rural areas the Government's embarrassment is understandable. But the solution would seem to lie in the improvement of police investigation and not in a return, or partial return, to the traditional rule of customary law allowing the summary execution of a witch by the local community.

The belief in, and fear of, witchcraft is very pervasive among the part of the community from which local courts justices are drawn; they are not free from the domination of witchcraft as African lawyers are. Again, they are generally conversant with public opinion and rumour in the area of their jurisdiction and, indeed, are part of the consensus of local public opinion which builds up against a person who is thought to engage in witchcraft. In these circumstances it will be very difficult to secure impartiality in the trial before a local court of a person accused of ritual murder.

If a man is to be tried for his life it is essential that his trial be conducted by a professional bench and such does not yet exist in the local courts in Malawi. It is also essential that there should be proper supervision by the judicial department and that a right to appeal should lie from the decision of the trial court.

In many African countries problems have arisen as a result of defective police investigation and because of the failure of expatriate counsel and judges to fully understand African traditions. But such problems have been overcome by the training of lawyers, public prosecutors and police officers who take over from their expatriate counterparts. In the majority of countries in free Africa the law is evolving, modernising and developing in the interest of the community. It is often necessary to modify inherited criminal law to meet local conditions, but this must be done in such a way as to ensure an impartial trial for an accused person under fair rules of procedure and evidence.

Dahomey: Executions in Public without Trial

The Commission's attention was drawn, by disturbing reports in the world press,¹ to the recent summary executions which have been carried out in public in Dahomey. In spite of the economic and political difficulties which Dahomey has had to face, the country has always shown respect for human rights² and due process of law. After the recent events, the President and nine members of the Dahomey Bar addressed a memorandum to the Minister of Justice expressing its concern. The text of this memorandum, with which the Commission fully associates itself, now follows.

In the night of 16th January 1970 a repugnant crime was committed in Cotonou: a customs officer, Lieutenant André Taigla, was atrociously murdered in his home. The feeling of disgust among the general public was such that the police had to protect the persons they had arrested or they would have been lynched. This was all to the credit of the police, for in the civilized society in which we live, the old *lex talionis*, an eye for an eye: a tooth for a tooth, can no longer be admitted.

But on the morning of 3rd February 1970, it was with astonishment—and horror—that we learnt that Thérèse Taigla, the wife of the murdered Lieutenant, and four men arrested with her, had been shot at dawn on the orders of the Military Government—without trial and in a manner which was at least as horrible as the crime for which they were arbitrarily being punished! Their bodies were held up to the unhealthy curiosity of the public for a whole morning and were subjected to acts of profanation, which are incompatible with the healthy traditions of our country.

While we, like everybody else, hoped that the case would be quickly concluded and that those found guilty of this monstrous crime would receive their just punishment, we cannot approve the summary and illegal solution which was adopted. Neither public pressure nor the need to make an example can justify such a flagrant violation of the principles and rules of law which are at the base of Society, the Nation and the State.

In our national society, which forms part of the Community of Nations bound by certain moral and legal principles, only the State is entitled to carry out justice through its specialized institutions created for the purpose in accordance with law. When the Executive itself passes sentence, thus usurping the functions of the institution responsible for carrying out justice, one cannot speak of justice but simply of a return to the primitive law of force and the *lex talionis*; and the door is wide open to arbitrary behaviour and a general feeling of insecurity.

The solution adopted in the Taigla case is a dismaying precedent, which can, on other occasions, easily serve those who are in de facto or constitutional authority. There is thus the grave danger that our country, to which we are all attached, may see executions carried out in an even more summary manner in the

¹ *Le Monde*, 5th and 12th February 1970; *The Daily Telegraph*, 12th February 1970; *Neue Zürcher Zeitung*.

² See *Bulletin of the ICJ*, No. 31, September 1967, p. 34.

name of an arbitrary *raison d'Etat* or simply of hidden private interests. The machine can then quickly be set up to eliminate anyone who is an embarrassment. The danger which now arises thus seems more serious than that which the authorities claim to have exorcised. This is the reason for the present memorandum.

As Dahomean law now stands, only a court set up in accordance with law can legally pass sentence of death on a person, who has been tried and found guilty of an offence for which this sentence may be passed. The crimes which are punishable with death under the Criminal Code in Dahomey include wilful murder preceded, accompanied or followed by a further felony (Articles 302 & 304). There is a court which has jurisdiction to pass this sentence: the Court of Assize, whose bench consists of three Judges and four assessors chosen from citizens of recognized integrity. These citizens are free in their actions; they are independent of the judges and form a majority on the bench. In all countries where the Court of Assize exists the assessors are traditionally looked upon as the reflectors of the public conscience. The Court of Assize can thus only give a verdict corresponding to the effect of the crime on the public conscience—in other words, to the real gravity of the offence.

Criminal proceedings in the Taigla case were already under way; on 2nd February 1970 the State Prosecutor had drawn up the indictment and had appointed a *juge d'instruction*. To allay the public's impatience, it would have been sufficient to shorten the procedure, and if necessary, with some slight statutory amendments, to adopt the procedure provided for in the Criminal Procedure Code governing persons arrested *in flagrante delicto*. Neither the need for speedy action, nor the need to set an example can therefore justify the execution of Thérèse Taigla and the four men without trial.

It is worth pointing out here that by our traditions persons sentenced to death who are shortly to be executed have the right to show their repentance and to know that they can ask for a minister of their religion. What has happened to this tradition?

Dahomey has adhered to the Universal Declaration of Human Rights. Every Constitution in Dahomey and every proclamation of the Military Governments in Dahomey has always solemnly declared its attachment not only to the Universal Declaration, but also to the Declaration of The Rights of Man and the Citizen of 1789 as well as the principles and rules which govern the international communities of which Dahomey is a member: the UN, the OAU and OCAM. The statement made on 10th December last year in the name of the Dahomean Army once again reiterated, with the same solemnity, Dahomey's attachment to these Declarations, principles and rules. But the Universal Declaration recognises as fundamental respect for the dignity of the human person. It reaffirms the inviolable rule that no one may be punished without first having had a fair trial in a court established according to law. It enshrines the principle that no one may be punished save in the manner prescribed by existing law.

The decision of the Government to execute Thérèse Taigla and four of the co-accused without trial and to exhibit their bodies to public hysteria violates all the principles which are essential if a society is to call itself civilized. Indeed, the provision in the Criminal Code concerning public exhibition has been repealed.

The Government's action runs counter to the principle of the Separation of Powers, the principle *nulla poena sine lege* and human rights, all of which form an integral part of the law of Dahomey. We are bound to point out these serious shortcomings in respect of the Rule of Law and of our obligations within the international community, which sees us and judges us. Throughout all the regimes which Dahomey has known, the administration of justice, of which we are part, has never failed in its task of loyally carrying out the law. In the face of a crime which was sanctioned by the Law and which, in addition, was repugnant to the conscience of everyone, it was even less likely to fail in its task. The Government's action therefore casts a slur on the honour and the dignity of the established administration of justice and on its servants.

We firmly protest against their action and condemn it as inadmissible.

A Disquieting Law in Libya

In the decade that has followed the discovery of oil in Libya, the national earnings of this desert country have increased by proportions unmatched elsewhere. Under the rule of the now eighty year old king, Idris I, however, only a small section of the population of one and a half million benefited from their country's new-found wealth. With the coup d'état of 1st September last year, the monarchy came to an end and the present Libyan Arab Republic, based on socialist principles, was set up.

During the month of the coup d'état, a number of well-known persons in the former regime were arrested and were, it was announced, to be tried by a Revolutionary Court on charges of corruption.

In the following month, the Revolutionary Command Council (the new Government) published a decision 'taken in the name of the people' in the desire 'to establish a society based on freedom and social justice'. The decision, which is in effect a law, enables the trial and punishment of persons who 'abused their political or administrative office' between 1st October 1951¹ and 1st September 1969. Persons principally and expressly aimed at are (*Article I*):

- (a) Members of the former Royal Family;
- (b) Former Prime Ministers, their deputies, Members of Cabinets and Governors;
- (c) The heads, advisers and officials of the Royal Court and advisers of the former King;
- (d) Chairmen and members of the House of Deputies and the Senate;
- (e) The chairmen and members of the legislative, executive and administrative councils in the provinces and members of local and municipal councils;
- (f) Under-secretaries and those who held senior positions in the Government, public bodies, organisations, the army or in the security forces;
- (g) Proprietors of newspapers and news-agencies and their editors-in-chief, directors and editors.

¹ Libya gained her independence officially on 24th December 1951 and the King was enthroned on 2nd December 1951.

Any of these persons is to be deemed guilty of the crime of abusing his political or administrative office if he committed one of the following acts (*Article 2*):

(a) Abusing a position of authority and harming the political, economic, financial or social interests of the country... in order to obtain advantages for himself or for others, directly or indirectly;

(b) Acting against the people's powers...;

(c) Attempting to mislead the people...;

(d) Exploiting influence by way of deception in order to obtain a position, a privilege or benefit for himself or for others;

(e) Committing any act which would directly or indirectly help increase the value of property or anything else in order to benefit himself or others;

(f) Interfering in a manner harmful to the public interest in the State's affairs or allowing such interference;

(g) Influencing legislation or members of any body authorised to act under the law;

(h) Committing any crime punishable under the criminal law or under any other code even after the statutory limitations have elapsed unless the criminal has already been tried. The provisions of the criminal law regarding the initiation of or the participation in any criminal agreement shall apply to the crime of abusing one's political or administrative office.

There is an apparent inconsistency between paragraph (h) of Article 2 and the particularly disturbing provisions of Article 5:

In deciding the cases referred to it the Court will not be bound by the provisions of the criminal or other codes. The Court will decide whether the accused is a criminal in accordance with Article 2 above.

The Court referred to in this last provision is a 'People's Court',¹ to be set up by the Revolutionary Council. The Members of the Court are to take an oath to perform their duties 'honestly, truly and fairly' (*Article 3*). The Court will try all cases that are referred to it by the Revolutionary Council and even those which have been examined by the ordinary courts or other bodies (*Article 4*).

The Court is to choose the penalty it deems appropriate from amongst the penalties provided for in the criminal law or impose any other penalty. It is empowered to order the confiscation of money illegally obtained and it is to decide on the compensation that should be paid for the harm caused to the people (*Article 6*).

The competence of the bench or any of its members to hear the case may not be challenged (*Article 7*). The Court may sit in

¹ This Court should not be confused with the special military court set up last December to try persons accused of conspiring to overthrow the present regime.

camera if it deems this advisable. The Court is to determine its own procedure and may try persons in their absence provided that they are defended. It must appoint defence counsel for those who are not represented (*Article 8*). Article 8 goes on to provide that the judges' decisions will be made by a majority vote after the defence has been heard.

The sentences of the People's Court are not to be effective until they have been ratified by the Revolutionary Council, who may amend them, quash them or order a re-trial. No appeal in any circumstances is permitted against the sentences (*Article 9*).

Articles 10 and 11 provide for a chief prosecutor, to be appointed by the Revolutionary Council, who will investigate the cases that are referred to it by the Council and conduct the prosecution in the Court.

A 'criminal' may be held in custody before judgment is passed for a period not exceeding 45 days; this period may be extended by the chief prosecutor to any other period or periods after he has given the accused a hearing (*Article 12*).

Under Articles 13 and 14, 'criminals' may be compelled to submit a statement of their assets; again, the confiscation of their property is provided for, at the discretion of the Revolutionary Council.

The formal investigation may be conducted in the absence of an accused or his counsel if this is thought necessary, provided that they both have access to the investigation reports (*Article 15*). The investigation is to be conducted in the manner laid down by the criminal code and the resulting report is to be submitted to the Revolutionary Council, which can refer the case to the Court (*Article 16*); the Court may order any supplementary investigation (*Article 17*).

Articles 18-20 concern the status and organisation of the prosecutor's office, which was in fact set up in November 1969 and has a staff of ten persons.

A detailed criticism of this law would be superfluous. The serious violations of general legal principles and the Rule of Law stand out, although here and there one finds some kind of guarantee for the rights of the defense.

The International Commission of Jurists can only express its grave concern at the series of trials which are almost certainly to take place in Libya, where hundreds of persons have been imprisoned since September 1969. It is disturbing that trials are to be conducted under the law described above, which will be open to abuse and arbitrary interpretation and which is in addition retroactive. The Commission appeals to the Revolutionary Command Council not to prejudice the ideals on which it is based and to direct all its efforts towards the attainment of social justice in the country, which is so rich in promise.

The Civil Rights Movement in the USSR

We, the signatories of this letter, deeply disturbed by the unceasing political persecution in the Soviet Union... appeal to the United Nations Commission on Human Rights to defend the human rights that are being trampled upon in our country.

We appeal to the United Nations because the protests and complaints which, for a number of years, we have addressed to the higher administrative and judicial authorities in the Soviet Union have received no response at all. The hope that our voice might be heard, that the authorities would refrain from the unlawful acts to which we have constantly drawn attention—this hope has been exhausted.

This appeal is dated 20th May 1969 and signed by 'The Action Group for the Defence of Civil Rights in the USSR'. There then follow fifteen names. Forty more signatures are reported to have been added. The right to petition the United Nations or other international organisation is dealt with elsewhere in this issue. This article is concerned specifically with the civil rights movement responsible for the appeal and will deal in general with the position of human rights in the Soviet Union.

The Growth of Civil Rights Movements

For the first time the Soviet civil rights movement has taken action at the international level. The petition was addressed to the United Nations, whose Members pledged themselves to co-operate with the Organisation in its promotion of 'universal respect for, and observance of, human rights and fundamental freedoms for all...' (Articles 55 and 56 of the Charter).

The proliferation of civil rights movements is a striking characteristic of our times. They are the spontaneous response of a growing number of citizens to the growing number of violations of fundamental human rights in their various countries. They can perhaps be seen as antibodies to 'the intensified violence and brutality of our times', where 'massacres, torture, arbitrary

imprisonment, summary executions have become such common currency...'¹

The growth of these movements may well open a new era in the protection of human rights. Their special place in the international order can best be seen in terms of the Universal Declaration of Human Rights, which transcends the frontiers of national sovereignty and speaks directly to individuals:

Every individual and every organ of society keeping this Declaration constantly in mind, shall strive... by progressive measures, national and international to secure the universal and effective recognition [of the rights in the Declaration].

The activities of the movements vary considerably according to the different social and political conditions prevailing in each country. Some of them, as for instance in Northern Ireland and in the United States, have recently entered the limelight of world attention. The remarkable movement in the USSR has hitherto received little or no attention.

The Birth of the Movement in the Soviet Union

The civil rights movement in the Soviet Union was formed in the course of International Human Rights Year 1968. It arose from an underground publication, entitled *The Chronicle of Current Events*,² which was first issued on 30th April 1968 and was dedicated to 'Human Rights Year in the USSR'. It had as its motto Article 19 of the Universal Declaration:

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.

This has been followed by eight more issues, generally at two-month intervals. The position of *The Chronicle* in the Soviet Union is revealed in an extract from the fifth issue:

Although *The Chronicle* is not an illegal publication, its work is hampered by the peculiar concepts of legality and freedom of information that have been developed over many years by certain Soviet Agencies.

¹ From the Conclusions of the Geneva Conference on Human Rights of 1968, organised by the International Non-Governmental Organisations from 29th-31st January 1968, published in *Bulletin* of the ICJ, No. 33. See also the Final Act of the International Conference of Human Rights, Teheran, 22nd April - 14th May 1968, UN Document A/CONF. 32/41; and Human Rights, Final Report of the International Conference of NGOs Paris, 16th-20th September 1968.

² Reported in *The Observer*, London, 13th June 1969; *Le Figaro Littéraire*, Paris 14th-20th July 1969 and *Le Monde Diplomatique*, Paris, November 1969.

For this reason *The Chronicle*, unlike many other newspapers, cannot give its postal address on the last page. Nevertheless anyone who is interested in seeing that the Soviet public is informed of events in the country can easily transmit information that he has to *The Chronicle*. Give the news to the person from whom you get your copy and he will pass it on to his supplier, etc. Please do not personally try to reach the top of the chain or you may be considered an informer.

The Soviet authorities, however, do consider *The Chronicle* to be illegal. Persons found distributing it have been punished—according to *The Chronicle* No. 7 of April 1969—usually with three years' forced labour followed by exile to another region.

At the end of International Human Rights Year, *The Chronicle* stated that since no one in the movement could consider his work completed, it would continue to appear in 1969. *The Chronicle* regards itself as the successor of earlier hand-printed (in Russian 'Samizdat') journals of protest, like *Syntaxis* and *Phoenix*. There is however a difference. Whereas the former published works of fiction which had not passed the censor, *The Chronicle* is concerned with violations of human rights in the country and it is this that has made it the nucleus of the civil rights movement. The Action Group for the Defence of Civil Rights seems to have been initiated by its editors and distributors.

The first nine issues of the publication, which are all that have been available up to now, give long and detailed accounts of current trials and political persecutions. They have shown that the civil rights movement is supported by different strata of society all over the Soviet Union. Numerically the movement is small, but it has adherents in Moscow, Leningrad, the Ukraine and Central Asia, coming from the professional classes, such as teachers, students, scientists, engineers and doctors, as well as from manual workers.

In June 1969, *The Chronicle* reported the repressive action against ninety-one Soviet intellectuals who had taken part in a protest movement, as well as the closure of the department of mathematical linguistics in 'Akademgorodok', a 'science-city' near 'Novosibirsk', because the protest movement had spread to its staff. Another interesting report, in the December 1968 issue, concerned the dissatisfaction of Estonian technologists with the liberal memorandum of Mr Sakharov, which they felt not to be far-reaching enough.¹ Sakharov had been criticised for 'hoping instead of acting', for relying on the influence of science and good-will instead of political action. In Obinsk, another science-city of the Soviet Union, *The Chronicle* reported, the Editor of the local newspaper and two other members of the local party committee had been

¹ Andrei Sakharov, a Member of the Soviet Academy of Sciences, had criticised the hypertrophy of bureaucracy in Soviet scientific and cultural life and had demanded more freedom in research. His memorandum was first circulated unofficially in the USSR and later published in the United Kingdom.

expelled for participation in protest movements. At the University of the town of Gorky, four students and four professors had been dismissed from the Party for their part in distributing the Czechoslovak manifesto of June 1968 entitled *Two Thousand Words*. After a discussion of housing problems among workers at the Kiev hydro-electric station, there had been protests alleging violations of human rights; the incident had ended with the arrest of the workers' leader.

Political Prisoners in the Ukraine

The political trials in the Ukraine were taken up in the December 1968 issue of *The Chronicle*. From 1965 onwards, a large number of Ukrainian intellectuals were arrested and subjected to a series of trials held *in camera*, at which basic principles of criminal procedure would seem to have been ignored. They were found guilty of 'anti-Soviet nationalist writings' and 'anti-Soviet agitation and propaganda' and sentenced to long terms of hard labour. The convictions were largely based on the fact that they had read pre-revolution Ukrainian works and had alleged discrimination against national minorities. These trials only came to the notice of the western press in 1968, when they received wide coverage.¹

Memoranda concerning these prisoners were submitted by Ukrainians living outside the Soviet Union to the International Conference on Human Rights, held at Teheran in 1968. Attention was once more drawn to the case on 8th October 1969, when a petition was submitted to the UN Human Rights Commission by three Ukrainian intellectuals.

The petitioners, Mykhailo Horyn, an industrial psychologist, Ivan Kandyba, a lawyer, and Lev Lukyanenko, also a lawyer, who are all in the early forties, had been sentenced to terms of imprisonment ranging from six to fifteen years in trials held *in camera*. They stated in their petition that they were being punished because they had demanded improvements in the conditions of Ukrainian workers and defended the right of Ukrainians to their language, educational system and culture. They complained that the Soviet Security Police (the KGB) 'failing to break us morally is trying to turn us from intellectuals into primitives by biological methods'. They alleged that poison was added to their food in the prison-camp and that food parcels which arrived twice a year were also poisoned. They described the symptoms of poisoning. 'Ten to fifteen minutes after eating one

¹ See the *New Leader*, New York, 15th June 1969; *The Observer*, London, 11th February 1968; *The New York Times*, 8th, 9th and 10th February 1968; *The New Statesman*, London, 23rd February 1969. A collection of documents by a Ukrainian journalist, V. M. Chornovil, has also been published in Great Britain under the title *The Portrait of Twenty 'Criminals'*, London, 1968. Another important collection will be published by Macmillan, London, in 1970.

felt a mild intoxication, followed by severe cramps in the centre of the brain, trembling of the hands, inability to concentrate. Headaches lasted for days.' The prisoners had complained to the camp authorities and, for their pains, had been put into single cells without light. They now asked the UN Commission to raise its voice in protest if it considered 'that such methods of re-educating human beings are incompatible with the laws of humanity'.

Further Political Trials and Infringements of Human Rights

The May 1969 petition of the Action Group, referred to at the beginning of this article, in effect, summarises and supplements the first nine issues of *The Chronicle*, which lists almost a thousand cases of infringements of human rights committed against individuals or ethnic, religious and other groups.

The list begins with the trial of Andrei Sinyavski and Yuli Daniel¹ and includes other trials of Soviet intellectuals sentenced for their non-conformist views and participation in protest movements: the cases of Ginzburg & Galanskov, Khaustov & Bukovsky, Marchenko, I. Belgoroskya, Gendler and Krachevsky. Then follow the trials of persons who protested against the occupation of Czechoslovakia: Pavel Litvinov, Larissa Daniel and others.² Less well-known trials are listed of persons who have alleged political and cultural discrimination against national minorities: the trial of Chornovil in the Ukraine and of Kalninsh in the Baltic Republic. More than twenty trials are listed involving about one hundred Tartars, who wish to return to their homeland in the Crimea. The list closes with the trials of those who have demanded their freedom of religion and of Soviet Jews, who have demanded the right to emigrate to Israel. The petition also draws attention to 'a particularly inhuman form of persecution: the detention of normal persons in mental hospitals because of their political convictions'.

The petition also refers to the arrests early last year which included that of Major-General Grigorenko, one of the best-known members of the civil rights movement in the Soviet Union, who had gone to Tashkent at the request of two thousand Crimean Tartars to act as defence witness at a trial. Mr Grigorenko, allegedly suffering from paranoia, has been confined in a mental hospital. Other names are those of Mr Yakhimovich, former *Kolkhoz* chairman in Latvia, and Ilya Gabay, a teacher of Russian literature, who had protested against political persecution. The petition concludes:

These latest arrests lead us to believe that the Soviet penal authorities are determined to suppress once and for all the activities of persons who protest against arbitrariness in our country.

¹ See *Bulletin of the ICJ*, No. 26, June 1966.

² See *The Review*, No. 1, March 1969.

Their view seems to have been confirmed. Five of the petition's signatories living in Kharkov are reported to have been dismissed from their employment. A signatory in Leningrad has been sent to a mental hospital. In Moscow, a student has been prevented from graduating, a crane operator has been threatened with dismissal and a mathematician, Alexander Lavrit, and a biologist, Sergei Kovalev, have lost their teaching posts at the University. Mrs Grigorenko, who also signed, has been expelled from the Communist Party.¹ In July last year, Genrik Altunyan was arrested,² as were Anatoly Levitin and Mustafa Djemilev, in September. Yuri Maltsev was committed to a mental institution in Moscow. Leonid Plyushch, a mathematician from Kiev, was questioned and his apartment searched. Seven of the ten members of the 'Action Group' living in Moscow were questioned by security forces but were not at that time detained.³

During Human Rights Year 1968, an article in the Government newspaper *Isvestia* stated that the Universal Declaration had become the generally accepted basis for man's political, social and economic rights and expressed regret that in western democracies 'rights and freedoms enshrined in their constitutions are turned into a farce'. It added that due to the tireless efforts of the Soviet Union, the United Nations had adopted a series of measures aimed at a better implementation of human rights. Indeed the Soviet Government should be given due credit for its work in support of the individual's rights—in countries other than its own. The allegations in the petitions from Soviet citizens to the United Nations are serious; they reveal not only infringements of certain human rights but a pattern of constant and systematic violations. If the facts contained in the petition are considered unfounded by the Soviet Government, it might agree to have the situation cleared up by a United Nations organ of inquiry.

Such an inquiry would not be unprecedented. The Human Rights Commission has recently decided to set up Special Working Groups to investigate alleged violations on human rights in Southern Africa and the Middle East—a decision which received the support of the Soviet Union.

¹ See *International Herald Tribune*, 19th June and 29th-30th November 1969.

² He was sentenced to 3 years' imprisonment in November.

³ See *The Guardian*, London, 16th September and 21st October 1969.

France: a Greater Protection for Human Rights

The French Declaration of the Rights of Man and the Citizen of 1789 is one of the great landmarks in the history of human rights. The French Codes, from the early eighteenth century onwards, were the most advanced in Europe in the protection that they gave to civil rights. The archaic and defective legal systems in the European countries to which Napoleon distributed his codes (at sword-point) still bear the imprint of enlightened French thought. Since that time however, French legal thought in this field has lost much of its former vigour. More advanced human rights provisions have been developed in foreign legal systems and embodied in international conventions, which reveal the lacunae in the French human rights system. The French Criminal Procedure Code of December 1958 was, it is true, a considerable improvement upon the former Criminal Investigation Code of 1808. However, French law taken as a whole and certain practices that have developed show that France's image as a champion of freedom is clearly in need of repair.

Late last year, a draft law was adopted by the Council of Ministers and is now on the agenda of the coming parliamentary session. The law, whose aim is to overcome the inadequacies of the French system, will affect a considerable number of provisions in the Criminal Procedure Code, the Criminal Code and the Civil Code. The subjects that it covers are as various as criminal procedure, liability for administrative acts, privacy, sentencing, prison conditions, probation, juvenile offenders, police records and transportation. The draft law is in five parts. The first two, concerning the right to freedom and security, provide for safeguards against arbitrary arrest and imprisonment which are not dissimilar to those prevailing in Common Law countries. The last three parts deal with certain human rights which have only recently been recognised as in need of protection.

This article will deal with some of the most interesting aspects of the draft law, which represents an important contribution to the protection of human rights.

Release before Trial

Although the principle that all persons are innocent until proved guilty was accepted, the Criminal Investigation Code of 1808 was stamped with the harsh and inquisitorial character of the French common law. The accused was normally held in detention from his arrest until the end of the trial. He was cut off from the outside world and had no access to counsel. Subsequent legislation was more favourable to the point where the Criminal Procedure Code of 1959 was able to state that 'pre-trial detention shall be an exceptional measure'. Under the law as it now stands the *juge d'instruction* can only order the accused to be detained for a period of four months. The order which must state the grounds on which it is based can be renewed for further four-monthly periods. The accused assisted by counsel has a right of appeal against his detention to a *chambre d'accusation*.

However the number of *juges d'instruction* has remained too small to deal with the rising number of accused persons with the result that cases are not disposed of as quickly as they should be. Moreover, an unnecessary number of persons are held in detention before their trial simply because the *juges d'instruction* have only two alternatives for dealing with them: remand in custody or unconditional release. This is one of the shortcomings that the draft law sets out to remedy.

For a start there is a significant change in terminology: the term 'pre-trial detention' is changed to 'provisional detention' and 'provisional release' has become simply 'release'. So as to prevent an accused from escaping or destroying evidence a judge will now have power to order his release under 'judicial supervision'. The accused may be prohibited from leaving a specified area, from visiting certain places or speaking to certain persons. He may be required to report periodically or even submit to house arrest.

The rules regarding release on bail, which up to now has been an exceptional measure, have been broadened and made more flexible. Bail can only be provided by the accused himself, but his financial position will be taken into account when it is fixed and provision is made for payment by instalments.

'Provisional detention' will no longer be ordered except where there is reason to fear that the accused may commit a breach of the peace, try to escape, tamper with evidence, commit acts of violence or a further offence, or refuse to submit to judicial supervision. The draft law makes provision for compensation to be paid to an accused whose case has been dismissed or not proceeded with or who has been acquitted. The amount will be assessed by a judicial committee composed of three judges of the Court of Cassation, who are to be appointed every year. The Committee's decision will not be motivated, will not be published and cannot be

appealed against. The cost of compensation will be borne by the State. This is in application of the French concept of State responsibility. Under this concept, whenever an individual suffers special hardship as a result of a State undertaking (in this case the criminal proceedings) he is entitled, even in the absence of a wrongful act or negligence, to compensation from the rest of the community.¹ Under the draft law however, the State will be able to bring proceedings for damages against the complainant or perjurer whose action was responsible for the trial.

Offences against State Security

Offences against State security are tried by a special court set up under a law of 15th January 1963. This Court is still unfortunately to continue, but the much criticised anomalies in the prosecution of security offences are to be modified. The maximum period during which a suspect can be held by the police will be reduced from ten days to six. Regrettably the period permitted during a state of emergency is to remain at fifteen days. However during the *instruction* stage, the ordinary rules requiring the judge to review the 'provisional detention' every four months are to apply to persons accused of security offences.

Privacy

The draft law contains provisions for the protection of the right to privacy. Neighbouring countries have adopted or are about to adopt laws in this field.² A unanimous recommendation to study legislation in this field was adopted by the Legal Committee of the Consultative Assembly of the Council of Europe on 17th January 1968.³

There is practically no privacy legislation in France at the moment; rules protecting the right have however been developed by the Courts. The Court of Cassation, in its annual report, has suggested that the right should be embodied in the Civil Code. Under the draft law: 'Everyone has the right to privacy. The Courts may order such measures as confiscation, seizure and continuing fines in order to prevent invasions of privacy...'. It is

¹ For an interesting illustration of the concept of State responsibility, see *The Review* No. 1, 'Judicial Application of the Rule of Law' pp. 43-45.

² In Germany a law was passed on 22nd December 1967 to sanction the abusive use of sound recorders. In Switzerland a Federal law passed on 20th December 1968 strengthens the criminal law in the field of privacy; a draft law is being discussed in Belgium and in Britain the question is being given detailed study.

³ Doc. No. 2326 of 22nd January 1968.

certainly encouraging to find Article 12 of the Universal Declaration¹ incorporated in French law.

Certain invasions of privacy will be made a criminal offence. These provisions will cover such matters as 'eavesdropping' in a private place, the recording or broadcasting of private conversations, the unauthorised photographing of persons and the retention, disclosure or use of such photographs or sound recordings. Criminal proceedings may also be taken against directors or managers of companies which have committed the offence or profited from it.

The Sentencing of Offenders

The draft law will introduce reforms in sentencing and will extend the use of probation. The granting of freedom on parole is to become more common. This has previously been used as a means of rehabilitating a long-term prisoner to a normal professional life. It can under the draft law be substituted for a sentence of short-term² imprisonment and will thus enable convicted persons to remain in contact with society. They will be able to go on with their work, studies or even take medical treatment.

Much more use is to be made of the probation system, which has produced good results in France. The terms of the probation orders will be made more flexible, particularly in regard to persons who have infringed an order concerning them. These persons will no longer automatically have to serve the suspended sentence which always accompanies a probation order. The Courts will have power to extend the period of probation or to commit the offender to prison for a lesser period than that of the suspended sentence.

Certain favourable provisions regarding the consequences of a conviction at present accorded to persons under eighteen will under the draft law apply to persons under twenty-one. The convictions of all minors will no longer be mentioned on the police records that are normally available to the public—including, for instance, prospective employers. A note of the conviction will however be kept for the prosecuting authorities.

The Abolition of Transportation

The sentence of transportation for life to a prison colony overseas³ which was, until recently, passed on incorrigible offenders will be abolished altogether. This harsh and archaic sentence, under

¹ 'No one will 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.'

² Up to six months.

³ In French Guiana.

which society permanently rid itself of habitual criminals (who may only have been convicted of a series of relatively minor offences), is clearly incompatible with human dignity and its abolition can only be viewed with unqualified approval.

The new draft law as a whole reflects recent trends in the legal systems of certain other countries and should produce an appreciable improvement in the protection of human rights. It is to be hoped that its provisions will be given the fullest and most liberal implementation and that France, whose ratification of the European Human Rights Convention is still awaited, will always remain open to new developments.

Individual Petition and International Law

Some time in May of last year, a group of Soviet citizens entered the United Nations Information Centre in Moscow and requested it to transmit a petition alleging violations of human rights in the USSR to the UN Headquarters in New York. The Soviet director refused to forward the letter, which finally reached its destination via a Non-Governmental Organisation.¹

On 28th October 1969, the United Nations issued Note No.3572 concerning a recent directive of the Secretary-General instructing United Nations Information Centres in the various Member States not to receive or forward communications relating to human rights.

On 17th December, twenty-two Non-Governmental International Organisations² having consultative status with the United Nations protested against the directive. They emphasised that this channel of communication had been in use for a long time and was of considerable importance especially in those Member States where ordinary citizens had difficulty in communicating directly with UN Headquarters.³

These events have drawn attention to a rather neglected aspect of law which is fundamental to the protection of human rights,

¹ *Amnesty International* in London.

² Including the International Commission of Jurists.

³ Letter of 17th December 1969 from the President of the Ad Hoc Human Rights Committee of the NGO's in New York to Secretary-General U Thant.

namely the right of petition. The position in international law is outlined below.

Within the United Nations System

Within the United Nations system, as in contemporary international law, the right of petition is recognised, but little provision is made for its exercise.

In relation to the people living within the United Nations Trusteeship System, the Trusteeship Council and the Fourth Committee of the General Assembly are empowered to receive petitions—a power inherited from the League of Nations. Two other organs of the General Assembly have subsequently been given this power: the Special Committee on Apartheid and the Decolonisation Committee, known as the 'Committee of Twenty-Four'. The United Nations has worked hard in this field and its efforts, despite the survival of colonial or semi-colonial regimes, have met with some success.

The right of petition has found a place in various human rights conventions adopted by the United Nations.

The International Convention on the Elimination of All Forms of Racial Discrimination, adopted in 1965 and already in force, has incorporated the right of petition as one of its provisions. Under Article 14 a State Party may at any time declare that it recognises the competence of the Committee, set up by the Convention to supervise its application, to receive and consider communications from individuals or groups of individuals within its jurisdiction claiming to be victims of a violation by that State Party of any of the rights set forth in the Convention.

The International Covenant on Civil and Political Rights, adopted in 1966 but not yet in force, extends the right of petition to cover *all* civil and political rights. The relevant provision however is found not in the Covenant itself but in an Optional Protocol annexed to it. The provision is similar to that in the Convention against Racial Discrimination. However, the acceptance and implementation of these optional provisions, on anything approaching a universal scale, is unlikely in the foreseeable future. One must conclude that although the right of petition is recognised in these international Conventions, the provisions relating to its exercise are weak.¹

Independently of the international conventions, it is possible under the United Nations system to send communications to the Organisation drawing attention to violations of fundamental rights. These petitions are dealt with purely as an administrative matter:

¹ See John Humphrey, 'Human Rights, the United Nations and 1968', *Journal of the ICJ*, Vol. IX, No. 1, June 1968, p. 12.

individuals send communications to the Secretariat, which notifies the Member States concerned. The problem had always been to know what to do with the communications, which arrive by the thousands and have amounted over the years to tens of thousands. The question was put to the Human Rights Commission, which adopted a Resolution in 1959, embodied in ECOSOC Resolution 728 F(XXVIII), in which it admitted its inability to do anything. The petitions were then stowed away in the archives. Since 1967 however there have been new developments.

In 1967 the functions of the Human Rights Commission were enlarged when it was requested to investigate violations of human rights in South Africa; and the power that it was given to receive and examine petitions was extended in 1969 to the territories occupied by Israel.

Finally, the Human Rights Commission adopted, at the suggestion of its Sub-Commission, a Resolution, subsequently passed by ECOSOC, which authorised the Sub-Commission to examine petitions according to a specified procedure. These Resolutions may well open new possibilities for the protection of human rights within the framework of the United Nations.¹

In the light of these developments, the directive forbidding the Information Centres to forward communications or petitions to New York appears even more regrettable.

However rudimentary the application of the right of petition may be in the United Nations, there do exist in international law two regional conventions which not only recognise the right of petition, but also provide detailed procedures for its implementation. They are the European and American Conventions on Human Rights.²

At the Regional Level

Under the European Convention on Human Rights the Commission that it sets up may receive petitions³ from anyone claiming to be the victim of a violation by one of the Contracting States of the rights in the Convention. The Commission also allows applications to be made by a representative of the victim or by anyone else if the victim cannot act himself. Furthermore the term 'victim' has not been given a restrictive interpretation: a close relative or a third party having a genuine personal interest in obtaining a remedy against the violation is entitled to apply to the Commission on his own initiative.

¹ See *The Review* No. 2, p. 28.

² The newly adopted Inter-American Convention (reproduced on pp. 44-62 below) is the subject of another article in this issue of *The Review*.

³ Provided that its competence has been recognised (see below).

Only a State which has ratified the Convention may be the object of an application before the Commission; and it must in addition have expressly recognised the competence of the Commission to receive individual applications. (The Inter-American Convention provides for the right of individual petition whether or not the competence of the analogous Inter-American Commission has been recognised by the State concerned). The Commission may only deal with the matter after all domestic remedies have been exhausted—except where the remedies available in the State concerned are inadequate.¹

States which have recognised the Commission's competence to receive individual applications 'undertake not to hinder in any way the effective exercise of this right' (Article 25 (1)). All individuals thus have an effective right of access to the Commission. Even prisoners have the right to correspond freely with the Commission. Their correspondence may be examined by the prison authorities provided that such action is not arbitrary or abusive and does not hinder the effective exercise of the applicant's right.²

An Austrian law of 1st January 1970 gives prisoners an absolute right to correspond with the European Commission. A Government circular along the same lines had already been issued to prison authorities in West Germany. Prison Governors in the United Kingdom have been instructed to address the petitions to the Commission without delay (after they have been read). In Belgium the prison authorities must post letters addressed to the Commission unopened.

Under a recent European Agreement drawn up by the Committee of Experts on Human Rights,³ immunity from legal process in respect of oral or written statements to the Commission or the Court is granted to applicants, their legal advisers and witnesses, experts or other persons asked to take part in proceedings before the Commission or the Court. Under Article 3 (2) of the Agreement:

As regards persons under detention, the exercise of this right shall imply in particular that: if their correspondence is examined by the competent authorities, its despatch and delivery shall nevertheless take place without undue delay and without alteration; such persons shall not be subject to disciplinary measures in any form on account of any communication sent through the proper channels to the Commission or the Court; such persons shall have the right to correspond, and consult out of hearing of other persons, with a lawyer... in regard to an application to the Commission...

¹ See on this point, 'Applications before European Commission of Human Rights against Greece', *The Review* No. 4, p. 43.

² *Yearbook of the European Convention on Human Rights*, Vol. III, p. 428 (Application No. 833/60) and p. 444 (Application No. 793/60).

³ *European Agreement relating to persons participating in proceedings of the European Commission and Court of Human Rights* signed on 6th May 1969 by Belgium, Denmark, the Federal Republic of Germany, Luxembourg, Malta, Norway, Sweden and the United Kingdom.

On the European and American continents, the individual thus has a realistic right to a hearing before the regional Commissions of Human Rights, which receive hundreds of petitions every year. A large number of them are declared inadmissible; but this does not alter the fact that an effective remedy is available in those regions before a supranational organ.

It will take time unfortunately for such a system to be established at the level of the United Nations; and the position has not been improved by the Secretary General's directive of 28th October last year. However, even today a limited right of petition is exercised before certain UN bodies; and great hopes should be placed in the proposal for a UN High Commissioner for Human Rights, one of whose tasks would be to deal with individual petitions. This proposal was first adopted by the UN Human Rights Commission and later by the Economic and Social Council.¹ It has for the last three years been on the agenda of the General Assembly.

If the General Assembly were this year, the 25th anniversary of the United Nations, to accept the proposal for a High Commissioner, a tremendous advance would be made in the international protection of the individual against violations of his fundamental rights.

¹ Resolution 1237 (XLII) of 6th June 1967.

Special Study

WATER AND AIR POLLUTION AND THE PUBLIC HEALTH

by

ROBERT KIEFÉ *

The pollution of the earth's water and atmosphere is a grave threat to public health. As such, it raises technical and legal problems that call for urgent action.

The problem is receiving increasing attention in many countries. In a message to Congress on February 10th of this year, President Nixon proposed a large-scale programme to combat all aspects of pollution in the United States. He called for the establishment of federal water and air quality standards with fines of up to \$10,000 a day for violations. At the same time it was announced that 11 American companies were to be charged with polluting water under a law of 1899 prohibiting the dumping of refuse in navigable waters. In Great Britain the question has been discussed on many occasions recently, and on February 17th the Prime Minister announced the setting up of a Royal Commission on Environmental Pollution. In France a Commission set up by the Minister of Health to look into the problem submitted its report in the middle of February; at the same time, the post of Director for the Protection of the Environment was created by the Minister of Agriculture.

An eminent scientist, Professor Jean Rostand of the *Académie Française*, in his preface to Professor Despax's excellent book on water pollution and the legal problems involved, writes:

No one who is concerned about the fate of the human species can ignore the lack of foresight, the levity and the alarming rashness that men today are showing towards nature. With an eye only to immediate returns, often heedless of the consequences of their impatience and avidity, they are recklessly exploiting the resources of a small planet that are far from inexhaustible.

* Attorney at the Court of Appeal of Paris; Jurisconsult at the Ministry of Agriculture; Legal Adviser to the Société des Experts-Chimistes de France; Secretary-General of the International Association of Chemical Experts.

And he adds:

We must not resign ourselves to the contamination of the earth's water as if it were the inevitable price to be paid for an industrial society . . . Acceptable solutions can be found in many cases if there is a firm determination to combat the carelessness, negligence and inertia of States and defy the economic power of the polluters.

Jean Rostand concludes with a remark that should make every jurist reflect:

Ever closer co-operation is required between scientists and jurists, between those who point out the dangers and those who provide safeguards against them.

This is a thesis I have tried to uphold for many years before national and international associations dedicated to the protection of public health.

The need for close collaboration between scientists and jurists cannot be stressed too much. While scientists and technicians can discover ways of protecting man from his own inventions, it is for jurists to draft laws for attenuating the harmful effects of rapid technological advances in every field. Vested interests may oppose the measures required. But Governments must resist such pressures and make the necessary rules binding on industry and the public.

Moreover, as Professor Schatzman of the Paris Faculty of Science has stressed,¹ the protection of nature is not a national but an international problem. This is now generally recognised. The European Conservation Conference, held last February under the auspices of the Council of Europe, recommended that internationally agreed standards for European industry should be drawn up to combat environmental pollution and suggested that the right to a healthy environment should be annexed to the European Convention on Human Rights. In addition, an agreement for joint co-operation in solving problems of air and water pollution was recently signed by the Soviet Union and the United States.

I. POLLUTION OF THE SEA

1. *Oil Pollution: the Discharge of Oil at Sea*

The pollution of the sea by oil creates serious public health problems. If this danger is to be combatted, difficult questions of national and international law must be settled.

¹ In *Scientific World* (No. 3, 1967), the publication of the World Federation of Scientific Workers.

Two international conventions signed at London in 1954 and 1962 deal with the discharge of oil at sea and have been embodied in national legislations.¹ They are still inadequate, however, and the grave problems facing scientists and law-makers are far from being solved.

For one thing, States should be permitted a wide zone of protection around their coasts, within which they would be able to take the necessary action to prevent pollution and to combat advancing oil-slicks.² In this connection, it will probably be necessary to replace the narrow notion of territorial sea with that of the continental shelf. States moreover should have a contiguous zone extending for some distance beyond the new limits of their territorial sea.

In addition, the various countries should work out and adopt detailed laws for the prevention of pollution.

In short, many problems in connection with water pollution and indeed pollution in all its aspects can be solved if appropriate measures are taken at the national level, though some—and doubtless the most serious—will require bold international co-operation.

(a) *The International Conventions*

The first convention³ was adopted at a Conference in London on 12th May 1954, together with eight resolutions, the first of which puts the problem in a nutshell. It states in effect that the discharge at sea of oil or oily mixtures should be outlawed as soon as possible.

The Conference had noted that the coastal areas and waters of many countries were seriously polluted by oil. Such pollution caused considerable damage to the coast and the beaches, jeopardizing their use for health and holiday resorts and prejudicing the tourist industry. It led to the destruction of sea birds and other life and probably had harmful effects on fish and the organisms they feed on. The Conference recognised that public opinion in many countries was alarmed by the extent and growing seriousness of this threat.

The persistent elements causing pollution are crude oil, fuel oil, heavy diesel oil and lubricating oil. Although there is no definite proof that such products remain indefinitely on the surface of the sea, it is known that they stay there for a long time and may be

¹ See for instance a French Law of 26th December 1964 (see below) and the British *Oil in Navigable Waters Act* 1955.

² The 1969 Convention relating to Intervention on the High Seas (see below) goes some way towards fulfilling this need.

³ International Convention for the Prevention of Pollution of the Sea by Oil.

carried considerable distances by currents, wind and the waves, eventually forming deposits on the shore. Large quantities of oil are regularly emptied into the sea by tankers, in cleaning their tanks and on discharging their polluted ballast water. Nor is this the only source of pollution. Other vessels that use their oil-fuel tanks to take in ballast also discharge oil-polluted water into the sea.

Equipment can be installed on tankers that enable them to keep oily water on board and discharge it into receiving plants at loading points or repair stations. The pollution caused by the discharge into sea water of the ballast of vessels other than tankers can be reduced or prevented by means of efficient separators or by building special plants at ports for receiving oil residues.

The only completely effective method known for preventing pollution of this type is to prohibit the discharge of oil or oily mixtures into the sea.

The 1954 Convention as amended in 1962 declares vast stretches of the sea to be 'Prohibited Zones'.¹ Under Article III, oil tankers² may not discharge oil or oily mixtures in Prohibited Zones, save in strictly defined exceptional circumstances (such as an emergency or unavoidable leakage). Other ships² must discharge oil or oily mixtures as far as possible from land. Ships of over 20,000 tons may not, save in an emergency situation, discharge oil or oily mixtures anywhere in the sea. In special circumstances they may however do so outside Prohibited Zones but they must report the matter to their Government. Ships must keep available for inspection an oil record book, in which they are to record the occasions when they have discharged oil or cleaned their tanks (Article IX).

States are bound by Article VI to make infringements of Articles III and IX a criminal offence and to provide adequate penalties. They must also, under Article VIII, take all appropriate steps to promote the provisions of such facilities as oil separators on ships and receiving plants at loading points or repair stations (mentioned above).

Article X of the Convention (as amended) provides for international action that is a start, hesitant but commendable, towards international criminal sanctions:

1. Any Contracting Government may furnish to the Government of the relevant territory... particulars in writing of evidence that any provision of the present Convention has been contravened in respect

¹ The exact geographical situation of these zones is set out in an Annex to the Convention. It is worth noting that *all* sea areas within 50 miles from land are Prohibited Zones.

² The Convention only applies to oil tankers of over 150 tons and other ships of over 500 tons. But States must take steps as far as reasonable and practicable to apply the provisions of the Convention to all ships (Article II).

of [a ship of that Government] wheresoever the alleged contravention may have taken place . . .

2. Upon receiving such particulars, the Government so informed shall investigate the matter, and . . . [if it] is satisfied that sufficient evidence is available in the form required by its law to enable proceedings against the owner or master of the ship . . . , it shall cause such proceedings to be taken as soon as possible and shall inform the other Government . . . of the result of such proceedings.

As is usual, the competent court for settling any disputes is the International Court of Justice, unless the Governments agree to submit the dispute to arbitration (Article XIII).

(b) France: the Law of 26th December 1964

To illustrate the incorporation of the London Conventions in a municipal law, a brief analysis of the French Law of 26th December 1964 is perhaps useful here.

Section 1 lays down the penalties for failure to observe the 1954 Convention. They are severe, and it is only right that they should be: a fine of between 2,000 and 20,000 francs and, in the event of repetition, from ten days' to six months' imprisonment and a fine of between 5,000 and 50,000 francs for the master of any French vessel found guilty of infringing Article III of the 1954 Convention. The owner or charterer of a vessel who expressly orders an infringement to be committed is liable to twice the same penalties.

Any owner or charterer of a vessel who has not expressly ordered the master to comply with the provisions of Article III of the Convention may be charged as an accessory.

Section 2 as amended extends the same penalties to the master of a French vessel of any tonnage¹ belonging to the following categories:

- (i) tankers;
- (ii) other vessels when their installed propulsive engine power exceeds 199 HP;
- (iii) Harbour boats, lighters and river tankers.

Under Section 6, the reports of the authorities empowered to investigate alleged infringements are to be regarded as binding until the contrary has been proved and they are to be submitted at once to the prosecuting authorities.

¹ See preceding footnote.

Oil Pollution from Accidents at Sea

There have in recent times been a number of ship disasters, in which vast sheets of oil have been left floating on the sea. The damage caused in the most well-known case, that of the giant *Torrey Canyon* three years ago, was estimated by France and the United Kingdom to have amounted to fourteen million US dollars.

In November of last year, the question of pollution arising from accidents was discussed at an International Conference held at Brussels by the Intergovernmental Maritime Consultative Organisation (IMCO).

The Conference adopted two Conventions. The first¹ allows Contracting States to take measures on the high seas to protect their coastline or related interests from pollution or threat of pollution of the sea by oil, following upon a maritime casualty which may reasonably be expected to result in major harmful consequences. The measures must be such as are, in the circumstances, reasonable and proportionate to the actual or threatened damage. They may be taken against any 'sea-going vessel' other than warships or ships that are being used on government non-commercial service.

The other Convention² imposes strict liability³ on the owner of any oil-carrying ship from which oil has escaped after an incident at sea. Unless the incident occurred as a result of the actual fault or privity of the owner, he may limit his liability for any one incident to the equivalent of US \$132 for each ton of the ship's tonnage. There is a maximum limit of liability of approximately US \$14,000,000. Ships carrying over 2,000 tons of oil must maintain insurance or other financial security up to the amount for which they may be made liable under the Convention, and States are in effect to ensure that this provision is respected not only by ships flying their flags but by all ships (wherever registered) which enter or leave their ports and are at the time carrying more than 2,000 tons of oil.

A working group had been set up by the Conference to consider the establishment of a supplementary international fund to cover damage in cases in which inadequate compensation is provided under the Convention. The Conference requested IMCO to draft such a compensation scheme with a view to its international adoption.

¹ International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties.

² International Convention on Civil Liability for Oil Pollution Damage.

³ The owner is relieved of liability in three exceptional cases, covering acts of war or natural catastrophe, intentional acts of a third party and negligence on the part of those responsible for the maintenance of navigational aids.

2. *Pollution from Radioactivity*

(a) Recent investigations have shown that the artificial radioactivity of the sea is at present mainly due to fall-out from nuclear explosions.

(b) Up to now radioactive waste has been stored in submerged concrete boxes; these boxes apparently disintegrate and the radioactive waste thus released pollutes the sea to a dangerous level. It was recently reported that 11,000 metric tons of radioactive products had been submerged last summer under the supervision of the European Nuclear Energy Agency, though experts have some doubts about whether the precautions taken will prove to be foolproof, especially in the long run.

Here again it is clear, from the detailed studies made by scientists, that jurists will have to formulate rules of international law¹ for the protection of public health.

3. *Bacteriological Pollution*

Nearly all earth bacteria that pollute the sea are carried by sullage which, coming from the land, is naturally or artificially emptied into water ultimately reaching the sea. Strict and detailed regulations are also needed for combatting this threat.

Every effort must be made to awake the public to the danger of eating certain shell-fish bred in polluted waters. Many countries have in fact already issued regulations governing the breeding and sale of shell-fish.

If the problems raised by water pollution are to be tackled effectively, an international legal commission should be set up on a permanent basis for the following reasons:

(a) The problems to be solved by each country at a strictly national level are so intricate as to require study on a comparative law basis; jurists and government representatives of each participating country will have to familiarise themselves with the laws and regulations drafted by their colleagues in other countries and with the relevant judicial decisions. Moreover judges and legal practitioners who have special knowledge of the law as applied in practice will be able to point out to the other jurists the various merits or demerits of a given provision.

¹The International Atomic Energy Agency was asked by the Geneva Conference on the Law of the Sea (1958) to assist States in drafting internationally acceptable regulations to prevent pollution of the sea by radioactive materials in amounts which would adversely affect man and his marine resources.

Just as scientists exchange information, so jurists—one of whose roles is to apply the findings of scientists to the field of law—must keep one another informed.

(b) If they are to be really effective, laws for the prevention of pollution must be applicable at the international level. The need for international regulation is illustrated by the 1954 and 1962 Conventions on oil pollution. As the threats to public health increase the recurrent problem of international penal sanctions becomes more urgent. International criminal law in this field is still at an early stage, and jurists everywhere must join forces in formulating the necessary rules.

H. POLLUTION OF RIVERS

The dangers of river pollution were described in a significant article by Dr Odette Lacambre of the French Ministry of Health, published in the journal *L'Éducation* (October 1969). Dr Lacambre points out that 'while the damage caused to the coast by oil is disquieting and spectacular, fresh water pollution, whether resulting from normal use or an accident, is even more dangerous and in the long run may lead to the destruction of our water resources'.

A French law of 16th December 1964 relating to watercourses and the prevention of pollution attempts to remedy the situation by establishing a permanent secretariat to study water problems in France.

Under the auspices of the Council of Europe, a Charter on Water was promulgated at Strasbourg on 6th May 1968. It began by recognising that life is not possible without water, which is essential to all human activities, and ended with the warning that water knows no frontiers but is a common resource demanding international co-operation.

The inefficacy of purely national measures against water pollution is stressed by Professor Despax in his book referred to above. This is a further reason why jurists should now set about drafting the necessary rules of international law.

The extremely complex questions involved in formulating such rules cannot be examined in detail here. One can only conclude as Mr Fischerhof has done, in *Public Health Papers* (WHO), No. 13, p. 82, that:

Whenever private international law has failed to make adequate provision for compensation, the problem of liability as between states must be attacked at a higher level, that of public international law, i.e. the law of nations.

Various treaties have indeed set up Commissions for the protection of international rivers and lakes. These include:

the Commission for the Protection of the Waters of Lake Constance (Convention of 27th October 1960 between Baden, Wurtemberg, Bavaria, Austria and Switzerland);

the Commission for the Protection of the Waters of Lake Lemán (Convention of 16th November 1962 between Switzerland and France);

the Commission of the Saar and the Moselle (Protocol of 1st July 1962 between France and the Federal Republic of Germany); and

the International Commission for the Protection of the Rhine from Pollution (Agreement of 29th April 1963 between the Federal Republic of Germany, France, Luxemburg, the Netherlands and Switzerland, in force since 1st May 1965).

III. POLLUTION OF THE ATMOSPHERE

This too, is an extremely complex problem which cannot be dealt with fully in an article that aims solely at summarising the problem and suggesting possible solutions.¹

To illustrate the effects of atmospheric pollution on human beings, some major disasters caused by pollution might be referred to. In December 1930, a very dense fog, which completely prevented the air from circulating, covered the Meuse valley. The gas, smoke and unburnt substances emitted by industries producing large amounts of pollutants—steel mills, glass-works, lime-kilns, cement factories, sulphuric acid and fertilizer plants—remained motionless in the air. By the fifth day sixty persons had died, mainly old or weak persons and persons suffering from asthma or heart disease.

Eighteen years later, in October 1948, fog and a total absence of wind brought about a concentration of pollutants in the heavily industrialized region of Donora, Pennsylvania, near the steel-producing region of Pittsburg. Infants, old persons and persons suffering from asthma, chronic bronchitis, emphysema and heart diseases were the ones most affected.

In London, between 5th and 9th November 1952, extremely dense 'smog' covered the entire valley of the Thames. More than 4,000 persons died from respiratory and cardiovascular diseases caused by the concentration of sulphurous gases.

¹ A book I would highly recommend is *Pollution Atmosphérique* by Paul Chovin, Director of the Central Laboratory of the Paris Police Headquarters, and André Roussel, Professor at the Paris Faculty of Medicine and Director of the Atmospheric Pollution Research Centre.

Apart from such dramatic accidents, atmospheric pollution constantly affects people's health, causing chronic bronchitis, respiratory obstructions, asthma, emphysema and cardiovascular diseases.

Carbon monoxide has ill effects on health, though they are partly compensated by an increase in the number of red blood cells.

Lastly, atmospheric pollution causes general fatigue by reducing the supply of oxygen or by its action on the central or peripheral nervous system. The further question has been raised of the relation between lung cancer and atmospheric pollution. This is such a serious matter as to demand detailed investigation.

The main provisions adopted in various countries for combatting atmospheric pollution are briefly outlined below.

1. *In France*, a law of 2nd August 1961, replacing one of 19th December 1917, specifically relates to atmospheric pollution and odours.

The explanatory note at the beginning of the law when it was submitted for adoption by the Minister of Public Health and Population on 6th July 1960 deserves to be quoted:

The public is legitimately worried about the dangers created for the population by the pollution of the atmosphere. The problem has now reached alarming proportions. Certain normal trends of modern civilisation—the concentration of the population in towns, the corresponding centralization of many industries, the increase in urban motor-car traffic—have steadily aggravated a situation that has long been disquieting.

This skeleton law, as Georges Levantal calls it in an excellent commentary, is designed 'to establish principles of action flexible enough to be adaptable to any situation, but built upon one general prohibition—against atmospheric pollution'. The law provides a wide range of criminal sanctions and does not affect the right of a person to take civil proceedings for damages. The law also provides for the establishment of a national service to combat atmospheric pollution.

A number of decrees and orders have also been issued to regulate the emission of noxious or unpleasant fumes by motor-car engines.

A ministerial circular addressed to all French prefects on 15th January 1964 reminds prefects 'that they are empowered to take action in the most flagrant cases in order to put a stop to any polluting emission which constitutes a threat to public health'.

It should be mentioned that, on 30th April 1969, two decrees were issued, one relating to fixed heating installations and smoke pipes and the other to the ventilation of buildings.

Lastly, on 18th May 1961, the Minister of Public Health and Population, addressing the National Assembly, pointed out that 'if the problem is to be dealt with in all its aspects, action will have to be taken within the framework of international institutions and through the channels of international agreements'.

2. Legislation in Other Countries

A list of all the laws enacted in other countries would be outside the scope of this article. However, the principal laws and regulations existing in the various countries for the prevention of pollution and harmful substances are listed in a report prepared by the General Department of Scientific and Technical Research in France.

In *Great Britain*, there are two principal laws: the 1956 Clean Air Act, amended in 1968, and the 1906 Alkali Act, amended in 1928 and again in 1958.

A very interesting study on the Clean Air Act by Mr Perry, Chief Public Health Inspector, appeared in *Environmental Health*, an excellent review published by the Association of Public Health Inspectors of England.

The author points out that existing legislation aims at reducing excessive smoke and dust from buildings or industries, and he looks forward to the day when comparable legislation will make it possible to combat pollution caused by motor-cars as well as industrial odours. It is also desirable, he says, that the Minister responsible should draw up the necessary regulations for implementing existing legislation.

In *Belgium*, a law of 28th December 1964 clearly defines pollution as:

Any emission in the air of gaseous, liquid or solid substances, whatever the source, that may have ill effects on human health, harm animals or plants, or cause damage to property and sites.

In the *United States*, the Clean Air Act of 17th December 1963, amended by an Act of 20th October 1965, also gives a very clear definition of atmospheric pollution, covering contaminants in the air which have a Ringlemann density of 2 or more and which are prejudicial to the comfort, health or safety of persons or are harmful to property.

In *West Germany*, some sixty directives have already been issued under the auspices of the *Reinhaltung der Luft* Commission. Under

German law rules for protection are applicable regardless of the population density of the area concerned.

In the *USSR*, the maximum permissible concentration of 67 substances found most frequently in the atmosphere has been laid down. In determining the maximum permissible concentration, the principle of the 'difficult sector' is applied; this means that the standards are established with the most vulnerable objects in mind. There must be no harmful or unpleasant effects, direct or indirect, on the individual, nor any harmful influence on his general state, his working capacity or his spirits.

In examining the measures adopted to combat pollution, a jurist is inevitably struck by the wide dispersion of effort, at both the national and the international levels.

Once again I should like to stress the need for close and constant co-operation between specialists in all relevant fields and jurists, and between scientists and jurists of different countries. Adequate rules must be drawn up in national legal systems and in international law for the protection of public health.¹

¹ *Editor's Note.* Since this article was written some very interesting developments have occurred in the field of pollution, which we have taken the liberty of including in the text of this article.

Judicial Application of the Rule of Law

SOME NOTEWORTHY PRONOUNCEMENTS ON THE RULE OF LAW AND PERSONAL LIBERTY

by

L. G. WEERAMANTRY *

This issue of *The Review* deals with three interesting cases pertaining to the Rule of Law chosen from three different countries.

THE MEANING, IMPORTANCE AND VALUE OF THE RULE OF LAW

The Legal Profession a most vital Part of the State Machinery

This was a case relating to professional discipline in which it was held that a practising advocate should not engage himself in activities or in business inconsistent with the etiquette and strict ethics of the legal profession. The judgment of the Supreme Court in this case, which was delivered by Mr Justice Vassiliades, its President, is however of importance primarily on account of its observations on the meaning, importance and value of the Rule of Law. There have been indeed few judgments in recent times carrying observations as good as these on the Rule of Law as opposed to the Rule of Man and as a most valuable heritage cherished by those still able to enjoy it.

In the course of his judgment, having stressed the importance of the Rule of Law Mr Justice Vassiliades went on to say:

‘Now the Rule of Law can only exist where law is declared and applied by independent Courts — and independent Courts can only exist where they are manned by Judges recruited from an honourable and dignified legal profession, standing fast and proud on its tradition; and on the principles which it generated in the course of time.

‘In this young Republic of ours, the structure of the State is based on the principle of separation of powers; the executive, the legislative and the judicial. Parts IX and X of the Constitution deal

* B.A. (London); Advocate, Ceylon Bar; of Gray's Inn, Barrister-at-Law; Senior Legal Officer, International Commission of Jurists.

with the exercise of the judicial power. The Courts of Justice Law, 1960 (Law 14 of 1960) and the Administration of Justice (Miscellaneous Provisions) Law, 1964 (Law 33 of 1964) provide for the establishment of the Courts in the Republic, entrusted with the duties and responsibilities arising from the exercise of the judicial power in the administration of Justice according to law. The functioning of these Courts, so vital and important for all people found in the country, rests on their principal officers: the judges and the advocates. They all come from the legal profession which, both in fact and appearance, *must be a most honourable society of dedicated and dignified men of the law*. Their practices and their general conduct must strictly conform to the rules and the etiquette of an honourable profession, enshrined in the dignity of a noble tradition.'

Supreme Court of Cyprus

*IN THE MATTER OF SECTION 17 (5) OF THE ADVOCATES LAW AND
IN THE MATTER OF C.D. AN ADVOCATE*

Before: Vassiliades, President, Triantafyllides, Josephides, Stavrinides, Loizou, Hadjianastassiou, JJ.

Decided: June 17, 1969

(1969) 11 J.S.C., pp. 1285-1301

THE RIGHT TO TRADE UNION MEMBERSHIP

Employer cannot question Candidates for Employment on their Trade Union Affiliations

This decision of the Social Chamber of the Cour de Cassation of France is of great importance in the field of labour law. It holds that the fact that an employer invites candidates for employment to fill up a questionnaire including the question 'Have you any Trade Union affiliations?' implies that he will take into consideration the trade union affiliations of its prospective employees and is therefore a violation of the first article of Book III of the Labour Code.

In this case the Société Anonyme 'Roclaine' had invited candidates for a post in the company to fill up a questionnaire which included the particular question already referred to. The Confédération Française Démocratique de Travail (CFDT), a trade union, filed action against the defendant Company for having included this question in its questionnaire.

The plaintiff trade union, having failed in its claim before the Court of Appeal of Paris on March 22, 1968, appealed to the Cour de Cassation. On May 13, 1969, the Cour de Cassation quashed the order of the Court of Appeal of Paris and directed that the case be

sent to a different court of appeal for a fresh decision on the basis that it was not permissible to ask prospective employees a question such as the one challenged. The defendant Company was ordered to pay the plaintiff Union a sum of Fr. 12.30 over and above the costs of the final appeal.

The main reason underlying the Cour de Cassation's decision was that the question was of such a nature as to enable the employer to make his choice on the basis of a prohibited criterion. An absolute prohibition of this type of question was necessary and it was immaterial whether actual damage had resulted. Otherwise employers would consider themselves free to ask all kinds of inadmissible questions. It was not sufficient that candidates for employment could refuse to reply, since this would almost always put them in a disadvantageous position. One could not regard the question in point as being merely superfluous or valueless and must assume that it had been put for a definite purpose.

The decision of the Court was clear and unambiguous. It stressed that it was of little importance whether or not an actual discriminatory step was taken against a candidate or an employee on the basis of questions such as the one attacked. The question was in itself a violation of the freedom to belong to a trade union guaranteed by the Labour Code and the Constitution. The judgment is important in that it indicates the keenness of the Judiciary to interpret strictly the provisions of the first article of Book III of the Labour Code and to uphold trade union freedom in a realistic fashion.

Cour de Cassation, France

CONFÉDÉRATION FRANÇAISE DÉMOCRATIQUE DE TRAVAIL v. SOCIÉTÉ ANONYME « ROCLAINE »

President of the Court: M. Vigneron

Decided: May 13, 1969

Quotidien Juridique, 1^{er} Novembre 1969, pp. 19-21

EQUALITY BEFORE THE LAW

Legislation Discrimination against a particular Race violates Canadian Bill of Rights

In this case Joseph Drybones, an Indian, was charged in a Magistrate's Court of the Northwest Territories of Canada with having been 'unlawfully intoxicated off a reserve' contrary to s.94(b) of the Indian Act. He was convicted and sentenced to a fine of \$10 and costs and in default to three days in custody. The conviction and sentence were set aside in an appeal to the Territorial Court.

The Crown with leave of Court appealed against the order of acquittal to the Supreme Court of Canada. The Supreme Court dismissed the appeal and upheld the order of acquittal.

The important question raised in this appeal was that in the Northwest Territories to be intoxicated away from a public place was not an offence for anyone except an Indian. The Liquor Ordinance, which is of general application in the Territories, provides that: 'No person shall be in an intoxicated condition in a public place...' The result is that an Indian who is intoxicated in his own home 'off a reserve' is guilty of an offence and subject to a minimum fine of \$10 or a term of imprisonment not exceeding three months or both, whereas all other citizens in the Territories may, if they see fit, become intoxicated otherwise than in a public place without committing any offence at all. Even if any such other citizen is convicted of drunkenness in a public place, he is not subject to a minimum fine; the only penalty provided by the Liquor Ordinance is 'a fine not exceeding \$50 or . . . imprisonment for a term not exceeding 30 days or . . . both fine and imprisonment'.

The argument which was successfully advanced in this appeal was that Indians in the Northwest Territories, by reason of their race, were denied 'equality before the law' with their fellow Canadian citizens and that s.94(b) of the Indian Act therefore authorized the abrogation, abridgment or infringement of one of the human rights and fundamental freedoms recognized and declared as existing in Canada without discrimination by reason of race, pursuant to the provisions of the Canadian Bill of Rights.¹

In delivering judgment invalidating the impugned section of the Indian Act, Mr Justice Ritchie, who wrote the principal judgment, discussed and overruled the judgment of the Court of Appeal of British Columbia in *Regina v. Gonzales* (37 W.W.R. p. 257) where the majority of the Court had held that s.94 of the Indian Act did not abrogate or infringe the right of the appellant in that case to equality before the law.

In concluding his judgment Mr. Justice Ritchie observed that it should be made plain, in the light of section II of the Bill of Rights, that it was impermissible to have a situation in which, under the laws of Canada, it is made an offence punishable at law on account of race for a person to do something which all Canadians who are not members of that race may do with impunity.

The Supreme Court of Canada

HER MAJESTY THE QUEEN v. JOSEPH DRYBONES

Before: The Chief Justice and Fauteux, Abbott, Martland, Judson, Ritchie, Hall, Spence and Pigeon JJ.

Decided: 20 November, 1969

¹ Statutes of Canada 8/9, Elizabeth II, ch. 44.

Basic Texts

American Convention on Human Rights

PREAMBLE

The American states signatory to the present Convention,

REAFFIRMING their intention to consolidate in this hemisphere, within the framework of democratic institutions, a system of personal liberty and social justice based on respect for the essential rights of man;

RECOGNIZING that the essential rights of man are not derived from one's being a national of a certain state, but are based upon attributes of the human personality, and that they therefore justify international protection in the form of a convention reinforcing or complementing the protection provided by the domestic law of the American States;

CONSIDERING that these principles have been set forth in the Charter of the Organization of American States, in the American Declaration of the Rights and Duties of Man, and in the Universal Declaration of Human Rights, and that they have been reaffirmed and refined in other international instruments, worldwide as well as regional in scope;

REITERATING that, in accordance with the Universal Declaration of Human Rights, the ideal of free men enjoying freedom from fear and want can be achieved only if conditions are created whereby everyone may enjoy his economic, social, and cultural rights, as well as his civil and political rights; and

CONSIDERING that the Third Special Inter-American Conference (Buenos Aires, 1967) approved the incorporation into the Charter of the Organization itself of broader standards with respect to economic, social, and educational rights and resolved that an inter-American convention on human rights should determine the structure, competence, and procedure of the organs responsible for these matters,

Have agreed upon the following:

PART I—STATE OBLIGATIONS AND RIGHTS PROTECTED

CHAPTER I—GENERAL OBLIGATIONS

Article 1. Obligation to Respect Rights

1. The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or

other opinion, national or social origin, economic status, birth, or any other social condition.

2. For the purposes of this Convention, 'person' means every human being.

Article 2. Domestic Legal Effects

Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.

CHAPTER II—CIVIL AND POLITICAL RIGHTS

Article 3. Right to Juridical Personality

Every person has the right to recognition as a person before the law.

Article 4. Right to Life

1. Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.

2. In countries that have not abolished the death penalty, it may be imposed only for the most serious crimes and pursuant to a final judgment rendered by a competent court and in accordance with a law establishing such punishment, enacted prior to the commission of the crime. The application shall not be extended to crimes to which it does not presently apply.

3. The death penalty shall not be reestablished in states that have abolished it.

4. In no case shall capital punishment be inflicted for political offenses or related common crimes.

5. Capital punishment shall not be imposed upon persons who, at the time the crime was committed, were under 18 years of age or over 70 years of age; nor shall it be applied to pregnant women.

6. Every person condemned to death shall have the right to apply for amnesty, pardon, or commutation of sentence, which may be granted in all cases. Capital punishment shall not be imposed while such a petition is pending decision by the competent authority.

Article 5. Right to Humane Treatment

1. Every person has the right to have his physical, mental, and moral integrity respected.

2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.

3. Punishment shall not be extended to any person other than the criminal.

4. Accused persons shall, save in exceptional circumstances, be segregated from convicted persons, and shall be subject to separate treatment appropriate to their status as unconvicted persons.

5. Minors while subject to criminal proceedings shall be separated from adults and brought before specialized tribunals, as speedily as possible, so that they may be treated in accordance with their status as minors.

6. Punishments consisting of deprivation of liberty shall have as an essential aim the reform and social readaptation of the prisoners.

Article 6. Freedom from Slavery

1. No one shall be subject to slavery or to involuntary servitude, which are prohibited in all their forms, as are the slave trade and traffic in women.

2. No one shall be required to perform forced or compulsory labor. This provision shall not be interpreted to mean that, in those countries in which the penalty established for certain crimes is deprivation of liberty at forced labor, the carrying out of such a sentence imposed by a competent court is prohibited. Forced labor shall not adversely affect the dignity or the physical or intellectual capacity of the prisoner.

3. For the purposes of this article the following do not constitute forced or compulsory labor:

(a) work or service normally required of a person imprisoned in execution of a sentence or formal decision passed by the competent judicial authority. Such work or service shall be carried out under the supervision and control of public authorities, and any persons performing such work or service shall not be placed at the disposal of any private party, company, or juridical person;

(b) military service and, in countries in which conscientious objectors are recognized, national service that the law may provide for in lieu of military service;

(c) service exacted in time of danger or calamity that threatens the existence or the well-being of the community; or

(d) work or service that forms part of normal civic obligations.

Article 7. Right to Personal Liberty

1. Every person has the right to personal liberty and security.

2. No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto.

3. No one shall be subject to arbitrary arrest or imprisonment.

4. Anyone who is detained shall be informed of the reasons for his detention and shall be promptly notified of the charge or charges against him.

5. Any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released without prejudice to the continuation of the proceedings. His release may be subject to guarantees to assure his appearance for trial.

6. Anyone who is deprived of his liberty shall be entitled to recourse to a competent court, in order that the court may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful. In States Parties whose laws provide that anyone who believes himself to be threatened with deprivation of his liberty is entitled to recourse to a competent court in order that it may decide on the lawfulness of such threat, this remedy may not be restricted or abolished. The interested party or another person in his behalf is entitled to seek these remedies.

7. No one shall be detained for debt. This principle shall not limit the orders of a competent judicial authority issued for nonfulfillment of duties of support.

Article 8. Right to a Fair Trial

1. Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a

criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

2. Every person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law. During the proceedings, every person is entitled, with full equality, to the following minimum guarantees:

- (a) the right of the accused to be assisted without charge by a translator or interpreter, if he does not understand or does not speak the language of the tribunal or court;
- (b) prior notification in detail to the accused of the charges against him;
- (c) adequate time and means for the preparation of his defense;
- (d) the right of the accused to defend himself personally or to be assisted by legal counsel of his own choosing, and to communicate freely and privately with his counsel;
- (e) the inalienable right to be assisted by counsel provided by the state, paid or not as the domestic law provides, if the accused does not defend himself personally or engage his own counsel within the time period established by law;
- (f) the right of the defense to examine witnesses present in the court and to obtain the appearance, as witnesses, of experts or other persons who may throw light on the facts;
- (g) the right not to be compelled to be a witness against himself or to plead guilty; and
- (h) the right to appeal the judgment to a higher court.

3. A confession of guilt by the accused shall be valid only if it is made without coercion of any kind.

4. An accused person acquitted by a nonappealable judgment shall not be subjected to a new trial for the same cause.

5. Criminal proceedings shall be public, except insofar as may be necessary to protect the interests of justice.

Article 9. Freedom from Ex Post Facto Laws

No one shall be convicted of any act or omission that did not constitute a criminal offense, under the applicable law, at the time it was committed. A heavier penalty shall not be imposed than the one that was applicable at the time the criminal offense was committed. If subsequent to the commission of the offense the law provides for the imposition of a lighter punishment, the guilty person shall benefit therefrom.

Article 10. Right to Compensation

Every person has the right to be compensated in accordance with the law in the event he has been sentenced by a final judgment through a miscarriage of justice.

Article 11. Right to Privacy

1. Everyone has the right to have his honor respected and his dignity recognized.

2. No one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence, or of unlawful attacks on his honor or reputation.

3. Everyone has the right to the protection of the law against such interference or attacks.

*Article 12. Freedom of Conscience
and Religion*

1. Everyone has the right to freedom of conscience and of religion. This right includes freedom to maintain or to change one's religion or beliefs, and freedom to profess or disseminate one's religion or beliefs, either individually or together with others, in public or in private.

2. No one shall be subject to restrictions that might impair his freedom to maintain or to change his religion or beliefs.

3. Freedom to manifest one's religion and beliefs may be subject only to the limitations prescribed by law that are necessary to protect public safety, order, health, or morals, or the rights or freedoms of others.

4. Parents or guardians, as the case may be, have the right to provide for the religious and moral education of their children or wards that is in accord with their own convictions.

*Article 13. Freedom of Thought and
Expression*

1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.

2. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law necessary to ensure:

(a) respect for the rights or reputations of others; or

(b) the protection of national security, public order, or public health or morals.

3. The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.

4. Notwithstanding the provisions of paragraph 2 above, public entertainments may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence.

5. Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar illegal action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law.

Article 14. Right of Reply

1. Anyone injured by inaccurate or offensive statements or ideas disseminated to the public in general by a legally regulated medium of communication has the right to reply or to make a correction using the same communications outlet, under such conditions as the law may establish.

2. The correction or reply shall not in any case remit other legal liabilities that may have been incurred.

3. For the effective protection of honor and reputation, every publisher, and every newspaper, motion picture, radio, and television company, shall have a person responsible who is not protected by immunities or special privileges.

Article 15. Right of Assembly

The right of peaceful assembly, without arms, is recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and necessary in a democratic society in the interest of national security, public safety or public order, or to protect public health or morals or the rights or freedoms of others.

Article 16. Freedom of Association

1. Everyone has the right to associate freely for ideological, religious, political, economic, labor, social, cultural, sports, or other purposes.

2. Exercise of this right shall be subject only to such restrictions established by law as may be necessary in a democratic society, in the interest of national security, public safety, or public order, or to protect public health or morals or the rights and freedoms of others.

3. The provisions of this article do not bar the imposition of legal restrictions, including even deprivation of the exercise of the right of association, on members of the armed forces and the police.

Article 17. Rights of the Family

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the state.

2. The right of men and women of marriageable age to marry and to raise a family shall be recognized, if they meet the conditions required by domestic laws, insofar as such conditions do not affect the principle of nondiscrimination established in this Convention.

3. No marriage shall be entered into without the free and full consent of the intending spouses.

4. The States Parties shall take appropriate steps to ensure the equality of rights and the adequate balancing of responsibilities of the spouses as to marriage, during marriage, and in the event of its dissolution. In case of dissolution, provision shall be made for the necessary protection of any children solely on the basis of their own best interests.

5. The law shall recognize equal rights for children born out of wedlock and those born in wedlock.

Article 18. Right to a Name

Every person has the right to a given name and to the surnames of his parents or that of one of them. The law shall regulate the manner in which this right shall be ensured for all, by the use of assumed names if necessary.

Article 19. Rights of the Child

Every minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state.

Article 20. Right to Nationality

1. Every person has the right to a nationality.

2. Every person has the right to the nationality of the state in whose territory he was born if he does not have the right to any other nationality.

3. No one shall be arbitrarily deprived of his nationality or of the right to change it.

Article 21. Right to Property

1. Everyone has the right to the use and enjoyment of his property. The law may subordinate such use and enjoyment to the interest of society.

2. No one shall be deprived of his property except upon payment of just compensation, for reasons of public utility or social interest, and in the cases and according to the forms established by law.

3. Usury and any other form of exploitation of man by man shall be prohibited by law.

*Article 22. Freedom of Movement
and Residence*

1. Every person lawfully in the territory of a State Party has the right to move about in it, and to reside in it subject to the provisions of the law.

2. Every person has the right to leave any country freely, including his own.

3. The exercise of the foregoing rights may be restricted only pursuant to a law to the extent necessary in a democratic society to prevent crime or to protect national security, public safety, public order, public morals, public health, or the rights or freedoms of others.

4. The exercise of the rights recognized in paragraph 1 may also be restricted by law in designated zones for reasons of public interest.

5. No one can be expelled from the territory of the state of which he is a national or be deprived of the right to enter it.

6. An alien lawfully in the territory of a State Party to this Convention may be expelled from it only pursuant to a decision reached in accordance with law.

7. Every person has the right to seek and be granted asylum in a foreign territory, in accordance with the legislation of the state and international conventions, in the event he is being pursued for political offences or related common crimes.

8. In no case may an alien be deported or returned to a country, regardless of whether or not it is his country of origin, if in that country his right to life or personal freedom is in danger of being violated because of his race, nationality, religion, social status, or political opinions.

9. The collective expulsion of aliens is prohibited.

*Article 23. Right to Participate
in Government*

1. Every citizen shall enjoy the following rights and opportunities:

(a) to take part in the conduct of public affairs, directly or through freely chosen representatives;

(b) to vote and to be elected at genuine periodic elections, which shall be by universal and equal suffrage and by secret ballot that guarantees the free expression of the will of the voters; and

(c) to have access, under general conditions of equality, to the public service of his country.

2. The law may regulate the exercise of the rights and opportunities referred to in the preceding paragraph only on the basis of age, nationality, residence, language, education, civil and mental capacity, or sentencing by a competent court in criminal proceedings.

Article 24. Right to Equal Protection

All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law.

Article 25. Right to Judicial Protection

1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the Constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

2. The States Parties undertake:

(a) to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state;

(b) to develop the possibilities of judicial remedy; and

(c) to ensure that the competent authorities shall enforce such remedies when granted.

CHAPTER III—ECONOMIC, SOCIAL, AND CULTURAL RIGHTS

Article 26. Progressive Development

The States Parties undertake to adopt measures, both internally and through international cooperation, especially those of an economic and technical nature, with a view to achieving progressively, by legislation or other appropriate means, the full realization of the rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States as amended by the Protocol of Buenos Aires.

CHAPTER IV—SUSPENSION OF GUARANTEES, INTERPRETATION, AND APPLICATION

Article 27. Suspension of Guarantees

1. In time of war, public danger, or other emergency that threatens the independence or security of a State Party, it may take measures derogating from its obligations under the present Convention to the extent and for the period of time strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law and do not involve discrimination on the ground of race, color, sex, language, religion, or social origin.

2. The foregoing provision does not authorize any suspension of the following articles: Article 3 (Right to Juridical Personality), Article 4 (Right to Life), Article 5 (Right to Humane Treatment), Article 6 (Freedom from Slavery), Article 9 (Freedom from *Ex Post Facto* Laws), Article 12 (Freedom of Conscience and Religion), Article 17 (Rights of the Family), Article 18 (Right to a Name), Article 19 (Rights of the Child), Article 20 (Right to Nationality), and Article 23 (Right to Participate in Government), or of the judicial guarantees essential for the protection of such rights.

3. Any State Party availing itself of the right of suspension shall immediately inform the other States Parties, through the Secretary General of the Organization of American States, of the provisions the application of which it has suspended, the reasons that gave rise to the suspension, and the date set for the termination of such suspension.

Article 28. Federal Clause

1. Where a State Party is constituted as a federal state, the national government of such State Party shall implement all the provisions of the Convention over whose subject matter it exercises legislative and judicial jurisdiction.

2. With respect to the provisions over whose subject matter the constituent units of the federal state have jurisdiction, the national government shall immediately take suitable measures, in accordance with its constitution and its laws, to the end that the competent authorities of the constituent units may adopt appropriate provisions for the fulfillment of this Convention.

3. Whenever two or more States Parties agree to form a federation or other type of association, they shall take care that the resulting federal or other compact contains the provisions necessary for continuing and rendering effective the standards of this Convention in the new state that is organized.

Article 29. Restrictions Regarding Interpretation

No provision of this Convention shall be interpreted as:

(a) permitting any State Party, group, or person to suppress the enjoyment or exercise of the rights and freedoms recognized in this Convention or to restrict them to a greater extent than is provided for herein;

(b) restricting the enjoyment or exercise of any right or freedom recognized by virtue of the laws of any State Party or by virtue of another convention to which one of the said states is a party;

(c) precluding other rights or guarantees that are inherent in the human personality or derived from representative democracy as a form of government; or

(d) excluding or limiting the effect that the American Declaration of the Rights and Duties of Man and other international acts of the same nature may have.

Article 30. Scope of Restrictions

The restrictions that, pursuant to this Convention, may be placed on the enjoyment or exercise of the rights or freedoms recognized herein may not be applied except in accordance with laws enacted for reasons of general interest and in accordance with the purpose for which such restrictions have been established.

Article 31. Recognition of Other Rights

Other rights and freedoms recognized in accordance with the procedures established in Articles 76 and 77 may be included in the system of protection of this Convention.

CHAPTER V—PERSONAL RESPONSIBILITIES*Article 32. Relationship between Duties and Rights*

1. Every person has responsibilities to his family, his community, and mankind.

2. The rights of each person are limited by the rights of others, by the security of all, and by the just demands of the general welfare, in a democratic society.

PART II—MEANS OF PROTECTION**CHAPTER VI—COMPETENT ORGANS***Article 33*

The following organs shall have competence with respect to matters relating to the fulfillment of the commitments made by the States Parties to this Convention:

- (a) the Inter-American Commission on Human Rights, referred to as 'The Commission'; and
- (b) the Inter-American Court of Human Rights, referred to as 'The Court'.

CHAPTER VII—INTER-AMERICAN COMMISSION ON HUMAN RIGHTS*Section I. Organization**Article 34*

The Inter-American Commission on Human Rights shall be composed of seven members, who shall be persons of high moral character and recognized competence in the field of human rights.

Article 35

The Commission shall represent all the member countries of the Organization of American States.

Article 36

1. The members of the Commission shall be elected in a personal capacity by the General Assembly of the Organization from a list of candidates proposed by the governments of the member states.

2. Each of those governments may propose up to three candidates, who may be nationals of the states proposing them or of any other member state of the Organization of American States. When a slate of three is proposed, at least one of the candidates shall be a national of a state other than the one proposing the list.

Article 37

1. The members of the Commission shall be elected for a term of four years and may be reelected only once, but the terms of three of the members chosen in the first election shall expire at the end of two years. Immediately following that election the General Assembly shall determine the names of those three members by lot.

2. No two nationals of the same state may be members of the Commission.

Article 38

Vacancies that may occur on the Commission for reasons other than the normal expiration of a term shall be filled by the Permanent Council of the Organization in accordance with the provisions of the Statute of the Commission.

Article 39

The Commission shall prepare its Statute, which it shall submit to the General Assembly for approval. It shall establish its own Regulations.

Article 40

Secretariat services for the Commission shall be furnished by the appropriate specialized unit of the General Secretariat of the Organization. This unit shall be provided with the resources required to accomplish the tasks assigned to it by the Commission.

*Section II. Functions**Article 41*

The main function of the Commission shall be to promote respect for and defense of human rights. In the exercise of its mandate, it shall have the following functions and powers:

- (a) to develop an awareness of human rights among the peoples of America;
- (b) to make recommendations to the governments of the member states, when it considers such action advisable, for the adoption of progressive measures in favor of human rights within the framework of their domestic law and constitutional provisions as well as appropriate measures to further the observance of those rights;
- (c) to prepare such studies or reports as it considers advisable in the performance of its duties;
- (d) to request the governments of the member states to supply it with information on the measures adopted by them in matters of human rights;
- (e) to respond, through the General Secretariat of the Organization of American States, to inquiries made by the member states on matters related to human rights and, within the limits of its possibilities, to provide those states with the advisory services they request;
- (f) to take action on petitions and other communications pursuant to its authority under the provisions of Articles 44 through 51 of this Convention; and
- (g) to submit an annual report to the General Assembly of the Organization of American States.

Article 42

The States Parties shall transmit to the Commission a copy of each of the reports and studies that they submit annually to the Executive Committees of the Inter-American Economic and Social Council and the Inter-American Council for Education, Science, and Culture, in their respective fields, so that the Commission may watch over the promotion of the rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States as amended by the Protocol of Buenos Aires.

Article 43

The States Parties undertake to provide the Commission with such information as it may request of them as to the manner in which their domestic law ensures the effective application of any provisions of this Convention.

*Section III. Competence**Article 44*

Any person or group of persons, or any nongovernmental entity legally recognized in one or more member states of the Organization, may lodge

petitions with the Commission containing denunciations or complaints of violation of this Convention by a State Party.

Article 45

1. Any State Party may, when it deposits its instrument of ratification of or adherence to this Convention, or at any later time, declare that it recognizes the competence of the Commission to receive and examine communications in which a State Party alleges that another State Party has committed a violation of a human right set forth in this Convention.

2. Communications presented by virtue of this article may be admitted and examined only if they are presented by a State Party that has made a declaration recognizing the aforementioned competence of the Commission. The Commission shall not admit any communication against a State Party that has not made such a declaration.

3. A declaration concerning recognition of competence may be made to be valid for an indefinite time, for a specified period, or for a specific case.

4. Declarations shall be deposited in the General Secretariat of the Organization of American States, which shall transmit copies thereof to the member states of that Organization.

Article 46

1. Admission by the Commission of a petition or communication lodged in accordance with Articles 44 or 45 shall be subject to the following requirements:

- (a) that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law;
- (b) that the petition or communication is lodged within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment;
- (c) that the subject of the petition or communication is not pending in another international proceeding for settlement; and
- (d) that, in the case of Article 44, the petition contains the name, nationality, profession, domicile, and signature of the person or persons or of the legal representative of the entity lodging the petition.

2. The provisions of paragraphs 1 (a) and 1 (b) of this article shall not be applicable when:

- (a) the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated;
- (b) the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or
- (c) there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

Article 47

The Commission shall consider inadmissible any petition or communication submitted under Articles 44 or 45 if:

- (a) any of the requirements indicated in Article 46 has not been met;
- (b) the petition or communication does not state facts that tend to establish a violation of the rights guaranteed by this Convention;
- (c) the statements of the petitioner or of the state indicate that the petition or communication is manifestly groundless or obviously out of order; or

(d) the petition or communication is substantially the same as one previously studied by the Commission or by another international organization.

Section IV. Procedure

Article 48

1. When the Commission receives a petition or communication alleging violation of any of the rights protected by this Convention, it shall proceed as follows:

(a) If it considers the petition or communication admissible, it shall request information from the government of the state indicated as being responsible for the alleged violations and shall furnish that government a transcript of the pertinent portions of the petition or communication. This information shall be submitted within a reasonable period to be determined by the Commission in accordance with the circumstances of each case.

(b) After the information has been received, or after the period established has elapsed and the information has not been received, the Commission shall ascertain whether the grounds for the petition or communication still exist. If they do not, the Commission shall order the record to be closed.

(c) The Commission may also declare the petition or communication inadmissible or out of order on the basis of information or evidence subsequently received.

(d) If the record has not been closed, the Commission shall, with the knowledge of the parties, examine the matter set forth in the petition or communication in order to verify the facts. If necessary and advisable, the Commission shall carry out an investigation, for the effective conduct of which it shall request, and the states concerned shall furnish to it, all necessary facilities.

(e) The Commission may request the states concerned to furnish any pertinent information and, if so requested, shall hear oral statements or receive written statements from the parties concerned.

(f) The Commission shall place itself at the disposal of the parties concerned with a view to reaching a friendly settlement of the matter on the basis of respect for the human rights recognized in this Convention.

2. However, in serious and urgent cases, only the presentation of a petition or communication that fulfills all the formal requirements of admissibility shall be necessary in order for the Commission to conduct an investigation with the prior consent of the state in whose territory a violation has allegedly been committed.

Article 49

If a friendly settlement has been reached in accordance with Article 48 (1)(f), the Commission shall draw up a report, which shall be transmitted to the petitioner and to the States Parties to this Convention and shall then be communicated to the Secretary General of the Organization of American States for publication. This report shall contain a brief statement of the facts and of the solution reached. If any party in the case so requests, the fullest possible information shall be provided to it.

Article 50

1. If a settlement is not reached, the Commission shall, within the time limit established by its Statute, draw up a report setting forth the facts and stating its conclusions. If the report, in whole or in part, does not represent the unanimous

agreement of the members of the Commission, any member may attach to it a separate opinion. The written and oral statements made by the parties in accordance with Article 48 (1) (e) shall also be attached to the report.

2. The report shall be transmitted to the states concerned, which shall not be at liberty to publish it.

3. In transmitting the report, the Commission may make such proposals and recommendations as it sees fit.

Article 51

1. If, within a period of three months from the date of the transmittal of the report of the Commission to the states concerned, the matter has not either been settled or submitted by the Commission or by the state concerned to the Court and its jurisdiction accepted, the Commission may, by the vote of an absolute majority of its members, set forth its opinion and conclusions concerning the question submitted for its consideration.

2. Where appropriate, the Commission shall make pertinent recommendations and shall prescribe a period within which the state is to take the measures that are incumbent upon it to remedy the situation examined.

3. When the prescribed period has expired, the Commission shall decide by the vote of an absolute majority of its members whether the state has taken adequate measures and whether to publish its report.

CHAPTER VIII—INTER-AMERICAN COURT OF HUMAN RIGHTS

Section I. Organization

Article 52

1. The Court shall consist of seven judges, nationals of the member states of the Organization, elected in an individual capacity from among jurists of the highest moral authority and of recognized competence in the field of human rights, who possess the qualifications required for the exercise of the highest judicial functions in conformity with the law of the state of which they are nationals or of the state that proposes them as candidates.

2. No two judges may be nationals of the same state.

Article 53

1. The judges of the Court shall be elected by secret ballot by an absolute majority of the votes of the States Parties to the Convention in the General Assembly of the Organization, from a panel of candidates proposed by those states.

2. Each of the States Parties may propose up to three candidates, nationals of the state that proposes them or of any other member state of the Organization of American States. When a slate of three is proposed, at least one of the candidates shall be a national of a state other than the one proposing the slate.

Article 54

1. The judges of the Court shall be elected for a term of six years and may be reelected only once. The term of three of the judges chosen in the first election shall expire at the end of three years. Immediately after the election, the names of the three judges shall be determined by lot in the General Assembly.

2. A judge elected to replace a judge whose term has not expired shall complete the term of the latter.

3. The judges shall continue in office until the expiration of their term. However, they shall continue to serve with regard to cases that they have begun to hear and that are still pending, for which purposes they shall not be replaced by the newly elected judges.

Article 55

1. If a judge is a national of any of the states parties to a case submitted to the Court, he shall retain his right to hear that case.

2. If one of the judges called upon to hear a case should be a national of one of the states parties to the case, any other state party in the case may appoint a person of its choice to serve on the Court as an *ad hoc* judge.

3. If among the judges called upon to hear a case none is a national of any of the states parties to the case, each of the latter may appoint an *ad hoc* judge.

4. An *ad hoc* judge shall possess the qualifications indicated in Article 52.

5. If several States Parties to the Convention should have the same interest in a case, they shall be considered as a single party for purposes of the above provisions. In case of doubt, the Court shall decide.

Article 56

Five judges shall constitute a quorum for the transaction of business by the Court.

Article 57

The Commission shall appear in all cases before the Court.

Article 58

1. The Court shall have its seat at the place determined by the States Parties to the Convention in the General Assembly of the Organization; however, it may convene in the territory of any member state of the Organization of American States when a majority of the Court consider it desirable, and with the prior consent of the state concerned. The seat of the Court may be changed by the States Parties to the Convention in the General Assembly by a two-thirds vote.

2. The Court shall appoint its own Secretary.

3. The Secretary shall have his office at the place where the Court has its seat and shall attend the meetings that the Court may hold away from its seat.

Article 59

The Court shall establish its Secretariat, which shall function under the direction of the Secretary of the Court, in accordance with the administrative standards of the General Secretariat of the Organization in all respect not incompatible with the independence of the Court. The staff of the Court's Secretariat shall be appointed by the Secretary General of the Organization, in consultation with the Secretary of the Court.

Article 60

The Court shall draw up its Statute which it shall submit to the General Assembly for approval. It shall adopt its own Rules of Procedure.

*Section II. Jurisdiction and Functions**Article 61*

1. Only the States Parties and the Commission shall have the right to submit a case to the Court.
2. In order for the Court to hear a case, it is necessary that the procedures set forth in Articles 48 to 50 shall have been completed.

Article 62

1. A State Party may, upon depositing its instrument of ratification or adherence to this Convention, or at any subsequent time, declare that it recognizes as binding, *ipso facto*, and not requiring special agreement, the jurisdiction of the Court on all matters relating to the interpretation or application of this Convention.
2. Such declaration may be made unconditionally, on the condition of reciprocity, for a specified period, or for specific cases. It shall be presented to the Secretary General of the Organization, who shall transmit copies thereof to the other member states of the Organization and to the Secretary of the Court.
3. The jurisdiction of the Court shall comprise all cases concerning the interpretation and application of the provisions of this Convention that are submitted to it, provided that the States Parties to the case recognize or have recognized such jurisdiction, whether by special declaration pursuant to the preceding paragraphs, or by a special agreement.

Article 63

1. If the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party.
2. In cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court shall adopt such provisional measures as it deems pertinent in matters it has under consideration. With respect to a case not yet submitted to the Court, it may act at the request of the Commission.

Article 64

1. The member states of the Organization may consult the Court regarding the interpretation of this Convention or of other treaties concerning the protection of human rights in the American states. Within their spheres of competence, the organs listed in Chapter X of the Charter of the Organization of American States, as amended by the Protocol of Buenos Aires, may in like manner consult the Court.
2. The Court, at the request of a member state of the Organization, may provide that state with opinions regarding the compatibility of any of its domestic laws with the aforesaid international instruments.

Article 65

To each regular session of the General Assembly of the Organization of American States the Court shall submit, for the Assembly's consideration, a report on its work during the previous year. It shall specify, in particular, the cases in which a state has not complied with its judgments, making any pertinent recommendations.

*Section III. Procedure**Article 66*

1. Reasons shall be given for the judgment of the Court.
2. If the judgment does not represent in whole or in part the unanimous opinion of the judges, any judge shall be entitled to have his dissenting or separate opinion attached to the judgment.

Article 67

The judgment of the Court shall be final and not subject to appeal. In case of disagreement as to the meaning or scope of the judgment, the Court shall interpret it at the request of any of the parties, provided the request is made within ninety days from the date of notification of the judgment.

Article 68

1. The States Parties to the Convention undertake to comply with the judgment of the Court in any case to which they are parties.
2. That part of a judgment that stipulates compensatory damages may be executed in the country concerned in accordance with the domestic procedure governing the execution of judgments against the state.

Article 69

The parties to the case shall be notified of the judgment of the Court and it shall be transmitted to the States Parties to the Convention.

CHAPTER IX—COMMON PROVISIONS*Article 70*

1. The judges of the Court and the members of the Commission shall enjoy, from the moment of their election and throughout their term of office, the immunities extended to diplomatic agents in accordance with international law. During the exercise of their official function they shall, in addition, enjoy the diplomatic privileges necessary for the performance of their duties.
2. At no time shall the judges of the Court or the members of the Commission be held liable for any decisions or opinions issued in the exercise of their functions.

Article 71

The position of judge of the Court or member of the Commission is incompatible with any other activity that might affect the independence or impartiality of such judge or member, as determined in the respective statutes.

Article 72

The judges of the Court and the members of the Commission shall receive emoluments and travel allowances in the form and under the conditions set forth in their statutes, with due regard for the importance and independence of their office. Such emoluments and travel allowances shall be determined in the budget of the Organization of American States, which shall also include the expenses of the Court and its Secretariat. To this end, the Court shall draw up its own budget and submit it for approval to the General Assembly through the General Secretariat. The latter may not introduce any changes in it.

Article 73

The General Assembly may, only at the request of the Commission or the Court, as the case may be, determine sanctions to be applied against members of the Commission or judges of the Court when there are justifiable grounds for such action as set forth in the respective statutes. A vote of a two-thirds majority of the member states of the Organization shall be required for a decision in the case of members of the Commission and, in the case of judges of the Court, a two-thirds majority vote of the States Parties to the Convention shall also be required.

PART III—GENERAL AND TRANSITORY PROVISIONS**CHAPTER X—SIGNATURE, RATIFICATION, RESERVATIONS, AMENDMENTS, PROTOCOLS, AND DENUNCIATION***Article 74*

1. This Convention shall be open for signature and ratification by or adherence of any member state of the Organization of American States.

2. Ratification of or adherence to this Convention shall be made by the deposit of an instrument of ratification or adherence with the General Secretariat of the Organization of American States. As soon as eleven states have deposited their instruments of ratification or adherence, the Convention shall enter into force. With respect to any state that ratifies or adheres thereafter, the Convention shall enter into force on the date of the deposit of its instrument of ratification or adherence.

3. The Secretary General shall inform all member states of the Organization of the entry into force of the Convention.

Article 75

This Convention shall be subject to reservations only in conformity with the provisions of the Vienna Convention on the Law of Treaties signed on May 23, 1969.

Article 76

1. Proposals to amend this Convention may be submitted to the General Assembly for the action it deems appropriate by any State Party directly, and by the Commission or the Court through the Secretary General.

2. Amendments shall enter into force for the states ratifying them on the date when two-thirds of the States Parties to this Convention have deposited their respective instruments of ratification. With respect to the other States Parties, the amendments shall enter into force on the dates on which they deposit their respective instruments of ratification.

Article 77

1. In accordance with Article 31, any State Party and the Commission may submit proposed protocols to this Convention for consideration by the States Parties at the General Assembly with a view to gradually including other rights and freedoms within its system of protection.

2. Each protocol shall determine the manner of its entry into force and shall be applied only among the States Parties to it.

Article 78

1. The States Parties may denounce this Convention at the expiration of a five-year period starting from the date of its entry into force and by means of notice given one year in advance. Notice of the denunciation shall be addressed to the Secretary General of the Organization, who shall inform the other States Parties.

2. Such a denunciation shall not have the effect of releasing the State Party concerned from the obligations contained in this Convention with respect to any act that may constitute a violation of those obligations and that has been taken by that state prior to the effective date of denunciation.

CHAPTER XI—TRANSITORY PROVISIONS*Section I. Inter-American Commission on Human Rights**Article 79*

Upon the entry into force of this Convention, the Secretary General shall, in writing, request each member state of the Organisation to present, within ninety days, its candidates for membership on the Inter-American Commission on Human Rights. The Secretary General shall prepare a list in alphabetical order of the candidates presented, and transmit it to the member states of the Organization at least thirty days prior to the next session of the General Assembly.

Article 80

The members of the Commission shall be elected by secret ballot of the General Assembly from the list of candidates referred to in Article 79. The candidates who obtain the largest number of votes and an absolute majority of the votes of the representatives of the member states shall be declared elected. Should it become necessary to have several ballots in order to elect all the members of the Commission, the candidates who receive the smallest number of votes shall be eliminated successively, in the manner determined by the General Assembly.

*Section II. Inter-American Court of Human Rights**Article 81*

Upon the entry into force of this Convention, the Secretary General shall, in writing, request each State Party to present, within ninety days, its candidates for membership on the Inter-American Court of Human Rights. The Secretary General shall prepare a list in alphabetical order of the candidates presented and transmit it to the States Parties at least thirty days prior to the next session of the General Assembly.

Article 82

The judges of the Court shall be elected from the list of candidates referred to in Article 81, by secret ballot of the States Parties to the Convention in the General Assembly. The candidates who obtain the largest number of votes and an absolute majority of the votes of the representatives of the States Parties shall be declared elected. Should it become necessary to have several ballots in order to elect all the judges of the Court, the candidates who receive the smallest number of votes shall be eliminated successively, in the manner determined by the States Parties.

ICJ News

COMMISSION

A meeting of the Executive Committee was held in Geneva on 17th and 18th January. Apart from the administrative matters which were dealt with, the Committee officially confirmed the results of the elections to the Commission which have just taken place. Seven new Members have been elected, all of them unanimously. They are:

Mr. Chandra Kisan Daphtary (India). Called to the Bar in 1917, Mr. Daphtary has had a particularly interesting career. He was appointed Solicitor-General of India in 1951 and was Attorney-General and Chairman of the Bar Council of India from 1963 until 1968.

Mr. Enrique Garcia Sayan (Peru). Former Professor of Civil Law and Political Economy at the University of Lima, Professor Garcia Sayan has contributed many authoritative works on legal and economic subjects. He has been a Member of the Advisory Committee on Foreign Affairs since 1945 and was the Minister of Foreign Affairs of Peru. He has acted as an Expert on ILO Committees and has represented his country at the United Nations and at several international conferences.

Me Bahri Guiga (Tunisia). At the side of President Bourguiba, Maître Guiga played a leading role in his country's accession to independence. He actively participated in the struggle for independence of the Neo-Destour Party and was a member of the Tunisian delegation which negotiated autonomy with the French Government. He is an Attorney at the Court of Appeal in Tunis and was President of the Tunisian Bar. He has also occupied several senior positions in the Administration of Justice.

Mr. Gustaf Bror Erik Petren (Sweden). A former Professor of Public Law at the University of Stockholm and well-known author of several legal works, Mr. Petren has been a Judge at the Stockholm Court of Appeal since 1961. At present he holds the distinguished positions of Deputy Ombudsman of Sweden and Secretary General of the Nordic Council.

Mr. Shridath S. Ramphal (Guyana). An authority on Constitutional Law and the problems that arise in multi-racial societies, Mr. Ramphal has written a number of studies on these questions, which have been noted for their clarity of thought. He has acted as Legal Advisor and as Law Officer in the Governments of British Guiana and the West Indies. He came to his present position of Attorney-General and Minister of State of Guyana in May 1965.

Mr. Michael A. Triantafyllides (Cyprus). Called to the Bar in 1948, Mr. Triantafyllides acted as a Member of the Constitutional Commission which drafted the Constitution of Cyprus in 1959-60. He became a Supreme Court Justice in 1960 and has since 1963 been a Member of the European Commission of Human Rights.

Mr. Masatoshi Yokota (Japan). After a long and distinguished career in the Judiciary, during which he was appointed to the most senior positions, Mr. Yokota announced his retirement in 1969. He was then Chief Justice of the Supreme Court of Japan.

The International Commission of Jurists now has 36 members comprising 34 nationalities. The maximum permitted under its Statute is 40. An announcement of the elections was made to the press.

SECRETARIAT

On 24th January the Secretary-General of the Commission, Mr. Seán MacBride, took part in a meeting held at Strasbourg of the Executive Committee of the International Institute of Human Rights. The Institute was founded by Mr. René Cassin, who was awarded the Nobel Prize for Peace in 1968.

From 28th to 30th January, Mr. MacBride attended a Conference on 'Humanitarian Law and Armed Conflicts' at the International Law Centre of the University of Brussels. The Conference was organised by the Secretary of the Centre, Professor Pierre Mertens. As a follow-up to the Resolution on Human Rights in Armed Conflicts, adopted at the International Human Rights Conference at Teheran and embodied in a resolution of the UN General Assembly, this meeting was of especial importance. Mr. MacBride made some very practicable suggestions as to how the Geneva Conventions might be revised and brought into line with today's armed conflicts. One of the points that he made was that there are certain elementary human rights which are recognised in international human rights Conventions and expressed to be applicable in all circumstances and not only in times of peace. Mr. MacBride suggested that these rights should be embodied in Article 3 of the four Geneva Conventions. His proposals are now being studied in detail.

From 20th-25th January, Mr. Daniel Marchand, a member of the legal staff of the Secretariat, who was on a private visit elsewhere, stopped in Guadeloupe and Martinique, which are French Departments in the Caribbean. He received an extremely warm welcome from leading lawyers, members of the Government and members of the legal professions. The establishment of a branch of *Libre Justice*, the French Section of the Commission, was seriously discussed.

NATIONAL SECTIONS

India: The Indian Commission of Jurists held its annual general meeting at New Delhi on 26th January. Mr. Justice T. S. Fernando, the President of the ICJ, was present.

The Madras Branch of the Indian Commission of Jurists inaugurated, on 25th January, a series of four seminars on various aspects of the Rule of Law. The subject of the first of these was 'The Disrespect of Law and Order and the Rule of Law'. This initiative of the Madras Branch deserves the warmest encouragement.

The complete report of the Bangalore Conference on the Right to Freedom of Movement has just been published by the Mysore State Commission of Jurists. This excellently printed publication includes the Working Papers prepared on the subject by eminent Indian lawyers. It is an essential work of reference for anybody who is studying the question.

United Kingdom: JUSTICE, the British Section of the Commission, has just published a report entitled *Privacy and the Law*. This is a detailed and up-to-date study prepared in an original way. It is not only a useful expansion of the work done at the Stockholm Conference on Privacy but has also made a considerable impact in Britain. The draft Bill that it contains as an appendix was the basis of a Right of Privacy Bill in Parliament.

In another excellent report recently published a JUSTICE Committee recommends that local Ombudsmen should be appointed in Britain to look into complaints of maladministration on the part of local authorities.

France: *Libre Justice*, the French Section, has published a series of studies entitled *Les Calamités Publiques*. There are seven articles dealing with such subjects as sea and river pollution, noise and supersonic 'bangs', artificial earthquakes and agricultural disasters.

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Former Judge of the Supreme Court of the Union of Burma
Senior Advocate; former Attorney-General of India

Attorney-at-law, New York; former General Counsel, Office of the USA High Commissioner for Germany

Professor of Law, University of Mexico; Attorney-at-Law; former President of the Barra Mexicana

Attorney-at-Law, Copenhagen; Member of the Danish Parliament, former President of the Consultative Assembly of the Council of Europe

Judge of the International Court of Justice, the Hague; former Chief Justice of the Supreme Court of the Republic of Senegal

Attorney-at-Law, Costa Rica; former President of the Inter-American Bar Association; Professor of Law; former Ambassador to the United States and to the Organization of American States

Member, Advisory Committee on Foreign Affairs, Government of Peru; former Minister of Foreign Affairs

Counsellor, Court of Appeal of Tunisia
Professor of Law; Director of the Institute of Comparative and International Penal Law of the University of Freiburg

Former Minister of Justice; former Prime Minister of France

Former Secretary-General of the International Commission of Jurists; former President of the General Assembly of the United Nations; former Ambassador of New Zealand to the United Nations and United States

Member of the Bar of Rio de Janeiro, Brazil
Chief Justice of the Supreme Court of Puerto Rico

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