

Human Rights and Development

**REPORT OF A SEMINAR ON
HUMAN RIGHTS AND THEIR PROMOTION
IN THE CARIBBEAN**

BARBADOS, W.I., SEPTEMBER 1977

**ORGANISED BY
THE INTERNATIONAL COMMISSION OF JURISTS
AND
THE ORGANISATION OF COMMONWEALTH
CARIBBEAN BAR ASSOCIATIONS**

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THE CEDAR PRESS
Bridgetown, Barbados, W.I.

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Typeset at The CEDAR Press
Printed by Caribbean Graphic Productions Ltd.

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INTRODUCTION

The Universal Declaration of Human Rights is a majestic statement of principles, which has justified its title by gaining acceptance in almost every country of the world. It is this which makes it an instrument of supreme importance. It expresses, as no document has done before, common aspirations of all mankind.

It is perhaps inevitable, given the great diversity of cultures and religions, social and economic systems and level of development of the various countries of the world, that there are considerable differences in the realisation and application of these universally accepted principles. This makes it difficult to discuss in a universal context how best in practical terms to further the achievement of these rights.

For this reason the International Commission of Jurists, a lawyers' organisation which has worked for over 25 years for the promotion of human rights under the Rule of Law, has recently decided to seek to organise a series of regional or sub-regional seminars. Their object is to study how best to promote human rights in the context of the current structures and problems of neighbouring countries having perhaps a similar background and history and common features in their societies.

First of these was an East and Central African seminar held in Dar-es-Salaam in 1976 on 'Human Rights, their Promotion and the Rule of Law in a One-Party State'. The participants came from Sudan, Tanzania and Zambia, all proclaimed one-party states, as well as from Botswana, Lesotho and Swaziland. The report of that seminar, which aroused considerable interest, has already been published by Search Press, London, under the title 'Human Rights in a One-Party State'.

The second seminar, organised together with the Organisation of Commonwealth Caribbean Bar Associations, was held in Barbados in September 1977. There were 72 participants from 16 Caribbean countries, including government ministers or senior officials from 11 of those countries. It was made clear throughout that the governmental participants attended in a purely personal capacity. None of the governments concerned are in any way bound by the conclusions of the seminar or by any views expressed during it.

As will be seen from the list of participants, the seminar was not confined to lawyers, but included participants from the churches, trade unions, universities and human rights organisations within the region. They also attended in a personal capacity and not as delegates of any organisations to which they belonged.

An organising committee was formed by the two sponsoring organisations, with members drawn from other bodies in the region concerned with human rights. This Committee decided to invite a small number of international experts who could help to inform the participants of existing international human rights

instruments and machinery. Otherwise, all the participants came from within the region.

The letter of invitation to participants stated:

'The purpose of the seminar is to explore ways of helping to promote human rights within the Caribbean, particularly at the international regional level. Equal prominence will be given to economic, social and cultural rights as to civil and political rights'. This latter point was reflected in the choice of persons invited and in the programme of the seminar. After the opening plenary sessions the seminar divided into two Committees, dealing respectively with economic, social and cultural rights and with civil and political rights.

The seminar was opened by a speech of welcome written by the Prime Minister of Barbados. As he was unfortunately prevented by urgent government business from attending the opening, his speech was kindly read on his behalf by Senator O'B. Trotman, Minister in the Prime Minister's Office.

There then followed a key-note speech by Mr. William Demas, President of the Caribbean Development Bank and former Secretary-General of CARICOM. He raised most of the central issues in a most stimulating and at times provocative way. This together with the other opening speeches laid the basis for well-informed and fruitful discussions.

The participants were concerned to identify those rights which were of particular importance to the region at the present time, as well as discussing in what ways human rights could best be promoted within the region. A number of specific conclusions and recommendations were finally agreed by consensus by the seminar. Perhaps the most important decision taken was to create a Continuation Committee to seek to bring about the establishment of a regional coordinating organisation on human rights, and meanwhile to see how acceptance and implementation of the other recommendations of the seminar could be brought about. With all respect to the Attorney-General of Guyana, Dr. Shahabuddeen, whose reservation on this point will be found at the end of the report of the closing session, it seemed to me as it did to the seminar as a whole that the creation of such a committee was fairly within the declared purpose of the seminar. In any event, as the organising secretary of the seminar I found it very encouraging that the seminar gave promise of a continuing action for promoting human rights within the region.

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OPENING PLENARY SESSION

ADDRESS OF WELCOME DELIVERED BY SENATOR O'B. TROTMAN ON BEHALF OF THE RT. HON. J.M.G.M. ADAMS, PRIME MINISTER OF BARBADOS

Mr. Chairman, Distinguished Guests, Ladies and Gentlemen:

It is with great pleasure that I welcome all visitors to Barbados on behalf of the people and Government of this country. I also wish to take this opportunity to pay tribute to the excellent work which the International Commission of Jurists has been doing over the years to promote human rights in every corner of the world. To its credit the Commission was pursuing the advancement of the cause of human rights—even in difficult circumstances—long before the issue of human rights became the focus of international public attention and debate. I have every reason to believe that the Commission will continue to be resolute in its search for a just and more humane order for the people of this world long after the present intense international interest in the subject has subsided.

The human rights record of the Commonwealth Caribbean countries has been generally good, at least as far as conventional rights and freedoms are concerned. This region as a whole enjoys a reputation in the eyes of the world for the practice of free elections, for universal adult suffrage, for natural justice, and for unimpeded access to impartial courts. The Caribbean is often regarded as a region which holds sacred the rule of law and the protection of fundamental rights.

It would be unwise for us in the Caribbean, however, to be complacent. Convention, reputation, and tradition will not stand us in good stead if they differ from actuality. I wish to direct your attention to two aspects of the present situation which call for renewed vigilance and demand new responses.

In the first place, respect for law and order is under stress within many Caribbean countries. The fundamental rights and freedoms which we have traditionally cherished have frequently come under attack as much from extreme forces of the right as from those of the left; from unscrupulous persons and groups with no ideological commitment, but spurred on by naked greed for power; from those with blind ideological zealotry, not minded to tolerate any point of view but their own; from organized political parties—out of Government and in Government—which wish to retain or obtain power, firmly holding to the view that any means to achieve their aims are justifiable. These groups are prepared to overthrow completely the rules as we understand them and as we have observed them.

I am of the opinion that if any Caribbean society is to deliver the goods for its people, by improving its standard of living and quality of life, there must be within the society a universal commitment not only to the rule of law but also

to what may be termed a principle of politics. This principle embodies not only our acceptance that change in political arrangements, structure, and leadership may be necessary from time to time, but also an acceptance that change must be achieved within a framework which provides for the protection of the fundamental rights and freedoms of individuals and of groups within the community, including minorities.

To succeed without rancour, the society must find the rules acceptable and must play within the rules. This holds good for those in power and for those out of office. If the batsman persists in running short and the bowler in throwing, that is not cricket and we are in a different ball game altogether.

On the one hand governments should not seek derogation of the lofty promises and principles of their constitutions except as a very last resort and in very exceptional circumstances. They should not too readily appear to be giving with their right hand what they are taking away with their left. Moreover I believe they should understand the full implications of their commitment. Thus, if I may take as an example freedom of expression, governments should realise that a corollary of the freedom of expression is a duty of the Government to listen, and that an integral part of that freedom is reasonable access to the media—radio, television, and the press—all of which are instruments of political power.

On the other hand those out of power must, if necessary, learn the painful patient lesson of prolonged opposition. They must undertake the demanding and often frustrating task of living within the rules, of persuading the people that there is an alternative Government in the making which is willing to wait—however long—for the resignation of the Government in power or for the expiry of its term of office. Those out of power cannot expect to change the basic rules of the game either in mid-innings or in mid-over.

Mr. Chairman, I hope that nothing I have said so far will be interpreted as a defence of the status quo. Society cannot be made absolutely secure against change in rules, whether political or legal. What I am saying is that the peaceful change which we desire can come about only through a general acceptance of the rules generally included under the umbrella terms of 'rule of law' and 'fundamental freedoms'. I am firmly of the view, however, that the governments and people of the Caribbean must be firmly committed to the need for change. And this brings me to my second observation.

Just as men can acquire new needs, so can they acquire new rights. Human rights are not finite. They are always increasing. New knowledge and new circumstances generate new rights. The challenge therefore is not merely to meet the conventional standard, but to go beyond it and seek to reach a goal above that which has so far been achieved. Thus I can envisage that the right to opportunity for education may harden with technological progress into a right to publication. (This latter claim need not of course be linked to the value of the publication any more than the conventional right of free speech is linked to the merit of what one has to say!)

We in the Caribbean also need to promote the new rights because our experience has taught us that the old conventional rights can be enjoyed to the full only if the new rights are admitted and won. Thus arguably the right to life presupposes the right to food which in turn presupposes the right of work and earn a living. The unemployed cannot live life to the full.

In this respect I am glad to note this Seminar's intention to grant the same prominence to economic, social, and cultural rights as to civil and political rights.

I hold the view nonetheless that the satisfaction of the new needs and the granting of new rights—which all have a strong element of justice—can come about only within a framework of order. While order can be achieved without justice, justice requires order. New rights can be met only if honest efforts are made to ensure that our people enjoy the conventional rights. Thus there must be a commitment to free expression before we can speak of having easy access to the media as a right.

Mr. Chairman, I am sure that this Seminar will indicate even more fully why we in the Caribbean should not be complacent about our achievements in the field of human rights. We face new challenges and new needs. Your Seminar may well suggest how the governments may meet the new challenges and cope with the new needs and I shall of course follow your decisions and deliberations with keenest interest.

This Seminar comes at an opportune time, when in many places the individual citizen may feel increasingly at the mercies of the State. This Seminar will enable us to take stock of this situation. I trust that there will be an openness and frankness in your discussions which will deepen our understanding of human rights and strengthen our resolve to advance those rights—without stirring up unnecessary bitterness.

Mr. Chairman, it is because I do not underestimate the ability of law to exert an indirect influence on social change that I welcome you all to Barbados to discuss the age-old question of human rights. An examination of the list of participants shows that it is rightly realised that the subject of human rights which was for a long time primarily the concern of lawyers and philosophers is now the concern of many disciplines, and is indeed the concern of all the people.

On behalf of the People and Government of Barbados may I again welcome you to Barbados in the hope that you will find your stay on our island pleasant and rewarding.

HUMAN RIGHTS AND THEIR PROMOTION

WILLIAM G. DEMAS
President
Caribbean Development Bank

Preliminary Remarks

When I was asked to give this opening address¹, I agreed to do so only with the greatest diffidence. This initial diffidence stemmed from my lack of training in and knowledge of law.

Five Fundamental Postulates

But on further reflection, I decided that I could at least share with you some thoughts of a layman on the subject. These thoughts are based on the following five postulates which I hope that you can accept.

The first of these postulates is that in order that one may speak meaningfully about and understand the background to the degree of granting or denial of many Human Rights and Fundamental Freedoms in various countries of the world, one has to view such rights and freedoms in the perspective of the political and social philosophy and type of political and economic system existing in particular countries and types of country.

The second postulate is that in discussing these Rights and Freedoms in relation to particular countries and types of country one should take into account the existing level of economic development and the desired rate of change in the transformation of economic and social structures.

The third postulate is the necessity to make a distinction between 'negative' civil and political rights and 'positive' economic, social, and cultural rights. Accordingly it must follow that serious discussion of human rights must try to analyse the relationship between these two sets of rights and to determine those circumstances in which there could be conflict between them.

The fourth postulate is the need for treating many crucial rights not as absolutes but rather as rights which have to be qualified in their application and implementation. From this point of view, some of the provisions concerning human rights and fundamental freedoms contained in international or regional declarations and conventions and even in national constitutions might best be

1. I wish to acknowledge a useful discussion which I had with Neville Nicholls (Vice-President of CDB) and useful comments on the first draft of this address which I received from Rupert Mullings (Director of the Economics Division of CDB). However, it does not necessarily follow that either these two persons or the organisation for which we all work necessarily share the views expressed in this address.

seen as setting norms for the conduct of States rather than as rigidly binding obligations which require immediate and literal application by the State concerned in the form of enactments under municipal law. Any serious discussion of these rights and freedoms must therefore analyse the special circumstances which might often lead to the abridgement or restriction or qualification of such rights in their practical application by States

The fifth and final postulate which I hope that you can find it possible to share with me is that serious attempts at the promotion of human rights in the English-speaking Caribbean must take into account several specific historical, sociological, economic, cultural, and even geographical factors which make the English-speaking Caribbean countries in some crucial aspects unique among Third World countries.

Impact of Different Philosophies and Different Political Systems

In looking at the impact of different political and social philosophies and different political systems, one should begin by noting that, while the constitutions of nearly all countries in the world today as well as the U.N. Universal Declaration on Human Rights and its two Covenants on 'negative' and 'positive' rights contain extensive safeguards and guarantees of human rights and fundamental freedoms and while nearly all countries in the world today regard themselves as 'democratic', there is in practice considerable variation between different types of regimes not only in the extent to which they grant several basic rights to their citizens but also in the relative emphasis as between civil and political on the one hand and economic and social rights on the other hand.

The fact is that it is mainly the Western developed countries with liberal democratic or social democratic regimes whose practice comes closest to the grand statements contained in international or regional declarations and conventions and in national constitutions with respect to both civil and political and economic and social rights.

In the development and near-developed countries with centrally planned economies it would be fair to say that the pursuit of economic and social rights is given precedence over the granting of civil and political rights.

It is not so easy to make generalisations about Third World countries. If we include those Third World countries with centrally planned economies we can (with some degree of over-simplification and even arbitrariness) place such countries into four categories:

- (a) countries with centrally planned economies and with post-revolutionary regimes;
- (b) countries with either dictatorial or authoritarian repressive and either conservative or 'purposeless' military or civilian regimes;
- (c) countries with progressive civilian (but sometimes military) regimes aiming at total or near-total mobilisation for rapid economic and social transformation and with either *de jure* or *de facto* one-Party States. Often these

- regimes refer to themselves as 'African' or 'Asian' or 'Arab' Socialist; and
- (d) countries with civilian democratic rule under a two-Party or multi-Party system. Such a regime may be either mildly modernising or aiming at a fairly rapid rate of economic and social transformation and a high level of popular mobilisation for development. Similarly, there are differences in the degree of 'democracy' (or in the extent to which civil and political rights are granted) within this type of regime.

With regard to type (a) regimes the remark made above in relation to developed and near-developed countries with centrally planned economies also holds true. In type (b) there is often little regard for either civil and political or economic and social rights—even though there may sometimes be an element of somewhat incoherent 'populism'. In a few cases, however, the government may pursue a policy of rapid economic growth with no or little regard for social justice. Type (c) tends to emphasise economic and social rather than the traditional Western civil and political rights. Only in type (d) are there efforts of varying degrees of seriousness and commitment and of success at the pursuit of both civil and political and economic and social rights. Moreover, the more rapid the rate of economic and social transformation and consequently the extent of popular mobilisation aimed at, the more does there tend to be greater emphasis on the latter relative to the former set of rights.

I must again emphasise that this fourfold classification is highly over-simplified and that in the real world there may not only be 'hybrid' types but variants within each of the four categories, especially with respect to types (b), (c) and (d).

It seems to me a matter of prime importance to consider the reasons for such differences between various types of countries and regimes in terms of the granting (or denial) of the two sets of human rights.

The first reason, I think, springs from differences of political and social philosophy and of political systems. And I would say that the second reason has to do with the question of material resources available or, in other words, the level of economic development already attained.

Take first the difference in political and social philosophy and political systems.

Western liberal democratic political systems in today's world are the product both of the history of events and the history of political thought. The foundations of today's Western liberal democracies are the product of the historical development of individualistic Capitalism in the last three centuries as well as the ideas or theories on the relationship between the State and the individual connected with the Hobbes/Locke/Bentham stream of Western political thought, as modified in the mid-nineteenth century by John Stuart Mill. In the Hobbes/Locke/Bentham line of thought (which may be very broadly characterised as competitive or 'possessive' individualism) the liberty of the individual to pursue

his own interests serves to maximise the sum of 'utilities' (or in modern terms the economic welfare) of the society.

In the modification introduced by John Stuart Mill in the middle of the nineteenth century there are two central propositions. First, freedom from an oppressive and 'over-interfering' State and 'over-democratic'² society enables and facilitates the fullest possible development of individual personality. Second, the State should play a somewhat greater role in the provision of economic and social rights for the majority than that envisaged by the Utilitarians and their even more 'individualist' philosophical predecessors in the seventeenth and eighteenth centuries.

Indeed, it was John Stuart Mill who paved the way for the Fabian Socialists in Britain. The Fabians made a unique contribution to the establishment of the welfare state version of today's Western liberal democracy. The influence of Marx and European Marxists who vigorously pointed out the limited importance of civil and political liberties to the economically oppressed European working classes in the late nineteenth and early twentieth centuries is also obviously important. Finally, the granting of the suffrage to the workers and the legalisation of trade unions also exercised a decisive influence in the shaping of today's modern Western welfare state.

In the Social Democratic version of the modern Western liberal democracy equality is probably valued almost as much as individual liberty and consequently a wide measure of State intervention, regulation, and even ownership and control of some of the important means of production (together constituting the 'mixed economy'), combined with State provision of certain vital social and individual needs of the masses, is used as the instrument for achieving the contemporary welfare state in some of the developed western countries. This means that in Western social democracies not only is a wide measure of civil and political rights available to the individual but 'positive' efforts are also made by the State to provide social justice (or economic and social rights) for the masses of the population.

In the case of the centrally planned economies, the ideological roots also stem from Western political thought in the form of the heritage of Marx and his notion of dictatorship of the proletariat following the Revolution. Now, while Marx was first and foremost a deeply humanistic philosopher, who firmly held the belief that the ultimate purpose of society was the 'withering away' of the State and the self-fulfilment of the individual through the ending of worker 'alienation' from the means of production under capitalism so that he or she could become creative and thus realise his or her 'human essence',³ in practice

2. It is often forgotten that in Western liberal democracy, liberalism preceded democracy. In the works of the seventeenth century thinkers such as Hobbes and Locke the idea of 'one man—one vote' never figures, although it is contained in the 'Utilitarian' writings of Bentham in the late 18th and early 19th centuries. Leaving aside the special case of the U.S.A., the democratic idea came to be generally accepted in the West only in the last three decades of the nineteenth century and the early decades of the twentieth century.

3. Marx saw this situation coming about through the massive technological development made possible by Socialism.

today his heirs who have either had to build Socialist states in a hurry or who are now trying to do so with equal speed appear to stress the needs of the collectivity more than the needs of the individual and accordingly lay great emphasis on the all-pervasive role of the State as the representative of the proletariat in building Socialism. Naturally, these regimes tend in both theory and practice to downgrade the idea of civil and political liberties of the Western countries as being 'bourgeois' and therefore at best irrelevant and at worst a hindrance in rapidly building Socialism. The realisation as quickly as possible of economic and social rights for the masses is their predominant concern.

Here it is necessary to make the point that, although the traditional set of civil and political rights originates from individualistic capitalism in its pre-democratic and pre-abolition of slavery phase, these rights are nevertheless of great value in promoting human dignity and the development of human personality and should never be lightly dismissed. In other words, we must never confuse 'value' with 'origin' in looking at social and political institutions.

Type (a)—those countries in the Third World with centrally planned economies and post-revolutionary regimes—obviously share many of the characteristics of the developed or near-developed centrally planned economies, except that a quite radical egalitarianism is emphasised—perhaps somewhat at the expense of the bureaucratic, organisational, and technological rationality to be found in the more developed centrally planned economies.

Type (b) of Third World regimes can come into being as a result of the breakdown of the political process brought about by extremes of tribal factionalism or religious sectarianism or ethnic group competitiveness; or by economic breakdown stemming from either externally originating economic crises or economic and financial mismanagement or a combination of both; or by a failure of the economy to satisfy rapidly rising aspirations of the people of the country for improvement in their material position. There is often highly centralised one-man or 'Junta' governments not resting on popular consent or participation. In this type of regime, civil and political rights are more likely than not to be strongly and sometimes ruthlessly suppressed. The view of the rulers of such countries is that, if they permit many of the traditional civil and political rights to be exercised, the safety and security of the State would be undermined. Moreover, since, apart from fitful 'populist' manifestations and in a few cases the pursuit of a highly unequal pattern of economic growth at the cost of social justice, there is no coherent and systematic pursuit of the realisation of economic and social rights, these repressive authoritarian or tyrannical regimes possess few, if any, of the many redeeming features of the other types of Third World regimes. Most of the elementary negative and positive human rights are more often than not brutally trampled upon. In some cases the motivation is self-preservation on the part of the regime, in others the need to preserve 'order', and in yet others the obsessive and paranoid fear of 'Communism'—a vague and elastic concept which often seems to include in its embrace the mildest kinds of economic and social reforms.

Type (c) is often by comparison a more idealistic type of regime in Third World countries in the sense that there is less repression of civil and political rights and more concentration on the promotion of the realisation over time of economic and social rights of the masses. Much emphasis is often placed on intensive mobilisation of the people for rapid economic and social transformation and in some cases their extensive participation in decision-making, particularly at the local level.

While a type (c) regime is certainly much more praiseworthy than the type (b) regime, there is often still considerably less emphasis on the individual and his rights than within the Western liberal democratic or social democratic framework. While most of these regimes claim indigenous roots in terms of 'communal' social and economic organisation and values, if we wished (highly artificially) to place these regimes within the framework of Western political thought their moral and intellectual foundations could be regarded as very roughly resembling in some respects Rousseau's conception of the 'general' or 'real' will. The concept of the rights of the individual does not always receive great emphasis since the State is regarded as providing for the expression of the 'general' or 'real' will of the people and therefore as always necessarily promoting the common good of the community as a whole. This is why many of these countries are, either *de jure* or *de facto*, one-Party states. (In this connection it is worth pointing out that, whatever one's own personal predilections may be, it is in principle possible to have in such states a considerable amount of intra-Party democracy and the recognition of several basic civil and political rights—except of course that the right of free association and possibly the right to dissent would be severely abridged.)

In type (d) of Third World regimes a harmonious blend of the two types of rights is sought, if not always successfully. In many countries of this type liberty is not always subordinated to equality, as is the case with type (a) or type (c); but there may be somewhat less emphasis than in type (c) on widespread popular mobilisation for development because the desired rate of economic and social transformation may not be as high as in type (c).

Impact of Variations in Existing Levels of Economic Development

With this background in mind, let us go on to explore the ways in which the existing level of development of a particular country can affect the extent to which economic and social rights are realised for the majority of people in the country.

In the majority of the developed Western liberal democratic or social democratic states, the individual is by and large guaranteed to a large extent nearly all of the traditional civil and political rights such as the right of freedom of speech, thought, and expression; freedom in the choice of his government; freedom of assembly and association; freedom of person in the sense of freedom from arbitrary arrest as well as freedom from inhuman treatment such as torture; freedom of movement within his nation state and freedom to travel outside;

freedom of religious belief and worship; and most of the other freedoms, principles, and procedures enshrined in the notion of the Rule of Law. And at the same time in these States a very large number of economic, social, and cultural rights (including availability of jobs) are also within reach of the individual. This is possible because the level of economic development achieved by these countries facilitates the establishment of the welfare state—in the sense of access to adequate diet and nutrition, adequate health and housing and widespread opportunities for education of both a liberal and vocational character up to both secondary and tertiary level.

However, we must never forget that in several of the developed Western democracies certain basic rights are in varying degrees denied to some ethnic minorities—particularly blacks and Asians.

The enjoyment of a wide measure of economic, social, and cultural rights is facilitated in the more developed centrally planned economies by virtue of their relatively high level of economic development, even though there could still be a certain amount of belittling of conventional civil and political rights.

In the case of nearly all Third World countries, whatever the degree of civil and political rights enjoyed, we find only a limited realisation of economic and social rights even where governments may be vigorously pursuing the objective of achieving the latter kind of rights. This is because of the low level of economic development in such countries.

Relationship Between Civil and Political and Economic and Social Rights

The question immediately arises: in developing countries should civil and political rights be sacrificed to the rapid achievement over time of social, economic, and cultural rights? Or, put in other words, are civil and political rights and freedoms a 'luxury product' that can only be made available to the masses after—through a rapid but necessarily long drawn-out process of economic and social transformation—a relatively high level of economic development has been attained? Let us admit straight away that this is a very difficult question to answer.

The problem is made even more difficult by the historical and contemporary evidence. For in today's Western developed countries the enjoyment of civil and political rights by the masses was for most of the eighteenth and nineteenth centuries—when economic transformation was taking place rapidly—suppressed in the interests of rapid capital accumulation by the then dominant capitalist class. It is also the case that during its critical period of economic transformation in the inter-war years of the twentieth century the country which pioneered central economic planning achieved a very high rate of capital accumulation at the expense of both the real income and many civil and political rights of the workers and peasants.

Yet the question, as to whether in today's developing countries the availability of civil and political rights should be sacrificed in the interests of rapid development undertaken either by local and/or foreign capitalists or by the

State, should not be answered only with reference to the historical experience of both developed liberal (or socialist democratic) countries and developed countries with centrally planned economies.

One could argue that, in principle, there is no sound reason why the goal of rapid social and economic development could not be pursued simultaneously with the existence of a wide range of civil and political rights. The very distinguished West Indian economist, Arthur Lewis, argued this point very forcefully twelve years ago in his work on *Politics in West Africa*. Arthur Lewis approached the problem from a liberal democratic (or more accurately a broadly social democratic) point of view. And more recently, in the August 1977 issue of *Caribbean Contact* we find another outstanding West Indian economist, Clive Thomas, who approaches the problem from a neo-Marxist (or rather New Left) point of view, passionately asserting that a rapid rate of economic and social transformation in a Socialist regime based on an alliance between the workers and the peasants in a Third World country can be achieved without those in power having to suppress the democratic rights and freedoms of such workers and peasants. Indeed, most Third World thinkers such as Nyerere who supported the type (c) regime mentioned above would almost certainly favour a situation in which mobilisation of the people for rapid economic and social transformation would be pursued with the least possible infringement of their basic civil and political rights.⁴

In my own view the real question is the extent to which it is possible in all developing countries aiming at rapid economic and social development to provide the maximum possible degree of respect for fundamental civil and political liberties within the framework of the Rule of Law. Seen in this way, it may not be so much a question of suppressing many civil and political liberties as rather a question of a very careful examination of the precise and specific circumstances under which, with no doubt considerable soul-searching and even reluctance, these rights might have to be qualified in their practical application. In other words, the greatest possible care should be taken in suppressing or in qualifying any of the fundamental civil and political rights. Such a procedure, it is suggested, would almost certainly leave intact most of the fundamental civil and political rights of the people.

In a developing country, then, it should be possible to have a wide range of civil and political rights granted *immediately*. *As a minimum*, I suggest that the following human civil and political rights should be immediately guaranteed, with as few qualifications as possible in their application:

- (a) the right to the fullest possible participation of the masses of the people in governmental planning and implementation and in the election of both local and central governments;
- (b) the right to freedom of thought, assembly, expression, association and religious worship;

4. The late Frantz Fanon would no doubt have shared this view.

- (c) the right to freedom from arbitrary arrest and imprisonment, and to the enjoyment of the Rule of Law; subject to any temporary infringement of these rights that may be necessary under a State of Emergency;
- (d) the right to freedom from forced labour, coercion, and inhuman or degrading forms of punishment such as the barbarous practice of torture.

Thus, the application of many of the fundamental civil and political liberties can be *immediately* guaranteed in a developing country aiming at rapid economic development. On the other hand, many though not all economic and social rights essential to human dignity can be realised only over a *fairly long period of time* as the total amount of material resources available to the community increases. It would be wrong, however, to wait for the growth of the total material product to increase sufficiently before any attempt is made to realise such rights. That is to say, social justice should be pursued simultaneously with economic growth and development. This requires that provision for the satisfaction of certain basic human needs of all the poor should be integrated into the process of long-term national development planning, strategies, and objectives. This is the 'Basic Needs' approach to development in Third World countries. This approach involves the setting and implementation of targets to ensure that within a determinate time period the poorer half of the population should have their basic needs for food and nutrition, clothing, shelter, basic preventive (and to a lesser extent curative) medical services, appropriate education, pure drinking water supplies, and adequate public transportation reasonably well satisfied. What is more, it is possible to show that the pursuit of the 'Basic Needs' approach, so far from being in conflict with, actually can contribute to structural transformation of the economy and the ultimate elimination of unemployment, underemployment, and mass poverty.

This 'Basic Needs' approach seems to me the only sound basis for economic development policies in countries which aim at raising the standard of living and the human dignity of the masses of the population, thereby promoting the quickest possible realisation of many important economic and social rights for the many persons living in abject poverty in such countries.

Circumstances under which Certain Rights Should Be Qualified in Their Practical Application in Third World Countries

In any relatively open society serious conflicts of interest between different economic classes and interest groups will always manifest themselves, since the better-off groups will nearly always be opposed to any change in the direction of promoting more ample economic and social rights for the poor. In other words, the realisation of economic and social rights for the disadvantaged nearly always entails, at least in the short run, an additional obligation or burden for the better-off. And in extremely special circumstances the right of national self-determination may have to be qualified to provide instead for collective self-determination of a group of neighbouring countries inhabited by similar

peoples, by reason of the harsh facts of power in international relations in the contemporary world.

Therefore, we must concede that in the process of rapid economic and social transformation it may well be necessary to determine circumstances under which certain rights enshrined in the U.N. Universal Declaration on Human Rights, its two Covenants and in preambles to national constitutions would have to be qualified in their practical application. I shall refer here to four such rights of the greatest relevance to the contemporary English-speaking Caribbean:

- (a) the absolute right to national self-determination;
- (b) the absolute right to property;
- (c) the absolute right to work; and
- (d) the absolute right to free collective bargaining.

The right to national self-determination is a value almost universally accepted in today's world. It is indeed one of the pillars of the United Nations Universal Declaration on Human Rights. As a West Indian I cannot but share this value. Yet, given in the English-speaking (and perhaps Dutch-speaking) Caribbean the large number of small islands and the very small offshore islands politically attached to slightly less small islands, one could in the name of the absolute right to self-determination put forward the patently absurd argument that every little islet or rock (inhabited by at least one person) should enjoy the unqualified right of individual self-determination. While small size *per se* should not be seen as a barrier to self-determination, there are varying degrees of smallness and of lack of both human and natural resources. It could well be the case that a certain critical minimum size and level and range of both human and natural resources are needed to make political self-determination meaningful. West Indians are no longer living in a simple pastoral economy and in my view would find such an economy incapable of satisfying their material aspirations. Moreover—and this is the crucial point—is not a state of collective self-determination among neighbouring islands whose inhabitants are all basically the same people preferable to a state of individual island self-determination? For this would at least permit the attainment of a critical minimum size and level and range of human and natural resources and so avoid the extraordinarily massive external dependence and consequent weakness and vulnerability which would render individual self-determination for the small and very small West Indian islands almost totally meaningless.

Thus, in certain circumstances—as in our region—the realisation in an absolute form of the fundamental political right of national or insular self-determination may lessen the possibility of the masses realising certain economic and social rights and at the national level may lead to an abridgement of human dignity as a result of not very subtle forms of neo-colonial dominance and manipulation—whether exercised by big and medium-sized powers, shady foreign investors, or transnational corporations. And even the right of the

people of such islands to cultural integrity is likely to be severely curtailed.⁵

In today's world it is generally accepted that, while the right of property is a basic human right, in certain circumstances this right may well have to be abridged or curtailed or qualified in order to secure economic and social rights for the masses of the population. Thus, there may well have in certain circumstances to be compulsory State acquisition of land for development purposes at values that may not be strictly market values and payment of compensation not promptly but within a reasonable time period. Or to promote economic development with social justice for the majority it may well be necessary to levy fairly high rates of taxation on property or the income from property in the form of Land Tax, Death Duties, and Income Tax, as is indeed generally accepted both in developing countries and in the developed liberal democracies.

In most Third World countries, except in those with type (a) regimes, the right to work as an immediately available right is virtually meaningless, since the realisation of reasonably full employment is intimately bound up with the processes of economic and social transformation which are in large part a function of time. Even if the government tried to create unproductive work—e.g., by having *all* the unemployed dig up and then fill in holes—the expenditures involved would most likely be beyond the resources of the country and would therefore mean the denial or curtailment of social and economic rights to other persons (including workers) and the diminution of other social and economic rights to the community as a whole.

It is generally recognised in virtually all types of regimes existing in the world today that the right to 'free collective bargaining' may well have to be qualified or circumscribed in several significant ways. Incomes policies (many of them unsuccessful) are commonplace in today's Western developed countries. In both the centrally-planned developed and under-developed countries there is no need for incomes policies as such, since the division between Consumption and Accumulation (that is, Investment) is centrally determined. In the developing countries with market or partly-planned economies it is now generally realised that because of the need to maximise the rate of saving and investment in both the public and private sectors, to promote employment opportunities for all, to promote agricultural and rural development, to protect the balance of payments, and to promote social justice both as between workers and the higher income groups and as between different categories of workers (in the light of large differences of productivity between economic sectors), free collective bargaining must be circumscribed by law and that a Prices and Incomes Policy for the whole country needs to be adopted and implemented. For in the absence of such legal circumscription and of such prices and incomes policies the enjoyment of certain economic and social rights by highly-paid workers

5. There remains the question of the desirable and feasible amount of autonomy and/or administrative decentralisation available to individual islands in relation to the Central Government. I cannot deal with this issue here, except to note that it is very much a matter of degree rather than of principle.

must mean the denial or abridgement of these same economic and social rights to other less fortunate workers and peasants and the young unemployed.⁶

The Promotion of Human Rights in the Caribbean

When we apply all the above-mentioned considerations to the specific case of the English-speaking Caribbean, what can we say about the promotion of such rights in this part of the world—having regard to the fact that, although our countries are part of the Third World, the region has many unique historical, cultural, economic, social, and geographical features? We can, I think, advance the following six basic propositions.

First of all, the need to ensure the maximum possible range of political and civil rights, consistent with whatever pace of economic and social transformation may be desired by the people and with the Rule of Law, should be scrupulously observed. This is because it would in my view be profoundly wrong in this age of self-determination to perpetuate the historical pattern whereby for centuries civil and political rights were denied to the masses of the West Indian people. We in the Caribbean must always remain committed to civil and political liberties, notwithstanding their origin as part of the ideology of individualistic Capitalism in the late seventeenth and eighteenth centuries, with its attendant exploitation of metropolitan workers and its enslavement of our ancestors.

To repeat, the *value* of an institution is often independent of its *origin*. If only because of the centuries of the violation of the individual personality and human essence of the West Indian involved in the institutions of colonialism, slavery, and indentureship, the basic human rights of West Indians should not lightly be suppressed, even if such suppression is motivated by well-intentioned desires to maximise the rate of economic and social transformation.

Secondly, it may well be desirable to modify the pure Westminster model of political democracy to suit the special circumstances of the Caribbean and its people. However, in my view, the Westminster model should not be totally abandoned, since it is a simple and effective means of government and capable of permitting the implementation of fairly radical economic and social change and virtually any degree of participation of the masses in public affairs and public decision-making.

Thirdly, we should accept that a modified Westminster model of political democracy is not really inconsistent with a reasonably high degree of political

6. I am very conscious of the achievements of the West Indian Trade Union Movement in getting rid of the terrible exploitation of labour by foreign and local capitalists which lasted up to the end of the 1950's, and in successfully pressing for West Indian self-government and Federation. Yet I consider that West Indian trade unions should now develop a somewhat new role in the economy and society, *provided* of course that it can be clearly seen that governments are simultaneously pursuing the goals of economic growth and development *and* social justice. Moreover, we should not forget that independent trade unionism is an important expression of freedom of association—one of the basic civil and political rights.

mobilisation of the population for development and a fairly rapid rate of economic and social transformation.

Fourth, in the Caribbean no effort should be spared to promote the speedy and full realisation of economic and social rights for the masses of the West Indian people.

Fifth, continuing efforts must be made to eliminate all traces of racial discrimination in the light of the historical experience of the great majority of West Indians who have up to recently suffered the gross racial discrimination inherent in colonialism, slavery and indentured labour and the aftermath of these political and social institutions.

Sixth and finally, for reason which I have urged earlier on (namely, extremes of small size and low levels and range of both human and natural resources), the principle ought to be accepted that self-determination—certainly for virtually all the English-speaking countries of the Eastern Caribbean—ought to be sought within a single political collectivity if such self-determination is to be of any real meaning.⁷

Moreover, with regard to economic and social rights, it seems to me that Caribbean countries need to adopt a 'Basic Needs' development strategy so as to provide *all* in the lower income groups within the shortest possible time-span with minimum human standards of nutrition and food consumption, shelter and clothing, preventive and to a lesser extent curative medicine, relevant education, pure drinking water supplies, adequate public transport, and access to productive employment.

In addition, there are certain social rights—not necessarily involving considerable State expenditures but nearly always involving social legislation—which in the specific circumstances of the Caribbean should be made available to the people.

Here I refer particularly to the provision of greater social rights to children and women—rights such as the removal from children of the stigma and legal disabilities of 'illegitimate' birth, which is virtually the norm in the English-speaking Caribbean; the protection of deprived and disadvantaged juveniles from over-severe or inappropriate trial and punishment for acts of delinquency; and the ending of discrimination and disabilities faced by women through the provision of equal pay for equal work, equal opportunities with men in all jobs and other spheres of activity, the guaranteeing and enforcement—if necessary by compulsory deduction from wages and salaries—of payment of adequate maintenance by fathers for both their legitimate and illegitimate children, a more equitable distribution of property jointly owned by husband and wife after the legal dissolution of marriage, the reduction and if possible elimination of the incidence of sexual exploitation of women by male employers taking advantage of the 'surplus labour' characteristics of the labour market.

7. Of course, as I have already noted, there must be feasible arrangements for some degree of autonomy and/or administrative decentralisation in the individual islands.

(I do not, however, know whether this last right of women can ever become justiciable; but you as lawyers can no doubt give the correct answer).

I now turn to the machinery for securing civil and political rights for the Caribbean. I am not a lawyer but I will draw attention to what appears to me to be certain desirable features of such machinery:

- (a) a genuinely independent Judiciary and Magistracy possessed of high integrity;
- (b) the appointment of an officer similar to an Ombudsman or Parliamentary Commissioner who would investigate complaints from citizens who have been victims of administrative injustice or arbitrariness;
- (c) the establishment of a permanent Commission of Enquiry and of a permanent Integrity Commission;
- (d) the modification in appropriate cases of the legal concept and practice of 'costs after the event' involved in litigation when poorer people have to fight for their rights in law courts;
- (e) State provision of legal aid, or alternatively, the enactment of legislation requiring all lawyers to devote part of their time to defending the poor free of charge;
- (f) education at both school and adult level of the people on their Rights as well as their Duties as citizens; and
- (g) a vigorous and well-informed press and other mass-communications media, not only capable of giving accurate factual information and analysing objectively national, regional, and international issues but also equipped to elicit maximum public participation in the discussion of national and regional issues, and possibly subject to self regulation by an independent Regional Press and Broadcasting Council

Above all, it is necessary for lawyers who by their professional training are the group most involved in the issue of Human Rights in our societies to understand that there are both *negative* rights (in the sense of civil and political rights) and *positive* rights (in the form of social, economic, and cultural rights). Caribbean lawyers, trained on British textbooks, tend to see rights of people in the Caribbean in terms of the *negative* civil and political rights of the Western liberal democratic tradition. Not only should they become more alive to issues of legal reform and economic and social change, but they should also understand that the *raison d'être* of such reform and such change is a fuller realisation of *positive* economic, social, and cultural rights for the people. They should take a leaf from the book of eminent jurists in Britain and even more so in the United States who have advanced the cause of human freedom in both its moral and material aspects by the far-reaching judgements they have given, not seeing themselves as forced to take a literal textbook and therefore conservative position on cases that come before them. In other words West Indian

lawyers must see themselves as a vanguard group in promoting economic development and social justice in the region.

Finally, I will not shirk from dealing with the contentious issue of the establishment of a Human Rights Commission in the Caribbean. I see one great difficulty in this. But before I come to this difficulty, let me remind you of an important and perceptive observation made years ago by Arthur Lewis, namely that one of the most crucial bases on which the case for a West Indian Federation rested was the checks and the balances provided by a Federal structure of government against the ever-present possibility of the exercise of power in an unjust, oppressive, and arbitrary manner in the small 'face-to-face' national communities of the region.

The difficulty here is, of course, the fact—familiar in all parts of the world—that national governments are extremely shy of subjecting their internal affairs to comment and judicial review from outside their boundaries. (In this context we must remember that the only existing reasonably effective international convention on human rights is the European Convention on Human Rights.) But there is the paradox—indeed the supreme irony—that the West Indian countries are content with having perhaps the most vital aspect of their judicial system, the right of final judicial appeal, located in the metropolis outside the Caribbean. An essential pre-condition, both logical and moral, for the establishment of a Human Rights Commission in the English-speaking Caribbean must be the replacement of the Judicial Committee of the Privy Council as the final Court of Appeal by a West Indian or Commonwealth Caribbean Court of Appeal. Only then will it be possible to think of a Human Rights Commission for the English-speaking Caribbean. Lawyers and other well-intentioned persons cannot have it both ways. They cannot on the one hand argue for the retention of the Judicial Committee of the Privy Council *outside* of the region in London and at the same time urge the need for the establishment of a Human Rights Commission *within* the Caribbean.

HUMAN RIGHTS AND DEVELOPMENT

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We are in an era which has been marked by a lot of activity in respect of defining international norms and values. There is much invocation and reiteration of these norms as we move about an avowed goal of the twentieth century—the building of a global community of shared values and institutions.

Progress towards fostering international value-sharing, however, leaves much to be desired and this is particularly true in the area of human rights. Much of the difficulty in achieving significant implementation of human rights stems from the fact that we are in the midst of one of the most, if not the most, revolutionary periods of human history. It is a period of vast and varied political, social, and economic changes, of instability and disorder rather than of stability and order, and thus hardly a period suited for achieving agreement on law or principles. It is a period of challenge to long-established norms, philosophies, practices, and even to basic conceptions of the nature and purpose of man and woman. It is a period of three (or is it four?) worlds divided over the organisation of the international political system and marked by a wide diversity of regimes and legal systems. It is only against a background of a real appreciation of the variety in power, ideology, culture and, therefore, of objectives that we can discuss this question of human rights.

Much of the current belief in human rights stems from a Western liberal tradition which assumed not only that men were equal but which, in the first half of the century, was optimistic about the creation—before the end of the century—of a material equality amongst men, both within and between states. That dream also assumed the transformation of the 'backward' Afro-Asian world into the image of the West—that was the liberal blueprint for heaven on earth. At core it was a culture-bound image and thus smacked of imperialism, but its motivations were undoubtedly both genuine and generous.

What has happened of course is that the scenario has changed and the plot has thickened—indeed there are several plots. We are turning away from a Western-dominated, Euro-centred world and therefore there are different agenda and different priorities. In such a context and at such a time is it possible to have common agreement on the meaning of human freedom?

A good deal of the misunderstanding and recrimination in the world comes from operating from false premises. The realities of the globe are not consistent with the terminology of international law and organisations: we do not in fact

share or practise the values of the United Nations Charter. The ideals of unity and of peace through internationally agreed constitutional norms are tied to the concept of the legitimate, inviolable sovereign state, and implies a vision of a stable international order which is culturally whole. The human rights tradition comes out of such a vision—a vision of a Western world which had long accepted the state system and thus was concerned with limiting the power of the state so as to give the individual maximum freedom of action. Thus the growth of ideas of individual and group rights very much paralleled the growth of free enterprise, capitalism, socialism, and liberal democracy.

But in the post-World War II world we have had an avalanche of new states—states which are unstable or not viable, states whose sovereignty and territorial integrity are often under challenge, states which lack a sense of unity and, for the most part, are still to establish internal order and an acceptance of their legitimacy—both internally and externally. In such states the priorities are necessarily different to old, established, ideologically settled states. Since the emphasis is on order—rather than on law—the goal is to strengthen state, i.e. governmental, power rather than individual or group power. Indeed the government may often be struggling to achieve compliance to its authority by contending groups, and thus the emphasis is on collective rights (of the whole) rather than group or individual rights. Quite apart from this, there is reason to believe that the traditional cultures of Asia and Africa were communally oriented and did not put the contrast between the individual vs. the society in the way in which a competitive and capitalistic Western society envisaged it, and therefore the Afro-Asian states are slow to internalise the colonially learnt lessons.

In addition the new states have appeared on the scene in the second half of the twentieth century when it is an accepted purpose of the state to advance, in the widest sense, the welfare of its citizens. This is a responsibility which implies broad powers of control for the state, to such an extent that even in Western capitalist states there is increasing centralisation and governmental participation in the economic sector. Now in many of the old Western states, it might be possible to accomplish such governmental control without necessarily treading too hard on individual rights. This can be done in part because of surpluses from the past, usually purloined through imperialism, and because of technological advances which permit a high level of living for all of the citizens. But in new states, with struggling economies, mass welfare cannot be delivered without a system of control and centralisation which would hardly permit the play of individual rights in the classic tradition.

Against this background then I am arguing that, for most Third World states, social and economic rights have a priority, *at the domestic level*, over the traditional civil and political rights, a rightful priority both because of the objective conditions within and without these states and because the traditional rights are not necessarily culturally relevant. This is not to suggest that civil and political rights are unimportant: they are necessary but are subject to limits within a context of developing an effective welfare state which benefits all of the people.

Indeed it would be difficult to achieve mass welfare without a fair level of civil and political rights, as the processes of the one tend to imply the other. For instance, women and ethnic minorities are often disadvantaged groups economically and socially. As they achieve equality in these areas, therefore, they would be better enabled to fight more vigorously for their civil and political rights.

The process of development is a harsh and demanding one. I know of no state which has developed, in the sense of achieving a satisfactory standard of living for the majority of its citizens, without extreme exploitation either at home, abroad or both. Or to put it another way, without a surplus which has been squeezed out at the expense of some group. The United States developed at the expense of the displaced and annihilated red Indians, the black slaves and the working classes; the European giants at the cost of their miserable colonial peoples and their working classes; the U.S.S.R. at the cost of the benighted peasants and the lost souls of the labour camps.

Today, with the advantages of technology and science, the process should be easier but, even at best, it remains painful. It remains a process which cannot, for instance, afford the luxuries of full freedom of choice or of movement. As for the first, a state with limited educational facilities may find it necessary to say to a young person 'You will be an engineer and not a doctor'—in the manner of Japan, which in its early days allocated careers to its bright young people. And as for the second, I am firmly of the opinion that a 'developing' state has the right to prevent a citizen who has been educated at state expense from emigrating unless he has given adequate service at home. Beyond this, whether or not a citizen has been educated at state expense it can be argued that, in a 'developing' state, he should be subject to the duty of service in hardship areas if his skill is called for. This suggests that a 'developing' state should be somewhat like a mobilized state—as indeed it is, if properly conceived. It is like wartime, and a discipline akin to wartime discipline is needed for the war on want, on hunger, on ill-health, on ignorance and on insecurity, for the war on the depressing cycle of poverty which kills and maims as effectively as bullets.

The main problem however is that of avoiding abuse of power by politicians, bureaucrats, and other elites during the development process. This is no easy task. It certainly is not guaranteed by constitutions: the record in this respect is clear. It is in this connection that certain core civil and political rights should be considered inalienable—specifically the right to peaceful assembly; the right to a government based on the expressed will of the people; the right to take part in the government; the right to a fair trial; the right not to be subjected to arbitrary arrest, detention or exile; the right to education; the right to freedom of information. It is also in this connection that the international arena comes into play, for often outside pressure, if properly and honestly applied, can be effective in levering open a situation where domestic groups are powerless.

The human rights record in the Third World is hardly a happy one. But of course, not many states in the Third World can properly be described as 'developing' states. That term has been used, far too loosely, to describe any non-industrial

state. But the many, stagnating, non-democratic polities which abound in the Third World are not 'developing' states in any sense of the term. It is not development to change from colonial dictatorship to tribal or ethnic dictatorship or party dictatorship. It is not development to exchange white exploitation for black or brown exploitation. It is not development to run economies where, even if the GNP grows, the per capita income does not. Societies with these characteristics are not 'developing' societies and I hold no brief for the abuse of human rights which flourish therein. States which are really concerned with true development and are willing to undertake its discipline are also states, I would argue, which would have a tolerable system of human rights, as development requires citizens to cooperate willingly for the good of the whole. Development, for most of the Third World, requires a sacrificial generation.

But the question of development is one which leads one to focus inevitably on the international system. In the decades since the end of World War II we have seen a gradual growth of appreciation and understanding of the implications of development. It is now generally acknowledged that in order to change significantly the status and condition of a part of the system—the weaker part—there would have to be global changes. But while this is grasped—and that is what acceptance of resolutions on a New International Economic Order implies—the willingness to effect such changes is hardly there. The greatest challenge to the achievement of an international respect for human rights therefore lies in the workings of the international system.

The recently concluded North-South talks in Paris are a case in point—these can hardly be described as a success. The hope for a better deal for the Third World has not materialised and, all over the globe, regimes in developing countries are struggling to make ends meet. The ever-tightening conditions which have played havoc with many an economy, particularly since the energy-price revolution of 1973, have had their effects in domestic politics. Many a government has been rejected at the polls by a desperate people who are blaming governmental inefficiency for their plight. There is, of course, the other phenomenon—of increasing repression by governments which cannot deliver welfare for all and which capture for the ruling elites what little there is of a national patrimony. In a decent international economic system there ought to be less international tolerance of such governments and little domestic excuse for treating those who are simply clamouring for more bread as if they were revolutionaries.

There is a direct link of these matters to international politics. For, as the system now operates, prominent governments in the industrialised world make allies of and support regimes in the Third World which are openly dictatorial and backward. Since they are not prepared to make fundamental changes in the international economic system such alliances necessarily follow. The fact of the matter is that a world which would live with the tragedies such as the Sahel will find it easy to live with the obscenities like Soweto.

It is a commonplace that racism is a major factor hindering development of Third World peoples and thus of the whole world—since we are, in effect, only

exploiting a small percentage of the potential brain-power of the globe. It is clear that the liberal westerner has given far more priority to the issue of liberty than to those of equality or fraternity. The fight for equality has had great difficulty in moving forward fast enough in a world where the information streams are essentially controlled by both the private and public capitalist systems. In this respect few human rights are more important than the right to full and varied information. It is a basic and seminal right.

It is instructive how our vision of development has evolved and changed as more information becomes available—hence, for instance, the valid concerns today about issues such as the environment and appropriate technology. The oppression of ideas and cultural imperialism which have flourished hitherto will dwindle rapidly if we can provide true freedom of information. An informed Third World will then be able to fulfill the possibilities latent in the magic of science and to meet the expectations of prosperity for all. World development in the best sense of that term rests upon achieving Third World development. World civilisation has only now begun to take off, since a mobilised world is a late twentieth century phenomenon.

The focus in this last quarter of the twentieth century then has to be on the struggle for global development—to establish the right of development for all and to create the conditions for the right of all to flourish. Heretofore it might not have been possible to engage in this particular enterprise, but contemporary science, technology, administrative skills and resources are such that a world free from want is possible. Thus the real Cold War is now joined—not the imperial competitive war of the East/West giants, but the fundamental confrontation between the haves and the have-nots, the North/South alignment if you will, over the reshaping of the globe; not an ideological struggle but a fight to establish human rights by acknowledging in a concrete fashion the equality of mankind. It is the characteristic of this new confrontation that the leadership in the struggle has been taken on the initiative of the have-nots themselves. This is in itself an important assertion of equality. It is a change from the past where the emphasis was on *noblesse oblige*—the rich helping the poor—and where the approach smacked of charity. A different perspective of the international relations of states and peoples is being called for. In this healthier developing climate it will not be as easy for the North to assuage its conscience by focusing on threats affecting the individual in the South—a favourite activity of Northern liberals.

The extent to which our perception is distorted at the international system level is astonishing. A recent headline in the *International Herald Tribune*, for instance, reads 'Bumper Grain Harvest Around World Raises Fear of a Food Crisis'. Normally one expects that there is a crisis when food supply is short but this crisis was apparently anticipated by the experts because of a glut, the problem being that the expected drop in prices would be found politically intolerable in the grain-exporting countries and this might lead to a drop in production so as to keep up prices. In essence the story demonstrates that we cannot manage the world food problem as long as the question is approached from the perspective

of capitalistic economic beliefs of the inherent link between supply and demand on the one hand and price on the other. Food is a matter which can only be properly organised in the world if it is treated as a global problem and as a human right.

Another systematic issue which is becoming of increasing importance is that of migration. The current patterns of settlement in the world reflect particularly the effects of imperialism, both over land and over sea. It has led particularly to the widespread dispersal of peoples of European descent and these peoples hold dominant positions in exactly those parts of the world to which migrants currently most desire to move. These are also the parts of the world with, more or less, the best absorptive capacity—particularly in terms of area and resources. I am referring to North and South America. It is exactly in these areas however that there are the greatest barriers to the migration of non-white peoples on grounds either of race or of skills or of both. I would argue that the imperatives of human development, of human rights, and of redressing the balance of history require that some preference be given to migrants from the Third World. A proper approach to development would see the necessity of distributing the burden of supporting the poor and unskilled not only by the sop of 'foreign aid' to weaker economies, but by the actual movement of peoples. It is not development for the 'have' countries to improve their situation by culling, primarily, the skilled from the 'have not' countries. It is also not development for overcrowded Third World countries not to take seriously their responsibilities in respect of population control.

There is also the question of the attitudes towards primary resources, particularly mineral resources. The tradition has developed that resources in the ground are the property of those who live there and, by implication, it is for those residents to decide what should be done, or not done, with the resource. These concepts come from the grasp of reality which we have from the past—a very limited grasp in terms of our knowledge of the environment, of other cultures, of science, or of technology. Today's reality is quite different. The need for the international management of important resources is becoming clearer every day and, for the human rights of all of us, we need to move towards establishing regimes for such regulation. Such an approach has the advantage that it makes possible a fairer distribution than the current one which leaves us all at the mercy of the technologically advanced. There is much talk about the interdependence of today's world but it has to be democratically institutionalised to be made effective for development, for it is the way in which power is controlled which matters.

There has been an astonishing growth of international organisations in this era. It is in many ways the century of international organisations, for that surely is a characteristic phenomenon of the twentieth century transformation of the international system. The use of international institutions, governmental and non-governmental, at regional and global levels to establish a brave new world should be a primary technique of those interested in establishing human rights. It is a necessary technique for attacking vested interests; for justifying interference in

what is called 'internal affairs'; for initiating processes which will transform societies and the lives of people; for indulging in what would otherwise be called 'intervention'. The concepts of sovereignty, territorial integrity, exclusive property rights, aggression, self-determination, legitimacy can all easily be barriers to the conditions which permit the development of peoples and of the human spirit.

A proper approach to development is only possible when we get beyond the restricting limitations of the established rights of sovereign states to focusing on the rights of peoples—for whom states exist—rather than the other way around. A proper approach to development would see what is called foreign aid as an international tax, associated with which there are rights and obligations as with any tax system. A proper approach to development by the developed Western states would involve their appreciation that the Third World can only be 'safe for democracy' when the rich states treat the war on want with the seriousness with which they pursue the ideological conflict. A proper approach to development involves the appreciation that the concept of international order requires the acceptance by the 'have' states of obligations vis-à-vis the 'have nots'; it also implies the recognition of the right of development. Out of such an understanding would come the realisation that the development of the Third World does not only involve discipline and sacrifice of those countries. It requires a cutback of consumption by the rich states, a system of resource reallocation which permits the sustenance of the basic needs of all, rearranging of the world finance network so as to establish a right of access to capital, the acceptance of the right of access to know-how and technology, and a regime of fair prices for the goods of the 'developing' states—in short it requires that programme for change and for world development which is spelled out in the call for a New World Economic Order.

Finally, a proper approach to development would stress the development of a multi-cultural world in which all cultures are given respect and opportunity so that the very concept of development is affected in the process and the goals of the international system are defined by reference to a broad constituency. In such an environment there would not be a prospect of men toiling, without surcease, on climbing a ladder of achievement built by so-called advanced societies. The task of Sisyphus is the lot of Third World man at present—no role is more dehumanising than that frustrating climb. The central thrust of all of our endeavours in the Human Rights field must surely be to create an environment in which it is possible for all humans to be human.

HUMAN RIGHTS AND ECONOMIC DEVELOPMENT

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INTRODUCTION

This paper examines some aspects of the relationship between the promotion of human rights and the furthering of economic development throughout the so-called 'Third World'. For a variety of reasons the two are becoming increasingly connected: unfortunately this is happening sometimes in ways which are likely to set back progress on both issues rather than (as ought to be the case) enable the one to reinforce the other. The paper tries to suggest some ways in which conflict may be avoided.

WHY THE TWO ISSUES ARE RELATED

A cursory examination of why the two issues are being related shows that there is a natural relationship between the two in that both are concerned with promoting human welfare. Statements of 'rights', however, include many matters that go beyond 'economic development', while 'economic development' covers many fields that do not normally feature in any statement of 'rights'. Indeed the two can sometimes be in conflict: some safeguards for human rights can impede some forms of economic development, while some means of promoting economic development can infringe some human rights. Interpretations placed upon the right that 'no one shall be arbitrarily deprived of his property' are an example of the first, while compulsory sterilisation is an example of the second.

Secondly, the principal U.N. documents dealing with human rights recognise (probably to a greater extent than most earlier documents dealing with this subject) that they ought to have an economic and social component. The preamble to the Charter which reaffirms the faith of the peoples of the U.N. 'in fundamental human rights, in the dignity and worth of the human person' also expresses their determination 'to employ international machinery for the promotion of economic and social advancement of all peoples'. There is an even clearer connection in Articles 1(3), 13(1)(b), and 55. In the Universal Declaration of Human Rights of 1948, Articles 22 to 25 are directly related to economic circumstances; while of the two U.N. covenants which in 1966 attempted to set certain standards which would have legal force on the parties adhering to them, one expressly deals with economic, social, and cultural rights (the other being the Covenant on Civil and Political Rights).

*This paper was circulated but not presented orally.

Thirdly, today few developing countries have a satisfactory record for respecting human rights, especially civil and political rights. The reasons for this are probably historical rather than economic. A few very poor countries have a good record for observing political and civil rights, while many of the richer developing countries have a very bad record. Why this should be so deserves more investigation but, apart from the factors that produce Gunnar Myrdal's 'soft state', many developing countries gained independence in circumstances which led to the emergence of one-party states, and these in turn have fallen easy prey to military dictatorial take-overs.

The phenomenon has led some governments of developed countries to consider restricting their supply of 'concessional resources' (aid) in the hope of persuading such recipients to adopt more humane policies. Further, some groups in developed countries, opposed to the supply of aid to developing countries, frequently argue that aid is a means of supporting corrupt and inhumane regimes and maintaining them in office. The fact that it is very improbable that economic aid (as opposed to military aid) has ever had this result does not interrupt the persistence of the argument.

Partly because of their poor record and partly because it serves their purpose in their general confrontation with developed countries on economic questions, developing countries generally play down political and civil rights and emphasise economic and social rights—even in some cases where their record in the latter is not much better than in the former. Some developing countries even argue that developed countries place so much stress on civil and political rights merely to distract attention from their poor performance over the past fifteen years in meeting 'developing country' demands in U.N. bodies for special concessions in trade, commodities, and the supply of financial and other resources (a New International Order). This is almost certainly untrue but the argument will continue to be repeated.

PART I: HUMAN RIGHTS—Some of the Economic Implications

Mr. Evan Luard has written 'One of the difficulties in all discussions of human rights is the absence of agreed definitions of the rights to which all are entitled'. Looked at historically, however, documents purporting to state or to establish 'rights' have been concerned far more with civil and political 'rights' than with economic, social, and cultural 'rights'. This has been so even when the document in question has been associated with—and indeed has had some part in producing—profound economic and social changes. For example, the French Revolution's Declaration of the Rights of Man contains no express economic provisions, let alone any social or cultural. Nevertheless the economic consequences of the French Declaration were profound—and beneficial. Even if we accept that 'the liberty that was protected was that of the middle classes to run their businesses as they willed and of the peasants to till their land free from the burdensome exactions of privilege', it still represented a substantial increase in human welfare. The history of the development effort over the past 20 years has

produced a number of examples which reinforce this lesson: namely, that without the support of an effective system of civil and political rights, economic investment takes unproductive forms, generating no development and leading to a serious waste of resources which increases poverty, not welfare. For example Pye (quoted in Rostow *Politics and Stages of Growth*) has shown how ordinary people in Pakistan were expressing a sensible preference for spending money on roads and bridges while their government preferred show-piece prestige projects, but through lack of proper political rights the people went unheard. Many agricultural projects in Africa have suffered through disregard for the views of the (often illiterate) peasantry. Even worse, governments which have committed serious breaches of civil and political rights have usually done themselves grave economic damage. Thus the drop in Equatorial Guinea's cocoa exports from 40,000 tons in 1968 to 2,340 tons in 1975 was not due to economic factors but to the producers' suffering the loss of most of the civil and political rights specified in Part III of the U.N. Covenant on Civil and Political Rights. Indeed, some students of the subject would argue that the institutional changes required by many of the declarations of civil and political rights are a necessary *precursor* to those economic changes which alone can produce the needed growth to satisfy the claims of economic and social rights.

There is, however, a difference in kind between civil and political rights on the one hand and economic and social rights on the other. Broadly speaking, in statements of civil and political rights governments give undertakings *not* to impose certain disabilities on their subjects, such as depriving them of freedom of speech or the protection of the courts against arbitrary arrest or interfering with their freedom of movement or torturing them. In statements of economic and social rights governments accept that they ought to take certain *positive* steps to promote the welfare of their citizens, such as ensuring adequate employment opportunities, 'fair wages', proper medical facilities, and universal education. They also undertake to 'ensure the realisation of the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing, and housing, and to a continuous improvement in living conditions'—incidentally a very big undertaking.

The difference in kind between the two sets of rights is recognised in the machinery set up both under the U.N. covenants and in the Council of Europe to supervise the implementation of the agreements relating to civil and political rights on the one hand and those relating to economic and social rights on the other. Under the U.N. covenants, for example, the former is supervised by a committee. For the latter, however, this was considered inappropriate, since it was felt that economic and social rights 'could be achieved less quickly because they could not be safeguarded by immediate legislation. Instead they depended upon the resources becoming progressively available to each state'. (Starke: *International Law*, p. 375). The Economic and Social Covenant calls simply for the submission by governments to ECODOC of periodic reports on progress made and measures taken to advance the rights concerned. Under the Council of Eu-

rope machinery, whereas for the civil and political rights specified in the Convention there is a Commission and a Court, for the economic and social rights specified in the Social Charter there is simply a system of reports by governments followed by examination by experts.

In considering the relationship between 'human rights' and 'economic development', however, the U.N. documents have several features that are worth noting. The first is that in both covenants the main concern is with protecting the rights of individuals vis-à-vis their own governments. The Teheran Proclamation of 1968 expressly states that 'the primary aim of the U.N. in the sphere of human rights is the achievement *by each individual* of the maximum freedom and dignity'. Also to illustrate the point, the Economic and Social Covenant refers to 'safeguarding fundamental political and economic freedoms *to the individual*'. To only a very limited extent are they concerned with the rights and duties of states to one another—the main exception being the reference in Article 2 of the Economic and Social Covenant to states taking 'steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources with a view to achieving progressively the full realization of the rights recognised in the present Covenant by all appropriate means'. The rest of the document is overwhelmingly concerned with setting out the rights of the individual against the state. U.N. discussions about economic development on the other hand are almost exclusively concerned with asserting the rights and duties of states to one another. Some governments appear to argue in some U.N. human rights debates as though the failure or refusal of some states to meet the claims made upon them by other states in economic matters justified their own failure to meet the economic, social, and cultural claims made upon them by their own citizens. There is nothing in the U.N. covenants to justify this assertion. Only the lack of resources could justify the claims of individual citizens not being met—and some of the states guilty of not fulfilling some of the provisions of the Economic, Social and Cultural Covenant would be hard put to prove that *all* the necessary means were lacking to them.

The second main point to note in considering the relationship between rights and development is that the Economic and Social Covenant is concerned with setting out the rights of the individual to such things as health, housing, cultural life, and the opportunity to work. In the jargon of the development specialist, all these are matters rather of 'welfare' than of 'development'. In other words, as spelt out in the Covenant they are concerned much more with the distribution (particularly the equitable distribution) of benefits than with the creation of the wealth which can provide them.

Thirdly, all the U.N. human rights documents try to establish standards for governments to attain. They do not prescribe the policies by which they are to be attained. In the Economic and Social Covenant, however, there are certain sections (Sections 2 of Articles 11, 12, 13, and 15) which look as though they are prescribing policies as well. In developing countries this has sometimes had unfortunate effects. For example Article 13 (2) refers to providing 'primary edu-

cation compulsory and available free to all'. In the opinion of many competent observers (e.g., Sir Arthur Lewis and Prof. I. Illich) the attempt of many African governments to do this in the 1960s had unhappy social consequences, leading to the creation of a class of semi-literates who flocked to the towns. Instead, it would have benefitted more individuals and been better for the development of the continent if governments had used their scarce resources of teachers and money to run adult literacy campaigns and to improve the right sort of secondary education.

It should be emphasised that this is not an argument for double standards in the sense that we ought to approve of some developing countries aiming at a lower level of attainment in political, civil, economic, or social rights. It is, however, an argument for applying in international law a principle accepted in municipal law of 'natural law with variable content' where 'the same principle of justice may require one rule in Colombo and another in London'. Certainly in economic affairs to attain the same ends frequently requires different policies in London from those in Colombo; and policies should be judged by their appropriateness to the culture and conditions of individual countries, always provided that they are (in the words of Article 4 of the Covenant) 'compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society'.

PART II: ECONOMIC DEVELOPMENT—Some of its Human Rights Implications

Among development experts there has never been an agreed definition of what constitutes 'development'. (Indeed the Development Assistance Committee of the Organization for Economic Co-operation and Development, although firmly laying it down that this is to be one of the two primary purposes of any expenditure—the other being 'welfare' if it is to count as 'aid'—has never to the best of my knowledge said what it is.) There would be general agreement that aid for development is different from aid for welfare. 'Welfare' expenditure is for immediate consumption, usually in cases where it is necessary to relieve distress or remove some immediate disadvantage. 'Development' on the other hand is concerned with the generation of future flows of income—in other words with increasing productive capacity over time. Indeed, in the 1950s it was considered sufficient to define economic development as 'a process whereby an economy's real national income increases over a long period of time'. Nowadays many of those concerned with the subject, however, would consider this definition inadequate. A 1965 U.S. college textbook, for example, says 'Economic growth means more output, but economic development implies both more output and changes in the technical and institutional arrangements by which it is produced'. The notion that 'economic development is growth *plus* change' was carried further by the U.N. Committee on Development Planning which in its proposals in 1970 for the Second Development Decade wrote: 'It cannot be over-emphasised that what development implies for developing countries is not simply an increase in productive capacity but major transformations in their social and economic

structures'. Most observers would agree that such changes are necessary if the economic growth is to be sustained. The Committee, however, went even further and said that 'the ultimate purpose of development is to provide opportunities for a better life to all sections of the population and to achieve this it will be necessary in developing countries to eliminate inequalities in the distribution of wealth and income and mass poverty and social injustice, create new employment opportunities, more food and better education and health facilities.' The similarity between the purposes of development as set out in the definition of the Committee on Development Planning and the standards set in the U.N. Covenant on Economic, Social and Cultural Rights is clear. Nevertheless although in the discussion leading to the adoption of the U.N. resolution on the Second Development Decade no government challenged the Committee's definition, the policies pursued since by many governments, of both developed and developing countries, have seemed to pay little more than lip service to it. It is worth examining why this should be so.

The first reason is that although experience shows that if development is to be sustained over time it needs both economic growth and institutional change, there is nothing to show that it also has to be accompanied by a reduction in inequality and all the other desirable things listed by the Committee. The last part of the Committee's definition of development is a statement of what is morally desirable rather than of what is necessary to produce growth plus change. There are in fact many different strategies for economic development. The choice of which to adopt depends partly on which is going to be most effective in economic terms, partly on what is politically possible, and partly upon the ethical criteria to be applied. Because there is so large a variety of policies enjoying differing degrees of favour with the governments of both developed and developing countries, there is an absence of consensus which hampers concerted action.

The second reason is political difficulties in the developing countries themselves. Economic development, even if considered to be simply an increase in productive capacity, both requires and produces changes in the social and institutional structure. Such changes frequently give rise to political unrest. Economic development is often a destabilising factor politically, and therefore an element in creating situations in which the governments are tempted into committing breaches of the Covenant on Civil and Political Rights. For example, one particular element in the Committee's proposals—the re-distribution of land—is usually disturbing politically; it is also difficult administratively.

Thirdly, the formula used by the Committee in practice involves some hard choices. Some of the policies which will produce economic growth in developing countries are difficult to reconcile in the short or medium term with policies which will produce a better distribution of wealth. For example, it is easier for the better-off and better-educated farmers than for poor subsistence farmers to adopt the farming practices associated with the 'green revolution' (hence the saying that 'the green revolution is bound to have some red edges'). In other ways too the formula would involve changes in the policies of the governments of de-

veloping countries which they would find difficult. To illustrate: in an attempt to encourage the growth of the industrial sector and to satisfy political pressures in the towns, many governments have policies of protecting industrial goods and maintaining artificially low food prices in the interests of urban consumers, thereby making life harder for the majority of their rural poor. This they can do with impunity because the rural poor are politically weaker. Some governments would not survive an attempt to change.

Another though less important obstacle lies in the policies of the aid donors. The standards set by Part III of the Economic and Social Covenant, if applied to the world-wide distribution of aid, ought to encourage donors to channel more of their aid to the poorest countries and spend it on schemes which will benefit more the poorest sections of the community. Over the past five years it is true that most donors, following the lead set by the World Bank, have announced their intention of trying to move more of their aid towards the poorer countries and towards helping the poorer sections of the population in these countries. Indeed, by 1975 some 43 per cent of the 17 billion US dollars aid from the DAC countries to 150 developing countries went to the poorest—defined as countries with less than 200 US dollars per capita GNP in 1972. Even so the poorest countries received in 1975 only 3.75 US dollars per head as compared with the 6.22 US dollars per head going to countries with a GNP of more than 200 US dollars a head. Moreover, the second largest donor (France) gave nearly 50 per cent of its aid to countries with an income of more than 1000 US dollars a head.

Even if their intentions are good, the problems facing the donors in implementing 'poverty-oriented' programmes are more difficult than might appear. Their first priority in using their aid must be to spend the major part of it on schemes which will produce economic growth—in other words, on schemes of investment rather than consumption. The reason for this is that this is the quickest way to produce a basis for a sustained increase in income. For example, it has been calculated that if present DAC aid were used entirely to finance additional consumption in developing countries, their aggregate GNP would be only some 2 per cent higher. This is a trivial increase in consumption. Spending the aid on investment, however, and assuming a capital output ratio of 3:1, the aid even at 1974 levels would add about 0.7 per cent to the developing countries' growth rate. This would rapidly permit much greater increases in their total income than would be achieved by spending it on consumption. It is, however, harder to find schemes of productive investment in poorer countries than in the richer. Also there is now more competition for such schemes among donors. Moreover, most development schemes take several years to work up and execute, but schemes frequently take above average in the poorer countries.

There is a further difficulty. Schemes which both produce a good flow of benefits and have an automatic guarantee that those benefits will flow to the poorer sections of the community are extremely hard to find. Even when found their effect is often to create new inequalities—between different zones of the country rather than between classes. This is particularly true of schemes of rural

development known as area development, which involve the intensive introduction of numerous projects into a limited area.

Finally, 'poverty-oriented' schemes frequently involve donors in problems of administration in developing countries which their governments regard as lying exclusively within their domestic jurisdiction.

All that having been said, however, the fact remains that the achievement of the standards set out in the Economic and Social Covenant would be facilitated if governments pursued development policies of the kind proposed by the Committee on Development Planning—i.e., development policies aimed at not simply economic growth plus the institutional and social change which will favour further economic growth, but also at the distribution of benefits from such growth in a more equitable fashion throughout their societies.

The main responsibility for executing these policies lies with the governments of the developing countries themselves—a fact recognised by the UN resolution on the Second Development Decade. Without their determination to achieve the prescribed standards little progress can be made, no matter how great the resources made available.

But what of the donors? Their capacity to influence the situation is marginal. They can do something by the distribution of their aid and the type of scheme they favour—allocating more to the poorer countries and less to the richer, and spending it on projects with the right distributive effects. Where foreign aid forms a large part of a country's development expenditure, donor policies can have some effect. But most developing countries finance most of their development plans themselves. It is often argued that donors could do more to help developing countries attain the necessary standards if they made more resources available—either through more aid or by means of special trade arrangements or by other financial devices. This would only be true if what was holding developing countries back from a better performance with regard to civil, political, economic, or cultural rights was lack of material resources. As shown below there is not much evidence *prima facie* to support this proposition. There is, however, evidence to show that, without the kind of institutional arrangements necessary to safeguard civil and political rights, governments will not have the political will to achieve the standards set out in the Covenant on Economic and Social Rights. Moreover, there is evidence to show that in most countries, without the right institutional arrangements ensuring a proper degree of participation of the people in government, much of the development expenditure will be wasted and sustained growth will not be possible.

PART III: THE RECORD OF DEVELOPING COUNTRIES IN THE HUMAN RIGHTS FIELD

In trying to assess the Human Rights performance of developing countries we face difficulties of definition and lack of objective evidence. The following table, however, makes the attempt, though admittedly it is crude and should be used with care. It has been compiled on the basis of using 135 developing

| Description of Area | No. of Countries | Average Per Capita GNP in US Dollars | FREEDOM HOUSE CLASSIFICATION | | | | | |
|--|------------------|--------------------------------------|------------------------------|-------|-------------|-------|------|------|
| | | | Not Free | | Partly Free | | Free | |
| | | | No. | As % | No. | As % | No. | As % |
| Africa (less Libya) | 51 | 328 | 31 | 60.8 | 15 | 29.4 | 5 | 9.8 |
| Arab Oil Producers (incl. Libya) | 9 | 5,070 | 6 | 66.6 | 3 | 33.3 | 0 | 0 |
| Asia (less Arab Oil Producers) | 28 | 738 | 13 | 46.4 | 12 | 42.8 | 3 | 10.0 |
| Central America and Caribbean | 33 | 1,263 | 2 | 6.0 | 15 | 45.5 | 16 | 48.5 |
| South America | 14 | 1,102 | 4 | 28.5 | 6 | 42.8 | 4 | 28.5 |
| TOTAL | 135 | 1,078 | 56 | 41.48 | 51 | 37.7 | 28 | 20.7 |
| Countries recognised in IBRD, U.N., or F.A.O. as being especially poor | Africa 30 | | 22 | 73.3 | 6 | 20 | 2 | 6.6 |
| | Asia 16 | | 8 | 50.0 | 7 | 43.75 | 1 | 12.5 |
| | Cent. Amer. 4 | | 1 | 25.0 | 3 | 75.0 | 0 | 0 |
| | South Amer. 1 | | 0 | 0 | 1 | 100.0 | 0 | 0 |
| | 51 | 153 | 31 | 60.7 | 17 | 33.3 | 3 | 5.8 |

countries out of the 150 recognised by the DAC for aid purposes. Only developing countries in Europe and the Indian Ocean have been omitted. The evidence about the per capita GNP is taken from the *World Bank Atlas* for 1975. The countries recognised as being 'especially poor' are those which appear in either the U.N. list of 'least developed', or the U.N. list of 'most seriously affected' by the oil crisis, or the World Food Council's list of 'food priority countries', or those whose income per head according to the World Bank was less than 200 US dollars per annum in 1972. For judging the human rights performance of these countries the 'Comparative Survey of Freedom' produced by an independent organisation (Freedom House in New York) has been used. The latest survey reported the position as at December 1976. The surveys were all based on a country's observance of political and civil rights only, since the authors consider that although the positive rights set out in the Covenant of Economic and Social Rights are important to assessing the whole quality of life, this was something

they were not qualified to judge. In fact, although it would produce a difference in a few instances (for example, probably improving the performance of the Arab oil states and one African country) it would not improve the general picture. Countries which have a poor record in political and civil rights generally do no better on economic and social rights because they have suppressed the political mechanism which would allow the people's economic and social demands to be expressed.

Using as its test of political freedom 'the extent to which the people are able to play an active and critical role in choosing their leaders', and of civil rights 'the extent to which people can openly express opinions without fear', the Freedom House survey divides countries into 'Not Free', 'Partly Free', and 'Free'. Looking at the situation worldwide, 41 percent of the 135 developing countries are 'not free', 37 percent are 'partly free', and only 21 percent are classified as 'free'.

On this table the Asian countries (less the oil producers) have a human rights record which comes nearest to the world average. Three groups of countries have a worse record than the world average—the richest, i.e. the Arab oil producers with an average per capita GNP of 5,070 US dollars, and the two poorest, viz. the African countries (average per capita GNP 328 US dollars) and the especially poor (average per capita GNP 153 US dollars). The two poorest groups, of course, have a number of members in common. The best performers are the Caribbean and Central American states who have the second highest per capita GNP among developing countries, but the performance of the South American group, who have a very similar GNP, is markedly worse than the Caribbean.

Is it safe to draw any conclusions from these figures about the relationship between poverty and bad human rights performance or vice versa? The answer is 'No'. The whole matter needs much more careful investigation. If the Arab oil producers are left out of account, it does appear that the lower the per capita GNP the worse the human rights performance in any region as a whole; but there are several exceptions at both ends of the scale which make generalisation difficult. A closer examination is needed, state by state. This would probably yield the following pattern:

(a) Among the wealthier developing countries, especially those who were independent before the First World War, the reasons for lack of human rights lie in authoritarian traditions of government allied to economies where there are big differences in wealth between classes. Faced with economic change, the political balance is upset, with resulting disturbances which governments try to control by infringing human rights. Increase in economic prosperity by itself is unlikely to affect matters for the better.

(b) Among the poorer countries, most of them gained their independence after the Second World War in circumstances where the emergence of one-party states was almost inevitable if national unity was to be preserved. At the same time their per capita GNP was low, in most cases owing to a lack of

obvious development resources. Consequent strains, combined with administrative inadequacy, have led to the emergence of more authoritarian regimes—usually by military coup. But the factors producing the situation are more likely to be cultural than economic and not something which an increase in material resources, by itself, could cure.

(c) Within both groups there are a few countries where the disregard for human rights is having a severely adverse effect on the economy. In many more countries examples will be found where the denial to the people of a means of expressing their views on government decisions, especially on development issues, is leading to a serious waste of scarce resources and is a deterrent to development.

PART IV: DEVELOPMENT AID AND HUMAN RIGHTS

Pressure is growing in many developed countries to persuade donor governments to link the supply of aid to the performance of individual recipients in the field of human rights. The link can take two forms—either that of cutting off aid to countries which perform badly or that of concentrating aid on countries which perform well. The reasons for pressure for linking the two are various. In some cases there is the notion that aid is a special mark of favour on the part of a donor to a recipient, indicating approval of all that recipient's policies. Indeed, sometimes recipient governments themselves, especially when they have a poor human rights record, publicise aid receipts as marks of favour in this way, particularly when the aid comes from a respected multilateral donor such as the World Bank. Another reason is the idea that aid is so important to the economies of developing countries that to deprive them of it is an economic sanction that will soon compel them to change their policies (in fact developing countries as a group finance 85 percent of their development out of their own budgets).

Attempts to regulate the flow of development aid according to human rights performance in this way rarely succeed. They usually reduce the aid without improving the human rights. Alternatively they lead donors to apply double standards, taking a kinder view of the human rights infringements of regimes with whom they sympathise politically or with whom they wish to maintain, say, commercial relations than they do of others. Attempts to interfere with the flow of aid do particular harm to the wrong people—usually damaging more the underprivileged groups who would benefit from a project than the government. If pressed too far, these attempts to link aid and human rights, either as sanctions or as favours, will seriously damage the international aid effort while doing nothing for human rights. Why should this be so?

First, aid is not so important to the economic life of any developing country—even those where aid supplies the major part of the development budget—that the tactic might succeed. But in fact if one donor cuts off aid, another for political or commercial reasons is often ready to take over. In any event the response

of authoritarian regimes to a deterioration in their economy is to become more authoritarian still.

Secondly, the scope for using aid to help regimes with good human rights records is limited—there are so few of them, especially among the poorest who need it the most. They could not absorb all the aid on offer; seriously to try to confine aid flows to them would mean a drastic reduction in world aid with adverse effects on the world economy. It would also greatly embitter North/South relations and materially it would do more damage to the poorer lands than to the richer.

Thirdly, there is an administrative problem. The human rights performance of governments can deteriorate or improve comparatively quickly. The processes of development on the other hand are slow, and if they are to be successful they need to be sustained over time. This applies particularly to project aid (and some 40 percent of donor aid for good development reasons takes this form). Most projects take several years to work up and several more years to produce results. To interrupt this process in the middle because of political or other changes in a country usually leads to a very great waste of scarce resources which can only serve to damage the international aid effort.

Finally, there is the fact that some 25 percent of DAC aid goes through multilateral institutions like the World Bank. Most of these have a provision in their Articles similar to Article IV Section 10 of the IBRD Articles which reads:

The Bank and its officers shall not interfere in the political affairs of any member; nor shall they be influenced in their decisions by the political character of the member or members concerned. Only economic considerations shall be relevant to their decisions and these shall be weighed impartially in order to achieve the purposes stated in Article I.

For the purpose of this and similar Articles elsewhere, human rights considerations are held to be political. The governing Articles of other international operations are so worded that it is impossible to exclude any recipient simply on the grounds of his human rights performance (e.g., under the Lomé Convention all developing country participants have to have a share of the cake).

PART V: SOME SUGGESTED CONCLUSIONS

The present way in which the international debate about human rights is becoming involved in the arguments about 'the new international economic order' is unfortunate. It will damage the cause of human rights and not do much to help the developing countries get what they want from a new economic order. The impression has been created that only if developing countries receive the greatly increased flow of resources which they expect from the new order is it reasonable to ask them to pay more attention to human rights. This has no basis in fact. It is true that most countries would find it easier to achieve the standards set out in the Economic and Social covenant if they had more resources. But their case would carry more conviction if they made better use of the resources

they had already, distributing their benefits in a more equitable fashion. Even if the new order secured a more equitable distribution of wealth between nations (and in practice it is more likely to favour the richer developing countries than the poorer) there is not much assurance that it will do the same among their peoples. This can only be done by their own governments, who could in fact demonstrate their good faith by making better use of the resources they have already. Moreover, civil and political rights do not require much by way of additional resources, and there is accumulating evidence to show that without reasonable observance of the code of civil and political rights, particularly one which permits the people to make their voice heard on development decisions, sound economic development is hindered not helped. (See Part I above.)

The difference in the machinery for supervising performance in civil and political rights on the one hand and that for economic and social rights on the other, though justified in law and understandable in logic, is nevertheless creating a false dichotomy. It gives scope for suggesting that in some sense one is more important than the other—or even worse, that one is appropriate to ‘market’ economies and the other to ‘socialist’ economies. Not only are both important, but in practice it is difficult to have the one without the other. Economic growth can take many forms; but civil and political rights are necessary to produce the right kind of economic growth and to secure the distribution of benefits required to meet the economic and social rights. Without the satisfaction of economic and social rights governments create unrest by failure to meet popular expectations, and to deal with that they are tempted to commit breaches of civil and political rights. A more systematic examination of the relationship between the two bodies of rights is needed, preferably on a state by state basis, and it should be continued over time. As evidence of the present compartmentalisation of the U.N. study of this subject, the 1975 report by Mr. Ganji on the *Realisation of Economic, Social, and Cultural Rights* contains almost no reference to civil and political rights at all.

More careful analysis is needed of the relationship between standards and the policies necessary to meet them. This should be carried out jointly by lawyers and social scientists with a special knowledge of developing countries. The important thing is to ensure that particular policies are appropriate to the society and culture of particular states but also ‘compatible with the rights’ as spelt out in the covenants.

One way in which campaigners for human rights can improve the quality of economic development is by pressing the view that development is growth plus change; and, moreover, that it ought to be change in the directions indicated by the U.N. Committee on Development Planning, if the economic and social standards set by the Covenant are to be attained. Donors ought to be able to accept this: they have paid lip-service to the notion and it will not cost them more in resources, though it may mean they will have to forego some of the other advantages, usually commercial, which they seek to obtain by their aid. If recipient governments could also more actively subscribe to the same concept of devel-

opment it ought to help to deprive some of the opponents of aid of one of their arguments.

It would be worth making an objective analysis of the human rights performance of developing countries to discover how it is related to their economic position. They too should be left in no doubt about the damage they do themselves by their poor human rights performance, both internally and externally. (See Part III.)

Finally, in dealing with economic aid to countries with a poor human rights record, it serves little purpose to try using aid either as a crude financial sanction to persuade the bad to reform or to reward the good for their virtue. Aid must be used to improve future flows of income in developing countries as its primary aim, especially in the poorer countries. To achieve this end economic considerations, though not the only ones, must be paramount. If they are, in almost every case more good than harm will be done, especially in poor countries, by proceeding with a programme or a project than by abandoning it. The right point at which to take human rights into account is at the moment of settling the allocation to particular countries. Further, this can be done in a way that is consistent with the paramountcy of economic considerations if donors, both multilateral and bilateral, were to take account of the effect of political, social, institutional, and cultural factors—all of which are very relevant to human rights and vice versa—on the economy as a whole. What must be avoided if at all possible is abandoning *projects* after they have reached an advanced stage of preparation—especially those which are going to benefit the poorer sections of the population—as a means of persuading a government to change its Human Rights practices. This is unlikely to do any good to anybody. (See Part IV above.)

Finally lawyers should examine the Articles of Association of the IBRD and the Regional Development Banks and similar bodies to see if they would permit the phrase 'economic considerations' to be interpreted as suggested above. Where there are organisations, such as the European Development Fund, where all participants are apparently entitled to a share regardless of performance, consideration should be given to amending their arrangements the next time they come up for review.

THE SCOPE AND LIMITATIONS OF STATE MACHINERY

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Testifying before the Subcommittee on International Organizations and Movements of the Committee on Foreign Affairs, House of Representatives, in October 1973, Professor Louis Henkin of Columbia University made the point that if human rights flourished everywhere under national constitutions or laws or if they were protected by national courts and other governmental or non-governmental institutions, there would be little need for any international law of human rights. Ideally, he stated, the ultimate purpose of the international human rights program is to liquidate itself, to see to it that human rights are protected nationally, so that an international program is no longer needed.¹ Indeed the operation of international machinery for the protection of human rights is almost always made dependent on the exhaustion of local remedies.² International enforcement of human rights invariably involves some surrender of the cherished concept of national sovereignty. While the Charter of the United Nations sets out as one of its purposes the achievement of

. . . international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion³

it also emphasises the fact that the organization is based on the principle of the sovereign equality of all its members and stresses that nothing in the present Charter 'shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state . . .'⁴ Although the promotion and enforcement of human rights are matters of international concern they fall nonetheless essentially within the domestic jurisdiction.

In examining the scope and limitations of state machinery in the Caribbean area it must first be noted that the constitutions of the Associated States and all the independent countries which were formerly British colonies contain chapters defining human rights and setting up machinery for their enforcement.⁵ These rights are civil and political rights which are by their very nature capable of easier legal enforcement. None of the constitutions enumerate social and economic rights but some of them do contain preambles⁶ setting out societal goals which implicitly recognize the existence of some of the rights which normally fall under the heading 'social and economic rights.'

Much time need not be spent on considering the scope and limitations of state machinery as far as the enforcement of social and economic rights are concerned. By and large they are not capable of direct legal enforcement. Such enforcement becomes possible only when the state passes legislation which establishes the right. Where there is no such legislation courts and other governmental institutions are powerless to afford protection.

A consideration of Article 11 of the International Covenant on Economic, Social and Cultural Rights will illustrate the difficulties. The Article reads:

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.
2. The States Parties to the present Covenant recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes which are needed:
 - (a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;
 - (b) taking into account the problems of both food importing and food exporting countries, to ensure equitable distribution of world food supplies in relation to need.

The Article on the face of it recognizes that freedom from hunger depends on international co-operation. State machinery for the enforcement of that right would be powerless to enforce it in circumstances, for example, where drought or flood disastrously reduced the available supply of food. Even if it could be shown that the resources of the country were sufficient to provide an adequate standard of living (a concept which is no doubt justiciable though potentially productive of wide divergencies of viewpoint) there would still remain near insuperable problems—with present machinery—of enforcing any judgement arrived at.

The distinction between the two types of rights finds expression in the language of the international covenants agreed upon to secure their protection. Thus, as far as economic, social, and cultural rights are concerned the obligation is to

take steps individually and through international assistance . . . to the maximum of its available resources with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.⁷

Where civil and political rights are concerned the States Parties undertake . . . to respect and ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant . . .⁸

A similar difference of language can be noted when Article 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms is contrasted with Part I of the European Social Charter.

As far as economic, social, and cultural rights are concerned the scope of State machinery embraces political activity to persuade governments to pursue policies which appear to be directed to the implementation and expansion of these rights. In that regard the enjoyment of civil and political rights may be of crucial importance since the unhampered exercise of these rights can make easier the tasks of organization and propaganda which can affect governmental action. Agitating for the enactment of the 'legislative measures' mentioned in the International Covenant on Social, Cultural and Economic Rights is only possible where there is some modicum of freedom of expression and freedom of association and some assurance that personal liberty is safeguarded by laws which define strictly the conditions under which it may be curtailed.

It is difficult, however, to conceive of any State institution monitoring progress in the field of social, cultural, and economic rights. Essentially this must be the task of an international body having the right to receive and preferably to demand reports from member countries. The International Labour Organization performs such a task. Members are required to report each year on the measures they have taken to give effect to Conventions they have ratified. They are also required to set out which Conventions they have not ratified and even though not bound to implement those they are obliged to report on the extent to which they have or have not given effect to their provisions. These reports are studied by a Committee of Experts which submits a report to the Tripartite ILO Committee on the Application of Conventions and that Committee in turn submits a report to the ILO Conference. In this way the pressure of international public opinion can be brought on members who fail to comply without good reason. International rather than State machinery is, therefore, the most efficient method of producing results in this important but exceptionally difficult area.

The situation is totally different when civil and political rights are considered. The Associated States and the independent countries of the Commonwealth Caribbean have all attempted in their constitutions to impose fetters on the powers of the legislative institutions of the State to pass laws which infringe the traditional civil and political rights. The concepts of the sovereignty of Parliament and the lack of jurisdiction of the courts to examine Acts of Parliament in order to decide on their validity have not been accepted. Courts in the Associated States and in the independent countries of the Commonwealth Caribbean can declare an Act of the legislature invalid if it impinges on a fundamental right enshrined in the Constitution.

Typical of the constitutional provision to that effect is s.25 of the Constitution of Jamaica

- (1) Subject to the provision of subsection (4) of this section, if any person alleges that any of the provisions of sections 14 to 24 (inclusive) of the Constitution has been, is being or is likely to be contravened in relation to him, then, without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the Supreme Court for redress.
- (2) The Supreme Court shall have original jurisdiction to hear and determine any application made by any person in pursuance of subsection (1) of this section and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of the said section 14 to 24 (inclusive) to the protection of which the person concerned is entitled. Provided that the Supreme Court shall not exercise its powers under this subsection if it is satisfied that adequate means of redress for the contravention alleged are or have been available to the person concerned under any other law.
- (3) Any person aggrieved by any determination of the Supreme Court under this section may appeal therefrom to the Court of Appeal.⁹

A clear power of judicial review has thus been set out in all the constitutions. In *Collimore and another v. The Attorney General*¹⁰ Wooding C.J. stated:

I am accordingly in no doubt that our Supreme Court has been constituted, and is, the guardian of the Constitution, so it is not only within its competence but also its right and duty to make binding declarations, if and whenever warranted, that an enactment passed by Parliament is *ultra vires* and therefore void and of no effect because it abrogates, abridges or infringes or authorises the abrogation, abridgement or infringement of one or more of the rights and freedoms recognised and declared by Section I of the Chapter. I so hold.

The rights which are protected under the constitutions other than that of the Republic of Trinidad and Tobago are essentially identical as is the method of formulating the rights. The basic pattern is that of the first Constitution of Nigeria which closely followed the model of the European Convention for the Protection of Human Rights and Fundamental Freedoms. In each case the right is stated broadly and thereafter exceptions are set out, sometimes in detail and other times in wide terms, which leave a great deal to judicial interpretation.

The following are the rights protected:

- the right to live;
- the right to personal liberty;
- protection from slavery and forced labour;
- protection from inhuman treatment;
- protection from deprivation of property;
- protection from arbitrary search or entry;
- provision to secure protection of law;

protection of freedom of conscience;
protection of freedom of expression;
protection of freedom of assembly and association;
protection of freedom of movement;
protection from discrimination on grounds of race, place of origin, political opinions, colour or creed.¹¹

An example of a right to which specific exceptions are set out is the right to life. In reasonably justifiable circumstances life can be taken in the defence of any person from violence or in the defence of property, in effecting a lawful arrest or preventing the escape of a person lawfully detained, in suppressing a riot, insurrection or mutiny or in order to prevent the commission of a criminal offence by the person killed.¹² On the other hand, the exceptions to protection from arbitrary search or entry are couched in the broadest terms. Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of the right so long as the provision is reasonably required 'in the interests of defence, public safety, public order, public morality, public health, town or country planning, the development or utilisation of public resources or the development or utilisation of any other property in such manner as to promote the public benefit'. Restrictions can also be imposed if reasonably required 'for the purpose of protecting the rights or freedoms of other persons'.¹³

The constitutions of the Commonwealth of the Bahamas, Barbados, and the Republic of Guyana contain clauses preserving existing written law from invalidation because of inconsistency with the provisions of the Chapters on Fundamental Rights.¹⁴ The Constitution of Jamaica preserves existing law from any such invalidation.¹⁵ In *D.P.P. v. Nasralla*¹⁶ the Privy Council held that the Jamaican clause included both written and unwritten law. In effect, therefore, in the case of Jamaica a common law rule which conflicts with the clear intent of a clause defining a fundamental right will prevail over that clause, thus restricting the rights apparently guaranteed under the Constitution.

The formulation used by the Republic of Trinidad and Tobago is completely different. The rights are stated baldly in section 4 of the Constitution, and there are no exceptions. Freedom of thought and expression stands as a right and also freedom of the press¹⁷ which, it can be argued, is merely a consequence of the exercise of that freedom. In much the same way freedom of association and assembly appears as well as the right to join political parties and to express political views.¹⁸ A right not contained in any of the other constitutions is 'the right of a parent or guardian to provide a school of his own choice for the education of a child or ward'.¹⁹ The Constitution declares that the enumerated rights have existed and shall continue to exist in Trinidad and Tobago and provides that 'no law may abrogate, abridge or infringe or authorise the abrogation, abridgement or infringement of any of them'.²⁰ Without prejudice to the generality of that prohibition, specific areas are then selected for special mention.²¹ All existing

law is, however, preserved from invalidation, as also are laws repealing and replacing existing laws or altering them in a manner which does not derogate from any fundamental right to an extent greater than was the case before the alteration. The intendment is clearly that the term 'existing law' should include both written and unwritten law which makes the formulation in Trinidad and Tobago perhaps the broadest of any of the constitutions. The net effect is that the entire body of existing laws in Trinidad and Tobago has been preserved from challenge and only new laws enacted after the date on which the 1976 Constitution became effective can be challenged. This considerably limits the scope of the machinery of judicial review as a method of enforcement of the rights apparently enshrined in the Constitution. The judicial view—at least in the cases of Jamaica and Trinidad and Tobago—is that the constitutions create no new rights. They merely preserve existing rights.²²

A classic example of the emasculation of a right stated with apparent clarity in the repealed Constitution of Trinidad and Tobago by a common law rule can be found in the case of *Re Thornhill*.²³ The situation under the Republican Constitution would have been the same. Section 2(c)(ii) of the repealed Constitution prescribed in effect that no Act of Parliament should deprive a person who has been arrested or detained of the right to retain and instruct without delay a legal adviser of his own choice and to hold communication with them.²⁴ Thornhill, who had been arrested on a series of charges, alleged that his police custodians had denied him this right to communicate with counsel of his choice. He filed a motion asking for a declaration that his right had been infringed and that certain statements which he had made to the police while in custody and denied this right should be declared inadmissible at his trial and handed up for destruction. It was argued on behalf of the Attorney-General at first instance that there was no right to counsel at common law and accordingly there was no right to counsel under the Constitution since existing law had been preserved and could not be invalidated even if inconsistent with the terms of the Constitution. The Constitution therefore forbade the Parliament from passing a law depriving a person of a right which in any event he did not enjoy.

In the High Court the argument failed but on appeal to the Court of Appeal the Attorney-General succeeded. The principal judgement was based on another ground. The Court held that the police are not in law servants of the State. They act independently and accordingly their actions could not be the basis for an application for remedies for infringement, abrogation or abridgement of a fundamental right. The implications of this approach to the protection of fundamental rights are far-reaching. The reality is that state actions infringing fundamental rights are usually executed by the police. If the state is not to be responsible but only the particular policeman who is alleged to have committed the infringement complained of, the effectiveness of judicial review will have been considerably reduced. Apart from this, the preservation of unwritten law and its elevation to a status above that of rights specifically enumerated in the constitutions of Jamaica and the Republic of Trinidad and Tobago are serious limitations on the scope of

enforcement of these rights. The restriction becomes greater when the unwritten law is regarded as being static—what it is alleged to have been at the date of the coming into force of the constitutions—and not as a dynamic system capable of movement and change. The Constitution Commission of Trinidad and Tobago had recommended that the formulation of the Chapter on Fundamental Rights and Freedoms in any new constitution should be brought in line with that of the other Commonwealth Caribbean territories and that the existing law clause should be removed.²⁵ In the draft Constitution submitted to the Parliamentary Select Committee the first recommendation was accepted²⁶ although the existing law clause was preserved.²⁷ The final draft, however, reverted to the original formulation and the existing law clause was made even wider so that laws passed between 1962 and 1976 which could have been challenged under the 1962 Constitution were preserved from challenge. This would indicate a conscious decision to limit the scope of judicial review as a method of enforcing the declared rights.

Public Emergency

Another serious limitation on the machinery of state enforcement is the power vested in the Executive to declare a state of emergency during which the rights enumerated in the constitutions can be abridged.

In Trinidad and Tobago laws can be passed which are inconsistent with all the rights recognised under the Constitution though such laws may be reviewed and invalidated if their provisions 'may be shown not to be reasonably justifiable for the purpose of dealing with the situation that exists during that period'.²⁸ The approach is rather more selective elsewhere. Barbados²⁹ and Jamaica³⁰ make specific provision only for detention without trial during a period of public emergency. As has been mentioned, some of the rights contain broad exceptions permitting derogation 'in the interests of defence, public safety, public order, public morality or public health'. These always include freedom of expression, freedom of assembly and association, freedom of movement, and freedom from arbitrary search of person or property. The constitutions of these two countries contemplate that in a period of emergency laws may be passed derogating from these freedoms under that broad head of exception and provision is made for removing these laws from the possibility of successful challenge under the provision prohibiting discrimination on grounds of race, place of origin, political opinions, colour or creed.³¹

In Grenada the provisions protecting the individual from arbitrary detention and from discrimination are suspended.³²

In the Commonwealth of the Bahamas, the proclamation of a state of emergency permits arbitrary detention and also infringements of the provisions to secure protection of the law (except with regard to retrospective creation of crimes and enhancement of penalties), protection for privacy of home and other property, freedom of conscience, freedom of expression, freedom of assembly and association, freedom of movement, and freedom from discrimination.³³

The inroads which can be made on the declared rights is therefore serious and the courts have no power to examine the circumstances which led to the declaration of the state of emergency and rule as to whether it was justified or not.

They can pronounce on whether the prerequisites for a valid declaration of a state of emergency have been fulfilled and if they have not been fulfilled invalidate any action taken consequent thereupon,³⁴ but such irregularities are usually easily corrected so that the situation remains unchanged save that an individual illegally detained can recover substantial damages.

Judicial Independence

Having considered so far the scope and limitations of State machinery as far as the constitutions themselves are concerned reference should be made to the actual operation of the system. If the courts are to be the guardians of the constitution it is important that they should themselves be adequately protected to perform that difficult task. There is no doubt that the constitutional protection afforded is adequate except in one particular. In all the territories judges once appointed cannot be removed, except for cause. The process of establishing good cause involves a hearing by a panel of persons who hold or have held judicial office in superior courts in Commonwealth countries and an appeal to the Judicial Committee of the Privy Council.³⁵

There is the possibility of political influence in the appointment of judges. The chief justices are all appointed by the Head of State on the advice of the Prime Minister—except in Trinidad and Tobago and the Associated States. In Trinidad and Tobago the Head of State appoints the Chief Justice after consultation with the Prime Minister and the Leader of the Opposition. The Chief Justice of the Associated States is appointed by the Queen on the advice of all the Premiers. The possibility that chief justices may be chosen who it is thought may be well disposed to the administration is understandable but there is no reason why any person so appointed should not behave impeccably once appointed. The issue is one of professional integrity.

Except in Barbados, where there was a constitutional amendment, judges are appointed by the Head of State on the advice of the Judicial and Legal Service Commissions, which are themselves composed of persons nominated on the advice of the Head of Government. The possibility of political influence cannot be dismissed as remote in such an arrangement. In Barbados judges are appointed by the Head of State on the advice of the Prime Minister. In moving the amendment the Prime Minister stressed that the important consideration was security of tenure and there is much to be said for that argument on the assumption that appointees are likely to be persons of integrity.

The one area of concern is the provision for acting judges. They do not enjoy security of tenure and may be motivated to behave in such a manner that their appointments are made permanent.

Total Breakdown

There are situations in which the protection of human rights breaks down because of the failure of the governmental institutions themselves to work for their protection. As recorded in the Duffus Report on the Inquiry into the Breakdown of Law and Order and Police Brutality in Grenada, police aides, many of them with criminal records, were recruited to assist the regular police force and in the words of the Commission 'inflicted unspeakable atrocities upon the people of Grenada, especially the members of the New Jewel Movement (an opposition group) on Sunday November 18 and Monday November 19, 1973.'

Apart from this illegal force a contributory factor in the breakdown of law and order was the failure of two magistrates to discharge their judicial office with fairness and competence and the lack of knowledge of his duties demonstrated by a senior legal officer. The Commission found that this officer behaved with 'grave impropriety' at the hearing of certain bail applications.

In cases such as Grenada the system in theory remains reasonably effective. In practice it does not operate because important officials do not carry out their functions as they should.

Setting the System in Motion

Even where the system is reasonably effective and the officials perform adequately the persons whose human rights are adversely affected may not take the necessary steps to secure their own protection. The legal mechanisms provided to obtain redress may be so expensive as to be beyond the reach of the underprivileged who are often most affected.

A significant example of legislation which appeared to be in part in clear breach of the Chapter on Human Rights and has so far remained unchallenged is the Prohibited and Unlawful Societies Association Act No. 32 of 1974 in Dominica. The purpose of the Act was to make the 'Dreads' a prohibited association, membership of which would be a criminal offence. Section 9 of the Act provides that no criminal or civil proceedings shall be brought or maintained against anyone who kills or injures any member of an association or society designated unlawful, who shall be found at any time of night or day inside a dwelling house. This section on the face of it infringes section 2 of the Constitution of Dominica which defines the right to life. The law has, however, not been challenged, to my knowledge. The 'Dreads' were strongly disapproved of by the society in general and were considered idle and potentially dangerous but this could hardly justify the general apathy which made them liable to be killed without redress if found within their own homes by night or day.

A Regional System of Enforcement

All the deficiencies discussed above will not be remedied by a regional system of enforcement. If governments do not wish to have existing laws, whether written or unwritten, subjected to challenge they are not likely to enter into covenants which will open the way to such challenges.

A regional system would, however, be effective in cases where the system has been subverted and there was a breakdown of law and order, as in Grenada. It would permit independent investigation of any complaint of systematic subversion of the judicial system which the exhaustion of domestic remedies rendered futile.

A regional system which required the reporting of declarations of public emergencies, stating the measures taken and the reasons therefor, would have an inhibiting effect on governments wishing to declare states of public emergency.³⁶ One does not know how the jurisprudence of such a system would develop but it is of significance that in the Greek case the European Commission held itself entitled to examine whether or not there existed in Greece in April 1967 an 'emergency threatening the life of the nation', a condition precedent for exercising the right to derogation under the Convention.³⁷ Any such provision would considerably strengthen the protection of human rights in the area.

Proposals

It is generally agreed that the most effective regional system for the protection of human rights is that provided by the European Convention. Inevitably, therefore, one should look at its experience in considering the design of any other system.

It is a three-tiered system with a Commission, a Committee of Ministers, and a Court of Human Rights. The most active of the three organs is the Commission. This receives complaints, decides whether they are admissible or not, investigates them if they are, and attempts to arrive at a friendly settlement. If no settlement is reached the report on the case is transmitted to the Council of Ministers. At that stage the case may be referred to the Court either by the Commission or by the State concerned. If there is no reference to the Court within three months the Committee of Ministers must decide the case. Up to 1975 the Court had delivered judgments in twelve cases. The Convention became operative in 1954 and the Court came into being in 1959.

It seems unlikely that in the context of the Commonwealth Caribbean a Court of Human Rights will be needed. When one considers that all the territories of the region (save Guyana) retain appeals to the Privy Council, there may well be reluctance to constitute another court which is not likely to be kept busy in one particular area.

On the other hand, an organ patterned after the Commission, receiving, sifting and investigating complaints can be most effective—more so if, like the European Commission, it operates in private and uses its good offices to effect friendly settlements. Where this fails a referral to a Committee of Ministers for decision would bring the matter to an end.

Some have argued that the enforcement of human rights is essentially a judicial matter and certainly within the domestic jurisdiction this is the preferred method. This is understandable because developed procedures for enforcement exist. In the international sphere no such procedures exist and the formal adju-

cation of a court which leads to the expectation of effective execution may well be inappropriate. In any event, as in the case of Greece, a participant can always abort a possibly unfavourable judgment by denouncing the Covenant. It pays the price of ostracism and may well find this burdensome, but it need not conform.

Doubtless in determining issues as to whether or not rights have been infringed, difficult questions of law will arise but a properly constituted Commission with a competent professional staff should be capable of deciding such issues expertly and wisely.

Of great importance also is the fact that procedures in complaining to a Commission need not be formal or expensive. While the services of a lawyer would be helpful they would not be necessary as they are in an application to the High Court. The Commission itself would carry out its investigations and expensive representation before it would not be required.

With investigation, mediation, and political adjudication as the basis of the regional system the surrender of sovereignty inherent in any such convention would be considerably minimised and its acceptance would therefore be more likely.

The conditions are propitious. The region is well-defined and has a common historical background. The same juridico-political concepts are shared throughout the Caribbean which I conceive to be present in the case of the proposed system—though it must be noted that the European Covenant has not suffered from both the Common Law and Civil Law concepts. A well-concerted effort should produce reasonably prompt results.

NOTES

1. International Protection of Human Rights. *The Work of International Organizations and the Role of U.S. Foreign Policy*. U.S. Government Printing Office, Washington (1974), p. 354.
2. European Convention for the Protection of Human Rights and Fundamental Freedoms, Art. 26.
American Convention on Human Rights, Art. 46(a). Optional Protocol to the International Covenant on Civil and Political Rights, Art. 5(3).
3. Article 1.3.
4. Article 2.7.
5. For example, The Constitution of the Commonwealth of the Bahamas, Ch. 3, Arts. 15-31;
The Constitution of Barbados, Ch. 3, secs. 11-27;
The Constitution of Grenada, Ch. 1, secs. 1-18;
The Constitution of Guyana, Ch. 2, Arts. 7-20;
The Constitution of Jamaica, Ch. 3, secs. 13-26;
The Constitution of the Republic of Trinidad & Tobago, Ch. 1, secs. 4-14;
The Constitution of Dominica, Ch. 1, secs. 1-17;
The Constitution of St. Lucia, Ch. 1, secs. 1-18.
6. For example, The Constitution of the Commonwealth of the Bahamas; The Constitution of Barbados, The Constitution of Grenada; The Constitution of the Republic of Trinidad & Tobago; The Constitution of Dominica.

7. International Covenant on Economic, Social and Cultural Rights, Art. 2.1.
8. International Covenant on Civil and Political Rights, Art. 2.1.
9. The corresponding clauses in some of the other constitutions are as follows:
Bahamas: Art. 28; Barbados: sec. 24; Grenada: sec. 16; Guyana: Art. 19; Trinidad & Tobago: sec. 14; Dominica: sec. 16; St. Lucia: sec. 16.
10. (1967) 12 W.I.R. 5.
11. This is the format followed in the constitutions of the Commonwealth of the Bahamas, Barbados, Grenada, The Republic of Guyana, Jamaica, Antigua, Dominica, St. Christopher, Nevis, Anguilla, St. Lucia and St. Vincent. There are differences of detail. The Constitution of Grenada mentions "the right to work", but makes no detailed provisions for its protection. In the Commonwealth of the Bahamas trial by jury when charged in the Supreme Court is protected. There are significant variations in the formulation of the protection from deprivation of property.
12. Commonwealth of the Bahamas: Art. 16; Barbados: sec. 12; Grenada: sec. 2; The Republic of Guyana: Art. 4; Jamaica: Art. 14; Dominica and St. Lucia: sec. 2.
13. Barbados: sec. 17; see in similar terms Commonwealth of the Bahamas: Art. 21; Grenada: sec. 7; The Republic of Guyana: Art. 9; Jamaica: sec. 15; Dominica and St. Lucia: sec. 7.
14. Commonwealth of the Bahamas: Art. 30; Barbados: sec. 26; The Republic of Guyana: Art. 18.
15. Sec. 26(8), (9).
16. (1967) 10 W.I.R. 299.
17. Sec. 4(i) and (k).
18. Sec. 4(j) and (e).
19. Sec. 4(f).
20. Sec. 5(1).
21. Sec. 5(2).
22. See particularly the judgment of Pamell J. in *Banton v. Alcoa Minerals of Jamaica Inc. & others* (1971) 17 W.I.R. 275. F. R. Alexis argues to the contrary in *Human Rights and the Courts in the Commonwealth Caribbean*, mimeographed, pp. 284 et seq.
23. Unreported. No. 2765A of 1973 (High Court). Civ. App. No. 39 of 1974 (Court of Appeal).
24. This is in exactly the same terms as sec. 5(2)(c)(ii) of the Republican Constitution.
25. Report of the Constitution Commission for Trinidad and Tobago. (Port-of-Spain: Government Printery, 1974).
26. Draft Constitution of Trinidad and Tobago 1975 (Trinidad & Tobago: Government Printery, 1975), secs. 16-30.
27. *Ibid.*, sec. 19.
28. Constitution of the Republic of Trinidad and Tobago, sec. 7.
29. Constitution of Barbados, secs. 13(5) and 25.
30. Constitution of Jamaica, secs. 15(5) and 26(4) to (6).
31. Constitution of Barbados, sec. 23(6); Constitution of Jamaica, sec. 24(7).
32. Constitution of Grenada, sec. 14.
33. Constitution of the Commonwealth of the Bahamas, Art. 29(2).
34. *Kelshall v. Pitt* (1971) 19 W.I.R. 136.
35. Commonwealth of the Bahamas Constitution, Art. 96; Constitution of Barbados: sec. 84; Constitution of Grenada: sec. 106; Constitution of Guyana: Art. 90; Constitution of Jamaica: secs. 100, 106; Constitution of the Republic of Trinidad & Tobago: sec. 106; West Indies Associated States Supreme Court Order SI 1967/233.
36. See Article 15 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
37. Robertson, *Human Rights in Europe* (Manchester, 1977), pp. 176-78.

POLITICAL IMPLICATIONS OF INTER-STATE MACHINERY

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The establishment of inter-state machinery for the promotion of human rights in the Caribbean raises important political issues. In the context of this discussion, practical realities demand that the 'promotion' of these rights should be regarded as including safeguarding, implementing, and probably even enforcing them. In the first place the chance of such machinery being created will depend largely on its political acceptability, but in the final analysis its survival will depend on the respect for it which its efficacy engenders.

The concept of fundamental human rights and freedoms springs from an awareness of the essential attributes and worth of the human personality. The provision within a region of inter-state machinery for the promotion of such rights and freedoms must therefore be based on a general awareness within such a region of the inherent dignity of the individual. It follows therefore that a primary factor in determining the feasibility as well as desirability of formulating any conventional arrangement for the promotion of human rights in the Caribbean is the extent to which there is a community of interest, concern, and experience on which the joint affirmation of such rights and freedoms can be founded. It is possible to say that the Commonwealth Caribbean constitutes a culturally identifiable unit. The historical antecedents of the former British colonies include common experiences of slavery, imperialist domination, and colonial exploitation. The resultant heritage embraces a common jurisprudence, similar political forms, linguistic similarities, parallel cultural disorientation and development, and extraordinarily uniform, if sometimes unfortunate, social attitudes and norms. Despite its failure, the ill-fated Federation of the West Indies is indicative of an identity of interest and community of purpose. Indeed, in some respects its failure may be said to have resulted from the uniformity of under-development in its units. Today co-operation and tentative integration continue in the University of the West Indies, Caricom, in cricket, and in a host of other little-noticed but significant ways. The existence of common interests and outlook is not confined to the Commonwealth Caribbean. Throughout the region we have suffered the impact of imperialist exploitation in the past. Today we strive together to maintain our sovereignty and right to self-determination. In previous centuries the Caribbean was a clearly defined sphere of influence for European colonialist policies. In today's world we are locked in a common struggle for survival against the injustices occasioned by the economic imbalances between the developed na-

tions and the Third World. More recently we have come to discover that through our common colonial history there are greater cultural similarities and social affinities than we had formerly appreciated. The concept of a Caribbean Free Trade Association, the Carifesta celebrations, and many Caribbean sporting activities are no longer confined to the English-speaking (or Commonwealth) Caribbean territories. These factors imply that in a large measure the Caribbean experience and outlook satisfy the first of the political desiderata for the institution of regional machinery for promoting human rights.

In the Commonwealth Caribbean our parallel political evolution has created a concrete basis for an identity of outlook in the field of human rights. Even before we experienced democracy in practice we had learnt in theory the value of freedom. We have inherited the common law tradition and its emphasis on individual liberty, the representative parliamentary system and its inclination to freedom of political choice. In all our territories respect is generally expressed for the fundamental principles of democracy. No government or nationally representative political organisation declares itself opposed to the principle that free, fair, and frequent elections should be conducted, and that the citizen should have the right to criticise his government and organise a political opposition. It is generally accepted that these are some of the constitutional means by which it is possible to ensure that legislative measures and executive action are expressions of the will of the people. From a political point of view it is significant that, even where there is controversy as to the extent to which these principles are faithfully adhered to, governments do not question their validity but defend their efforts to conform with them.

The community of interest and identity of concern which characterise the Commonwealth Caribbean countries are most evident in the constitutional instruments which they have adopted. In each of the constitutions fundamental rights and freedoms are enshrined and protected. In each case the constitutional guarantees owe their inspiration to the Universal Declaration of Human Rights and the European Convention on Human Rights. These protective provisions are made justiciable and thus constitute a legal constraint on the political element in the State. The prevailing sentiment is typified by the Preamble to the Jamaican Chapter on Fundamental Rights and Freedoms which states:

Whereas every person in Jamaica is entitled to the fundamental rights and freedoms of the individual, that is to say, has the right, whatever his race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely:

- (a) life, liberty, security of the person, the enjoyment of property and the protection of the law;
- (b) freedom of conscience, of expression and of peaceful assembly and association; and
- (c) respect for his private and family life.

The subsequent provisions of this Chapter shall have effect for the purpose of affording protection to the aforesaid rights and freedoms, subject to such limi-

tations of that protection as are contained in those provisions being limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest.

In the Commonwealth Caribbean there is an ultimate right of appeal to a single but external body, namely the Judicial Committee of the Privy Council in England. Further, in Guyana, Trinidad and Tobago as well as Jamaica, Ombudsmen have been appointed to investigate citizens' complaints about abuses of administrative power and discretion. Despite the ostensible orthodoxy and impressive constitutional declarations there are even within these territories such deviations from the observance of human rights as to present political obstacles to the adoption of inter-state regulatory machinery. In September 1975 the Tenth Meeting of the Council of the Organisation of Caribbean Bar Associations unanimously passed a Resolution which noted a 'growing tendency towards disregard for human rights in the Caribbean Region'. In September 1976 a meeting of experts and interested persons sponsored by the Caribbean Conference of Churches unanimously passed a Resolution which drew attention to the existence of 'widespread violations of human rights throughout the Caribbean Region', and stated that such violations had taken 'legislative, executive, social, economic, and other forms'.

At recent regional conferences of lawyers as well as of other interested persons, critical note has been taken of allegations concerning, *inter alia*, the following:

- (a) the curtailment of freedom of association and the infringement of the rule of law inherent in the Unlawful Societies and Associations legislation in Dominica;
- (b) the abrogation of the freedom of expression occasioned by the Public Order (Use of Loudspeaker) Act and its administration in Grenada;
- (c) the Newspaper legislation of Antigua, Dominica, Grenada and Guyana, which inhibits the right to freedom of expression;
- (d) the failure of the Government of Grenada to implement the recommendations of the Duffus Commission of Inquiry which are directed to safeguarding the Rule of Law;
- (e) the denial of justice in the Dominican case of Desmond Trotter by the circumstances surrounding the preparation and presentation of the case for the prosecution;
- (f) the expulsion of the Attorney-General of Grenada from the State and its endangering of the administration of justice;
- (g) the searching during the State of Emergency in Jamaica of the office of a lawyer who was then representing a detainee in habeas corpus proceedings and its implications for the relationship between client and attorney, and the confidentiality of the relationship;
- (h) the unfair harassment of the poor or dissident by security forces and the recurring instances of police brutality in the region; and

- (i) the manipulation of the electoral processes and machinery to the detriment of political opposition groups.

Many of the matters to which these allegations relate are interwoven with partisan political rivalries and struggles for political power. To the extent that effective inter-state machinery for the protection of fundamental rights would restrict the facility with which those who control the levers of governmental power are able to retain that power, there will be an inevitable disincentive to governmental acceptance of such protective machinery.

Reluctance to implement regional control will also be bolstered by traditional insularity and fear of overweening supra-nationalism. Doubtlessly there are politicians who will oppose inter-state machinery for the promotion of human rights on the grounds that it is a threat to national sovereignty and may lead to unjustifiable foreign intervention in the domestic affairs of their countries. So far the portent of our experience is not encouraging. Although many Caribbean and Latin-American countries are members of the Organisation of American States, eight years after its approval only two States had adhered to the American Convention on Human Rights, and so it remains today a merely dormant instrument. One political factor has so far been given inadequate attention: it is that the existence of an effective and respected inter-state mechanism for preserving human rights will make it more difficult to justify unsolicited foreign intervention in the internal affairs of a participating country or destabilising manipulations of discontent on the grounds of alleged human rights violations. The presence of an impartial regional system of monitoring and regulating human rights issues would necessarily reduce the risks of purely politically motivated criticisms of the governments against whom allegations are made, and therefore lessen their potential for causing political embarrassment. It is a truism that where the protection of human rights is entrusted to an effective legal mechanism the relevant issues tend to be depoliticised.

The argument in opposition to international machinery for the protection of human rights which is based on national sovereignty is in fact losing much of its former force. The Universal Declaration has come to be generally regarded as an authoritative 'statement of common standards of achievement for all peoples and all nations'. The Declaration has been invoked in the international area as well as in national jurisdictions. It has been relied on as the norm by which such issues as racial discrimination, the treatment of minorities and refugees, forced labour, and colonialism should be judged. The European Convention and the effective and efficient operation of the European inter-state machinery have demonstrated the feasibility and fairness of regional mechanisms for the protection of the fundamental rights and freedoms of individuals. The Commission on Human Rights of the United Nations Economic and Social Council has not only conducted useful studies and provided advisory services in the field of human rights but it has also requested and obtained periodic reports from member States concerning developments in human rights as well as encouraged the establishment

of national advisory committees on human rights. The Inter-American Commission on Human Rights, the International Commission of Jurists, and Amnesty International are among international organisations which have been permitted to investigate complaints of governmental abuses and the reports of such bodies are given wide international recognition and respect.

What one may term 'the internalisation of the human rights ideal' has also been seen in a less institutionalised form. There is today hardly an international conference at which some aspect of human rights is not an important topic for discussion. As the condemnation of Uganda at the recent Commonwealth Prime Ministers' Conference indicates, the former diplomatic inhibitions against international criticism of internal abuses of human rights are fast dissipating. Ali Mazrui has made an impassioned plea that the Organisation of African Unity should change its emphasis from the protection of African presidents from assassination and overthrow to the safeguarding of the human rights of individuals. The United States Secretary of State, Cyrus Vance, commenting on the recent OAS Assembly in Grenada, stated that the matter which had been of greatest importance was the attention paid to human rights and 'it is important to have human rights on our table and have it fully discussed'. Recent developments suggest that there is a new spirit of unprecedented political strength which favours the application in the field of human rights of an international moral judgment based on generally recognised principles of civilised nations. While normal inter-state machinery has been slow in coming into operation, in an informal way an international pattern of monitoring human rights issues has been taking shape.

There is no doubt that in the Caribbean and Latin America region as a whole, where different systems of government are in existence and varied ideologies are embraced, there are special political problems in carrying these trends to the ultimate of establishing inter-state machinery for the enforcement of human rights. Where there is a military regime which is not subject to a free electoral process, the submission to impartial arbitrament of complaints against the exercise of autocratic power is inconsistent with its nature. Where the tendency is to charismatic political leadership, international supervision is a threat to the mystique of power and the personality cult. Where the government is communist, the adoption of the strict communist doctrine of 'self-determination' implies that since the proletariat are the ruling class they promote and protect their own human rights and freedoms through the State organs and therefore international adjudication is treated as tantamount to a violation of this concept of self-determination. It is noteworthy, however, that even those governments which are basically opposed to inter-state machinery for the protection of human rights normally defend themselves against charges of violations of human rights and show themselves anxious to convince world opinion that they respect human rights. In this region, for instance, Chilean authorities have sought to justify the detention of political prisoners and to explain the extent to which they have actually released such detainees. In Grenada political and moral pressure forced the establishment of the Duffus Commission of Inquiry. World experience has shown that no gov-

ernment can be entirely insensitive to the political importance of adverse international opinion.

It is of the utmost importance to observe that the call for regional surveillance of human rights and the establishment of inter-state protective machinery has come not only from Bar Associations, Church organisations, and human rights activists, but also from political organisations. The Jamaica Labour Party recently complained to Amnesty International about the operation of the electoral system in Jamaica. Delegates at a recent Conference of Caribbean Marxist Organisations called for the establishment of a Caribbean Convention on Human Rights. The Marxist opposition party of Guyana has also proposed that the Caricom Treaty provisions should include the protection of human rights. It is noticeable also that minority and opposition political groups are usually most strongly in favour of the establishment of inter-state protective machinery. Since there is no absolute insurance against the loss of political power, the ruling groups may eventually see in such machinery their ultimate protection against retributive political power.

Perhaps the greatest single impetus to the growth of internationalism in the protection of human rights is the decision and declaration of the Carter Administration to make human rights an integral part of U.S. foreign policy. One may cynically say that it lacks sincerity of purpose since gross violations continue in the U.S. itself and the condemnations have so far been selective. The genuineness of the policy will surely be tested by time. In the meanwhile, as an approach to international relations its moral soundness is of political significance. Whether or not this emphasis on human rights will, as some claim, heighten rather than lessen repression and abuse, it adds a new dimension to international politics. It has brought the human rights issue into the limelight, and exposed all countries, including the United States itself, to the moral judgment of mankind. The approach has been welcomed by other governments. The acidity of the Russian response to it confirms rather than denies that this sort of diplomatic humanism exerts a strong political influence on international relations and the effect of international public opinion on human rights questions should not be under-estimated.

The Carter approach has stripped international relations of some of the hypocrisy and subterfuge of traditional diplomatic language. It suggests a change in American foreign policy from the unswerving support of the military despot in preference to the democratic socialist. In the developing world, and in this region in particular, its political importance is increased by the declared objective to pursue a policy of good neighbourliness in the region and to take into account the due observance of human rights in U.S. foreign economic policy and programmes. In a recent speech at the plenary session of the 18th General Assembly of the Inter-American Development Bank, U.S. Treasury Secretary Michael Blumenthal declared that the target and objectives of financial institutions included the protection of human rights, the improvement of living standards of people, the satisfying of basic human necessities, and the promotion of the dignity of man.

This re-emphasizes the importance of the question of economic and social human rights. In the field of economic and social human rights, as distinct from legal and political rights, the political implications of inter-state machinery have a positive as well as a negative aspect. The concept of human rights is now acknowledged as comprehending socio-economic rights. To achieve the true dignity of man the individual has to be emancipated from want and destitution and placed in a position where he can achieve a reasonable standard of living. In the Caribbean we have been striving to overcome the effects of the imbalance of our trade patterns with the developed world, of low prices for our products, technological under-development, exploitation by multi-national corporations and in many cases the accompanying features of illiteracy and unemployment. In dealing with these problems we have found it expedient to cooperate. In Caricom we already have an inter-state mechanism for regulation in the economic field. There has been co-operation in trade negotiations and in the formulation of common Third World strategies. The economic development of our natural resources, the development of technology suited to our peculiar needs and circumstances, the institution of effective environmental control, the inculcation in our peoples of a spirit of self-respect and self-reliance, the eradication of disease and malnutrition, the elimination of unemployment and illiteracy, the removal of the scourge of poverty are all capable of being facilitated and accelerated by regional co-operation and, in many cases, inter-state machinery. That gradually we have been coming to recognise this, is an important political factor in a consideration of the desirability and feasibility of establishing regional inter-state machinery in the field of human rights.

Expressed in terms of general policy and combined efforts on an international plane, the prospects for the institutional development of inter-state promotion and regulation of economic human rights are relatively good. Framed in terms of individual rights susceptible to inter-state regulation there are immense practical problems. The economic and social structure of our States are so diverse in nature that even common minimal standards are difficult to formulate. For example, while the Cuban society can, by the nature of its economic and social structure, accept the positive right of each individual to work, the Jamaican society is a far way from achieving that position. By reason of these divergencies, the inter-state machinery which is politically feasible will in the foreseeable future be limited in socio-economic matters mainly to the co-ordination of programmes, the formulation of joint approaches to international economic matters, and the regularisation of the consultative processes. In relation to an inter-state pronouncement on individual economic and social rights, its formulation would necessarily be a hortatory declaration of ideals rather than a legal expression of obligations. We have a sufficient identity of socio-economic concerns and objectives, common needs to protect our indigenous art and cultural identities, and mutual desires to utilise our natural resources for the improvement of the standards of living of our peoples, to find a Caribbean or Latin American Declaration of the Rights and Duties of Man to be a politically feasible—if minimal—achievement.

In the struggle within our communities to re-order our economies so as to promote social justice, social tensions and political conflict inevitably arise. There are occasions when the dynamics of change will produce collisions between intra-state machinery and individual liberty. It is important that we should appreciate that this clash is not the result of an inherent conflict between social and economic rights on the one hand and civil and political rights on the other. It is sometimes caused by the anxiety with which socio-economic rights are sought and the mechanisms employed for their realisation. The peoples of the Caribbean have contributed to the development of human rights in their struggles for self-determination and will not readily sacrifice their civil and political rights. At the same time the promotion of human rights in the region must recognise the urgency of the need for promoting social and economic rights. The political credibility and acceptability of policies and programmes for promoting human rights depend on the parallel development of both aspects of human rights and do not require the sacrifice of one set of rights on the pretext that it is necessary for the attainment of the other. Our collective experience, combined wisdom, and mutual co-operation on a regional level can assist in the resolution of these conflicts and the easing of these tensions. In a practical sense, it is important that we establish the mechanism for facilitating the transition from dependency and gross inequalities to economic sovereignty and social justice. Inter-state machinery for resolving human rights issues might assist in producing the political stability and social conscientiousness which will enable the acceleration of economic reform and the effective realisation of human rights. There is a fundamental political correlation between the observance of human rights and socio-economic development. As the Tanzania-sponsored U.N. Resolution recently declared, human rights' protection is 'a touchstone of development'. Martin Ennals, Secretary-General of Amnesty International, has stated: 'Developing countries are starting to realise that human rights is as crucial to their nation-building as economic development, and not just a luxury or western relic left from the colonial era.'

SUMMARY OF DISCUSSION OPENING PLENARY SESSION

Chairman: Sir William Douglas

Vice-Chairman: Miss Desirée Bernard

The Seminar opened with the presentation of four papers to the Plenary Session. The speakers were

Mr. W. Demas whose topic was 'Human Rights and their Promotion in the Caribbean';

Dr. N. Linton who spoke on 'Human Rights and Development';

Prof. P. T. Georges whose paper examined 'The Scope and Limitations of State Machinery'; and

Dr. L. Barnett on 'The Political Implications of Inter-State Machinery'.

The floor was then opened for general discussion of issues raised by the respective speakers.

The contributions reflected a predominant concern with two key issues and the debate consequently resolved itself into a consideration of:

1. The supposed dichotomy which flows from the categorisation of rights as either civil/political or economic/social/cultural and the relative emphasis which is to be placed on each set of rights.

2. The necessity for inter-state machinery for promoting Human Rights in the Caribbean and the chances of its success given the constraints of politics, economics, and geography.

Relationship Between Civil/Political and Economic/Social/Cultural Rights

It was universally recognised that a philosophy of human rights must underlie all development. Every type of political system expressed a commitment to human rights and accepted the formulation in the Universal Declaration of Human Rights, which was a distillation of all that was best in the diversity of perspectives on human rights. However, this shared commitment did not necessarily lead to a common perception of priorities, for these varied according to conditions of historical development. Accordingly, great controversy had been generated over the relative emphasis to be given to the respective classes of rights.

Support was expressed for the view that, as developing countries, Caribbean nations would have to exercise patience with respect to the full realisation of socio-economic rights, for while these rights might be recognised as philosophical imperatives their realisation was tied to such factors as self-reliance and adequacy of resources. To attempt too much in too short a time could effectively devalue

human rights; for should the attempt fail, the frustration of popular expectations which this would engender would inevitably lead to disillusionment and cynicism and a loss of faith in the validity of the concept of human rights. Governments should be required to concern themselves, as a long-term policy objective, with the economic, social, and cultural security of the community; in the short term the focus should be on securing civil and political rights.

This argument was challenged by participants who thought that the priorities should be reversed. They agreed that in the context of Third World experience there was justification for distinguishing between the two categories of rights, but rejected in emphatic terms the suggestion that such countries overreached themselves in attempting to achieve modernity and socio-economic transformation in a short time. That transformation is possible and often requires the application of coercive measures in order to eliminate backwardness and tardy growth. On this thesis, the realities of development justify restrictions on certain civil and political rights such as freedom of expression and association.

The adherents of this approach took strong exception to the view that economic mismanagement necessarily resulted where certain states, cited in category (b) of Mr. Demas' paper (see page 5 above), derogated from civil and political rights in order to achieve economic advancement. The 'economic mismanagement' resulted frequently from the machinations of members of the international community which had the strength and capacity to disrupt development in such countries. Equally, the perception of economic mismanagement was often the result of historical prejudice as to what happened within those states which subscribed to such a system of political economy.

Generally, participants denied the thesis of a dichotomy between the rights and denounced it as false. In the drafting of the Universal Declaration, it was pointed out, all the rights were regarded as complementary; the supposed tension between the rights was an outgrowth of ideological conflict and world politics of the 1960s. The Caribbean experience was asserted to be a negation of the proposition that one class of rights is to be advanced to the detriment of the other. The satisfaction of economic and social needs involved full popular participation in decision-making and policy formulation.

The important question was not whether one category of rights was to be sacrificed in favour of the other. It was as false to assume either that there was a necessary conflict between the two categories as it was to assume that there could never be such a conflict. The real issue was the extent to which underdevelopment justified the imposition of limitation on *any* human rights at all.

It was emphasised that before a government could justify the restriction of rights in the interests of development, that government must possess the legitimacy of being representative of the people who were to benefit from that development.

Machinery for Promotion and Protection of Human Rights in the Caribbean

Participants considered that central to the issue of enforcement of rights was the question of power. The recognition of rights was at once an acknowledgement of the need to protect the individual from the arbitrary exercise of power. But power tended always to be self-justifying and self-perpetuating and rights were thus in constant danger of erosion. Mere recognition was not a sufficient safeguard. For this reason all systems found it necessary to formulate strategies to deter the powerful from encroaching on individual rights. Institutionalised machinery for determining and protecting rights was usually considered the most appropriate means of achieving this.

The call was made for Caribbean peoples to concern themselves with devising options which might secure mechanisms of co-operation to promote human rights in the region. The protection of rights could not be left entirely to the devices of the municipal system for, quite apart from the legal mechanisms ensuring judicial independence, constitutional rights could be subverted if the judiciary became subservient to the interests of the executive or if constitutionally prescribed processes of consultation were not implemented in the spirit which was intended.

There was no dissent from the conclusion that a regional system of enforcement was needed. The more troublesome issue was deciding the form which that system should take and the standards which it should adopt. Should it be governmental or non-governmental? Should it be exclusively or primarily concerned with civil and political rights or would it monitor all rights?

The larger body of opinion favoured a governmental Commission on Human Rights, though it was envisaged that governmental hostility to an institution which might be perceived as impinging on a newly-won and much cherished sovereignty could destroy its effectiveness. It was argued in rebuttal that this was no bar to the establishment of such a regional body since the decision to ratify its creation would be a sovereign act in itself.

Some dissent from this view was based on a belief that a Caribbean Commission on Human Rights would not be successful unless it was complemented by a court of competent jurisdiction to provide judicial settlement of Human Rights disputes.

Further dissent was based on the fundamental rejection of the idea of a governmental structure. Certain participants advocated the creation of a conference or association of national non-governmental organisations involved in human rights to discharge a promotional and protectional function throughout the region. This was said to be likely to attract less governmental hostility than would a formally constituted commission.

Another view was that respect for human rights could be achieved only through the conscious efforts and struggle of the people: it could not be artificially superimposed by the creation of an organisation having no base of popular support. The historical evidence demonstrated that regional inter-state machinery for the protection of rights was not likely to have the approval or genuine sup-

port of Caribbean governments—particularly since there was widespread distrust of the electoral systems and a general belief that many regional governments were elected because of a subversion of electoral processes involving a denial of human rights. It therefore fell to activist groups and organisations to lay down guidelines for the initiation of popular movements to raise the level of human rights consciousness in their respective communities.

Whilst it was conceded that the inability of the countries of the English-speaking Caribbean to agree on a common Court of Appeal for the region made it less likely that they would agree on setting up inter-state machinery for the promotion and protection of human rights, the general view was that the two issues were quite separate. Efforts to press for the establishment of inter-state machinery should not be affected by the failure to secure establishment of a West Indian Court.

COMMITTEE I—ECONOMIC, SOCIAL AND CULTURAL RIGHTS

ECONOMIC AND SOCIAL RIGHTS IN THE CARIBBEAN

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All human behaviour is in some sense a derivative of mankind's urge for survival and self-fulfilment. The complex manifestation of the human urge for survival and self-fulfilment is, in turn, rooted in the triune human personality. Thus, the physical, the intellectual, and the spiritual are severally and conjointly the genesis of all human thought and action, imbuing mankind with an infinite capacity for good and evil.

Man's fight for survival and his quest for self-fulfilment are revealed in a system of aspirations or wants. The nature of the human personality is such that mankind's 'aspiration set' is unbounded. That is, the totality of human desire is insatiable. Thus, because of man's inability to attain absolute self-fulfilment and because of the multi-dimensional nature of his aspiration set, mankind is constantly faced with the problem of choice between alternative actions.

Because of one's involvement with one's fellow-person in society, one's actions normally have implications for the well-being of others. Man's intellect makes him aware of the consequences of his actions for his fellow-person and his spiritual dimension forces him to adopt an attitude of benevolence or malevolence towards his fellow-person. It is in this context that the idea of human rights arises.

In the Preamble to the Universal Declaration of Human Rights, it is asserted that 'recognition of the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world'. Inspired by this statement, the United Nations and a number of other international organizations have set about the task of cataloguing and classifying human rights.

Among the attempts to codify economic and social rights are the International Covenant on Economic, Social and Cultural Rights, and the European Social Charter. The following are the economic and social rights listed in the European Social Charter:

1. Everyone shall have the opportunity to earn his living in an occupation freely entered upon.
2. All workers have the right to just conditions of work.

3. All workers have the right to safe and healthy working conditions.
4. All workers have the right to a fair remuneration sufficient for a decent standard of living for themselves and their families.
5. All workers and employers have the right to freedom of association in national or international organizations for the protection of their economic and social interests.
6. All workers and employers have the right to bargain collectively.
7. Children and young persons have the right to a special protection against the physical and moral hazards to which they are exposed.
8. Employed women, in case of maternity, and other employed women as appropriate, have the right to a special protection in their work.
9. Everyone has the right to appropriate facilities for vocational guidance with a view to helping him choose an occupation suited to his personal aptitude and interests.
10. Everyone has the right to appropriate facilities for vocational training.
11. Everyone has the right to benefit from any measures enabling him to enjoy the highest possible standard of health attainable.
12. All workers and their dependents have the right to social security.
13. Anyone without adequate resources has the right to social and medical assistance.
14. Everyone has the right to benefit from social welfare services.
15. Disabled persons have the right to vocational training, rehabilitation and resettlement, whatever the origin and nature of their disability.
16. The family as a fundamental unit of society has the right to appropriate social, legal and economic protection to ensure its full development.
17. Mothers and children, irrespective of marital status and family relations, have the right to appropriate social and economic protection.
18. The nationals of any one of the Contracting Parties have the right to engage in any gainful occupation in the territory of any one of the others on a footing of equality with the nationals of the latter, subject to restrictions based on cogent economic or social reasons.
19. Migrant workers, who are nationals of a Contracting Party, and their families have the right to protection and assistance in the territory of any other Contracting Party.

An analysis of the foregoing list of economic and social rights will reveal that, for the most part, they are culturally determined, and are informed by social and economic organization in Western Europe. It is quite evident that such highly

specific economic and social rights are relative and situational, rather than absolute and inalienable. Likewise, it should be apparent that these specific rights do not form an essential part of 'the foundations of freedom, justice and peace in the world', but rather are but co-manifestations of the recognition of higher order human rights in the context of western European society.

Consequently, the rights enshrined in the European Social Charter cannot serve as a yardstick for measuring conditions pertaining to human rights in the Caribbean. The same can be said about the International Covenant on Economic, Social and Cultural Rights.

It is suggested here that, in order to establish a specific set of economic and social rights which are appropriate to the contemporary Caribbean, one should seek to establish the universal essence of human rights at the highest level of purity, and then seek to articulate these in a manner which relates to the specifics of social and economic organization in the Caribbean. Because of similarities between the Caribbean and western European societies, it is expected that there will be similarities in appropriate economic and social rights. Likewise, because of dissimilarities, there should be difference in the respective rights.

In the Preamble to the International Covenant on Economic, Social and Cultural Rights, it is presumed that human rights 'derive from the inherent dignity of the human person'. However, the view is taken here that 'dignity' is too protean a concept to provide adequate analytical insight into the genesis of human rights. The view is advanced here that the essential brotherhood of man is the origin of human rights. Thus, all human rights are encapsulated in the single primal right to brotherly love and treatment from one's fellow person. What brotherly treatment connotes in any specific social situation is a function of prevailing social, economic, and political conditions and is revealed to those who love their brothers and sisters through the intellectual and spiritual dimensions of their being.

A feature of the sub-set of specific human rights which are classified as Economic and Social Rights is that they are material-oriented and possess a quantitative as well as a qualitative dimension. The capacity of a nation to guarantee these rights to its citizens is thus limited by the performance of the economy.

In order to articulate a set of economic and social rights appropriate to the Caribbean, one must identify the community aspiration set of Caribbean people as it relates to the material aspect of life and use this as the basis for making inferences regarding the specifics of brotherly love and action, given the constraints relating to the capacity of Caribbean economies. In this regard, one should note that, in addition to being unbounded, the material aspiration sub-set of an individual consists of three types of wants: biologically determined wants, culturally determined wants and idiosyncratic wants. These wants can be satisfied—as opposed to satiated—by the consumption of goods and services. Thus, biological, cultural, and idiosyncratic considerations determine the qualitative aspect of human rights; but it is the capability of the economic system which is paramount in the determination of quantitative aspects of human rights.

Given the material aspiration sub-set of the community, the specifics of economic and social rights are but an elaboration of the pragmatics relating to a single fundamental economic and social right—the right of legitimate and dignified access to the means of attaining a satisfactory level of material well-being.

It must be noted that in the context of the foregoing the term 'satisfactory' has both an individual and a community dimension, resulting in both a lower and an upper limit to what should be considered as a satisfactory level of material well-being, given the economic conditions prevailing in the community. In this regard, it is important to note that Article 28 of the American Declaration of the Rights and Duties of Man acknowledges that:

'The rights of man are limited by the rights of others, by the security of all, and by the just demands of the general welfare and the advancement of democracy'.

There is no country in the Caribbean, with the debatable exception of Cuba, in which all persons have legitimate and dignified access to the means of attaining a satisfactory level of material well-being. Widespread unemployment and wide disparities of wealth in the context of low per capita income are endemic in Caribbean societies. Thus, Caribbean countries must undergo radical structural transformation, if they are ever to attain the capacity to ensure fundamental economic and social rights for all. In fact, a programme for the attainment of economic and social rights in the Caribbean is nothing more or less than a programme for the economic and social development of the Caribbean.

In this regard, the view is advanced that a developed economy is an economy which has attained the capacity and flexibility to meet the continuing and changing aspirations of the community. In this view, the degree of under-development is measured by the size of the gap between aspirations and attainments. Also it is important to note that a development process can be characterised by aspiration modification as well as economic transformation. That is, development is not only a function of material abundance, but is equally a function of the values of a community.

The foregoing makes it evident that there is nothing which guarantees a community the capacity to confer economic and social rights upon all citizens other than the people's ability to regulate their aspiration levels. It is evident, therefore, that given the restricted production-possibility frontiers of Caribbean economies, all citizens can enjoy fundamental economic and social rights only if there is attitudinal change away from a proclivity for ostentation and extravagance as well as from selfish preoccupation with the accumulation of personal, material wealth.

In this regard, it must be noted that, because of the low level of per capita income in the Caribbean, if the majority of the people are to enjoy the right of legitimate and dignified access to the means of attaining a satisfactory level of material well-being, there can be no large disparities in income levels. Thus, it becomes evident that the notions of competition and profit maximization, in the

context of capitalistic economic organization, are antithetical to economic and social rights for all Caribbean people. This is so because of the income polarization characteristics associated with unrestrained capitalism.

The preceding indicates that there must be considerable behavioural restraint if all Caribbean people are to enjoy fundamental economic and social rights. Consequently, recognising that the obverse side of every right is an obligation, an enlightened approach to economic and social rights is to regard them as prescribing one's behaviour towards one's fellow person, rather than as expressive of the privileges upon which one can insist. Indeed, some rights formulated as rights are meaningless, but formulated as an obligation can point the way to humane action—for example, the right to work. Thus, the Preamble to the American Declaration of the Rights and Duties of Man is worthy of special note:

All men are born free and equal, in dignity and in rights, and, being endowed by nature with reason and conscience, they should conduct themselves as brothers one to another.

The fulfillment of duty by each individual is a prerequisite to the rights of all. Rights and duties are interrelated in every social and political activity of man. While rights exalt individual liberty, duties express the dignity of that liberty.

Duties of a juridical nature presuppose others of a moral nature which support them in principle and constitute their basis.

Inasmuch as spiritual development is the supreme end of human existence and the highest expression thereof, it is the duty of man to serve that end with all his strength and resources.

Since culture is the highest social and historical expression of that spiritual development, it is the duty of man to preserve, practice and foster culture by every means within his power.

And, since moral conduct constitutes the noblest flowering of culture, it is the duty of every man always to hold it in high respect.

It is suggested that concern over economic and social rights should be transposed into preoccupation with the moral imperatives that should underlie one's attitude to one's fellow man. In this regard, it behooves us to remember that one's attitude to one's fellow man is essentially reflexive, and at the highest level of truth, becomes one's attitude to one's self. You cannot truly love yourself unless you love your fellow persons, your brothers and sisters in the unity that is Creation.

As in the case of human rights, specific obligations are situational and relative. However, at a sufficiently high level of abstraction, all obligations are encapsulated in the obligation to be our brothers' and sisters' keeper. Also all specific economic and social obligations derive from our individual and collective responsibility to ensure that everyone has legitimate and dignified access to the means of attaining a satisfactory level of material well-being.

It is evident that the attitude of brotherly love, to which we are enjoined by our obligations to our fellow person, stands in opposition to capitalistic competition and exploitation. Thus a strategy for the promotion of Human Rights in the

Caribbean which emphasises obligations, must seek to replace capitalistic competition with co-operative competition. Likewise, the inclination towards exploitation which characterises Caribbean society must be replaced by the practice of mutual reliance and support.

This can be achieved if capitalism and the other property-centred, material-oriented ideologies with which modern civilisation has been preoccupied are replaced by a people-centred philosophy, such as Mutualism, as articulated by the People's Democratic Movement in Barbados.

NATIONAL UNITY, CULTURAL IDENTITY, AND HUMAN RIGHTS IN THE CARIBBEAN

R. DOBRU RAVELES

Suriname

One of the special characteristics of the Caribbean communities is their plurality. These are communities of people consisting of human beings with a wide variety and diversity of ethnic, racial, religious, and cultural descent. This phenomenon in those nations which are now independent is one of challenge in relation to concepts of unity. In the colonial period of these countries unity did not matter. The colonising European rulers imposed without consideration their own norms upon the people and were not interested in unity. On the contrary, 'Divide and Rule' was the motto. Groups were set against each other with the purpose of using them against one another, thus making it easier to maintain power over them. The coloniser had only selfish economic objectives in mind and did not consider our people to be real nations.

Our ancestors, in fact, from the start were considered to be cheap labour-slaves and indentured labourers coming to the region as plantation workers. The European culture and religion were just imposed upon us. To a certain extent this colonial oppression has caused 'a kind of unity' in our countries, but this has made of us second-class citizens, people who have lost their own identity. We have been robbed of our languages, our religion, our traditions, as a result of which we have lost our personal security. In many cases we have unrecognizably adopted these languages and religions and altered them. The latter has now become one of the characteristics of the Caribbean man. Oppressing Europe, however, never has recognized even those adopted and changed things. The norms were set up by the mother countries till the bitter end. After independence of these countries and even in times prior to it, a development was initiated which brings the setting of norms within the nation. This ambition fights against segments of our peoples, namely against the former colonial elite, which borrows its power and authority from the fact that it imitates the former coloniser best.

These persons are the chief persons who in many countries up to the present day contribute to cultural oppression. They do not belong to these modern times in which we try to free our nations from all colonial left-overs. It is our firm conviction that our peoples should free themselves culturally before seeking any other freedom. This is of immense and principal importance. They should set their own norms. Unity in our countries has too long been considered as uniformity under the influence of Europe. We then thought that it would be good to do away with all differences and to lift ourselves up to Europe. This was the

so-called vertical cultural integration. We did not realize that in this way we were continuing colonialism and were destroying the proper cultural expression of our own population at the expense of the individual security of the Caribbean man.

More and more, however, the new concept of what according to us should be unity is gaining ground, resulting in free people and communities. Our unity is a multi-sided one, a plural one, which has deepened the concept of unity. For example, the African culture within Suriname is as much Surinamese as the Javanese, the Hindustani, Chinese, or Amerindian. All cultural usages, traditions and forms of any Surinamese ethnic group are *national Surinamese*. No segment of the Surinamese culture has the monopoly to be called Surinamese. All cultural segments belong to the entity, and they are national. Every other starting point would mean that groups and individuals within the nation are oppressed, are robbed of their identity, of their individual security. It is against human rights not to recognize as an integral part of the culture of the total population a citizen or a segment of the population because of the traditions they inherited from their African, Indian, etc. ancestors. It is against human rights to aim at doing away with the cultural contributions of one individual or group of the population, or integrating them within the greater entity, without giving those contributions the chance to also exist pure and untouched. It is against human rights when a government does not recognize as national the cultural contributions of an individual or a group of the population. It is against human rights if a government does not promote and stimulate the further development and deepening of the cultural contributions of an individual or group of the population.

HUMAN RIGHTS AND ECUMENICAL ACTION IN THE CARIBBEAN

JIMMY TUCKER

It may be said that the concept of rights being practiced by the ecumenical movement in the Caribbean serves to occasion, for the first time, the liberation of the Church's thinking about itself in relation to the role of other institutions.

In a manner, this action for rights could surpass the expectations that attended the Church's participation in development and renewal efforts that have occurred within the last ten years. Interestingly, this seems to be the case as the Churches exhibit a willingness to promote a conscious programme of rights, with some measure of political and ideological fortitude and awareness. This is nothing short of being laudable.

Following the initial efforts of the Caribbean Conference of Churches (CCC) to provide a vanguard for its Member Churches through the work of its development agency, CADEC, it is fair to say that the development thrust of this agency, with its emphasis on economic opportunities, has hardly provided the theological underpinnings relative to the Gospel imperatives for social justice. It could also be said that neither has it displayed the mind or will to identify, in the least measure, with any radical concept of class-stratification and social change.

On the other hand, it may be said that the ecumenical movement in respect of its concern for rights could serve the danger of over-compensation with an ill-defined socialism, a danger of which Lloyd Best* in 1967 so eloquently cautioned. Nevertheless, it ought to be said that such a movement can hardly avoid identification with the growing intolerance of and impatience with our condition of dependency on over-developed capitalism.

It might also be said that to allow the rising expectations of people to go unheeded, without the renewal of thinking in accord with social and economic opportunities, is to compound the disenchantment of the young, in particular, against organised religion.

The ethos in which the seeds of ecumenical action for rights are being sown is interestingly one that is characterised by genuine collaboration and consultation with a number of organisations throughout the region, including the Organisation of Commonwealth Caribbean Bar Associations (OCCBA), the Desmond Trotter Defence Committee, the Guyana Civil Liberties Action Council, the Peoples' Working Alliance (Guyana), and YULIMO of St. Vincent, among others. Such a

*Lloyd Best, 'Independent Thought and Caribbean Freedom', *New World Quarterly*, III, No. 4 (1967).

convergence of organisational interest for human rights has begun to evolve as a constituency of conscience. Clearly influenced by the strong collaboration of some young lawyers, each partner in this enterprise is known to engage in self-inspection in terms of the aims and objectives of the organisation he represents.

For the CCC, the need for renewal of thought and a commitment to a non-consumer-oriented kind of development is well-known. Similar to this, the expressed willingness by some of these young lawyers is known to go beyond legal aid (charity), and, instead, they act for fundamental constitutional changes in their respective countries.

A Social Perspective

The following perspective on Human Rights in the Caribbean, whether promoted in the name of the Church, the courts and the administration of justice, or in the context of political action for national self-reliance, shows that the historical factor needs to have priority recognition as we assess the rights that have already been achieved and those that are yet to be achieved.

The historical factor is clearly the most important, because to concede the socio-politico axiom that rights are never conceived or achieved as absolutes, but rather in relation to others in a social context of conflicting interests and power, one immediately appreciates that some rights and privileges will always be curtailed or cancelled by virtue of the very nature of social organisation. It is, therefore, from a historical understanding of the social formation of stratification and the perception in respect of the most fitting political direction which guarantees the greater measure of justice and participation for the citizens of a country that one is able to assess to what extent the particular society is achieving its historical potential for social justice. In short, the ideal is that no rights would be violated, but in a tradition of widespread social and economic depravity—the lot of the majority throughout the Caribbean—any strategy that clearly seeks to restructure the quantum of interests and power to the advantage of the majority should ideally receive the critical support of all those people who are committed to social justice.

Should we consider the development of rights in a country such as the United States, we will note that in contrast to the Caribbean that country possessed a strong confidence in self and in its ability to harness natural and human resources. It was a confidence that was dramatised by the powerful declaration called 'Manifest Destiny'.

Our ancestors in the Caribbean, however, had no rights whatsoever, and when rights became supposedly accessible the result was, according to Norman Girvan, the formation of structural unemployment. So the irony of it all is that youthful capitalism of the 19th Century provided full employment so long as labour was synonymous with capital. However, when chattels became human beings the result was that capitalism became more vicious as thousands of people lost their jobs.

Having made reference to the root cause of unemployment, it does not require

any length of time to understand that a regional programme of human rights must clearly give attention to the contention that we have indeed inherited institutions which are still, in the majority, promoting non-local and regional interest and which at their post-colonial best, are not capable of meeting adequately the needs of a people determined to be self-reliant.

The Significance of the Family

Any one who is familiar with the philosophical ideas which guided the evolution of English Constitutional Law, particularly the writings of John Stuart Mill on Liberty, will recall that it was Mill's fundamental assumption that the makings of responsible citizenship had to do with the care and nurture the individual received from belonging to a cohesive family. And in a generally acceptable fashion it may be said that the application of English social legislation to the Caribbean islands hardly took into account the unique features of social neglect attendant on the social grouping we refer to as 'the family'.

As a matter for historical ideological linkage, reference to Mill certainly helps to throw some light on our predicament. However, on the other hand, it should be said that without having a ready familiarity with Mill and English Constitutional Law one is able out of mere common sense to understand that where there is widespread lack of education, illiteracy, and ignorance of rights and duties, were it not for our religion and resignation and a misapplied hope, Caribbean societies would hardly be able to boast of such an eloquent and mature mastery of the parliamentary process which we call the Westminster Model.

In some quarters, the Westminster Model is now under great pressure, not necessarily as a result of the abandonment of the democratic process by our leaders. It is rather the case that the social effects of the rural-urban drift, the ghettoised conditions of our cities, the contradiction of political democracy in co-existence with economic oligarchy, the domination of our institutions by metropolitan financial, marketing, and industrial systems, all result in a social dilemma that leaves hardly any room for a people who are socially and politically expectant. And the worst feature of this expectancy is that its religious reflex is one of benign passivity.

In relation to our North American friends we are conceived as territory rather than as nations. We do not have any discernible privacy, as a number of our communication systems remain in the control of foreign concerns. The naval bases that have been established all around us seem to be fixed and final even when it is no longer the case that we believe that there is a need for any protection.

For states such as Jamaica and Guyana that are daring to be self-reliant, daring to exercise their political independence by choosing their friends, and daring to struggle against forces of domination, the level of social conflict naturally has reached unprecedented proportions. So, lest we forget from whence we are coming, it is to the creation of social cohesion and the restructuring of economics that we ought first to turn in our concern for the rights of Caribbean people.

The Church as Education for Political Will and Social Cohesion

It has often been said, and it may well be worthwhile here to reiterate, that the Church as a constituency remains most suitable for the education of the public on matters which are vitally integral to the political process. This assertion is reinforced by the notions that the civic and Christian community are actually one and the same, and consequently that the traditional dichotomy of the State and the Church is intellectually untenable and sociologically irrelevant to a Caribbean psychology that is conscious of the complementary formation of inherited institutions which have caused us to be working now against the status of being the outposts and the playground of metropolitan interests. In this regard, the call is for Church men and women of the clergy and the pew to share a common understanding through inter-disciplinary consultation and common action.

This approach to social cohesion reinforces the view that, when the leaders of our Churches begin to see economic issues of rights as theological issues of concern for all of God's creation, the popularization of such issues via the full utilization of the pastorate not only forms in people a higher level of party political action, but also serves to build commonality of purpose and a sense of national destiny. In essence, this affirmation reflects the purpose and style of the Church's activities in respect of rights.

Toward a Regional Machinery for the Realization and Protection of Rights

After more than a year of collaboration with a number of Caribbean organisations in the field of Human Rights, the CCC at a meeting on September 5, 1976 at Mount St. Benedict in Trinidad noted in the company of representatives of regional and extra-regional organisations that a number of violations of human rights were surfacing, to which the CCC needed to give attention. The meeting noted that

1. Such violations have taken legislative, executive, social and economic, and other forms.
2. There was a pressing need for the establishment of a regional body to coordinate, among other things, the action of persons and institutions concerned in the defence of persons whose rights are violated and in the effective realization of human rights throughout the region.
3. There was a pressing need to educate the peoples of the Caribbean region in the true meaning of human life.
4. Justice and the principles of the Christian faith demanded the involvement of all Christians in these problems and a commitment by all Christian organisations to work towards the establishment of a just and equitable social and economic system.
5. Until the establishment of such a Committee, the CCC should immediately establish a Bureau/Department within the Secretariat of the CCC for the purpose of collecting information on questions of human rights, dissemin-

ating information on such matters, and co-ordinating the preparatory work involved in the establishment of the Standing Regional Committee.

Following the resolution on the Standing Regional Committee, the following proposals for preparatory work toward the establishment of the Regional Committee were approved:

1. There be established within the CCC a Human Rights Bureau to be headed by a full-time Co-ordinator to be based either in Georgetown or Port-of-Spain.
2. The responsibility of this Bureau would include the following:
 - (i) The identification of individuals, institutions and organisations, regional and international, who are concerned with human rights matters, with a view to establishing lines of communication, co-operation, and effective support.
 - (ii) The collection, collation and dissemination of case materials and information on human rights matters in the Caribbean and all factors affecting them.
 - (iii) To refer to the appropriate authorities and organisations, matters which are relevant to the work of the Bureau/Department.
 - (iv) To seek co-operation and assistance of those who are willing to help in the work of the Bureau.
 - (v) To draft a Declaration on Human Rights for consideration by the CCC, which takes into account existing international declarations and conventions on the subject.

On January 1, 1977 the CCC established a Bureau.

During the period January 1-August 31 consultations have been realized with a number of heads of governments, heads of Member Churches of the CCC in the respective local areas, and with community development groups of varying sorts in order to gain a first-hand account of human rights issues and concerns at the local level.

In a number of areas, such as St. Lucia, St. Vincent, Jamaica, St. Kitts, Dominica, and Trinidad, public forums on human rights issues were conducted in co-operation with local Christian Councils, the University centres, governmental and other organisations, again, in a manner to quicken the awareness of people of their human rights and responsibilities.

One of the important results of such forums is the establishment of local human rights committees. These committees have been carrying on the educational programmes in co-operation with local media organisations. Where there is already a local Human Rights Council, the local committee seeks to join forces with them, as in the case of Trinidad and Jamaica.

From these committees that have been democratically constituted it is expected that if and when a Standing Regional Committee is proposed a number of these members of local committees will be invited to serve as regional members.

Not only has the Bureau been concerned with documenting the cases of violations which have been identified in a number of States. It has sought to establish positive measures for correcting the larger circumstances that are usually reflected in the specific violations as outlined in certain cases. The Bureau seeks to encompass the broad philosophical and ideological orientations that are germane to the cases under review. For example, it is not often that the Caribbean is challenged by a case such as the Guatemalan claim to Belize. If ever there is a fundamental case for human rights in the English-speaking Caribbean, this is it. This is not of course to suggest that there might not be serious cases of violation in areas such as Grenada and Guyana. The point here is that the particular case of Belize is fundamental to the total life and destiny of that country in such a way that it requires the unqualified support and attention of all who would hope for the peace and security of this region.

In another fashion, it may be said that the precedent of a Guatemalan invasion of Belize, and consequently Belize's perpetual inability to achieve its political independence, is certainly not desirable. In respect of notable violations of rights in other areas of the English-speaking Caribbean, there is some value to the resolve that the people themselves have the power to solve an internal set of contradictions and violations. We dare not resolve the same for Belize.

Comments on a Regional Machinery for the Defence and Realization of Human Rights

The contemplation of a regional machinery for the defence of human rights—in a Caribbean that is hardly able to subscribe to the principle that the least government is the best—needs to address itself to the more positive responsibility of exploring how it could help to devise strategies for the realization of those basic social and economic rights that are not now the lot of the majority poor in the region.

Another way of putting the question is to suggest that we have not yet achieved the level of social cohesion, regionally, which ensures that a Watchdog Committee would have the effective influence that is required. At the same time, it should be said that regional organisations of communication do have a measure of influence, judging from the reactionary behaviour of some leaders who, for various reasons, have cause to think that the press is not always kind.

Nevertheless, it is not the functional efficacy of a Commission that is the priority concern here; the priority concern has to do with increasing the awareness and capability of a regional machinery that will in its study and action on rights reflect a deep concern for the general conditions of mis-development, attitudes, and the inadequate administrative machineries evidenced by documented cases at the local level.

The task before us, therefore, is simply not to look at the symptoms but at the cause, and resolve to effect the organisation that will ensure the social, economic, and cultural rights upon which our already less than impressive record of civil and political rights will be further enhanced.

SUMMARY OF DISCUSSION COMMITTEE I—ECONOMIC, SOCIAL, AND CULTURAL RIGHTS

Chairman: Mr. Jimmy Tucker

Rapporteur: Mr. Dennis Daly

Chairman's Introductory Remarks

The Chairman initiated the Committee's deliberations with the observation that regional efforts at promoting human rights had not yet gone beyond the embryonic stage, pointing out that such machinery as existed for the regional promotion and protection of human rights had resulted mainly from the work of the Caribbean Conference of Churches (CCC).

The CCC considered participation at the local level crucial to a democratic approach to the question of human rights. In consequence of this policy the CCC had established a Human Rights Bureau—an agency whose function was to encourage local participation by making contact with people and organisations in the various communities with a view to identifying, on an inter-disciplinary and inter-organisational basis, human rights issues crucial to the peoples of the region. The CCC had approached the task by speaking with members of governments, opposition parties, and other individuals and groups representing a variety of interests. In some cases it had organised a local Human Rights Committee. In others it had joined forces with existing councils.

Any mechanism which the Committee (and ultimately, the Seminar) might endorse could therefore find as a convenient point of departure the useful work already being undertaken by the Bureau.

Working Papers

In addition to the texts of the speeches delivered earlier to the Opening Plenary Session, the Committee had before it two working papers:

- (a) 'Economic and Social Rights in the Caribbean' by Mr. Wendell McClean
- (b) A background paper on the rights which fall within the jurisdictional competence of UNESCO by Mr. Stephen Marks.

Each author was invited in turn to address the Committee.

Mr. McClean made the following observations:

(1) A necessary prerequisite to debate on the machinery for the enforcement of human rights was the staking out, by the debating forum, of a clear philosophical position in relation to such rights.

(2) Although in functional terms one might speak of a number of separate

and distinct rights, there was a unifying philosophical thread running through each one which justified its treatment as a constituent element of a composite and all-embracing right, viz. the right of a human being to the enjoyment of a state of existence consonant with his very humanity.

(3) All economic, social, and cultural rights could be expressed collectively as constituting the right of legitimate and dignified access to a satisfactory standard of living.

(4) The non-realisation of human rights must be perceived not only in terms of acts of commission, but also from the perspective of breaches by way of omission—this latter dimension being particularly important in the field of economic, social, and cultural rights.

(5) Although there was no dichotomy between economic, social, and cultural rights and civil and political rights, there might be conflicts between the exercise of one right by one person and other rights by others. One way to focus on the full scope of economic, social, and cultural rights was to think in terms of the obligations which the existence of each person's rights imposed on others.

(6) The seminar should seek to identify the aspirations of the Caribbean people. In view of the present inability to satisfy economic, social, and cultural rights fully, capitalist competition may have to give way to mutual co-operation. It was not enough to repeat that there is a right to work, when work cannot be provided. The need was for a guide as to how the right may be realised, and it was in this sense that the emphasis should be placed on obligations.

Mr. Marks adverted to Part II of his paper which set out the basis of UNESCO's jurisdictional competence in relation to certain economic and social rights.

He referred in particular to problems arising in the implementation of the right to education, the right to benefit from scientific and technical progress, cultural rights and rights concerning communication. The latter included the free flow of information, which was a sensitive political issue.

The Committee was then invited to consider the crucial role which development must play in the propagation of human rights in the Caribbean, especially in the light of the current weakness of the regional economic base characterised as it is by the following factors:

- (1) high population growth and unemployment;
- (2) economies which were dangerously dependent on external support;
- (3) the remarkable difference in economic performance between the more developed and the less developed countries of the Caribbean Community.

Improvement of this economic base could not wait for the realisation of the New International Economic Order.

Among the points made in the ensuing discussion were that to be considered a human right a 'right' must be universally recognised; one could not decide rights according to the conditions in a particular State, though one might discuss the application of a right to a particular State; the factual situation in relation to

economic, social, and cultural rights were insufficiently known between the states of the region; the development of economic, social, and cultural rights required improvement of the consultative machinery between states in the region, and it might be possible to establish regional machinery for reporting.

One participant contended that part of the problem was that much of the derogation of rights in the Caribbean territories occurred not by the actions of the government or the people of the territories, and he instanced the right to work. The achievement of full employment was not retarded by policy or lack of effort or desire. International lending agencies such as the International Monetary Fund (IMF), which had control of vast financial resources and upon which the Caribbean territories were dependent for loans, imposed crippling constraints upon the territories as the price of borrowing. He said there was a need for international activism, indicating that it was pointless for international human rights organisations to write charters if they were not prepared to support action designed to impose more equitable policies upon these agencies. He also listed a number of areas which were in need of urgent attention in the Caribbean. These included discrimination against illegitimate children, affecting up to 60% of the Caribbean people, equal rights for women, the right of workers to join a trade union, consumer protection, and corruption in the award of welfare benefits.

It was pointed out by another participant that the right to education was inadequately protected and that this seriously retarded any meaningful participation by the people, as well as any assertion by them of their civil and political rights.

Methodology

Recognising the particular difficulties attendant on debate of the extensive, relatively uncharted field of economic, social, and cultural rights, members agreed that the Committee should adopt a mode of proceeding which would maximise output in terms of definite, concrete suggestions and proposals, while minimising waste of effort by ensuring that the discussions remained pointedly relevant to those issues which were its particular concern.

In the event three suggestions were made. The first proposed that the rights be approached from their domestic, regional, and international perspectives. The domestic perspective would be crucial, beginning as it would with the *people*, in which context the need for a programme to increase the effectiveness of popular action could not be too greatly emphasised.

The second suggested approach was more conscientiously regionalist in its intent. Its proponents felt that the only appropriate methodology was to attempt first to articulate the felt needs of Caribbean peoples and then to identify the type of actions which could be taken to realise socio-economic rights in the context of the social dynamics within the area. Where appropriate, such needs would be measured against the various international Conventions which were not necessarily articulate with reference to practical situations existing in Third World countries.

However, a majority of the Committee were of the view that those 'felt needs' were not so esoteric as the contributions of some members tended to suggest. It was therefore considered a structurally preferable approach to base discussions on those provisions contained in the International Covenant on Economic, Social and Cultural Rights. The Covenant, at any rate, only set out minimum standards to be attained by individual states. Moreover, the Committee could not fruitfully embark on a re-definition of concepts—that being a task to be undertaken in other fora. Although it appeared to be the considered judgment of certain participants that social and economic rights could only be achieved in consequence of radical socio-economic transformation in the Caribbean, it was not for the Committee to enter into debate on the merits of various types of political economy but to formulate proposals on the basis of accepted concepts, acknowledging at the same time the need for practical solutions to the concrete problems which confronted the people of the region.

This view eventually prevailed as the Committee decided that proceeding from a documentary base would secure the advantage of a structured debate which would more likely lead to concrete proposals.

Substantive Discussions on Provisions of International Covenant on Economic, Social and Cultural Rights

At the start of discussions on the substantive provisions of the Covenant participants pointed out that in the entire Caribbean region only four governments had taken steps to ratify the instrument. Of this number, three had publicly stated that they did not consider the act of ratification to be acknowledgment of an obligation to bring provisions of municipal law into line with the text of the Covenant. Participants questioned how meaningful such acts of ratification were and pointed out that before the Committee could enter into debate on the circumscription of rights, it should be made clear what rights the Caribbean people (in contradistinction to Caribbean governments) were concerned with.

Of the rights proclaimed in Articles 1-15 of the Covenant, discussions focussed upon the following articles:

Art. 1 Self-determination. Members evinced a high level of interest in this issue, which in recent times had stirred much controversy in several Caribbean territories where there have been active secessionist movements, or at least movements agitating for a greater degree of autonomy.

Delegates strongly defended the absolute nature of the right of peoples to determine their own affairs. However, the distinction was drawn between the right itself and the mode of its exercise which need not (and in appropriate circumstances) should not be absolute. In the regional context, therefore, the right to self-determination was not to be equated with atomization since this would invariably prove counter-productive to the cause of human rights by increasing the vulnerability of small communities to penetration by forces hostile to the promotion of human rights.

It was observed too that self-determination related equally to the exercise of sovereign substantive rights by a people over its natural resources; this was the appropriate focus to be adopted by a committee on economic, social, and cultural rights.

Art. 6 The Right to Work. There was near unanimity as to the desirability of emphasising this right but there was some disagreement as to what its contents should be and the mode of implementation.

The argument was advanced that the right to work must necessarily involve an obligation to work, since society expected social security to be a necessary outgrowth of economic development—an expectation legitimised by Art. 9 of the Covenant which recognised the right of everyone to social security (including social insurance). Governments would then appear to need to strike a delicate balance between the right and the expectation, for those who do not work could not expect to live off the product of the work of others. The right therefore raised serious implications in terms of such infrastructural requirements as manpower planning and direction of labour. Those supporting this argument considered that the phrase in Article 6 'to gain his living by work which he freely chooses or accepts' was too widely expressed and did not take into account the problems of development. Also, the Article had to be read subject to Art. (8)(3)(iv) of the Covenant on Civil and Political Rights which stated that forced labour did not include work or service imposed as part of normal civil obligations.

This line of argument was strongly disputed by those supporting the definition in Art. 6 of the right to work as including the right to gain a living by work freely chosen or accepted. Members of the community might have a moral duty to engage in productive work but a legally enforceable obligation to work would be contrary to the ILO Conventions on forced labour which had been ratified by all of the Caribbean states from which the participants came. Indeed, the only obligation which was imposed by the right to work devolves not on the individual but on governments which had a duty to make efforts towards the provision of maximum job opportunities for its citizens. The realisation of the right to work like that of all other economic, social, and cultural rights required positive plans and programmes by the guardians of the economic and social security of the community. The problem of developing countries was to find jobs under reasonable conditions and wages. Whenever and wherever this objective was pursued the question of forced labour would hardly arise. The problem of people not wishing to work was really one of applying the right sort of incentives.

Further, the right to work was not to be considered an end in itself. It was no less than a means of securing a number of socio-economic rights contained in several universally recognised principles such as the principle of non-discrimination, the recognition of the right to education, skill-acquisition and training, financial protection during times of unemployment either through National Insurance or other welfare benefits, and the principle of free choice. (When the conclusions were considered in the Closing Plenary Session one participant proposed the

insertion of a statement that the right to work carried with it the duty to work. This was not accepted.)

Art. 8 Right to Form and Join Trade Unions. This Article appeared to suggest the existence of a right to strike. West Indian jurisprudence, however, had not recognised that this is a fundamental right, though it could be conferred by legislation. The courts had also decided that the right to organise did not carry with it a correlative right to compel the employer to bargain with any workers' organization which had been formed, though some countries had passed laws providing for compulsory recognition.

It was also stated that the wording of this Article had been used to deny the right to join trade unions.

One participant considered that there was a need for a Caribbean Convention on the whole subject.

Art. 10 Family and Children's Rights. There was general endorsement of the recognition of the need to accord the widest possible protection of and assistance to the family, with the qualification that 'family' should be so defined as to acknowledge the realities of Caribbean familial forms.

Attention was drawn to the designation of 1978 as the Year of the Child—a timely and convenient opportunity for highlighting issues of children's rights and protection.

It was noted that the Covenant did not positively stress the obligation of the State to oversee and enforce the obligations of parents to maintain and provide for their children. This, it was felt, was an area of need in the Caribbean.

Art. 12 Health and Medical Care. The Committee concluded that Caribbean medical services were deficient in provision for the special needs of the aged, the very young, and expectant mothers.

Members noted with satisfaction the recent establishment of a Regional Psychiatric Association, but deplored the failure of states singly and collectively to maintain adequate standards of mental health and care.

It was agreed that centrally applied coercive measures would not be the most appropriate method of implementing family-planning programmes. It was argued that counselling was better than contraception, and family life education should be developed. The raising of social and economic standards would tend to produce as a direct consequence an increased level of voluntary efforts to reduce population growth.

The attention of Caribbean governments should be drawn to the existence of ILO conventions on methods of organisation of medical services for securing the type of medical aid contemplated by the Covenant.

Art. 13 Education. There was general satisfaction with the Covenant's provisions on education, but it was thought necessary to emphasise that educational services should be directed towards providing education for the child as early as possible. Where State education started at seven years, working-class children

were severely disadvantaged compared with children going to private kindergarten and preparatory schools from the age of three.

Members debated the adequacy of the provision requiring governments merely to make secondary education 'generally available and accessible'. But the resource implications of introducing a system of compulsory secondary education convinced the Committee that its implementation was at present beyond the capacity of the countries of an under-developed region.

The opportunity was taken to point out that only Barbados and Cuba had ratified the UNESCO Convention on Discrimination in Education.

UNESCO had recently decided to assist states in developing a programme of education in human rights.

Art. 15 Scientific and Cultural Rights. Discussion of this Article was initiated by the observation that the right to protection of intellectual property set out at paragraph (c) of the Article was not generally enjoyed in the Caribbean area where it was of particular significance to artists engaged in the propagation of indigenous cultural forms.

The Committee was cautioned against advocating subscription to such a right as it could be used to obstruct the transfer of technology and create problems in the development and circulation of educational materials to and among developing countries.

The consensus appeared to be that subscription to Art. 15(c) was not inimical to the interests of the Caribbean. The formulation adequately protected Caribbean intellectual property, and posed no threat of depriving the region of access to scientific data and knowledge. The region had access to all the technology it could absorb at the present level of development. Furthermore, continued access to technology was ensured by the existence of other mechanisms such as the UNESCO instrument on the Transfer of Technology, which upheld the principle that scientific knowledge was part of the common heritage of mankind. Other mechanisms continued to be developed and UNCTAD, for example, was at present in the process of elaborating a code on the transfer of technology.

Machinery for Promoting Human Rights in the Caribbean

It was suggested by one participant that the most effective method of achieving the protection of Human Rights in the Caribbean would be to focus attention on the securing of the rights within the respective municipal systems by the creation in each of a Constitutional Court of independent jurisdiction, its importance deriving from its quality of independence.

This proposal was challenged on the ground that it would tend to perpetuate the imbalance of focus in favour of civil and political rights since many socio-economic rights were not directly justiciable. The proposal appeared to require the simultaneous establishment of local commissions to settle disputes relating to economic, social, and cultural rights.

The prevailing view was that machinery of a supra-national character was

likely to prove most effective in achieving the protection of socio-economic and cultural rights.

In this regard one member proposed the creation of an institutional consultative process on a regional basis, probably with a tripartite composition to reflect the interests of government, management, and labour.

A majority of members favoured the creation of a regional body working probably within terms of reference defined by a Caribbean Convention on Human Rights.

One participant advanced the view that no more could be expected of supra-national machinery than a reporting function. But the performance of such a function by agencies within the U.N. system had often produced very good results and had notable success in hastening the process of decolonisation across the globe.

Additional Observations

One participant considered that there were two important rights, not comprehended in the Covenant, which relate directly to the individual's access to a satisfactory standard of living:

- (1) the right to protection from exploitative business practices;
- (2) the right to benefit from the socially efficient utilisation of all resources.

The Committee accepted that in a poor region the allowable margin of inefficiency could not be very great, and adverted to the existence of ILO instruments which imposed an international duty on states not to waste their natural resources.

It was noted that some responsibility for under-development in the region, with consequent limitation on the achievement of social and economic rights, had to be placed on international lending agencies. Frequently they attached conditions to their loans which inhibited growth in the economy and an equitable sharing of the fruits of national productivity.

Yet, this was not to deny that activism by groups and individuals could directly influence the degree to which erosion of economic rights could be reduced. Campaigns for reform could enhance the recognition and protection of economic rights in such areas as trade unionism, consumer protection, women's rights, succession rights of illegitimate children, and access to legal representation and a judicial hearing.

It was agreed that the constitutions of the region should be amended to facilitate incorporation of such economic, social, and cultural rights as are susceptible to direct protection and judicial enforcement.

COMMITTEE II—CIVIL AND POLITICAL RIGHTS

THE CONTRIBUTION OF DEVELOPING COUNTRIES AND OF COLONIAL COUNTRIES AND PEOPLES TO THE FULL REALISATION OF CIVIL AND POLITICAL RIGHTS

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A shocking lack of knowledge exists in a number of developed countries of Western Europe and in the United States with regard to the past and present contribution made by the colonial countries and peoples and by the so-called 'developing countries' to the struggle for the full enjoyment of basic human rights, particularly of civil and political rights. All too frequently, in the opinion of Cuban jurists, when 'reporting' on the debates in the various bodies of the U.N. system specialising in these matters, the newspapers and other mass media venture opinions that cast an unfavourable light on the initiatives and other actions taken in this field by our countries. Seldom is the attempt made to delve into the motivations behind our positions. With unbelievable superficiality, to say the least, they brand them as 'selective', 'tyrannies of the majority' or 'mechanical majorities' and go on to conclude that our 'double standards' in the debates on human rights—condemning certain situations prevailing in given areas or countries—while turning a deaf ear on violations which allegedly occur in other countries—as well as our 'obsessive' insistence both on the condemnation of the situations in South Africa, Zimbabwe, Namibia, Chile and the Arab territories occupied by Israel, and on the importance we grant to the problems of poverty, unemployment, and economic development will inevitably make of these fora a 'carnival' and discredit the U.N. and its agencies. It should be noted that these interpretations coincide almost verbatim with the positions sustained by the representatives of the developed Western countries in those bodies.

Consequently, the impression which the ordinary citizen in those countries receives when reading or hearing such versions is that only the countries of his part of the world are seriously concerned with the 'real problems' relating to civil and political rights. In addition to all this, for the past several months we have all been witnesses to a strident campaign which presents the Western capitals as paladins of a veritable international crusade to exorcise all the evils that afflict the world in the field of human rights and to end, once and for all, the violations of the fundamental freedoms of all the peoples of the world.

It is not on this occasion the intention of the author of this paper to make a profound analysis of the true nature of this campaign, nor to study in depth, in

the light of their past and present actions, the ethical credentials of those who would so lightly take upon themselves such a lofty undertaking. These two thought-provoking topics are the subject of a forthcoming study on which the author has been working for some time.

Although occasional reference to some aspects of the aforementioned topics is inevitable, this paper pursues a different goal. While we are, on the one hand, incapable of understanding and sharing such a particular interpretation of the freedom of information as the one mentioned above and finding it impossible, on the other hand, for our countries to compete with the financial, human, and technical resources available to the highly efficient and wide-spread network of the mass media of developed countries and, consequently, to convey our positions to the public opinion of those countries without distortion, we consider it extremely useful to present these positions to this seminar where it is reasonable to suppose that they will be the subject of the thorough and serious consideration which we believe they deserve.

We shall endeavour to explain the contributions, past and present, which in the opinion of the National Union of Jurists of Cuba, have been made by the peoples who still live under the colonial yoke and by those who, in a broader sense, continue to fight for a more just social, economic, and political order that will ensure the effective exercise of civil and political rights in the domestic as well as in the international plane. We shall elaborate on the reasons that have moved us to act as we have in this field in international organisations. We shall, furthermore, advance some ideas on the tasks that merit priority consideration by our countries' delegations to future meetings devoted to these questions. We shall conclude with some suggestions regarding the kind of international co-operation that could prove fruitful in this field.

It should be made perfectly clear from the beginning that the opinions herein expressed are not solely those of the author, but rather a reflection of the points of view shared by all the Cuban jurists who make up the membership of our Union, which we represent in this meeting. Nor are they solely the result of academic research or of our political and philosophical persuasion, although both elements will certainly be present. The views expressed will be based fundamentally on practical experiences derived both from the construction of a society in our country which we believe to be freer and more just, and from our participation in a number of international meetings of a humanitarian nature within and without the U.N. system. In all of these meetings we have had occasion to contribute, along with numerous representatives of other non-aligned countries and members of the 'Group of 77', to the drafting of a good number of initiatives sponsored by our countries which were subsequently adopted. This has given us the opportunity to acquire first-hand knowledge of the common hopes, concerns, and priorities shared by our country with numerous countries of the 'less-developed world'.

This paper is dedicated to that fruitful collaboration with our colleagues of those meetings, most of them jurists, and to the struggle of all those who are dedicated to the quest for a more just social and economic order that will guaran-

tee and respect all human rights and fundamental freedoms. Their understanding, respect, and solidarity of support of the positions defended by the Cuban Revolution deserve special mention and recognition.

The military defeat suffered in 1945 by the Rome-Berlin-Tokyo Axis opens a new and fruitful era in the age-old struggle of peoples for the realisation of human rights, particularly of civil and political rights. The downfall of Nazi-Fascism as a system of institutionalised terror which unleashed genocide, oppression, and a generalised breach of the most elemental guarantees to the life and fundamental freedoms of dozens of millions of human beings, meant new possibilities for channeling their longing for freedom and the effective implementation of their fundamental freedoms, not only for those who endured the terror but for the immense majority of the population of the world, particularly those living in what has recently come to be known as 'the developing countries'.

The notion that the post-war world would be radically and inevitably different from that of the pre-war period allowed those who drafted the U.N. Charter to declare in the Preamble their peoples' determination 'to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small . . . [and] to promote social progress and better standards of life in larger freedom'.

Notwithstanding the fact that from a historical point of view this process of liberation is irreversible, it is yet to be fulfilled. Progress on the long road to achievement and preservation of full human dignity has been, is, and will continue to be beset with multiple obstacles. Nevertheless, it can be stated that this last quarter century in which we are living constitutes a decisive period for the establishment of that new social and international order, mentioned in the Preamble and in the Purposes and Principles of the United Nations Charter as well as in Article 28 of the Universal Declaration of Human Rights, and in which the fundamental rights and freedoms that the international community has consecrated in this field will be fully effective.

Of paramount importance is the role to be played—as a continuation of their efforts toward the achievement of this new and more just international order—by the peoples and countries who, as independent states, struggle to overcome under-development, as well as by those who are still subject to any form of colonial domination or to foreign occupation and who fight for self-determination and independence. This role deserves the recognition and militant support of all those who are dedicated to the realisation and defense of the intrinsic dignity and the equal rights which are inalienable not to some, but rather to *all* members of the human family, as is stated in the Preamble of the Universal Declaration.

The significance of the actions of our peoples and governments in international organisations to this purpose, both from a domestic point of view as well as in the international plane, is not *exclusively* based on the fact that they constitute a substantial majority of the international community, in a world that has adopted as a fundamental principle of international relations that of the sovereign equality of all its members, enshrined in the San Francisco Charter.

With respect to the most effective manner of securing human rights and fundamental freedoms in each society, it is obvious that even though there are problems connected with the enjoyment of civil and political rights that affect both our peoples and those living in economically developed societies (especially the impoverished strata in the latter), it is also true that the solutions that could remedy those problems in our society will not necessarily bring positive results in others in which a greater economic development gives way to substantial differences with ours and where the cultural heritage and the social institutions—particularly the juridical ones—are based in social structures yet to be achieved in our development, or already tested in our countries but discarded as unjust or ineffective. In other words, at this stage of the social development of mankind there are no *universal* solutions for the problems related to the observance and guarantee of human rights in all societies. Furthermore, it is important to stress that it is not the purpose of our countries to impose specific formulas on the highly-developed societies through international actions adopted by international organisations with the majority of our votes. It is also evident, on the other hand, that such a course of action on our part would be in sharp contradiction with the already mentioned principle of sovereign equality of states and the not less important one of non-intervention in the domestic jurisdiction of other states, also enshrined in the Charter and in other instruments of international law.

Likewise, it is also beyond doubt that all efforts in this field directed to apply mechanically in our societies' institutions, formulas, experiences, and solutions—even those which have proved effective in realities alien to ours—could end in total failure and could even be a step backward for our peoples. Consequently, they should be rejected, even at the risk of being misinterpreted. Although developed and developing countries could claim an equal right to the common cultural and humanitarian heritage of mankind, it goes without saying that the problems of the effective implementation and the observance of basic human rights and fundamental freedoms in our societies obliges our peoples to search for solutions that would be compatible with our history, traditions, and social-economic realities. Our priorities in this field and, in general, our answer to these problems can only be determined by an adequate harmonisation of those elements and the principles generally accepted in this matter by the international community, particularly strengthened in our time as we come closer to an imminent universality in international organisations.

What has been said before does not mean—and this seminar gives proof of that—that it is impossible to achieve international co-operation in these issues, or that useful exchange of experiences cannot take place in the field of human rights, duties which on the one hand all Member States of the United Nations have undertaken to fulfil in accordance with Article 1, paragraph 3 and Article 56 of the Charter. The work of the Third Committee of the General Assembly of the United Nations and of ECOSOC (especially of the Commission on Human Rights) offer wide possibilities for fruitful collaboration. On the other hand, it is a fact that a greater understanding of the realities of our countries by those non-

governmental organisations active in this field will largely contribute to international co-operation.

Now then, why do we Cuban jurists highly value the contribution of our countries in these matters? Even though we have already discarded, as the *exclusive* factor for that judgement in connection with the action of international organisations the simple numerical fact that we are a solid majority in those meetings, one cannot ignore an objective reality. Any *effective* international action in the field of human rights—or in any other field in which those bodies are competent—is only feasible if it gains the support of our countries. It is also necessary to point out, just in passing, the weak logical foundation of certain charges of ‘mechanical majorities’ or ‘tyrannies of the majority’ which challenge a basic principle in the practical exercise of democracy: this time with respect to multi-lateral international relations within the U.N. system, where the vote cast by a small country has the same juridical value as that of a nuclear power.

Without underestimating its value, let us leave this factor aside for the moment and go on to analyse the other factors which we believe give special weight to the action of our countries in the struggle for human rights, especially for civil and political rights.

In the first place, the fact that our peoples have been subjected for hundreds of years to the most merciless colonial and neo-colonial oppression with the inevitable consequences of illiteracy, hunger, poverty, unemployment and insalubrity—under-development, to be concise—affords us a unique experience in this field and a clear perception of the significance of the much-used formulation ‘systematic, flagrant, and mass violations’ of human rights in terms of human degradation and the desecration of the fundamental dignity of man. This also explains our emphasis, our priorities, and our ‘obsession’ with situations that imply a total travesty of the human condition and the denial of all human rights to entire nations . . . to each and every individual in them.

It is precisely because our peoples have been denied the right to self-determination for such a long time that we fully comprehend why the United Nations General Assembly stated in operative paragraph 1 of its historical Declaration on the Granting of Independence to Colonial Countries and Peoples (Resolution 1514 (XV) of 14 December 1960) that ‘the subjection of peoples to alien subjugation, domination, and exploitation constitutes *a denial of fundamental human rights*, is contrary to the Charter of the United Nations and is an impediment to the promotion of world peace and co-operation’.

Today, in the fight against the tragic consequences of the colonial or neo-colonial legacy so graciously bequeathed us by those who would still claim to have ‘civilised’ us, we have acquired a full understanding of how a man who is still illiterate or a man who is unemployed becomes a mere nominal holder of such important civil and political rights as the freedom of opinion and the right of equality before the law, respectively.

We must also bear in mind that it has been precisely in the territories of our countries where all the wars of aggression to which the world has been witness

since the end of World War II have been fought. Among these wars, the genocide perpetrated upon the peoples of Indo-China is a unique and singularly expressive example for our peoples of total annihilation of civil and political rights. We therefore know perfectly well what we meant in supporting paragraph 10 of the Proclamation of Teheran which states that acts of aggression result in 'massive denials of human rights . . .'.

The outrages we have suffered in our own flesh as a result of the violations of our civil and political rights committed by the colonialists, old and new, confer upon us an authority in this field which cannot, under any circumstances, be superseded by the authority which might be claimed by the very societies that imposed the colonial system on our peoples. It was these societies that denied our peoples the very same principles and rights which are today considered to be the foundation of the present doctrine on human rights—principles which they so zealously defended for themselves in their own countries even to the point of widespread bloodshed. A few examples in the Caribbean will suffice to illustrate the truth of this statement.

It is a well-known fact that Leclerc did not go to Saint Domingue (now known as Haiti) in the beginning of the century in defense of the principles enshrined in the Declaration of the Rights of Man and of the Citizen of 1789; nor did Cromwell's troops bring to Jamaica the spirit of the 1649 Revolution in mid-18th century; and by no means did the U.S. expeditionary and occupation troops impose upon Cuba and Puerto Rico in 1898 the principles of the Continental Congress or of their own Constitution.

In this light, the value we recognise in the struggle for civil and political rights by the peoples that still suffer foreign domination becomes self-evident. Just as the Algerians and Vietnamese did yesterday (to give only a few examples), those who today struggle in South Africa, Puerto Rico, and the occupied Arab territories are contributing to this task even before the realisation of their right to self-determination and independence or to the vote in international organisations.

A second element which we take into account in order to explain the options of action open to our peoples in the struggle to attain full implementation of civil and political rights would be the consistent participation by our countries in this struggle over a long period of time. In general terms, the history of our countries is one of constant struggle for the achievement, not only of the full exercise of the inalienable right to self-determination and true national independence, but also for the elimination of all forms of racism and discrimination, for the recovery of our national resources and wealth, the eradication of under-development and the implementation of full guarantees for the fundamental freedoms of the individual. In other words, a practically uninterrupted process, yet to be concluded, in search of human dignity. In that quest the peoples of the under-developed world have not and will not hesitate to resort to rebellion as a final alternative against tyranny and oppression when their basic human rights and fundamental freedoms have been violated. This recourse to rebellion has no limitations what-

soever as to the methods and ways to materialize it in the Preamble of the Universal Declaration of 1948.

Does this imply that in the history of our countries flagrant, systematic, and mass violations of civil and political rights have not continued and will not continue to take place? Definitely not. It is true that in our part of the world situations of this nature have existed and continue to exist. But it is also axiomatic that in these situations one can see the guilty hand of powerful foreign interests which consider the perpetuation of such states of affairs as the best guarantee for their profits. They are behind the actions of both the national authorities responsible for such violations and of the small domestic minorities that support the latter because of their minority interests. Situations such as those that existed or exist in the South Vietnam of Thieu, the South Korea of Park, or the Nicaragua of Somoza, as well as those exemplified by the military cliques of the southern cone of our continent headed by Pinochet of Chile are notorious examples of this assertion. The struggle against the mass violations of the most elementary human rights of the true democrats in those countries gives proof that the peoples have not taken a vacation for self-destruction. It must be added that such regimes have been repudiated, formally or tacitly, by the majority of our governments, an attitude which is in sharp contradiction to the benevolent and condoning position maintained in those cases by certain powerful governments that support these same regimes in the international arena, be it because of the participation they have had in the seizure of power by such cliques or to protect the interests of their corporations.

This consistent effort of our peoples in the search for the full accomplishment of the fundamental freedoms in their domestic jurisdiction is complemented by the promotion, particularly within the U.N. system, of stronger juridical guarantees for human rights and by concrete steps to condemn and eliminate the mass violations of human rights that, logically enough, stir the sensibilities of the majority of the international community.

With the mass participation of new states in the work connected with these issues, the international community benefits from a healthy, creative impetus that has marked numerous new multi-lateral juridical instruments and resolutions of the U.N. General Assembly and the specialised agencies. This has brought the struggle for human rights to a plane far superior to the one existing in past decades.

This statement is sustained by different examples. To begin with, we must take into consideration the Universal Declaration of 1948 adopted by the U.N. General Assembly when there were only 58 member states. Not a single mention is made in it of the right to self-determination, the full exercise of which as we have seen, is a pre-requisite for the exercise of human rights in general and civil and political rights in particular. In December of 1966, when the Assembly adopted the International Covenants on Human Rights with the participation of 122 member states, the first Article of *both* Covenants included this lofty principle *in extenso*. The fact that this principle was already established in the Charter

at the time the Declaration was adopted gives particular significance to its omission in the Declaration. It was not until the massive accession of dozens of peoples to national independence and participation in international affairs—peoples who in their immense majority had been deprived of that basic human right at the time when without their participation the Declaration was adopted—that such a fundamental principle was explicitly incorporated into an international instrument of significance in the field of human rights. On the other hand, the formulation and procedural guarantees that are established in the International Covenant on Civil and Political Rights regarding such transcendental rights as the right to life, liberty, and the security of person are markedly superior in the Covenant, as compared with the Universal Declaration. The Covenant also included what were gaping omissions in the Declaration, such as the prohibition of war propaganda and the incitement to discrimination (both of which could have been considered legitimate in the light of the letter of Article 19 of the Declaration) as well as the reference to the rights of minorities (Article 27 of the Covenant).

The contribution of our countries to the adoption of other basic documents relevant to civil and political rights has also been considerable. Instruments of paramount importance in this field—e.g., the International Convention on the Elimination of All Forms of Racial Discrimination (1965), the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity (1968), the Convention on the Suppression and Punishment of the Crime of Apartheid (1973), the Declarations on the Granting of Independence to Colonial Countries and Peoples (1960), on the Promotion Among Youth of the Ideals of Peace, Mutual Respect, and Understanding between Peoples (1965), on the Protection of All Persons against Torture or Other Cruel, Inhuman, or Degrading Treatment or Punishment (1975), and on the Utilisation of Scientific and Technical Progress in the Interest of Peace and Benefit of Humanity (1975)—have been adopted by the General Assembly either at the initiative of our countries or with their massive support.

It was also at our initiative that the Assembly adopted by overwhelming majorities numerous resolutions demanding the immediate release of and the respect for the human rights of individuals sentenced or detained for their struggle for self-determination and independence, or condemning and declaring that the policies of racial discrimination and *apartheid* imposed by the regimes of Rhodesia and South Africa in their respective territories and in Namibia are crimes against humanity. With our sponsorship the Assembly has also repudiated the systematic violations of human rights in Chile and the occupied Arab territories.

Our performance is in vivid contrast to the attitude which the governments of several of the developed countries of Western Europe and North America, particularly the United States, have shown with respect to numerous international instruments or resolutions of the most representative body of the U.N., all of them of unquestionable relevance to the implementation and defence of civil and political rights. If we were to judge solely on the basis of their flaming rhetoric on this issue, these governments should be the first to lend unlimited support to

such initiatives. Their deeds, nevertheless, prove quite the contrary.

No effort has been spared in their attempt to impede these initiatives—from the outright vote against those texts to the non-adherence or non-ratification of those of a binding nature, and including hypocritical abstentions and the contemptuous ‘not participating in the vote’ (the most recent procedural contribution made last May in ECOSOC by the delegates of the new U.S. administration to the debate on the status of human rights in Southern Africa).

The facts that we have enumerated in the preceding paragraphs show the positive contribution made in this sphere. They exemplify the interest our countries take in the search for the full enjoyment of civil and political rights and are a sample of the underlying potential for action that can be expected from them in the future. Furthermore, the same facts illustrate the logical priorities that our countries give to certain topics or specific cases where violations of human rights are reported. Hence it is to be expected that our countries shall continue to devote particular attention to questions related to the effective exercise of the right to self-determination, the elimination of racist policies and *apartheid*, the condemnation of wars of aggression and foreign military occupation, and to the repudiation of the new expressions of fascism, as is the case in Chile. These are all situations that by definition mean the denial of the civil and political rights of millions of human beings, as well as blatant violations of international law (of the U.N. Charter in particular), and in some cases they are even real threats to international peace and security. It is therefore logically overwhelming as well as fundamentally just that we give a high priority to their discussion.

In assigning a high priority to those fundamental issues we do not mean to imply the wilful negligence of cases of violations of civil and political rights that might occur in any society (including our own, of course), cases in which the rights of some individuals are impeded through miscarriages of justice, unjust decisions made by government officials, or abuses of authority.

Let us for the moment leave aside the fact that there exist real limitations in the availability of qualified personnel for our government administrations, as a result of the colonial and neo-colonial legacy, which could explain these incidents to a certain extent though never justify them. The important thing is that these cases are categorically different from those situations that have heretofore deserved our urgent and constant attention. These latter reflect an institutional reality that is not only unquestionably incapable of offering the most elementary guarantee of the basic rights of individuals but rather generates, in and of itself, violations of the traditional legality of the country in question or of international law. In these situations there exist ample proof of the impossibility of redressing the general denial of human rights through the existing domestic ‘legality’, since this is precisely a tool to perpetuate them.

Conversely, in those cases of isolated violations within a given society, whose general pattern embodies the respect for fundamental freedoms and in many cases dedicated struggle to achieve the full realisation of the human rights of all of its citizens, international action cannot and should not be a substitute for na-

tional action to remedy these cases—once they are verified by the internal authorities—and to re-establish the legal order.

Any attempt to place both realities on the same plane or to establish an equivalence between them as regards measures to be taken by the international community to redress them implies a violation of the principles of logic and a capital travesty of elementary justice. Those who through frank complicity, lukewarm attitudes, silence, or sheer indolence are responsible for the perpetuation of such systematic, flagrant, and mass transgressions of human rights (whatever their pious excuses may be)—while blowing individual cases out of all proportion and indiscriminately mixing sporadic proven cases together with mere unconfirmed allegations or complaints with obvious political motivations—show themselves to have, in the best of cases, a highly dubious sense of ethics and justice. Bearing this in mind, it is a gross underestimation of our rational capacity to ask us to cease to be 'selective', have our people and their representatives in international bodies confer equal or even greater importance to such *cases* in contradistinction to the intolerable *situations* we have described, and meekly join them in their well-publicized 'crusades'.

Even when we reject these attempts they always leave a negative balance since public attention, being directed toward these cases, is drawn away from situations which demand our undivided attention, e.g., Southern Africa. The time and space which the mass media devote to the magnification of sporadic cases or unconfirmed allegations of violations of human rights means that much less time and space is available for public opinion to become aware of the domestic economic and social problems of those unconcerned countries, or of the non-compliance of their governments with U.N. resolutions which point to their responsibility for our economic under-development.

An important element in these efforts is the 'concern' in certain circles for the so-called 'political prisoners' or 'prisoners of conscience' in a number of countries, including some of ours. There are two important questions in this respect which must be mentioned, although we shall not go into a deep analysis of them in this paper.

The first is the fact that the term 'political prisoner', can mean different things in different legal and penal systems and that neither this term nor 'prisoner of conscience' has been precisely defined by any governmental legal or political international organization. This goes beyond semantics or the mere attachment to an unjust or suspicious legalistic formalism. It touches upon important concepts of law, philosophy, and politics. The second question, closely related to the previous one, refers to the paradoxical situation which arises when those who are imprisoned as a result of their struggle to install in their country a social, political, and economic order which would effectively guarantee basic human rights and fundamental freedoms are lumped together, under one or the other of the afore-mentioned terms, with those who have been condemned for activities leading to the opposite direction, i.e., the restoration or establishment of a society whose institutions lend themselves to mass violations of such rights.

Just as when stern condemnations are made of wars without establishing the necessary distinction between the wars of aggression and wars of liberation, thereby placing the victim and the culprit on the same plane, it is not surprising that our peoples react before the intrinsic injustice implied in placing equal emphasis, for example, on the liberation of those who suffer the brutality of fascism in the prisons of the Chilean Junta, or in the dungeons of the South African racists, and the liberation of those who (as has happened in our region) have tried to 'destabilize' our institutions and cast our peoples back into the dark past of foreign oppression and exploitation in which human rights are trampled upon.

In most of these cases it is not difficult to find the links that tie these individuals to powerful foreign interests. On many occasions such prisoners are mere salaried agents of foreign intelligence agencies whose activities have been abundantly publicized even by institutions of their own countries, though many years afterwards and without any apparent punishment for those responsible for them. Our governments are obliged to devote valuable human and material resources (which obviously do not abound) to the detection and elimination of such activities, as well as the trying, sentencing, and imprisonment of those responsible. In many cases, this process ends, oddly enough, with scores of communications from abroad asking for their release or with an international campaign for the same purpose. No further comment is necessary.

It is unavoidable that in these cases not only we Cuban jurists but also the great majority of peoples who have gone through these experiences should ask ourselves certain questions. Could it be that they are trying to cast the shadow of doubt on our efforts to give real substance to the expression 'human rights'? Since the responsibility of foreign interests and agencies in the events that have brought about the incarceration of at least a large number of these 'political prisoners' or 'prisoners of conscience' is public knowledge, and in some cases even confessed, why then are these communications and campaigns not directed against the culprits instead of against our institutions?

Lastly, let us ask ourselves, perhaps with a touch of naiveté, why those who in good faith have participated in these actions have not pondered the positive results that could accrue for the real and effective implementation of *civil and political rights* throughout the world—and especially in the developing countries—if the resources which are consumed in these campaigns were instead devoted to exposing thoroughly before world opinion (particularly those of consumer societies) the true causes that impede the full realisation of *economic, social, and cultural rights*, i.e., the existence of an unjust international economic order and of domestic structures in numerous societies that impede an equitable distribution of their gross national product. Although this concept may possibly seem new to some because of the slight importance attributed to it in developed Western countries, the interrelation that exists among *all* basic human rights and fundamental freedoms is neither new nor unfounded.

The notion that both categories of human rights are intimately linked is latent in the spirit of the Preamble of the Charter when, as has been noted before, the

peoples of the United Nations declared themselves to be resolved 'to promote social progress and better standards of life in larger freedom', a resolution recalled in the Preamble of the 1948 Universal Declaration. Paragraph 13 of the Proclamation of Teheran (1968) was extremely precise in this respect in recognising that 'since human rights and fundamental freedoms are indivisible, the full realisation of civil and political rights without the enjoyment of economic, social and cultural rights *is impossible*'. In its most recent Session (February–March 1977), the Commission on Human Rights ratified this concept in Resolution 4 (XXXIII).

This interpretation is of pristine logic. The freedom and the individual rights of each of the members of a given society are not abstract concepts, alien to their specific reality determined by the overall social, economic, and political relations existing in the society in which they live. It is precisely that specific reality, resulting from the particular nature of those internal structures, that determine the general situation of each individual in his or her society, including of course the *real* scope and *true* meaning of *his* human rights. The freedom of an unemployed person (that is, an individual whose *economic* rights have not been implemented) and, consequently, his *civil and political rights* have a *practical* content and an *actual* range different from that of another member of the same society who has a job. His individual freedoms differ from those of the manager of the 'national' subsidiary of a trans-national corporation to whom he applies for work, and are abysmally different when compared with the freedom enjoyed by the Chairman of the Board of that vast industrial complex.

If, according to Article 1 of the Universal Declaration, 'all human beings are born free and equal in dignity and rights' and if the principle that all citizens are equal before the law is of general acceptance in the various legal systems existing in the world, then what is it that gives a different materialisation to those rights for the three individuals mentioned above? If the relations and structures which we mentioned in the preceding paragraph establish and secure economic and social relations of dependency for certain strata of a society and not for another, thus making it impossible for a section of the society to realise its economic, social, and cultural rights, then it becomes of limited importance whether or not the juridical guarantees of the fundamental freedoms are *formally* recognised for all members of that society. Regardless of formal recognition, the civil and political rights of its different strata will certainly have different values.

Would it be of any practical importance for an illiterate person (i.e., an individual whose *cultural* rights have not been realised) that the legal texts of his society entitle him to the freedoms of opinion and information? Furthermore, could it truthfully be said that in a given society freedom of the press has the same meaning for a newspaper owner, for the linotypist that helps to print it, for the reader and, finally, for all those who lack the financial resources to publish a magazine or a newspaper or buy time on a T.V. station?

Lastly, what might be the most graphic example of our proposition. The right to life is the primary human right. All other rights, including—obviously—civil and political rights, depend on its realisation. Without it, it is impossible to exer-

cise the rest. Every day thousands of children of less than one month of age die throughout the world. An appalling majority of them die in our 'developing countries' as a result of insufficient intake of calories and proteins; lack of pre-natal medical care for their mothers; lack of post-natal attention to the infant's health, or an insalubrious environment. The fact that it has been impossible for these children or for their parents to exercise the economic, social, and cultural rights enshrined in the Universal Declaration will also make it impossible for each and every one of these children to realise any of their civil and political rights.

The establishment of a society free of social relations that foster situations such as the ones described above—a society in which hunger, unemployment, illiteracy, and insalubrity can be eliminated, thus a society that would eradicate exploitation and under-development and, consequently, where economic, social, and cultural rights can have an actual daily realisation—is what many of our countries consider to be their most valuable contribution to the struggle for the full implementation of civil and political rights.

In addition, it must be pointed out that this effort on the domestic plane depends, to a certain degree, on the termination of an international order which, as a reflection of the colonial past, imposes upon most of our countries relations of dependence and unequal terms of exchange with their former metropolises, checks their access in fair terms to the financial resources needed for their development and, in short, widens the gap between developed and 'developing' countries, thus perpetuating our lack of development. Possibly the most effective way for developed societies—particularly those who for centuries have plundered our resources—to contribute to the full implementation of *civil and political rights* in our countries would be to abide by the spirit and the letter of the Declaration and Program of Action on the Establishment of the New International Economic Order and of the Charter of the Economic Rights and Duties of the States (U.N. General Assembly's Resolutions 3201 and 3202 (S-VI) and 3281 (XXIX) of 1 May and 12 December 1974), thus contributing to the redress of a historical injustice.

The preceding assertions should be understood in their correct sense. Economic development does not necessarily determine in and of itself an effective implementation of human rights in general, nor do our countries believe that it is necessary to wait until we achieve economic development in order to be capable of securing civil and political rights in our societies in an effort—as some quarters suggest—to find excuses for the violations that might occur in them.

With regard to the first of the above issues, it is a well-known fact that unemployment, that is, the non-realisation of the right to work (Article 23 of the Universal Declaration), is inherent in developed societies of market economies. In addition, the unacceptable situation with respect to the civil and political rights of—to mention only a few examples—the black people in the U.S., the Catholic minority in Northern Ireland, the migrants from the English-speaking countries of the Caribbean in Britain, or of those from the Maghreb in France is notorious.

In connection with the second, suffice it to recall that without having to look for them elsewhere, there are examples in our own Caribbean region that give proof of the fact that it is possible, simultaneously, to struggle against underdevelopment, successfully oppose foreign aggression or 'destabilization' and establish or enrich institutions that can guarantee the implementation of civil and political rights.

In the light of all past considerations, how do we Cuban jurists feel that our countries may further contribute to the universal realisation of and respect for civil and political rights?

Domestically, it is evident that the main task would be to continue our efforts to exercise fully the right to our self-determination, independence, and full sovereignty, giving our societies institutions incapable of generating relations of dependence both internally and in the international plane, and to make such institutions more solid with each passing day. A concentrated effort must be made to strengthen our legal system aiming, on the one hand, to develop the formulation of civil and political rights in the legislation in force and, on the other, to secure a quick and efficient system to redress all violations of such rights. Occasional miscarriages of justice and abuses of authority can be eliminated to a great extent by improving the professional qualifications of the judicial and administrative officials who deal directly with individuals awaiting trial or already sentenced.

On the international plane, our countries should continue their militant support, according to their several resources, for the noble struggle of our brothers still suffering the old colonial rule, wars of aggression, foreign occupation, racism and fascism. To expose and condemn the violations of their civil and political rights should continue to deserve our priority. Our countries should give special attention to the development of international law in this field, particularly by the drafting and adoption of conventions that would strengthen the international juridical guarantees for those rights. An ever-increasing dedication in their participation in the work of U.N. bodies specialising in these matters is of capital importance for the fulfillment of these tasks. The highest possible degree of co-ordination of our positions so as to promote common actions in these questions is also of great value for these purposes. Though it might be considered unnecessary, it would be useful to stress whenever possible in international gatherings that the fulfillment in good faith by every state of the obligations freely assumed by it, particularly those established in the U.N. Charter, is of great relevance for an effective implementation of civil and political rights.

With respect to regional co-operation in this field, a periodical exchange of experiences through multi-lateral activities such as symposia, seminars and round tables, or by means of bi-lateral contacts through delegations of members of parliaments, jurists, members of the judiciary, university professors, etc., would greatly contribute to a better understanding of common problems, to the search for their solution as well as to a deeper knowledge about our respective peoples.

CARIBBEAN CONSTITUTIONAL PROVISIONS ON HUMAN RIGHTS

ALBERT N. J. MATTHEW

The human rights provisions found in the constitutions of most Caribbean nations do not vary in content to any significant degree but, as might be expected, the provisions of the constitutions of the Commonwealth Caribbean countries bear a closer similarity to each other than they do to the constitutions of the non-Commonwealth Caribbean countries. The constitutions of the Commonwealth Caribbean countries deal only with what may be referred to as individualistic rights. The constitutions of the non-Commonwealth Caribbean countries are broader and deal additionally with social, cultural, political, and economic matters. Sometimes they enunciate duties of the individual correlative to those rights. Sometimes the provisions of the constitutions of the non-Commonwealth countries are very detailed and elaborate the many matters which are accepted as governmental functions or responsibilities in the Commonwealth Caribbean countries.

It is noticeable that the human rights provisions are found at the beginning of almost all the constitutions, and in a few cases these constitutions begin with preambular provisions recognising the supremacy of God, or reverence for the Deity, or invoking the protection of God Omnipotent; where reference to God or the Deity is omitted, as in the constitution of Haiti, the preamble states that the people of Haiti *inter alia* establish a nation which is socially just, economically free, and politically independent under a democracy adapted to its customs and traditions.

In the constitutions of all the Commonwealth Caribbean countries, except that of Trinidad and Tobago, there is an introductory section which precedes the list of fundamental rights and freedoms and sets out the general theme of what is to follow. The provision in the Constitution of Antigua for example is as follows:

1. Whereas every person in Antigua is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely:

*This paper was written from an examination of the Human Rights provisions of the constitutions of Antigua, Barbados, Bermuda, Cuba, Dominica, Dominican Republic, Guyana, Haiti, Jamaica, Netherlands Antilles, St. Kitts/Nevis/Anguilla, St. Lucia, St. Vincent, Trinidad and Tobago, and Venezuela.

- (a) life, liberty, security of the person, the enjoyment of property and the protection of the law;
- (b) freedom of conscience, of expression and of peaceful assembly and association; and
- (c) respect for his private and family life,

the subsequent provisions of this Chapter shall have effect for the purpose of affording protection to the aforesaid rights and freedoms, subject to such limitations of that protection as are contained in the provisions, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest.

Commenting on a similar provision Professor S. A. de Smith says, 'Such a provision serves useful purposes. It brings out the general purport of the guarantees, lifting them above the austerity of tabulated legalism and may help to spread awareness of their implications—and indeed, of their existence—among the Community at large. It might be more appropriately placed in a preamble if the niceties of draftsmanship were the only consideration to take into account, but it stands out more boldly in the main text'.

It is necessary to state that the format of the human rights provisions in the Constitution of Trinidad and Tobago is different from that of the other Commonwealth Caribbean countries. As has been stated above there is no introductory section similar to section 1 of the Constitution of Antigua. Instead, there is provided in section 4 of that Constitution a recognition and declaration of rights and freedoms which have always existed and which will continue to exist in Trinidad and Tobago. These rights and freedoms are listed in section 4 but, unlike the constitutions of the other Commonwealth Caribbean countries, the succeeding provisions of that Constitution do not with that degree of particularity state in what circumstances will derogations be made to the rights and freedoms, but are fairly general. Section 4 of the Constitution of Trinidad and Tobago is as follows:

4. It is hereby recognised and declared that in Trinidad and Tobago there have existed and shall continue to exist without discrimination by reason of race, origin, colour, religion or sex, the following fundamental rights and freedoms, namely:

- (a) the right of the individual to life, liberty, security of the person and enjoyment of property and the right not to be deprived thereof except by due process of law;
- (b) the right of the individual to equality before the law and the protection of the law;
- (c) the right of the individual to respect for his private and family life;
- (d) the right of the individual to equality of treatment from any public authority in the exercise of any functions;
- (e) the right to join political parties and to express political views;
- (f) the right of a parent or guardian to provide a school of his own choice for the education of his child or ward;
- (g) freedom of movement;

- (h) freedom of conscience and religious belief and observance;
- (i) freedom of thought and expression;
- (j) freedom of association and assembly; and
- (k) freedom of the press.

It is now necessary to examine the provisions of the constitutions and the different rights and freedoms in closer detail.

Protection of the right to life

We shall begin our examination with the protection of the right to life. Most of the constitutions provide that no person shall be deprived of his life intentionally, save in the execution of a sentence of the court in respect of a criminal offence of which he has been convicted. This is followed by another provision which states circumstances in which a person loses his life and which are not considered to be intentional deprivation of life. The first provision would exclude legal execution for murders committed from the protection of the right to life. This, of course, is a highly controversial matter, and at the time of writing the press has been reporting a statement attributed to a committee for the abolition of the death penalty in Trinidad and Tobago to the effect that the death penalty is cruel and inhumane. The second provision relates to the circumstances in ordinary criminal law where a person who has caused the death of another has a legal defence, and his act would not be described as murder. Some of the circumstances are where such force as is reasonably justifiable results in death of another:

- (a) for the defence of any person from violence or for the defence of property;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (c) for the purpose of suppressing a riot, insurrection or immunity;
- (d) in order lawfully to prevent the commission by that person of a criminal offence;

or if a person dies as a lawful act of war. The Constitution of Haiti pronounces on this right in two general provisions at Articles 5 and 25. Article 5 states that the life and liberty of Haitians are sacred and must be respected by individuals and by the State. Article 25 states that capital punishment may not be imposed for any political offence except treason and describes the crime of treason as taking up arms against the Republic of Haiti, joining avowed enemies of Haiti and giving them aid and comfort. The Constitution of Cuba, the Dominican Republic, and Venezuela all provide against the sanction of the death penalty.

Article 25 of the Cuban Constitution states in the opening sentence that the death penalty cannot be imposed but the Article goes on to except a number of instances pertaining to support for 'the restoration or defence of the tyranny overthrown on December 31, 1958'. More interesting exceptions are found in the provision: 'Also excepted are persons guilty of treason, subversion of the institutional order, or of espionage in favour of the enemy in time of war with a

foreign nation; and those guilty of counter-revolutionary crimes designated as such by law and crimes which harm the national economy or the public Treasury.'

The Dominican Republic sets out as a standard the inviolability of life and states that neither the death penalty, torture, nor any other punishment or oppressive procedure or penalty that implies loss or diminution of the physical integrity or health of the individual may be established.

Venezuela states briefly 'The right to life is inviolable. No law may establish the death penalty nor any authority carry it out.' (Article 58).

Protection of right to personal liberty

Some of the constitutions refer to this right as protection from arbitrary arrest or detention. The provisions in most of the constitutions state that persons shall not be deprived of their personal liberties except as are specified in particular cases by the authority of law. Some of the cases listed are in consequence of a person's unfitness to plead to a criminal charge; in execution of a sentence or order of the court where he has been convicted or for contempt of the court; upon reasonable suspicion of his having committed or being about to commit a criminal offence; in the case of minors, for the purpose of their education or welfare; for the purpose of preventing the spread of an infectious or contagious disease; or in the case of a drunkard or drug addict, for the purpose of his care or treatment or the protection of the community.

Further provisions state that a person who is arrested or detained should be informed as soon as reasonably practicable in a language he understands the reasons for his arrest, should be brought without undue delay before a court, should not be thereafter further held in custody in connection with those proceedings or that offence save upon the order of the court, should be entitled to bail.

The Constitutions of Barbados and Jamaica under this head provide additionally that derogations can be made to this right through the instrumentality of law during a period of public emergency. Additional provisions state that persons lawfully detained by virtue of law made during emergency periods may request that their cases be reviewed by independent and impartial tribunals established by law and presided over by persons appointed by the Chief Justice.

Article 77 of the Constitution of Haiti is along the same lines, providing that individual liberty shall be guaranteed, but there is the additional provision in Article 18 that no one may be denied access to the judges whom the Constitution or the law assigns to him. Article 60 of the Constitution of Venezuela states that personal liberty and safety are inviolable and consequently goes on to specify the conditions for arrest or detention.

Article 27 of the Constitution of Cuba states that every arrested person shall be placed at liberty or delivered to the competent judicial authority within twenty-four hours following his arrest, and every arrest shall be set aside or converted into imprisonment by a judicial order stating the reasons therefor within seventy-two hours after the arrested person was placed at the disposition of the competent judge. Within that same period the interested person shall be notified

of the decision rendered. Article 8(c) of the Constitution of the Dominican Republic has a provision similar to that of Cuba to the effect that every arrest shall be void or shall become imprisonment within forty-eight hours after the arrested person has been submitted to the competent judicial authority, and the interested party must be notified of the ruling handed down in the case within the same period. Article 3 of the Constitution of the Netherlands Antilles has a general provision which simply states 'All those who are within the territory of the Netherlands Antilles have an equal right to protection of their person and property'.

Protection from slavery and forced labour

Some of the constitutions contain a provision for the protection from slavery and forced labour while others are silent on this. The provision begins by stipulating that no person shall be held in slavery or servitude and follows this by a provision that no person shall be required to perform forced labour. None of the words—'slavery', servitude' or 'forced labour'—is further defined except that we are informed that for the purposes of the section, 'forced labour' does not include labour required by a sentence of the court, presumably of prisoners, labour required of persons lawfully detained which is reasonably necessary in the interest of hygiene or for the maintenance of the place of detention, or labour required of members of a disciplined force, or labour required during a period of public emergency which is reasonably justifiable in the circumstances giving rise to the public emergency. Although the Constitution of Venezuela does not refer to slavery or servitude there is a provision in Article 60 which states that no one may be the object of forced recruitment nor subjected to military service except for terms outlined by law.

Protection from inhuman treatment

The constitutions of many of the countries provide that no person shall be subjected to torture or to inhuman or degrading punishment or other treatment, but then go on to save the infliction of any punishment or the administration of any treatment that was lawful immediately before the coming into operation of the constitution. This provision suffers from the same defect as the previous one mentioned above in that the matters against which protection may be desirable are not defined and an onerous burden will presumably be placed on the courts to determine the content of those rights.

Protection from deprivation of property

Almost all of the constitutions have provisions protecting the property of persons in the sense that one's property shall not be compulsorily acquired except where there is a law authorising such acquisition and that such law provides for compensation within a reasonable time. Different adjectives are used to describe the compensation in that while some countries require 'full' compensation

others are satisfied with 'adequate' or 'fair' compensation. Some of the constitutions require that the provisions of the law shall prescribe the principles on which and the manner in which compensation is to be determined and given and secures to any person claiming an interest or right over such property a right of access to a court for the purpose of establishing such interest or right, determining the amount of such compensation to which he is entitled, and enforcing his right to any such compensation.

Where the provisions of the constitutions do not require that the law providing for compensation also provides for the right of access to the courts, this right is given in the constitution itself. Some of the constitutions provide that the Chief Justice may make rules in reference to practice in respect of the right of access.

There are a number of matters provided for by law which, although authorising the taking of possession or acquisition of property, are held not to be in contravention of this right. These matters relate to cases where there seems to be some fault or incapacity on the part of the persons in possession or the holder of the right or interest. Examples of these are where possession is taken:

- (i) in satisfaction of any tax, rate or due;
- (ii) by way of penalty for breach of the law or forfeiture in consequence of breach of the law;
- (iii) as an incident of a lease, tenancy, mortgage, charge, bill of sale, pledge or contract;
- (iv) in the execution of judgments or orders of a court in proceedings for the determination of civil rights or obligations;
- (v) in circumstances where it is reasonably necessary so to do because the property is in a dangerous state or likely to be injurious to the health of human beings, animals or plants;
- (vi) in consequence of any law with respect to the limitation of actions; or
- (vii) for so long as may be necessary for the purposes of any examination, investigation, trial or inquiry, or in the case of land, for the purposes of the carrying out thereon of work of soil conservation or the conservation of other natural resources or work relating to agricultural development or improvement; or
- (viii) in the case of enemy property, or property of a deceased person, a person of unsound mind or of a minor, for the purpose of its administration for the benefit of the persons entitled; property of a person adjudged insolvent or a body corporate in liquidation, for the purpose of its administration for the benefit of the creditors of the insolvent person or body corporate; or property subject to a trust in accordance with the provisions of the trust instrument or by order of a court, for the purpose of giving effect to the trust.

An interesting derogation from this right found in some of the constitutions is anything contained in or done under the authority of a law which makes pro-

vision for the orderly marketing or production or growth or extraction of any agricultural or mineral product.

Another exception is in the compulsory acquisition in the public interest of any property held by a body corporate established by law for public purposes in which no monies have been invested other than monies provided by Parliament.

A strange provision in a couple of the constitutions states that no person entitled to compensation shall be prevented from remitting, within a reasonable time after he has received any amount of that compensation, the whole of that amount to any country of his choice outside of the country acquiring the property.

The Constitution of Cuba in Article 24 provides that the confiscation of property is prohibited but is authorised for the property of a few classes of persons such as 'the Tyrant deposed on December 31, 1958 and of his collaborators', natural or juridical persons responsible for crimes committed against the national economy or the public treasury, those who are enriched or have been enriched unlawfully under the protection of the public power, and those persons condemned for the commission of crimes specified by law as counter-revolutionary. Further provisions stipulate: 'No other natural or juridical person can be deprived of his property except by competent authority and for reason of public benefit or social or national interest. The law shall regulate the procedure for expropriations and shall establish the manner and form of payment as well as the authority competent to rule on causes of public utility or social or national interest and the need for expropriation', and according to Article 87 'The Cuban State recognizes the existence and legitimacy of private property in its broadest concept as a social function and without other limitations than those which, for reasons of public necessity or social interest, are imposed by law'. Another provision states that large landholdings are proscribed and that the law shall specify the maximum amount of land that may be owned by any person or entity for each type of exploitation to which land is devoted. The Dominican Republic similarly has a provision providing that the gradual elimination of large holdings (*latifundios*) as well as the application of land to useful purposes are declared to be of social interest.

The Constitution of Haiti in Article 22 guarantees the right of ownership to citizens. This is an interesting provision, if only because for the first time a difference is made as to rights and freedoms which apply to all persons and those which relate peculiarly to citizens, a feature which is particularly noticeable in the fundamental rights provisions of the Constitution of India. The provision in the Haitian Constitution continues by stating another unique provision that 'Expropriation for a legally established purpose may be effected only by advanced payments, or deposit, in favour of the person entitled thereto of fair compensation.' Property, the provision continues to state, also entails certain obligations; its use must be in the public interest and the landowners have obligations to the community to cultivate, work, and protect their land particularly against erosion, with penalties for failure to fulfil the obligations prescribed by law. Venezuela

likewise guarantees the right to own property and provides that the expropriation of any kind of property may be declared only on the grounds of public benefit by final judgment and the payment of fair compensation.

Protection for privacy of home and other property

This is a common provision which is sometimes referred to in some constitutions as protection from arbitrary search or entry. The first sub-section states the basic rule that except with his own consent no person shall be subjected to the search of his person or his property or the entry by others on his premises, and the following sub-section stipulates the exceptions to the general rule. The exceptions as in most of the other rights and freedoms must be contained in or done under the authority of a law. The matters are held not to be inconsistent with or in contravention of this protection if they are reasonably required in the interests of defence, public safety, public order, public morality, or if they are reasonably required for the purpose of protecting the rights or freedoms of others, or if they authorise certain officers or agents of government to enter premises in order to inspect those premises for the purpose of any tax or rate, or if they authorise for the purpose of enforcing the judgment or order of a court the search of any person or property.

Some of the constitutions would go further to add that the derogations must be reasonably justifiable in a democratic society.

The constitutions of the non-Commonwealth Caribbean countries all pronounce upon the inviolability of the home and permit entry in accordance with law, but they do not describe the content of the law.

Provision to secure protection of law

This protection in some of the constitutions deals with the conduct of proceedings against a person charged with a criminal offence and in some cases provides for the independence and impartiality of courts authorised to determine disputes in civil matters. A person charged with a criminal offence shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law. He shall be presumed innocent until he is proved or has pleaded guilty. He shall be informed as soon as reasonably practicable in a language he understands, and in detail, the nature of the offence charged; he shall be given adequate time and facilities for the preparation of his defence; he shall be permitted to defend himself before the court in person or, at his own expense, by a legal representative of his own choice; he is entitled to cross-examine prosecution witnesses and to secure the attendance of his own witnesses and to have the free assistance of an interpreter if he cannot understand the language used at the trial of the charge. Further provisions require that a person charged is entitled to obtain copies of the record of the proceedings against him on payment of a reasonable fee; that retroactive penal legislation and double jeopardy are prohibited; that a person who has been pardoned may not subsequently be tried for the same offence; that a person shall not be compelled to give evidence at his

trial; that court proceedings shall be held in public except where publicity would prejudice the interests of justice or the welfare of minors or the protection of the private lives of the persons concerned in the proceedings.

Article 21 of the Constitution of Cuba provides that penal laws shall have retroactive effect when they are favourable to the delinquent. It excludes from this benefit, in cases where fraud was involved, public officials or employees who commit crimes in the exercise of their positions and those responsible for electoral crimes and crimes against the individual rights. In cases of crimes committed in the service of the tyranny overthrown on December 31, 1958, the perpetrators may be tried in accordance with penal laws promulgated for this purpose. Another interesting provision is found in Article 22 which states 'No other laws shall have retroactive effect, unless the law itself so specifies for reasons of public order, or social utility, or national necessity, expressly stated in the law, approved by a vote of two-thirds of the total number of the Council of Ministers'. Haiti and Venezuela have provisions on retroactivity similar to that of Cuba. Article 44 of the Venezuela Constitution states 'No legislative provision shall have retroactive effect except when it imposes a lesser penalty'.

Protection of freedom of conscience

This freedom takes the form of freedom of thought and more especially of religion. This includes freedom to manifest and propagate one's religion or belief, either alone or in community with others. Some of the provisions under this head state that no person attending any place of education shall be required to take part in or attend any religious ceremony or observance if that ceremony or observance relates to a religion which is not his own; that religious communities which establish or maintain places of education should not be prevented from providing religious instruction for persons of that community; that a person should not be compelled to take any oath that is contrary to his religious belief. There is a slight difference in the provisions of some constitutions as far as the provision of religious instructions in places of education is concerned in that some constitutions recognise the right to do so whether or not the religious community is in receipt of a government subsidy or other form of financial assistance, whereas other constitutions recognise the right to provide religious instructions in the course of education only where the religious community wholly maintains the places of education.

Derogations from this freedom are allowed under the authority of law in the interests of defence, public safety, public order, public morality or public health; for the purpose of protecting the rights and freedoms of other persons, including the right to observe and practice any religion without the unsolicited intervention of members of any other religion; or for the purpose of regulating educational institutions in the interests of the persons who receive or may receive instructions in them. Here again the non-Commonwealth Caribbean constitutions simply state the general freedom without illustrating the circumstances in which derogations are permissible.

Protection of freedom of expression

This crucial freedom includes freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to communicate ideas and information without interference, and freedom from interference with correspondence. Derogations are permissible under the authority of law in the interests of defence, public safety, public order, public morality, or public health, or for the purpose of protecting the reputations, rights and freedoms of other persons, preventing the disclosure of information received in confidence, or for the purpose of imposing restrictions upon public officers.

Protection of freedom of assembly and association

This is another fairly common provision in the constitutions which protects the rights of persons to assemble freely and associate with other persons and in particular to form or belong to trade unions or other associations for the protection of their interests. The constitutions of Barbados, Cuba, Guyana, Haiti, and Trinidad and Tobago specifically mention the right to form or belong to political parties, and Haiti mentions the right to form co-operatives. Following the familiar format, some of the constitutions then proceed to give the instances where derogations are made to this freedom. First of all, and again as usual, the derogation must be contained in or done under the authority of law and it must be reasonably required in the interest of defence, public safety, public order, public morality, or public health, or where it is reasonably required for the protection of the rights and freedoms of other persons, or where restrictions are imposed upon public officers.

Protection of freedom of movement

This freedom permits a person to move freely through the particular country, to reside in any part of the country, and to enter and leave the country; it also provides immunity from expulsion. It is connected to the right to personal liberty so that if a person is lawfully detained, it follows his right to freedom of movement must of necessity be affected. Derogations are made from this freedom by authority of law when the imposition of restrictions on movement of persons are in the interests of defence, public safety, public order, public morality, or public health; or where restrictions are imposed by order of a court in respect of persons found guilty of crimes or where such persons are required to stand trial at a later date; or where restrictions are imposed on the acquisition or use of land or property; or where there are restrictions upon movement or residence of public officers; or for the imposition or restriction of persons who are not citizens of, or do not belong to, the particular country.

It is to be noted that in the protection of this freedom there is different treatment of citizens and other persons. Guyana adds to the words 'reasonably required in the interest of defence, public safety or public order' the words 'or for the purpose of preventing the subversion of democratic institutions in Guyana'.

Some of the constitutions provide a procedure when persons have been detained in the interests of defence, public safety, public order, public morality, or public health. A person who is thus detained may request at any time during the period of his restriction, and not earlier than three months (in a couple of cases six months) after he last made such a request, that his case be reviewed by an independent and impartial tribunal established by law and presided over by a person appointed by the Chief Justice from among persons entitled to be admitted to practice as barristers or solicitors. The tribunal is empowered to make recommendations concerning the necessity or expediency of continuing the restriction to the authority by whom it was ordered, but the virtue of this provision seems to be minimized by the words 'but, unless it is otherwise provided by law, that authority shall not be obliged to act in accordance with any such recommendation'.

Protection from discrimination on grounds of race, place of origin, political opinions, colour, or creed

In most of the constitutions the protection afforded is against any discriminatory law or discriminatory action by public officers. Excepted from this protection are provisions for the appropriation of public revenues or other public funds; or where the provision relates to the personal law of persons of a particular description; or where the restrictions are reasonably justifiable in a democratic society; or where the restriction relates to persons who are not citizens of, or do not belong to, the particular country.

Also excepted from this protection are measures relating to qualifications for persons appointed to the public service or to the exercise of any discretion—relating to the conduct or discontinuance of civil or criminal proceedings in any court of law—that is vested in any person by or under the constitution or any other law. Article 7 of the Constitution of the Netherlands Antilles is more pointed in the difference of treatment between citizens and aliens. It states

- (1) Every Netherlander, without distinction of citizenship, may be elected or appointed to any public function and has the right to vote in accordance with the provisions of the [relative] federal ordinance.
- (2) No foreigner may be elected or appointed [to a public function] nor is he entitled to vote. This provision may be deviated from by federal ordinance with respect to the appointment of certain functions.

Cuba has a similar provision. Article 39 states 'Only Cuban citizens may exercise public functions that involve jurisdiction'.

The Constitution of Venezuela reserves political rights to Venezuelans.

Derogation by Parliament from certain of the fundamental rights and freedoms, namely, the right to personal liberty and protection from discrimination, is permissible during a period of public emergency, but the measures must be reasonably justifiable for the purpose of dealing with the situation that exists during that period of emergency. 'Period of public emergency' means one during

which the particular State is engaged in war or where there is in force a Proclamation by the Governor or Governor-General declaring that a state of public emergency exists; or there is in force a resolution of Parliament declaring that democratic institutions in the country are threatened by subversion. Provision is made for procedures to be observed with respect to persons detained under such emergency powers. Such a person must as soon as reasonably practicable after detention and in any case not more than seven days (in some cases five days) be furnished with a statement in writing, in a language that he understands, specifying in detail the grounds upon which he is detained; not more than fourteen days after the commencement of his detention a notification shall be published in the Official Gazette concerning his detention; not more than one month after the commencement of his detention and thereafter at intervals of not more than six months (in some cases three months) his case shall be reviewed by an independent and impartial tribunal established by law and presided over by a person appointed by the Chief Justice from among persons entitled to practice as barristers or solicitors; he shall be afforded reasonable facilities to consult a legal representative of his own choice to represent him before the tribunal; he shall be permitted to appear in person or by a legal representative of his own choice. The effect of this provision, as in the case of the protection of freedom of movement, is similarly watered down because although on review the tribunal may make recommendations to the authority responsible for the detention, the authority shall not be obliged, unless it is otherwise provided by law, to act in accordance with such recommendation.

Another common provision in some of the constitutions which affect in some measure the prominence of fundamental rights and freedoms is the saving of existing laws from their inconsistency or contravention of the fundamental rights provisions. Subsection (8) of Section 26 of the Constitution of Jamaica states:

- (8) Nothing contained in any law in force immediately before the appointed day shall be held to be inconsistent with any of the provisions of this Chapter; and nothing done under the authority of any such law shall be held to be done in contravention of these provisions.

Another interesting provision is found in the Constitution of Trinidad and Tobago which excepts certain legislation from the protection of the rights and freedoms which are recognised and declared in section 4 of that Constitution. Section 13 of the Trinidad and Tobago Constitution is as follows:

- 13 (1) An Act to which this section applies may expressly declare that it shall have effect even though inconsistent with sections 4 and 5 and, if any such Act so declare, it shall have effect accordingly unless the Act is shown not to be reasonably justifiable in a society that has a proper respect for the rights and freedoms of the individuals.

One might ask of what use are fundamental rights unless they can be enforced as justiciable issues. The constitutions of Cuba, Haiti, Netherlands Antilles, and

Venezuela all recognise the right of the individual to petition, and Cuba goes as far as to specify the period of fifty-five days in which petitions to the authorities must be attended to and decided, with notice of the decision made. Most of the other constitutions have a provision on enforcement of protective provisions. Unlike Section 32 of the Constitution of India, these constitutions do not grant any constitutional rights to named remedies for the protection of fundamental rights and freedoms, but they authorise any person who alleges that any of the provisions of the chapter on fundamental rights has been, is being, or is likely to be contravened in relation to him (or, in the case of a person who is detained, if any other person alleges such a contravention in relation to the detained person) to apply to the High Court for redress and for that purpose the High Court is clothed with original jurisdiction in such a matter. Where a question as to the contravention of any of the fundamental rights and freedoms arises in an inferior court, the person presiding in that court may, and shall, if any party to the proceedings so request, refer the question to the High Court unless, in his opinion, the raising of the question is merely frivolous or vexatious. Article 49 of the Venezuelan Constitution states: 'The courts shall protect any inhabitant of the Republic in the enjoyment and exercise of the rights and guarantees established in this Constitution, in conformity with law'. Cuba also has an interesting provision on this topic. Article 40 states in part 'The right of action to prosecute infractions of this Title is public, without surety or formality of any kind, and by mere denunciation.'

Article 40 of the Constitution of Cuba seeks to nullify one of the criticisms made against the inclusion of Fundamental Rights in a constitution—that important aspects of freedom that are not constitutionally guaranteed may enjoy less respect than those formally enumerated in accordance with the principle *expressio unius est exclusio alterius*. Article 40 continues: 'The enumeration of rights guaranteed in this Title does not exclude others that this Fundamental Law establishes, or others of an analogous nature or that are derived from the principle of the sovereignty of the people and from a republican form of government.' Venezuela also has a similar provision: 'The enunciation of rights and guarantees contained in this Constitution must not be construed as a denial of others which, being inherent in the human person, are not expressly mentioned herein. The lack of a law regulating these rights does not impair the exercise thereof.'

If fundamental rights and freedoms are to be efficacious then there should be a mechanism which prohibits their easy repeal, and in most of the constitutions there is a degree of entrenchment requiring a more difficult means of their amendment than the amendment of the ordinary laws of the land. Various methods are used in the constitutions of the Caribbean countries. In some countries all that is required is a special majority of the votes cast by the members of a uni-cameral or bi-cameral Parliament. The special majority is in most cases two-thirds. In other countries there is the requirement of a special majority as well as a period of delay between the introduction of the bill for amendment

and the debate, and in Jamaica there is a further moratorium between the conclusion of the debate and the passing of the bill in the House of Representatives. The period of delay is usually 90 days or three months. In Venezuela, in certain instances, there is a requirement of a simple majority of votes of the chambers, followed by referendum. In the Associated States there is a requirement of a special majority of two-thirds in Parliament, a moratorium of 90 days, and referendum in which two-thirds of the votes cast must be obtained. Guyana does not require a special majority of votes of the National Assembly nor of the referendum.

As has been stated earlier, the constitutions of the Commonwealth Caribbean countries do not say much about social, political, economic, or cultural rights; neither do they refer to the duties of individuals. The non-Commonwealth Caribbean constitutions have very detailed provisions on those matters. The social rights relate to the rights to the protection of health; protection of family, motherhood, marriage, childhood, and youth; the right to education and the duty of the State to maintain schools; the right to social security, including care of the poor and freedom to private and church charity; the right to work and to obtain for such work adequate wages, holidays, and to form unions for the protection of workers.

The political rights relate to the rights of citizens. Article 6 of the Constitution of Haiti states, 'The aggregate of civil and political rights constitutes citizenship'. It is the right of citizens to vote and to be eligible for election. Article 10 of the Constitution of Venezuela states 'Voting is a right and public function. Its exercise shall be compulsory, within the limits and conditions established by law.' The constitutions of Cuba, Haiti, and Venezuela all recognise the right of asylum for political refugees, and Article 37 of the Constitution of Haiti states, 'Extradition in political matters shall not be permitted'.

The Constitution of Venezuela has elaborated a number of articles relating to economic rights dealing with the freedom of all persons to engage in lucrative activities of their choice, the prohibition of monopolies, and the protection of private initiative by the State, and the constitutions of the Netherlands Antilles, Cuba, and Venezuela all pronounce upon the State's responsibility to promote culture in all of its manifestations.

The social, political, economic, and cultural rights described above are in broad general terms and resemble the non-enforceable provisions of the Indian Constitution referred to as the directive principles of state policy.

Correlative to the rights are a number of duties required of citizens and foreigners in the non-Commonwealth Caribbean constitutions. According to Article 9 of the Constitution of Cuba:

Every Cuban is obligated

- (a) to serve his country with arms in these cases and in the manner established by law;
- (b) to contribute to the public expenditure in the manner and amount provided by law.

The Venezuelan Constitution makes military service compulsory and says it shall be rendered without distinction as to class or social condition. It also stipulates that 'Labour is a duty of every person fit to perform it'.

In the Dominican Republic it is a duty of all persons who inhabit the territory to attend the educational institutions of the nation in order to acquire, at least, an elementary education, and another duty requires every foreigner to refrain from participating in political activities within the territory.

EXTRACTS FROM CONSTITUTION OF THE REPUBLIC OF SURINAME

PREAMBLE

WE, THE PEOPLE OF SURINAME,
THROUGH OUR REPRESENTATIVES
ASSEMBLED IN PARLIAMENT

considering that all citizens are equal before the law without distinction of race, sex, religion, ideology or political convictions,

firmly believing in our duty to respect and safeguard the fundamental human rights and freedoms,

inspired by the ideals of freedom, tolerance, democracy and progress for our nation,

firmly resolved to live and work in peace and friendship with one another and other peoples in the world on the basis of freedom, equality, brotherhood and human solidarity,

SOLEMNLY DECLARE THAT WE BESTOW UPON OURSELVES THE FOLLOWING
CONSTITUTION:

1975

No. 2

CONSTITUTION OF THE REPUBLIC OF SURINAME

CHAPTER I

BASIC RIGHTS

Article 1

1. Everyone in Suriname shall be deemed a person before the law and shall have equal rights to the protection of his person and property.
2. No-one shall be advantaged or disadvantaged on account of race, sex, religion, ideology or political conviction.

Article 2

1. The law shall determine who is a Suriname national.
2. All Suriname nationals shall be allowed entry into Suriname. They may not be expelled.
3. They may move and stay freely in Suriname save for the restrictions regulated by law.
4. The law shall regulate the admission and expulsion of aliens.

5. The law shall lay down regulations for the extradition of aliens.
6. Extradition may take place only by treaty.

Article 3

1. All Suriname nationals shall be equally eligible for appointment to public service.
2. The law shall lay down the public offices to which aliens may be appointed.

Article 4

1. Everyone shall have the right to submit requests in writing to the appropriate authority and shall be entitled to reasonable treatment of such requests.
2. The law shall regulate the procedure for the treatment of requests submitted to Parliament.

Article 5

1. Everyone shall have the right to freedom of religion and ideology. This right shall include freedom to change one's religion, beliefs and ideology as well as freedom to profess one's religion or ideology, either singly or with others, in public or in private, through worship, the teaching of the said religion or ideology, the practical application thereof, and the preservation of prayers and precepts, subject to everyone's responsibility under the law.
2. The law can, in the interests of public order, morality and health, lay down restrictions on the exercise of this right.
3. Equal protection shall be accorded to all religions and ideological communities.

Article 6

Education shall be provided free, subject to supervision by the authorities and, in so far as forms of education indicated by the law are concerned, to investigation regarding the competence, health and moral character of the teachers, both to be regulated by law. The law may, in connexion with the provision of education, lay down regulations for the safeguarding of health.

Article 7

1. Everyone shall have the right freely to express his opinion and to receive and provide information, subject to his responsibility under the law. The law may impose restrictions in the interests of public order, morality and health.
2. Preventive censorship shall be prohibited, save for preliminary inspection of film performances.
3. The freedom of the press shall be recognized, subject to the responsibility of everyone under the law.
4. The granting of radio and television permits shall be regulated by law, due account being taken of the importance of a diversified broadcasting service.

Article 8

1. The right of assembly, demonstration and uniting, including the right of persons to establish and join trade unions to defend their interests, shall be recognized. The exercise of this right may in the interests of public order, morality and health, be subject to regulations and restrictions by law.

2. The right to strike is recognized, subject to restrictions deriving from the law.

Article 9

Anyone whose rights are infringed shall be entitled to a fair and public examination of his complaint within a reasonable period of time by an independent and impartial judge.

Article 10

No-one can be denied, against his will, the judge he is entitled to by law.

No person may be withdrawn against his will from the judge whom the law assigns to him.

Article 11

1. Everyone may be defended in court.
2. The law shall lay down regulations governing the granting of legal aid to less well-to-do persons.

Article 12

1. Everyone shall have the right to personal freedom and security. No-one may be deprived of his freedom save in such cases as are provided for by law and in any other manner than that provided for by the law.
2. Anyone deprived of his freedom otherwise than by judicial order shall have the right to request the judge to be set free. He shall, in such a case, be heard by the judge within a period of time to be determined by the law. The judge shall order his immediate release if he considers the deprivation of freedom to be unjust.
3. Anyone unlawfully deprived of his freedom shall have the right to compensation.

Article 13

The civil death or the forfeiture of all the property of a condemned person may not be imposed as a penalty or as consequence of a penalty.

Article 14

1. Everyone has the right to respect of his private and family life, subject to the restrictions to be laid down by the law.
2. No-one's dwelling may be entered against his will save by order of an authority that is declared competent by the law to give such an order and with due regard for the procedures laid down by the law.
3. The secrecy of letters, the telephone and telegraph shall be inviolable, save in the cases laid down by law by virtue of an order issued by an authority declared competent by law.

Article 15

1. Everyone has the right to the undisturbed enjoyment of his property, save for the restrictions arising out of the law.
2. Expropriation may take place only in the public interest in accordance with

regulations provided by law and against previously assured compensation.

3. Compensation need not be assured previously when in an emergency expropriation is required forthwith.

4. In the cases stipulated by law or by virtue of the law, the right to compensation shall apply where the property is destroyed or rendered unusable, or the exercise of the right to the property is restricted by the competent authority in the public interest.

Article 16

1. It shall be the concern of the Government that everyone is able to receive an education and instruction directed to the full development of the human personality and that everyone is able to participate in cultural life and enjoy the benefits of scientific progress.

2. The above paragraph shall in no way prejudice the right of parents to ensure that their children receive such education and instruction as are in accordance with their religious or ideological beliefs.

Article 17

The Government shall concern itself with the social security of the population, the availability of adequate opportunities for work with guarantees of freedom and justice, the participation of everyone in economic progress, and the adoption of social provisions for those who, as a result of circumstances beyond their control, cannot provide for their subsistence.

Article 18

The competence to restrict a basic human right may be exercised only in so far as such restriction is necessary in a democratic community and does not affect the principle of that right.

Article 19

None of the provisions of this Chapter may be interpreted as comprising the right for any persons or groups, even if they are engaged in the exercise of an official function, to display any activity or to perform any acts aimed at the suppression of the rights and freedoms granted under the Constitution or to restrict the said rights and freedoms more than as provided by the Constitution.

RELATIONSHIP BETWEEN U.N. AND REGIONAL HUMAN RIGHTS ORGANISATIONS

SIEGFRIED E. WERNERS

Introduction

The fact that the United Nations came into being amidst tremendous violations of human rights, that had led, *inter alia*, to the genocide of millions of human beings, has undoubtedly contributed to the emphasis on human rights in the preamble and in many articles of the United Nations Charter.¹

From the early days of the United Nations it was considered a necessity that a bill of human rights with a wide frame of reference that would give a broad dimension to the Charter of the United Nations should come into being.

Thought was given to an international bill of human rights that should consist of a declaration and a convention (covenant) to which measures of implementation should be added. The first step in this direction was made when the Universal Declaration of Human Rights was adopted by the General Assembly on 10th December 1948. Although this Declaration was of a high moral standing, it did not contain the machinery for implementation to make it legally operative.

The Declaration had more the nature of an authoritative guide for the interpretation of the provisions of the Charter of the United Nations which were concerned with human rights. It would therefore stand to reason that after 10th December 1948 both the Commission on Human Rights, as a vital part of the Economic and Social Council, and the General Assembly as a main deliberative body of the United Nations devoted much time to an adequate implementation of the human rights provisions of the Charter.

The outcome of the numerous discussions on this topic was the adoption by the General Assembly on 16th December 1966 of a Covenant on Economic, Social and Cultural Rights and one on Civil and Political Rights, together with a related Optional Protocol. These covenants and protocol were designed to become legally binding upon States after ratification, with the overall requirement that they should become operative after thirty-five ratifications or, in the case of the optional protocol, ten ratifications. In 1976 this number was reached and since then two world-wide legally binding covenants on human rights were added to the existing instruments in this field.

A look at the picture of the legally binding instruments on human rights before 1976 shows that the European Convention on Human Rights, which was

1. Articles 1, 13, 55, 56, 62, 68, and 76.

signed in Rome on 4th November 1950 and entered into force on 3rd September 1953, was the forerunner in this field. One of the principal organs of the European Convention is the European Commission of Human Rights, which considers in the first instance the complaints concerning violations of the rights mentioned in the Convention.

Also, individuals and groups of persons claiming to be victims of violations have *locus standi* before the Commission when the party concerned to the Convention has recognized the competence of the Commission to receive these petitions. When the State concerned has made a declaration concerning recognition of the European Court of Human Rights, the Court has compulsory jurisdiction regarding the appropriate matters that are referred to it.

Specialized Conventions on a World-Wide Scale

On the world-wide scale the Convention on the Elimination of All Forms of Racial Discrimination preceded the above-mentioned covenants that entered into force in 1976. This was due to the fact that the Covenant on Economic, Social and Cultural Rights and on Civil and Political Rights remained for many years under consideration before they came to birth.

In the late fifties and sixties it had almost become an annual ritual in the United Nations that the draft covenants were discussed in the General Assembly. These draft covenants were on the agenda of the General Assembly for twelve years before they were adopted.

In the meantime, the criminal aspects of *apartheid* and other forms of racial discrimination became more and more obvious. These particular infringements of human rights spurred the General Assembly to adopt at its eighteenth session a resolution expressing the desire for the preparation of a declaration and a convention on the elimination of all forms of racial discrimination. This resolution was adopted on 7th December 1962 and at the next General Assembly a declaration was approved, which paved the way for a legally binding convention in this field.

The Convention was adopted by the General Assembly on 21st December 1965 and on that occasion the then President of the General Assembly expressed the feelings of the members of that august body by stating that 'States Members of the United Nations attach special importance to the fight against racial discrimination, thus stressing one of the most crucial and urgent problems that has risen in the matter of protecting fundamental human rights'. The International Convention on the Elimination of All Forms of Racial Discrimination entered into force on 4th January 1969, the thirtieth day after the twenty-seventh instrument of ratification had been deposited with the Secretary-General of the United Nations.²

The States Parties to the Convention undertake, among other things, to guarantee equality before the law in the enjoyment of human rights, notably the

2. General Assembly, Official Records, 1408th meeting, 21st December 1965, p. 22.

right of everyone to equal justice, the right to security of person and protection by the State against violence or bodily harm.

It is interesting to note in this respect that in accordance with Article 7 of this Convention the 95 States Parties which have so far ratified the Convention are also obliged to adopt immediate and effective measures, particularly in the fields of teaching, education, culture, and information, with a view to combatting prejudices which lead to racial discrimination and to promoting understanding, tolerance, and friendship among nations and racial or ethnic groups.

The Committee on the Elimination of Racial Discrimination, which is established under Article 8 of the Convention, is composed of 18 experts, serving in their personal capacity to ensure the objectivity of the examination of the reports that are submitted to the Secretary-General of the United Nations by the States Parties to the Convention. In accordance with a practice initiated at the sixth session of the Committee in 1972, the representatives of the States Parties were given the opportunity to answer questions put to them by the Committee and to furnish it with additional information concerning the implementation of the Convention in their respective countries.

Furthermore, there is another procedure in this Convention when a State Party considers that another State Party is not giving effect to the provisions of the Convention. In that case the Committee shall transmit the communication to the State Party concerned. Within three months the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been adopted by that State. If the matter is not adjusted to the satisfaction of the parties within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the case again to the Committee and also to the other State.

The Convention also contains in Article 14 a procedure for considering complaints ('communications') from individual or group victims, but this procedure has not yet come into force for want of its adoption by the necessary ten State Parties.

The quick response of the members of the General Assembly in adopting a legally binding convention in the field of racial discrimination, compared with the slow process that has preceded the adoption of both the covenants on human rights, shows clearly that specialized conventions on human rights are more readily acceptable in the international community than covenants of a more general nature.

Other specialized conventions on human rights that had preceded the Convention on the Elimination of All Forms of Racial Discrimination were the conventions on genocide, statelessness, refugees, slavery, and also the instruments that came into being under the auspices of the specialized agencies of the United Nations, i.e., the International Labour Organization (ILO) and the United Nations Educational, Social and Cultural Organization (UNESCO).

Regional Conventions

Apart from the fact that actions on human rights related to special cases or specific issues are more likely to become legally binding instruments, it is also evident in international life that governments tend to adhere more to actions of their neighbours and friends in the region, who share similar traditions and backgrounds, than to representations from the other side of the ocean.

Surinam and other countries in the same situation, which were parties to the European Convention on Human Rights under the Colonial Application Clause, ceased to be members on achieving independence. Article 63 of the European Convention on Human Rights had provided that any contracting party may at any time extend the application of the Convention to overseas territories for whose international relations they were responsible.

It goes without saying that Surinam and the above-mentioned ex-colonies in the Caribbean have more affinity with each other than with the European countries with which they were bound by historical ties. It would therefore have been preferable that the countries to which the European Convention on Human Rights was extended could fall back on a legal instrument in their own region, which could fill the gap that came into existence after independence. The Inter-American Convention on Human Rights that was created for this region is not yet a legally binding instrument, and there are no signs which suggest that this would be the case in the near future.

Be that as it may, there is an Inter-American Convention on Human Rights, which was adopted at a special conference of the Organization of American States (OAS) in San José, Costa Rica in November 1969. Several members of the OAS have signed the Inter-American Convention on Human Rights, known as the Pact of San José, but since 1969 little progress has been made in the number of ratifications that would bring the convention to life.

At the seventh regular session of the OAS (St. George's, Grenada, June 1977) a proposal was put forward by the representative of Costa Rica to convene a special conference of the Organization in order to discuss a proposal concerning the reduction of the required ratifications. The opposition to this proposal urged the delegation of Costa Rica to withdraw its proposal. It is interesting to note in this respect that up to now only Costa Rica and Colombia have ratified the Inter-American Convention on Human Rights.

In the absence of legally binding international conventions in the region, the Inter-American Commission on Human Rights was established in 1959 to promote respect for human rights by preparing studies and recommendations and also to serve the OAS as an advisory body. The Commission, which was established by a resolution of the Organization, is now treaty-based.

Although the Commission has no judicial powers, it has made a substantial contribution in examining communications on alleged infringements of human rights. When the Commission deems it appropriate, it makes recommendations to the accused governments, with the object of bringing about more effective

observance of fundamental human rights. The Commission's only sanctioning power so far has been the publication of information concerning violations of human rights in a given country.

In the period that the Inter-American Convention on Human Rights was taking shape, both the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights along with the Optional Protocol to the International Covenant on Civil and Political Rights were adopted by the General Assembly of the United Nations. The Council of the Organization of American States decided therefore to consult its members regarding the question whether the proposed Inter-American Convention could co-exist with the world-wide covenants that were adopted by the General Assembly. The members were asked whether the governments of the American States wished to establish a single universal system of regulation of human rights, or whether they contemplated the possibility of the co-existence and coordination of the world-wide and regional conventions on the same rights.³

Only Argentina and Brazil did not consider it advisable to continue studies for preparing an Inter-American Convention on Human Rights, since they considered that international agreements already adopted on that matter represent a universally applicable and concrete set of standards on human rights. The other members of the Organization of American States were of the opinion that world-wide instruments, adopted by the General Assembly of the United Nations, should not be an obstacle to further study and preparation of Inter-American Conventions on this subject.

As regards the implementation machinery, the coming into force of the human rights Covenant on Civil and Political Rights, together with the related protocol, brought also to life a new Human Rights Committee on a world-wide level. The Committee is empowered to consider reports or measures related to the human rights that are recognized in the Covenant.

Under the Optional Protocol to the International Covenant on Civil and Political Rights, 16 States have recognized the competence of the Committee to consider communications from individuals in their countries alleging that their human rights have been violated.⁴ The power of the Committee to consider such communications has already come into force as more than the necessary 10 declarations have been made accepting its authority regarding this matter.

3. See OAS Doc. OEA/sec. G/IV/c-i-787, Rev. 3.

4. The Human Rights Committee, established under the International Covenant on Civil and Political Rights, will hold its second session in Geneva from 11 to 31 August 1977. The first session of this Committee was held in March and April 1977 and was for a large part devoted to organizational matters, including the adoption of provisional rules of procedure.

The following 44 states have ratified or adhered to the Covenant: Barbados, Bulgaria, Byelorussia, Canada, Chile, Colombia, Costa Rica, Cyprus, Czechoslovakia, Denmark, Ecuador, Finland, German Democratic Republic, Federal Republic of Germany, Guyana, Hungary, Iran, Iraq, Jamaica, Jordan, Kenya, Lebanon, Libya, Madagascar, Mali, Mauritius, Mongolia, Norway, Panama, Poland, Romania, Rwanda, Spain, Surinam, Sweden, Syria,

In Article 44 of the Covenant on Civil and Political Rights it is clearly stated that the provisions for the implementation of the present covenant shall not prevent the parties from having recourse to other procedures for settling a dispute in accordance with general or special international agreements in force between them. Furthermore, neither the International Covenant on Civil and Political Rights and its Optional Protocol, nor the International Covenant on Economic, Social and Cultural Rights prohibit or rule out in any provision the possibility of concluding regional conventions on the same subject.

The coherence of the provisions in the various human rights conventions discussed in this paper find, *inter alia*, expression in the articles of a general nature. Article 1 of the American Convention on Human Rights states explicitly that the State Parties to this Convention undertake to ensure to all persons subject to their jurisdiction the free and full exercise of the recognized human rights, without any discrimination for reasons of race, colour, sex, origin, economic status, birth, or any other social condition.

These assertions are similar to the provisions of Article 2 of the International Covenant on Civil and Political Rights and of Article 14 of the European Convention on Human Rights.

But this similarity is not always the case in the regional and the world-wide convention. Factors of a cultural, religious and, in a more broad sense, of a political nature also have a bearing on the legal norms that are put forward in the human rights conventions.

Take, for example, the articles that are concerned with the inherent right of every human being to life. In Article 6 of the International Covenant on Civil and Political Rights it is explicitly stated that no one shall be arbitrarily deprived of his life. Sentence of death may be imposed only for the most serious crimes and can only be carried out pursuant to a final judgment rendered by a competent court.

The Inter-American Convention on Human Rights goes into more detail when it states that the death penalty shall not be re-established in states that have abolished it. With this Article, the American Convention on Human Rights makes clear that its sympathy is not on the side of the death penalty, however serious the crimes which are committed by the offenders.

It is worthy of note that the death penalty is still a part of the law in several countries in the Caribbean. In July of this year the Parliament of Surinam approved a law abolishing the death penalty. Since the twenties the government of Surinam had not applied capital punishment.

The Inter-American Convention also indicates some slight differences with

Tunisia, Ukraine, USSR, United Kingdom, United Republic of Tanzania, Uruguay, Yugoslavia, and Zaire.

Up to now the following 16 States have accepted the provisions of the Optional Protocol: Barbados, Canada, Colombia, Costa Rica, Denmark, Ecuador, Finland, Jamaica, Madagascar, Mauritius, Norway, Panama, Surinam, Sweden, Uruguay, and Zaire.

the other instruments in this field as regards the right to life. In the first part of Article 4 of this Convention it is clearly stated that the right to life shall be protected by law and, in general, from the moment of conception. Neither the International Convention on Civil and Political Rights nor the European Convention on Human Rights has a similar provision concerning the moment of conception. It is clear that dogmas of a religious nature have had a strong impact on the above-mentioned provision in the American Convention on Human Rights.

It would seem to be preferable that on so sensitive a question, the citizens of the countries concerned should be allowed to choose for themselves among competing theories of life, and that for an answer to this question government guidance is superfluous. Well known is the ruling of the Supreme Court of one of the members of the Organization of American States in this important matter. In 1973 the Supreme Court of the United States of America ruled that, at least during early pregnancy, the abortion decision belongs to the woman involved.

In many cases the regional provisions will have a complementary character. For example, the Optional Protocol to the International Covenant on Civil and Political Rights has established a procedure by which the states recognize the competence of the Human Rights Committee to receive and consider claims from individuals. Both the European Convention on Human Rights and the draft Inter-American Convention on Human Rights establish a much more detailed, complete and effective institutional system consisting of two main organs, a commission and a court.

On the other hand, one can also think of a regional system with a strong promotional and protecting character, but less rigid than an instrument with a judicial commission and a court.

Concluding Remarks

In conclusion it can be stated that protecting measures concerning human rights can co-exist at the world-wide, the regional, the sub-regional, and the domestic level, thereby taking into account the provision of the exhaustion of local remedies.

It has to be clear, however, that the protecting measures at the different levels can only function well when they perform their tasks in close contact with each other.

In this context the Caribbean sub-region can make an important contribution in the Inter-American region by making proposals that can bring the Inter-American Convention on Human Rights to life, either by remodelling this Convention or by ratifying it as it stands.

As has already been stated, the Convention is ratified by only two members of the OAS, among whom there was no Caribbean country. Furthermore, it has often been stated, sometimes in government circles, that a line has to be drawn between the developed and the developing countries with regard to the protection of human rights. In this view, basic human needs, like food, housing, etc. are so crucial and primary that the other rights have to wait until these needs are

fulfilled. I do not support this view. It seems to me that both in the developed and the developing countries a balance has to be drawn between the economic, social, cultural, civil, and political rights, on the understanding that in the developing countries emphasis has to be placed on the economic rights of the individual.

SUMMARY OF DISCUSSION COMMITTEE II—CIVIL AND POLITICAL RIGHTS

Chairman: Mr. Justice Edwin Watkins

Rapporteur: Mr. Kendal Isaacs

Members of the Committee elected to reverse the sequence of discussion set out in the programme and dealt first with questions relating to machinery for the implementation of human rights on a regional scale.

Two experts present—one, the former Secretary of the European Commission on Human Rights; the other, the former Secretary of the Inter-American Commission on Human Rights—were invited by the Chairman to describe the manner in which their respective organisations functioned. They were also invited to answer and comment on questions and proposals from the other members of the Committee in relation to the suitability of such systems to meet the needs of the Caribbean region.

The European Commission on Human Rights

The system operated through three constituent bodies, the Commission, the Court, and the Committee of Ministers, as is prescribed in the Convention.

Cases went first to the Commission. They could originate either by an inter-state complaint, or by an individual petition against a state which had recognised the right of individual petition, as most of the member-states had done.

Where the Commission declared a case admissible, it must next ascertain the full facts and simultaneously make itself available in order to try and reach a settlement. If no settlement was reached, the Commission produced a full report containing an opinion as to whether or not the Convention had been violated. It would then be for the Court or, if the case was not referred to it, for the Committee of Ministers to decide on the question of a violation. Only the Commission or the government concerned could refer a case to the Court.

If there was a settlement, the Commission produced and published a short report without any opinion on the question of a violation.

The Commission had been the main element in the effective implementation of the Convention, having dealt with five inter-state complexes of cases and some 7,000 individual cases since it was established in 1954. Relatively few cases had been admitted (about 175) and, of them, about 23 had been referred to the Court. The rest had been decided by the Committee of Ministers, settled, or were pending.

The Committee of Ministers, which had of course a political character as opposed to the judicial and quasi-judicial character of the Court and Commission

respectively, had not had a very satisfactory record in dealing with cases. Decisions mainly on political grounds were not usually the fairest in human rights cases. Secondly, the Committee of Ministers showed an inter-dependence between governments which was in some ways valuable, but might also lead governments to be over-considerate of each other's feelings.

The Commission must have the confidence and thereby the co-operation of governments in order to be effective. Although the government was always the defendant in individual cases, the relationship between the Commission and the government concerned should not be one of prosecutor and accused. The Commission's proceedings were confidential and hearings were *in camera*. Such discretion was important as the government and individual had equal representation before the Commission but not before the Court, where the individual had no formal status and proceedings were public.

The Convention was realistic in containing 'blanket' and particular 'escape' clauses in order to allow a government to protect its democratic institutions. The Commission had also to be realistic and dynamic in interpreting the Convention's provisions, particularly where it had to balance the right or freedom invoked by the individual against any qualifying clause invoked by the government.

In response to questions posed by members of the Committee the following points were made:

1. Establishment of the Commission and the Court occurred simultaneously in 1953. The Commission became competent to receive individual applications in 1955 and the Court achieved its competence in 1958.
2. Applicants may present their cases personally or have legal representation. A legal-aid scheme, funded by the Council of Europe, was available.
3. The Commission could not admit an application unless local remedies at national level had been exhausted, but unreasonable delay in domestic proceedings or ineffective remedies could be grounds for waiving this obligation.
4. A strong moral sanction acted on governments. They were voluntary Parties to the Convention. Experience had shown that they did not violate it deliberately but through inadvertence or a genuine difference of opinion on its interpretation. Even in the Greek case, where the Commission had found an administrative practice of torture, the government had substantially participated in the proceedings and allowed witnesses to be heard in Greece.
5. The Commission usually referred a case to the Court where they considered there was a violation or where a question of public importance was involved.
6. The machinery was not a means of appealing from decisions of national courts. The Commission was not a supra-national court of appeal but only concerned with complaints on various aspects of the conduct of proceedings.
7. The Convention had been incorporated into the domestic law of most of

the member-states and there was already an important body of jurisprudence. Norms of human rights were thereby being established from this national jurisprudence as well as from the international jurisprudence at Strasbourg.

8. The effectiveness of the system depended largely on (a) an efficient secretariat, (b) discreet conduct of affairs, and (c) confidence and cooperation on all sides.

The Inter-American Commission on Human Rights

The Inter-American Commission on Human Rights was established by the Organization of American States (OAS) in 1959 with a view to securing promotion of human rights throughout the Americas, meaning by human rights those set forth in the American Declaration of the Rights and Duties of Man. Under its original Statute, approved in 1960, the Commission did not have the power to review individual petitions. This anomalous situation, however, was corrected in 1965, when the OAS expanded the powers of the Commission to include those functions for the protection of human rights (examination of communications or claims).

The Commission, composed of seven members, nationals of the member-states of the OAS, has developed three types of activities: (a) study of the situation of human rights in the American countries; (b) examination of communications or claims; and (c) preparation of studies and reports for the purpose of promoting human rights.

As to the first type of activity, the Commission undertook the preparation of reports on the situation of human rights in Haiti, the Dominican Republic, Cuba, Chile, Brazil, Uruguay, and other countries, some of them as a result of examinations *in situ*.

In regard to communications or claims, the procedure was outlined and it was emphasised that individual petitioners were required to have exhausted local remedies only when submitting individual cases. This rule did not apply when petitioners submitted communications dealing with general cases or gross violations. The Commission had established a clear distinction between individual and general cases. About 90% of the cases with which the Commission has dealt so far had been general cases.

As to the other activities for the promotion of human rights, the Commission had approved a general programme of work, which included seminars, scholarships, etc. A serious deficiency in the Commission was the degree to which some members are politicised. Although they were elected in their personal capacity, some behaved after the fashion of political agents of their governments rather than neutral commissioners. This was so in the case of the Brazilian and Chilean members.

The Commission lacked support of the political organs of the OAS. As long as violations of human rights occurred in small countries such as Haiti or the Do-

minican Republic, the work done by the Commission to uncover such violations was hailed. But when the violations occurred in the so-called important countries of the OAS, such as Brazil and Chile, the reports of the Commission were ignored or received with an overwhelming cry involving the principle of 'non-intervention'.

Trinidad and Tobago, Jamaica, Barbados, and Grenada, as member-states of the OAS, had access to the Inter-American Commission.

The American Convention on Human Rights signed in 1969, which widens the American Declaration of 1948 by including additional rights as well as by enlarging the functions of the Commission and establishing an Inter-American Court of Human Rights, has been ratified only by Costa Rica, Colombia, and Venezuela. Eleven ratifications are needed for the Convention to enter into force.

Machinery for Implementation in the Caribbean

The Committee next considered what practical steps could be taken to enhance promotion of Human Rights in the Caribbean.

Delegates were urged to remind themselves of existing procedures and to examine whether there were any particular needs of the region which were not met by the existing regimes. For example, certain Caribbean countries had already ratified the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights. By being or becoming members of the OAS they had access to the procedures available through the Inter-American Commission. Was there need for anything more than fact-finding machinery to complete these structures?

In the ensuing discussions a number of approaches were offered for consideration. These included:

1. Non-governmental national councils to promote human rights in each territory, with an interdisciplinary composition in order to make available to the human rights movement the widest possible variety of skills and talent. These bodies would then participate in a regional council.
2. An International Commission, which would not be dependent on government support, to receive reports, conduct investigations and generally monitor the state of rights in the region.
3. An International Commission with governmental support with powers and duties similar to those of the European Commission.
4. A Council of Ministers consisting of governmental representatives from each participating country.
5. An International Court responsible for adjudicating claims and whose jurisdiction could be invoked by individuals, non-governmental organisations, the Commission or Contracting States.

It was suggested that these proposals were not mutually exclusive and that the following questions should be considered:

1. What did Committee members regard as the ideal at which they should aim?
2. What are the political realities, in terms of acceptance by governments, of any of the suggested approaches, and in the light of those realities should the Committee propose what they thought ought to be done or only what they thought was likely to gain acceptance?
3. Some countries in the region were reluctant to join the OAS or accept the Inter-American Commission. Would more countries be willing to participate in a Caribbean regional human rights organisation?

During the discussion the following were among the points put forward. It would be open to governments, whatever proposals were put forward, to accept or reject one or more or all of them. Any regional convention would determine the jurisdiction of any organisation it established, and could provide for optional acceptance by States of different parts of the convention, or modes of invoking the jurisdiction of any organisation it established. Whichever form was adopted, it must strike a balance between the ideal and the political reality.

Objections were raised by certain participants to each of the proposed options.

In relation to non-governmental bodies it was envisaged that there would be serious difficulties in settling the constitution and composition of such bodies in geographically-fragmented, plural societies. Moreover, the very idea of involvement by a voluntary organisation in an area which essentially concerned government would be found to be unacceptable. Confrontation rather than co-operation would be the predictable result.

It was pointed out, however, that the objections to non-governmental organisations tended to ignore the historical evidence. The greatest value of such organisations lay in their capacity to present well-documented cases relating to a general pattern or system of violation of human rights, as opposed to individual complaints. Experience under the United Nations procedure for examining complaints of gross violations of human rights suggested that it was only non-governmental organisations who could present such cases effectively. The Council of Ministers on the other hand would necessarily lack that degree of detachment appropriate to a credible and effectively functioning body.

Some members felt that any inter-governmental enforcement machinery should be preceded by a Caribbean Court of Appeal. Others felt that a Caribbean Court would be workable only if the correct climate was cultivated to foster confidence in and support for the independence of the judiciary.

Several members felt there was little likelihood of securing governmental approval for the establishment of a regional Commission of Human Rights. The Committee was informed that:

1. a regional non-governmental body had recently been incorporated to promote human rights, legal aid, and law reform; its memorandum was widely drawn; it had an initial grant from the Caribbean Conference of Churches, but funds were being sought from foundations;

2. at the recent Commonwealth Law Ministers Conference, one African government had presented a paper proposing the establishment of a Commonwealth Human Rights Commission. This was to be circulated to Commonwealth Ministers for consideration.

A Cuban View of Human Rights

While a working group was drafting recommendations on international machinery for consideration by the Committee, Dr. Alfonso was invited to present his paper on 'The Contribution of Developing Countries and of Colonial Countries and Peoples to the Full Realisation of Civil and Political Rights'. He said that there was a great deal of misunderstanding internationally about the wants and aspirations of the under-developed and developing countries. He asserted that such countries had made their own contributions to the field of human rights, particularly in the area of national self-determination, which was often overlooked. He called for greater communication of ideas, problems, and solutions among countries of the region which would promote better understanding.

In an ensuing discussion he was questioned closely about the rights and freedoms of citizens in Cuba.

Violations of Human Rights in the Region

In opening a discussion on violations of human rights in the region the Chairman asked that the Committee consider in a general way the nature of any violations occurring without referring to particular situations. The object of the seminar was to inform, encourage, and induce a greater degree of commitment to human rights. It was not a forum for passing judgment on individual cases.

Contributions indicated a deep concern in the region for the right to vote and the integrity of the electoral process. Participants viewed with concern the trend to making opposition parties redundant and superfluous by means of unscrupulous electoral practices.

Participants also viewed with alarm the growing presence in the Caribbean of repressive regimes such as that of Chile.

Recommendations

The Committee considered and approved, with certain amendments, the recommendations drafted by the working group.

CLOSING PLENARY SESSION

SUMMARY OF DISCUSSION CLOSING PLENARY SESSION

Chairman: Mr. Norman Hill

Rapporteur: Professor Telford Georges

Conclusions and Recommendations

The Plenary Session received and adopted the reports of the rapporteurs from the respective committees. The draft of a document containing an expression of the Seminar's Conclusions and Recommendations was worked out by a joint working party consisting of members of both Committees. The draft was adopted with minor amendments to the text and the insertion of recommendations pertaining to the recognition of women's rights and the independence of the legal profession.

At the conclusion of the Seminar, on the motion of Dr. Lloyd Barnett, a resolution to establish a follow-up committee was approved unanimously in the following terms:

Resolution on a Follow-Up Committee

Resolved that the Seminar authorises the Organising Committee after appropriate consultations to establish a follow-up committee of participants at the Seminar to seek to bring about the establishment of the regional co-ordinating organisation referred to in the Conclusions and Recommendations. Pending the establishment of this organisation the Committee should undertake the task of seeking to bring about the acceptance and implementation of those Conclusions and Recommendations.

This follow-up committee shall have the power to co-opt.

Statements of Reservations on the Conclusions and Recommendations

Dr. Shahabuddeen reserved his position in relation to the document as a whole, although he agreed that it contained much that was of value. The terms of his reservation were as follows:

- (1) I strongly support the promotion of human rights in the region by all practical methods but, like Mr. Demas, I do not consider that any machinery is likely to prove useful unless introduced as part of a regional package arrangement which includes a Caribbean Court of Appeal. It would be a serious setback in this sensitive area to leap only to fall.
- (2) The resolution, while undoubtedly incorporating many valuable elements, is eclectic in that it deals with particular rights but fails without good reason to deal with others.
- (3) The Seminar was understood to be intended to consider ideas. Such ideas might legitimately include ideas concerning possible models for machinery. But the Seminar has not limited itself to a consideration of ideas concerning machinery. It has gone on to turn itself into a constituent assembly of individ-

uals seeking to secure the establishment of particular and substantial pieces of machinery for the region, complete with a standing committee to ensure the establishment of that machinery.

(4) Because of (3) the Seminar has exceeded the purposes for which the invitations suggested it was being called.

Mr. A. B. McNulty wished to record his abstention on the ground that he did not feel competent to make recommendations for the Caribbean.

Mr. Douglas Williams declared that none of his contributions were to be taken as reflecting the views of the British government.

Dr. Miguel Alfonso expressed support for the document on behalf of the Cuban Union of Jurists.

Mr. K. T. Samson, Mr. B. G. Ramcharan and Mr. Luis Requé asserted that their respective contributions were merely the provision of technical advice, not inputs of recommendations for the Caribbean area.

Resolution on Chile

At the conclusion of the Seminar the Caribbean participants present at the closing session agreed upon a Resolution on Chile. The Organising Secretary was requested to forward this Resolution to the Heads of States in the region, at the same time as he sent them the Conclusions and Recommendations of the Seminar.

The terms of the Resolution were as follows:

On the occasion of the fourth anniversary of the military coup in Chile on September 11, 1973, the Caribbean participants present at the concluding session of the Seminar resolved to express their concern about the disappearance of persons in Chile and their solidarity with the people of Chile in their just struggle against the military regime which has been virtually universally condemned for its violent repression of basic human rights and fundamental freedoms.

They stressed the need for all concerned with human rights in the region to be vigilant in resisting any attempts to spread the system of violent repression or the influence of this regime into the Caribbean.

Votes of Thanks

Finally, the participants expressed their gratitude to all those who had prepared papers for the Seminar, to the Chairmen, Vice-Chairmen and Rapporteurs of the Seminar and its two Committees, to the International Commission of Jurists and the Organisation of Commonwealth Caribbean Bar Associations for having organised it, and to the Government of the Netherlands and the Ford Foundation for their grants which made it possible.

FINAL CONCLUSIONS AND RECOMMENDATIONS

THIS SEMINAR

1. recognises the significant steps which have already been and are being taken in the territories of the region for the promotion and defence of Human Rights and emphasises that the progressive development and advancement of human rights require the creative co-operation of all the peoples and governments of the region;

2. affirms that all fundamental rights and freedoms are whole and inseparable and stresses that the effective realisation of economic, social, and cultural rights is necessary for the full attainment of civil and political rights;

3. recognises that the full realisation of the economic and social rights of the peoples of the region, while primarily dependent on the action of individual governments, will also require radical transformation of international economic and social relations in accordance with the United Nations' Declaration and Programme of Action on the Establishment of the New International Economic Order and Charter of the Economic Rights and Duties of States;

4. recognises the work in the field of human rights of local and regional organisations in the Caribbean and recommends the establishment, where they do not already exist, of Human Rights organisations in each territory;

5. recommends the formation of a regional co-ordinating organisation composed primarily of representatives of local and regional organisations concerned with the promotion of human rights;

6. recommends that such regional co-ordinating organisation, in consultation with local and regional organisations as well as governmental authorities, prepare in suitable form a declaration of fundamental rights—economic, social, and cultural, as well as civil and political—and that each organisation promote their recognition and development in its territory;

7. recommends to the governments of the region that a close examination of existing international instruments be undertaken with a view to framing a Convention on Human Rights which is particularly suited to the region;

8. urges all governments in the region which have not yet done so to ratify the International Covenant on Economic, Social and Cultural Rights and the Covenant on Civil and Political Rights, as well as other international instruments relating to human rights, including those of the ILO and UNESCO. Towards this end the Seminar calls on those governments having responsibility for the external

affairs of non self-governing territories to seek, and the territories to give, the necessary consent for the ratification of these instruments;

9. recommends that the regional co-ordinating organisation in co-operation with the relevant local and regional organisations, where appropriate, enter into dialogue with governments for the practical achievement of human rights and their accession to appropriate international and regional conventions on human rights;

10. recognises the importance and urgency in the region of the need for the effective realisation of particular human rights, and accordingly draws attention to the following:

(a) *Rights to Self-determination*

The Seminar sees the right of self-determination as fundamental to the peace, security, and territorial integrity of the Caribbean region and to the fullest realisation of the human rights of the Caribbean people. It recommends systematic and continuing studies to determine the modalities through which the right might be given expression while avoiding unnecessary fragmentation.

(b) *Right to Participate in Public Affairs*

The Seminar emphasises that it is essential to the effective enjoyment of the right of each person to take part in the conduct of the public affairs of his country that free, fair, and periodic elections be conducted, and urges the governments of the region to ensure that there are effective procedures for the regulation of elections and avoidance of unfair practices.

(c) *Right to Fair and Impartial Justice and the Independence of the Legal Profession*

The Seminar emphasises the importance of the independence, impartiality, and fearlessness of the judiciary and the protection of the full independence of the legal profession in the defence of human rights.

(d) *Right to Legal Representation*

The Seminar recognises the need for legal assistance for persons and groups who allege violations of their fundamental rights and calls upon the governments and other organisations to provide free legal aid in appropriate cases.

(a) *Right to Work*

The Seminar stresses the need for Caribbean governments to take bold initiatives to develop policies and create incentives and conditions which enable the full realisation of this right.

(f) *Right to Freedom of Association and Collective Bargaining*

The Seminar feels strongly that the right to organise and freely to join trade unions should not be circumscribed in any way. It urges the taking

of positive steps to secure this right and, where necessary, the legislative protection of this right and of collective bargaining and trade union recognition.

(g) Right to Protection of Family Life

The Seminar recognises the right of each person to establish a home and emphasises the right of each child to the protection of a stable domestic environment. It recommends the establishment of family life education programmes which are appropriate to the circumstances of the region.

(h) Equal Rights for Women

The Seminar urges the introduction of legislation and other measures that will give recognition and effective realisation to the equal rights of women in the region.

(i) Right of Children to Protection

The Seminar urges the removal of unfavourable treatment, discrimination, or legal disability based on birth or the marital status of parents, and calls upon the governments of the region to take measures for the effective enforcement of the obligations of parents to provide for the care and maintenance of their children.

(j) Right to Education

The Seminar affirms the need for equal opportunities for education at all levels and urges governments to introduce legislation and provide resources to ensure that education be free and compulsory at least as far as the primary level. Recognising the importance of early childhood care and education it urges that pre-primary education should be provided for all and stresses the need for special emphasis on the creation of appropriate facilities such as day-care centres.

(k) Right to Health

The Seminar feels that adequate medical and health care should be made available to all members of the community, preferably free or at least within the means of all persons, with attention to the particular needs of the young, the aged, and expectant mothers.

11. Recognising the importance of public awareness of the fundamental nature of human rights, recommends to governments and human rights organisations within the region the implementation of education programmes, exchange of information, and the promotion of regional solidarity and co-operation on human rights matters.

APPENDICES

- I Charter of the United Nations
–Preamble and Articles 1, 55, and 56
- II Universal Declaration of Human Rights
- III International Convention on the Elimination of
All Forms of Racial Discrimination
- IV International Covenant on Economic, Social and Cultural Rights
- V International Covenant on Civil and Political Rights
- VI Optional Protocol to the International Covenant
on Civil and Political Rights
- VII UNESCO and Human Rights: The Implementation of Rights
relating to Education, Science, Culture and Communication:
by Stephen Marks
- VIII Table of Caribbean Ratifications of International
Instruments on Human Rights

APPENDIX I

CHARTER OF THE UNITED NATIONS

WE THE PEOPLES OF THE UNITED NATIONS determined

to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and

to promote social progress and better standards of life in larger freedom,

and for these ends

to practice tolerance and live together in peace with one another as good neighbours, and

to unite our strength to maintain international peace and security, and

to ensure, by the acceptance of principles and the institution of methods, that armed force shall not be used, save in the common interest, and

to employ international machinery for the promotion of the economic and social advancement of all peoples,

have resolved to combine our efforts to accomplish these aims

Accordingly, our respective Governments, through representatives assembled in the city of San Francisco, who have exhibited their full powers found to be in good and due form, have agreed to the present Charter of the United Nations and do hereby establish an international organization to be known as the United Nations.

ARTICLE 1

The Purposes of the United Nations are:

1. To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law,

adjustment or settlement of international disputes or situations which might lead to a breach of the peace;

2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;

3. To achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and

4. To be a centre for harmonizing the actions of nations in the attainment of these common ends.

* * * *

ARTICLE 55

With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

a. higher standards of living, full employment, and conditions of economic and social progress and development;

b. solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and

c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

ARTICLE 56

All Members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55.

* * * *

UNIVERSAL DECLARATION OF HUMAN RIGHTS

PREAMBLE

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

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

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

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

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

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

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

Now, Therefore,

*THE GENERAL ASSEMBLY
proclaims*

THIS UNIVERSAL DECLARATION OF HUMAN RIGHTS as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by

progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

Article 1. All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2. Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

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

Article 3. Everyone has the right to life, liberty and security of person.

Article 4. No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 5. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 6. Everyone has the right to recognition everywhere as a person before the law.

Article 7. All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8. Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 9. No one shall be subjected to arbitrary arrest, detention or exile.

Article 10. Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the

determination of his rights and obligations and of any criminal charge against him.

Article 11. (1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

(2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 12. No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 13. (1) Everyone has the right to freedom of movement and residence within the borders of each state.

(2) Everyone has the right to leave any country, including his own, and to return to his country.

Article 14. (1) Everyone has the right to seek and to enjoy in other countries asylum from persecution.

(2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

Article 15. (1) Everyone has the right to a nationality.

(2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Article 16. (1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

(2) Marriage shall be entered into only with the free and full consent of the intending spouses.

(3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 17. (1) Everyone has the right to own property alone as well as in association with others.

(2) No one shall be arbitrarily deprived of his property.

Article 18. Everyone has the right to freedom of thought, conscience and religion;

this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 19. Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20. (1) Everyone has the right to freedom of peaceful assembly and association.

(2) No one may be compelled to belong to an association.

Article 21. (1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

(2) Everyone has the right of equal access to public service in his country.

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

Article 22. Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 23. (1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

(2) Everyone, without any discrimination, has the right to equal pay for equal work.

(3) Everyone who works has the right to just and favourable remuneration ensuring himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

(4) Everyone has the right to form and to join trade unions for the protection of his interest.

Article 24. Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25. (1) Everyone has the right

to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

(2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Article 26. (1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

(2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

(3) Parents have a prior right to choose the kind of education that shall be given to their children.

Article 27. (1) Everyone has the right

freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

(2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Article 28. Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Article 29. (1) Everyone has duties to the community in which alone the free and full development of his personality is possible.

(2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

(3) These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

Article 30. Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

APPENDIX III

INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION

(Entered into force January 4, 1969)

The States Parties to this Convention,

Considering that the Charter of the United Nations is based on the principles of the dignity and equality inherent in all human beings, and that all Member States have pledged themselves to take joint and separate action in cooperation with the Organization for the achievement of one of the purposes of the United Nations which is to promote and encourage universal respect for and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion,

Considering that the Universal Declaration of Human Rights proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set out therein, without distinctions of any kind, in particular as to race, colour or national origin,

Considering that all human beings are equal before the law and are entitled to equal protection of the law against any discrimination and against any incitement to discrimination,

Considering that the United Nations has condemned colonialism and all practices of segregation and discrimination associated therewith, in whatever form and wherever they exist, and that the Declaration on the Granting of Independence to Colonial Countries and Peoples of 14 December 1960 (General Assembly resolution 1514 [XV]) has affirmed and solemnly proclaimed the necessity of bringing them to a speedy and unconditional end,

Considering that the United Nations Declaration on the Elimination of All Forms of Racial Discrimination of 20 November 1963 (General Assembly resolution 1904 [XVIII]) solemnly affirms the necessity of speedily eliminating racial discrimination throughout the world in all its forms and manifestations and of securing understanding of and respect for the dignity of the human person,

Convinced that any doctrine of superiority based on racial differentiation is scientifically false, morally condemnable,

socially unjust and dangerous, and that there is no justification for racial discrimination, in theory or in practice, anywhere,

Reaffirming that discrimination between human beings on the grounds of race, colour or ethnic origin is an obstacle to friendly and peaceful relations among nations and is capable of disturbing peace and security among peoples and the harmony of persons living side by side even within one and the same State,

Convinced that the existence of racial barriers is repugnant to the ideals of any human society,

Alarmed by manifestations of racial discrimination still in evidence in some areas of the world and by governmental policies based on racial superiority or hatred, such as policies of *apartheid*, segregation or separation,

Resolved to adopt all necessary measures for speedily eliminating racial discrimination in all its forms and manifestations and to prevent and combat racist doctrines and practices in order to promote understanding between races and to build an international community free from all forms of racial segregation and racial discrimination,

Bearing in mind the Convention on Discrimination in Respect of Employment and Occupation adopted by the International Labour Organization in 1958, and the Convention Against Discrimination in Education adopted by the United Nations Educational, Scientific and Cultural Organization in 1960,

Desiring to implement the principles embodied in the United Nations Declaration on the Elimination of All Forms of Racial Discrimination and to secure the earliest adoption of practical measures to that end,

Have agreed as follows:

PART I

Article I

1. In this Convention the term "racial discrimination" shall mean any distinction,

exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

2. This Convention shall not apply to distinctions, exclusions, restrictions or preferences made by a State Party to this Convention between citizens and non-citizens.

3. Nothing in this Convention may be interpreted as affecting in any way the legal provisions of States Parties concerning nationality, citizenship or naturalization, provided that such provisions do not discriminate against any particular nationality.

4. Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure to such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved.

Article 2

1. States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms, and promoting understanding among all races, and to this end:

(a) Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation;

(b) Each State Party undertakes not to sponsor, defend or support racial discrimination by any persons or organizations;

(c) Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists.

(d) Each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circum-

stances, racial discrimination by any persons, group or organization;

(e) Each State Party undertakes to encourage, where appropriate, integrationist multi-racial organizations and movements and other means of eliminating barriers between races, and to discourage anything which tends to strengthen racial division.

2. States Parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. These measures shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved.

Article 3

States Parties particularly condemn racial segregation and *apartheid* and undertake to prevent, prohibit and eradicate, in territories under their jurisdiction, all practices of this nature.

Article 4

States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination, and to this end, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in Article 5 of this Convention, *inter alia*:

(a) Shall declare an offense punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof;

(b) Shall declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall

recognize participation in such organizations or activities as an offense punishable by law:

(c) Shall not permit public authorities or public institutions, national, or local, to promote or incite racial discrimination.

Article 5

In compliance with the fundamental obligations laid down in Article 2, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

(a) The right to equal treatment before the tribunals and all other organs administering justice;

(b) The right to security of person and protection by the State against violence or bodily harm, whether inflicted by governmental officials or by any individual, group or institution;

(c) Political rights, in particular the rights to participate in elections, to vote and to stand for election—on the basis of universal and equal suffrage, to take part in the government, as well as in the conduct of public affairs at any level and to have equal access to public service;

(d) Other civil rights, in particular:

- (i) the right to freedom of movement within the border of the State;
- (ii) the right to leave any country, including his own, and to return to his country;
- (iii) the right to nationality;
- (iv) the right to marriage and choice of spouse;
- (v) the right to own property alone, as well as in association with others;
- (vi) the right to inherit;
- (vii) the right to freedom of thought, conscience and religion;
- (viii) the right to freedom of opinion and expression;
- (ix) the right to freedom of peaceful assembly and association;

(e) Economic, social and cultural rights, in particular:

- (i) the rights to work, free choice of employment, just favourable conditions of work, protection against

unemployment, equal pay for equal work, just and favourable remuneration;

(ii) the right to form and join trade unions;

(iii) the right to housing;

(iv) the right to public health, medical care, social security and social services;

(v) the right to education and training;

(vi) the right to equal participation in cultural activities;

(f) The right of access to any place or service intended for use by the general public such as transport, hotels, restaurants, cafes, theatres, parks.

Article 6

States Parties shall assure to everyone within their jurisdiction effective protection and remedies through the competent national tribunals and other State institutions against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.

Article 7

States Parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture, and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnic groups, as well as to propagating the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, and this Convention.

PART II

Article 8

1. There shall be established a Committee on the Elimination of Racial Discrimination (hereinafter referred to as the Committee) consisting of eighteen experts of high moral standing and acknowledged impartiality elected by States Parties from amongst their nationals who shall serve in their personal capacity, consideration being given to equitable geographical distribution

and to the representation of the different forms of civilization, as well as of the principal legal systems.

2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by the States Parties. Each State Party may nominate one person from among its own nationals.

3. The initial election shall be held six months after the date of the entry into force of this Convention. At least three months before the date of each election the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within two months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated indicating the States Parties which have nominated them, and shall submit it to the States Parties.

4. Elections of the members of the Committee shall be held at a meeting of States Parties convened by the Secretary-General at the Headquarters of the United Nations. At that meeting, for which two-thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

5. (a) The members of the Committee shall be elected for a term of four years. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these nine members shall be chosen by lot by the Chairman of the Committee.

(b) For the filling of casual vacancies, the State Party whose expert has ceased to function as a member of the Committee shall appoint another expert from among its nationals subject to the approval of the Committee.

6. The States Parties shall be responsible for the expenses of the members of the Committee while they are in performance of Committee duties.

Article 9

1. The States Parties undertake to submit to the Secretary-General for consideration by the Committee a report on the legislative, judicial, administrative, or other measures that they have adopted and that give effect to the provisions of this Convention: (a) within one year after the entry into force of the Convention for the State

concerned; and (b) thereafter every two years and whenever the Committee so requests. The Committee may request further information from the States Parties.

2. The Committee shall report annually through the Secretary-General to the General Assembly on its activities and may make suggestions and general recommendations based on the examination of the reports and information received from the States Parties. Such suggestions and general recommendations shall be reported to the General Assembly together with comments, if any, from States Parties.

Article 10

1. The Committee shall adopt its own rules of procedure.

2. The Committee shall elect its officers for a term of two years.

3. The secretariat of the Committee shall be provided by the Secretary-General of the United Nations.

4. The meetings of the Committee shall normally be held at the Headquarters of the United Nations.

Article 11

1. If a State Party considers that another State Party is not giving effect to the provisions of this Convention, it may bring the matter to the attention of the Committee. The Committee shall then transmit the communication to the State Party concerned. Within three months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.

2. If the matter is not adjusted to the satisfaction of both parties, either by bilateral negotiations or by any other procedure open to them, within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter again to the Committee by notice given to the Committee and also to the other State.

3. The Committee shall deal with a matter referred to it in accordance with paragraph 2 of this article after it has ascertained that all available domestic remedies have been invoked and exhausted in the case, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged.

4. In any matter referred to it, the Committee may call upon the States Parties

concerned to supply any other relevant information.

5. When any matter arising out of this article is being considered by the Committee, the States Parties concerned shall be entitled to send a representative to take part in the proceedings of the Committee, without voting rights, while the matter is under consideration.

Article 12

1. (a) After the Committee has obtained and collated all the information it thinks necessary, the Chairman shall appoint an *ad hoc* Conciliation Commission (hereinafter referred to as "the Commission") comprising five persons who may or may not be members of the Committee. The members of the Commission shall be appointed with the unanimous consent of the parties to the dispute, and its good offices shall be made available to the States concerned with a view to an amicable solution to the matter on the basis of respect for this Convention.

(b) If the States Parties to the dispute fail to reach agreement on all or part of the composition of the Commission within three months, the members of the Commission shall be elected by two-thirds majority vote by secret ballot of the Committee from among its own members.

2. The members of the Commission shall serve in their personal capacity. They shall not be nationals of the States Parties to the dispute or of a State not Party to this Convention.

3. The Commission shall elect its own Chairman and adopt its own rules of procedure.

4. The meetings of the Commission shall normally be held at the Headquarters of the United Nations, or at any other convenient place as determined by the Commission.

5. The secretariat provided in accordance with article 10, paragraph 3, shall also service the Commission whenever a dispute among the States Parties brings the Commission into being.

6. The States Parties to the dispute shall share equally all the expenses of the members of the Commission in accordance with the estimates to be provided by the Secretary-General.

7. The Secretary-General shall be empowered to pay the expenses of the members of the Commission, if necessary, before reimbursement by the States Parties to the

dispute in accordance with paragraph 6 of this article.

8. The information obtained and collated by the Committee shall be made available to the Commission and the Commission may call upon the States concerned to supply any other relevant information.

Article 13

1. When the Commission has fully considered the matter, it shall prepare and submit to the Chairman of the Committee a report embodying its findings on all questions of fact relevant to the issue between the parties and containing such recommendations as it may think proper for the amicable solution to the dispute.

2. The Chairman of the Committee shall communicate the report of the Committee to each of the States Parties to the dispute. These States shall within three months inform the Chairman of the Committee whether or not they accept the recommendations contained in the report of the Commission.

3. After the period provided for in paragraph 2 of this article, the Chairman of the Committee shall communicate the report of the Commission and the declarations of States Parties concerned to the other States Parties to this Convention.

Article 14

1. A State Party may at any time declare that it recognizes the competence of the Committee to receive and consider communications from individuals within its jurisdiction claiming to be victims of a violation by that State Party of any of the rights set forth in this Convention. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration.

2. Any State Party which makes a declaration as provided for in paragraph 1 of this article may establish or indicate a body within its national legal order which shall be competent to receive and consider petitions from individuals and groups of individuals within its jurisdiction who claim to be victims of a violation of any of the rights set forth in this Convention and who have exhausted other available local remedies.

3. A declaration made in accordance with paragraph 1 of this article and the name of any body established or indicated in accordance with paragraph 2 of this article, shall be deposited by the State Party concerned with the Secretary-General of the

United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General, but such a withdrawal shall not affect communications pending before the Committee.

4. A register of petitions shall be kept by the body established or indicated in accordance with paragraph 2 of this article, and certified copies of the register shall be filed annually through appropriate channels with the Secretary-General on the understanding that the contents shall not be publicly disclosed.

5. In the event of failure to obtain satisfaction from the body established or indicated in accordance with paragraph 2 of article, the petitioner shall have the right to communicate the matter to the Committee within six months.

6. (a) The Committee shall confidentially bring any communication referred to it to the attention of the State Party alleged to be violating any provision of this Convention, but the identity of the individual or groups of individuals concerned shall not be revealed without his or their express consent. The Committee shall not receive anonymous communications.

(b) Within three months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.

7. (a) The Committee shall consider communications in the light of all information made available to it by the State Party concerned and by the petitioner. The Committee shall not consider any communication from a petitioner unless it has ascertained that the petitioner has exhausted all available domestic remedies. However, this shall not be the rule where the application of the remedies is unreasonably prolonged.

(b) The Committee shall forward its suggestions and recommendations, if any, to the State Party concerned and to the petitioner.

8. The Committee shall include in its annual report a summary of such communications and, where appropriate, summary of the explanations and statements of the States Parties concerned and of its own suggestions and recommendations.

9. The Committee shall be competent to exercise the functions provided for in this article only when at least ten States Parties to this Convention are bound by declarations

in accordance with paragraph 1 of this article.

Article 15

1. Pending the achievement of the objectives of General Assembly resolution 1514 (XV) of 14 December 1960 in the Declaration on the Granting of Independence to Colonial Countries and Peoples, the provisions of this Convention shall in no way limit the right to petition granted to these peoples by other international instruments or by the United Nations and its specialized agencies.

2. (a) The Committee established under article 8, paragraph 1, shall receive copies of the petitions from, and submit expressions of opinion and recommendations on these petitions to, the bodies of the United Nations which deal with matters directly related to the principles and objectives of this Convention in their consideration of petitions from the inhabitants of Trust and Non-Self-Governing Territories, and all other territories to which General Assembly resolution 1514 (XV) applies, relating to matters covered by this Convention which are before these bodies.

(b) The Committee shall receive from the competent bodies of the United Nations copies of the reports concerning the legislative, judicial, administrative or other measures directly related to the principles and objectives of this Convention applied by the administering Powers within the territories mentioned in sub-paragraph (a) of this paragraph and shall express opinions and make recommendations to these bodies.

3. The Committee shall include in its report to the General Assembly a summary of the petitions and reports it has received from United Nations bodies, and the expressions of opinion and recommendations of the Committee related to the said petitions and reports.

4. The Committee shall request from the Secretary-General of the United Nations all information relevant to the objectives of this Convention and available to him regarding the territories mentioned in paragraph 2 (a) of this article.

Article 16

The provisions of this Convention concerning the settlement of disputes or complaints shall be applied without prejudice to other procedures for settling disputes or complaints in the field of discrimination laid

down in the constituent instruments of, or in conventions adopted by, the United Nations and its specialized agencies, and shall not prevent the States Parties from having recourse to other procedures for settling a dispute in accordance with general or special international agreements in force between them.

PART III

Article 17

1. This Convention is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a Party to this Convention.

This Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 18

1. This Convention shall be open to accession by any State referred to in article 17, paragraph 1.

2. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 19

1. This Convention shall enter into force on the thirtieth day after the date of the deposit with the Secretary-General of the United Nations of the twenty-seventh instrument of ratification or instrument of accession.

2. For each State ratifying this Convention or acceding to it after the deposit of the twenty-seventh instrument of ratification or instrument of accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or instrument of accession.

Article 20

1. The Secretary-General of the United Nations shall receive and circulate to all States which are or may become parties to this Convention reservations made by States at the time of ratification or accession. Any State which objects to the reservation shall, within a period of ninety days from the date

of the said communication, notify the Secretary-General that it does not accept it.

2. A reservation incompatible with the object and purpose of this Convention shall not be permitted, nor shall a reservation, the effect of which would inhibit the operation of any of the bodies established by the Convention, be allowed. A reservation shall be considered incompatible or inhibitive if at least two-thirds of the States Parties to the Convention object to it.

3. Reservations may be withdrawn at any time by notification to this effect addressed to the Secretary-General. Such notification shall take effect on the date on which it is received.

Article 21

A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Denunciation shall take effect one year after the receipt of the notification by the Secretary-General.

Article 22

Any dispute between two or more States Parties over the interpretation or application of this Convention, which is not settled by negotiation or by the procedures expressly provided for in this Convention, shall at the request of any of the parties to the dispute be referred to the International Council of Justice for decision, unless the disputants agree to another mode of settlement.

Article 23

1. A request for the revision of this Convention may be made at any time by the State Party by means of a notification in writing addressed to the Secretary-General.

2. The General Assembly shall decide upon the steps, if any, to be taken in respect of such a request.

Article 24

The Secretary-General of the United Nations shall inform all States referred to in article 17, paragraph 1, of the following particulars :

(a) Signatures, ratifications and accessions under articles 17 and 18;

(b) The date of entry into force of this Convention under article 19;

(c) Communications and declarations received under articles 14 and 22;

(d) Denunciation under article 20.

Article 235

1. This Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of this Convention to all States belonging to any of the categories mentioned in article 17, paragraph 1.

APPENDIX IV
INTERNATIONAL COVENANT ON
ECONOMIC, SOCIAL AND CULTURAL RIGHTS

(Entered into force January 3, 1976)

PREAMBLE

The States Parties to the present Covenant,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that these rights derive from the inherent dignity of the human person,

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

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

Agree upon the following articles:

PART I

Article 1

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

PART II

Article 2

1. Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

3. Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

Article 4

The States Parties to the present Covenant recognize that, in the enjoyment of those rights provided by the State in conformity with the present Covenant, the

State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.

Article 5

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights or freedoms recognized herein, or at their limitation to a greater extent than is provided for in the present Covenant.

2. No restriction upon or derogation from any of the fundamental human rights recognized or existing in any country in virtue of law, conventions, regulations or custom shall be admitted on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

PART III

Article 6

1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

Article 7

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

(a) Remuneration which provides all workers, as a minimum, with:

(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those en-

joyed by men, with equal pay for equal work;

(ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;

(b) Safe and healthy working conditions;

(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;

(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.

Article 8

1. The States Parties to the present Covenant undertake to ensure:

(a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;

(c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.

2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.

3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice,

or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention.

Article 9

The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.

Article 10

The States Parties to the present Covenant recognize that:

1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.

2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such a period working mothers should be accorded paid leave or leave with adequate social security benefits.

3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.

Article 11

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:

(a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;

(b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

Article 12

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

(a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;

(b) The improvement of all aspects of environmental and industrial hygiene;

(c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;

(d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

Article 13

1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:

(a) Primary education shall be compulsory and available free to all;

(b) Secondary education in its different forms including technical and vocational secondary education, shall be made generally available and accessible to all by

every appropriate means, and in particular by the progressive introduction of free education;

(c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;

(d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;

(e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 14

Each State Party to the present Covenant which, at the time of becoming a Party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.

Article 15

1. The States Parties to the present Covenant recognize the right of everyone:

(a) To take part in cultural life;

(b) To enjoy the benefits of scientific progress and its applications;

(c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.

3. The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.

4. The States Parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields.

PART IV

Article 16

1. The States Parties to the present Covenant undertake to submit in conformity with this part of the Covenant reports of the measures which they have adopted and the progress made in achieving the observance of the rights recognized herein.

2. (a) All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit copies to the Economic and Social Council for consideration in accordance with the provisions of the present Covenant;

(b) The Secretary-General of the United Nations shall also transmit to the specialized agencies copies of the reports, or any relevant parts therefrom, from States Parties to the present Covenant which are also members of these specialized agencies in so far as these reports, or parts therefrom, relate to any matters which fall within the responsibilities of the said agencies in accordance with their constitutional instruments.

Article 17

1. The States Parties to the present Covenant shall furnish their reports in stages, in accordance with a programme to be established by the Economic and Social Council within one year of the entry into force of the present Covenant after consultation with the States Parties and the specialized agencies concerned.

2. Reports may indicate factors and

difficulties affecting the degree of fulfillment of obligations under the present Covenant.

3. Where relevant information has previously been furnished to the United Nations or to any specialized agency by any State Party to the present Covenant, it will not be necessary to reproduce that information, but a precise reference to the information so furnished will suffice.

Article 18

Pursuant to its responsibilities under the Charter of the United Nations in the field of human rights and fundamental freedoms, the Economic and Social Council may make arrangements with the specialized agencies in respect of their reporting to it on the progress made in achieving the observance of the provisions of the present Covenant falling within the scope of their activities. These reports may include particulars of decisions and recommendations on such implementation adopted by their competent organs.

Article 19

The Economic and Social Council may transmit to the Commission on Human Rights for study and general recommendation or, as appropriate, for information the reports concerning human rights submitted by States in accordance with articles 16 and 17, and those concerning human rights submitted by the specialized agencies in accordance with article 18.

Article 20

The States Parties to the present Covenant and the specialized agencies concerned may submit comments to the Economic and Social Council on any general recommendation under article 19 or reference to such general recommendation in any report of the Commission on Human Rights or any documentation referred to therein.

Article 21

The Economic and Social Council may submit from time to time to the General Assembly reports with recommendations of a general nature and a summary of the information received from the States Parties to the present Covenant and the specialized agencies on the measures taken and the progress made in achieving the general observance of the rights recognized in the present Covenant.

Article 22

The Economic and Social Council may bring to the attention of other organs of the United Nations, their subsidiary organs and specialized agencies concerned with furnishing technical assistance any matters arising out of the reports referred to in this part of the present Covenant which may assist such bodies in deciding, each within its field of competence, on the advisability of *international measures likely to contribute to the effective progressive implementation of the present Covenant.*

Article 23

The States Parties to the present Covenant agree that international action for the achievement of the rights recognized in the present Covenant includes such methods as the conclusion of conventions, the adoption of recommendations, the furnishing of technical assistance and the holding of regional meetings and technical meetings for the purpose of consultation and study organized in conjunction with the Government concerned.

Article 24

Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Covenant.

Article 25

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize freely their natural wealth and resources.

PART V

Article 26

1. The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a party to the present Covenant.

2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this article.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States which have signed the present Covenant or acceded to it of the deposit of each instrument of ratification of accession.

Article 27

1. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.

2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

Article 28

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

Article 29

1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one third of the States Parties

favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Covenant in accordance with their respective constitutional processes.

3. When amendments come into force they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Covenant and any earlier amendment which they have accepted.

Article 30

Irrespective of the notifications made under article 26, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph 1 of the same article of the following particulars:

(a) Signatures, ratifications and accessions under article 26;

(b) The date of the entry into force of the present Covenant under article 27 and the date of the entry into force of any amendments under article 29.

Article 31

1. The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in article 26.

APPENDIX V

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

(Entered into force March 23, 1976)

PREAMBLE

The States Parties to the present Covenant,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that these rights derive from the inherent dignity of the human person,

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

Considering the obligations of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

Agree upon the following articles:

PART I

Article 1

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

PART III

Article 2

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

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

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil or political rights set forth in the present Covenant.

Article 4

1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

2. No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision.

3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

Article 5

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.

2. There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such right or that it recognizes them to a lesser extent.

PART III

Article 6

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.

3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.

4. Anyone sentenced to death shall have the right to seek pardon or commutation of sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.

5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.

6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Article 8

1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.

2. No one shall be held in servitude.

3. (a) No one shall be required to perform forced or compulsory labour;

(b) Paragraph 3 (a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of

hard labour in pursuance of a sentence to such punishment by a competent court;

(c) For the purpose of this paragraph the term "forced or compulsory labour" shall not include:

- (i) Any work or service, not referred to in sub-paragraph (b), normally required of a person during conditional release from such detention;
- (ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;
- (iii) Any service extracted in cases of emergency or calamity threatening the life or well-being of the community;
- (iv) Any work or service which forms part of normal civil obligations.

Article 9

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as established by law.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of the charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to a trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right of compensation.

Article 10

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

2. (a) 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;

(b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

Article 11

No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.

Article 12

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.

3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.

4. No one shall be arbitrarily deprived of the right to enter his own country.

Article 13

An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

Article 14

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The Press and the public may be excluded from all or part of a trial for reasons of morals, public order (*ordre public*) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit of law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him,

(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing.

(c) To be tried without undue delay;

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(g) Not to be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with law and penal procedure of each country.

Article 15

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby.

2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

Article 16

Everyone shall have the right to recognition everywhere as a person before the law.

Article 17

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

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

Article 18

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

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

4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

Article 19

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, or in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

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

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

Article 20

1. Any propaganda for war shall be prohibited by law.

2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

Article 21

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 22

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

Article 23

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 found a family shall be recognized.

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

4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

Article 24

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.

2. Every child shall be registered immediately after birth and shall have a name.

3. Every child has the right to acquire a nationality.

Article 25

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

(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 shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

(c) To have access, on general terms of equality, to public service in his country.

Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 27

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

PART IV

Article 28

1. There shall be established a Human Rights Committee (hereafter referred to in the present Covenant as the Committee). It shall consist of eighteen members and

shall carry out the functions hereinafter provided.

2. The Committee shall be composed of nationals of the States Parties to the present Covenant who shall be persons of high moral character and recognized competence in the field of human rights, consideration being given to the usefulness of the participation of some persons having legal experience.

3. The members of the Committee shall be elected and shall serve in their personal capacity.

Article 29

1. The members of the Committee shall be elected by secret ballot from a list of persons possessing the qualifications prescribed in article 28 and nominated for the purpose by the States Parties to the present Covenant.

2. Each State Party to the present Covenant may nominate not more than two persons. These persons shall be nationals of the nominating State.

3. A person shall be eligible for re-nomination.

Article 30

1. The initial election shall be held no later than six months after the date of the entry into force of the present Covenant.

2. At least four months before the date of each election to the Committee, other than an election to fill a vacancy declared in accordance with article 34, the Secretary-General of the United Nations shall address a written invitation to the States Parties to the present Covenant to submit their nominations for membership of the Committee within three months.

3. The Secretary-General of the United Nations shall prepare a list in alphabetical order of all the persons thus nominated, with an indication of the States Parties which have nominated them, and shall submit it to the States Parties to the present Covenant no later than one month before the date of each election.

4. Elections of the members of the Committee shall be held at a meeting of the States Parties to the present Covenant convened by the Secretary-General of the United Nations at the Headquarters of the United Nations. At that meeting, for which two thirds of the States Parties to the present Covenant shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the

largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

Article 31

1. The Committee may not include more than one national of the same State.

2. In the election of the Committee, consideration shall be given to equitable geographical distribution of membership and to the representation of the different forms of civilization and of the principal legal systems.

Article 32

1. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if re-nominated. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these nine members shall be chosen by lot by the Chairman of the meeting referred to in article 30, paragraph 4.

2. Elections at the expiry of office shall be held in accordance with the preceding articles of this part of the present Covenant.

Article 33

1. If, in the unanimous opinion of the other members, a member of the Committee has ceased to carry out his functions for any cause other than absence of a temporary character, the Chairman of the Committee shall notify the Secretary-General of the United Nations, who shall then declare the seat of that member to be vacant.

2. In the event of the death or the resignation of a member of the Committee, the Chairman shall immediately notify the Secretary-General of the United Nations, who shall declare the seat vacant from the date of death or the date on which the resignation takes effect.

Article 34

1. When a vacancy is declared in accordance with article 33 and if the term of office of the member to be replaced does not expire within six months of the declaration of the vacancy, the Secretary-General of the United Nations shall notify each of the States Parties to the present Covenant, which may within two months submit nominations in accordance with article 29 for the purpose of filling the vacancy.

2. The Secretary-General of the United

Nations shall prepare a list in alphabetical order of the persons thus nominated and shall submit it to the States Parties to the present Covenant. The election to fill the vacancy shall then take place in accordance with the relevant provisions of this part of the present Covenant.

3. A member of the Committee elected to fill a vacancy declared in accordance with article 33 shall hold office for the remainder of the term of the member who vacated the seat on the Committee under the provisions of that article.

Article 35

The members of the Committee shall, with the approval of the General Assembly of the United Nations, receive emoluments from United Nations resources on such terms and conditions as the General Assembly may decide, having regard to the importance of the Committee's responsibilities.

Article 36

The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the Committee under the present Covenant.

Article 37

1. The Secretary-General of the United Nations shall convene the initial meeting of the Committee at the Headquarters of the United Nations.

2. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.

3. The Committee shall normally meet at the Headquarters of the United Nations or at the United Nations Office at Geneva.

Article 38

Every member of the Committee shall, before taking up his duties, make a solemn declaration in open committee that he will perform his functions impartially and conscientiously.

Article 39

1. The Committee shall elect its officers for a term of two years. They may be re-elected.

2. The Committee shall establish its own rules of procedure, but these rules shall provide, *inter alia*, that:

(a) Twelve members shall constitute a quorum:

(b) Decisions of the Committee shall

be made by a majority vote of the members present.

Article 40

1. The States Parties to the present Covenant undertake to submit reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made in the enjoyment of those rights:

(a) Within one year of the entry into force of the present Covenant for the States Parties concerned;

(b) Thereafter whenever the Committee so requests.

2. All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit them to the Committee for consideration. Reports shall indicate the factors and difficulties, if any, affecting the implementation of the present Covenant.

3. The Secretary-General of the United Nations may, after consultation with the Committee, transmit to the specialized agencies copies of such parts of the reports as may fall within their field of competence.

4. The Committee shall study the reports submitted by the States Parties to the present Covenant. It shall transmit its reports, and such general comments as it may consider appropriate, to the States Parties. The Committee may also transmit to the Economic and Social Council these comments along with the copies of the reports it has received from States Parties to the present Covenant.

5. The States Parties to the present Covenant may submit to the Committee observations on any comments that may be made in accordance with paragraph 4 of this article.

Article 41

1. A State Party to the present Covenant may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Covenant. Communications under this article may be received and considered only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration. Communications received under this article shall be

dealt with in accordance with the following procedure:

(a) If a State Party to the present Covenant considers that another State Party is not giving effect to the provisions of the present Covenant, it may, by written communication, bring the matter to the attention of that State Party. Within three months after the receipt of the communication, the receiving State shall afford the State which sent the communication an explanation or any other statement in writing clarifying the matter, which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending, or available in the matter.

(b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State.

(c) The Committee shall deal with a matter referred to it only after it has ascertained that all available domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged.

(d) The Committee shall hold closed meetings when examining communications under this article.

(e) Subject to the provisions of sub-paragraph (c), the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of a matter on the basis of respect for human rights and fundamental freedoms as recognized in the present Covenant.

(f) In any matter referred to it, the Committee may call upon the States Parties concerned, referred to in sub-paragraph (b), to supply any relevant information.

(g) The States Parties concerned, referred to in sub-paragraph (b), shall have the right to be represented when the matter is being considered in the Committee and to make submissions orally and/or in writing.

(h) The Committee shall, within twelve months after the date of receipt of notice under sub-paragraph (b), submit a report:

(i) If a solution within the terms of sub-paragraph (e) is reached, the Committee shall confine

its report to a brief statement of the facts and of the solution reached;

- (ii) If a solution within the terms of sub-paragraph (e) is not reached, the Committee shall confine its report to a brief statement of the facts; the written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report.

In every matter, the report shall be communicated to the States Parties concerned.

2. The provisions of this article shall come into force when ten States Parties to the present Covenant have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by any State Party shall be received after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

Article 42

1. (a) If a matter referred to the Committee in accordance with article 41 is not resolved to the satisfaction of the States Parties concerned, the Committee may, with the prior consent of the States Parties concerned, appoint an *ad hoc* Conciliation Commission (hereinafter referred to as the Commission). The good offices of the Commission shall be made available to the States Parties concerned with a view to an amicable solution of the matter on the basis of respect for the present Covenant;

(b) The Commission shall consist of five persons acceptable to the States Parties concerned. If the States Parties concerned fail to reach agreement within three months on all or part of the composition of the Commission, the members of the Commission concerning whom no agreement has been reached shall be elected by secret ballot

by a two-thirds majority vote of the Committee from among its members.

2. The members of the Commission shall serve in their personal capacity. They shall not be nationals of the States Parties concerned, or of a State not party to the present Covenant, or of a State Party which has not made a declaration under article 41.

3. The Commission shall elect its own Chairman and adopt its own rules of procedure.

4. The meetings of the Commission shall normally be held at the Headquarters of the United Nations or at the United Nations Office at Geneva. However, they may be held at such other convenient places as the Commission may determine in consultation with the Secretary-General of the United Nations and the States Parties concerned.

5. The secretariat provided in accordance with article 36 shall also service the commissions appointed under this article.

6. The information received and collated by the Committee shall be made available to the Commission and the Commission may call upon the States Parties concerned to supply any other relevant information.

7. When the Commission has fully considered the matter, but in any event not later than twelve months after having been seized of the matter, it shall submit to the Chairman of the Committee a report for communication to the States Parties concerned:

(a) If the Commission is unable to complete its consideration of the matter within twelve months, it shall confine its report to a brief statement of the status of its consideration of the matter;

(b) If an amicable solution to the matter on the basis of respect for human rights as recognized in the present Covenant is reached, the Commission shall confine its report to a brief statement of the facts and of the solution reached;

(c) If a solution within the terms of sub-paragraph (b) is not reached, the Commission's report shall embody its findings on all questions of fact relevant to the issues between the States Parties concerned, and its views on the possibilities of an amicable solution of the matter. This report shall also contain the written submissions and a record of the oral submissions made by the States Parties concerned;

(d) If the Commission's report is submitted under sub-paragraph (c), the States Parties concerned shall, within three months of the receipt of the report, notify the Chair-

man of the Committee whether or not they accept the contents of the report of the Commission.

8. The provisions of this article are without prejudice to the responsibilities of the Committee under article 41.

9. The States Parties concerned shall share equally all the expenses of the members of the Commission in accordance with estimates to be provided by the Secretary-General of the United Nations.

10. The Secretary-General of the United Nations shall be empowered to pay the expenses of the members of the Commission, if necessary, before reimbursement by the States Parties concerned, in accordance with paragraph 9 of this article.

Article 43

The members of the Committee, and of the *ad hoc* conciliation commissions which may be appointed under article 42, shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

Article 44

The provisions for the implementation of the present Covenant shall apply without prejudice to the procedures prescribed in the field of human rights by or under the constituent instruments and the conventions of the United Nations and of the specialized agencies and shall not prevent the States Parties to the present Covenant from having recourse to other procedures for settling a dispute in accordance with general or special international agreements in force between them.

Article 45

The Committee shall submit to the General Assembly of the United Nations, through the Economic and Social Council, an annual report on its activities.

PART V

Article 46

Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in

regard to the matters dealt with in the present Covenant.

Article 47

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

PART VI

Article 48

1. The present Covenant is open to signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a party to the present Covenant.

2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this article.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States which have signed this Covenant or acceded to it of the deposit of each instrument of ratification or accession.

Article 49

1. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.

2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of deposit of its own instrument of ratification or instrument of accession.

Article 50

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

Article 51

1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General of the United Nations shall thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by the majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Covenant in accordance with their respective constitutional processes.

3. When amendments come into force, they shall be binding on those States Parties

which have accepted them, other States Parties still being bound by the provisions of the present Covenant and any earlier amendment which they have accepted.

Article 52

Irrespective of the notifications made under article 48, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph 1 of the article of the following particulars:

(a) Signatures, ratifications and accessions under article 48;

(b) The date of the entry into force of the present Covenant under article 49 and the date of the entry into force of any amendments under article 51.

Article 53

1. The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in article 48.

APPENDIX VI

OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

(Entered into force March 23, 1976)

The States Parties to the present Protocol,

Considering that in order further to achieve the purposes of the Covenant on Civil and Political Rights (hereinafter referred to as the Covenant) and the implementation of its provisions it would be appropriate to enable the Human Rights Committee set up in Part IV of the Covenant (hereinafter referred to as the Committee) to receive and consider, as provided in the present Protocol, communications from individuals claiming to be victims of violations of any of the rights set forth in the Covenant,

Have agreed as follows:

Article 1

A State Party to the Covenant that becomes a party to the present Protocol recognizes the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of any of the rights set forth in the Covenant. No communication shall be received by the Committee if it concerns a State Party to the Covenant which is not a party to the present Protocol.

Article 2

Subject to the provisions of article 1, individuals who claim that any of their rights enumerated in the Covenant have been violated and who have exhausted all available domestic remedies may submit a written communication to the Committee for consideration.

Article 3

The Committee shall consider inadmissible any communication under the present Protocol which is anonymous, or which it considers to be an abuse of the right of submission of such communications or to be incompatible with the provisions of the Covenant.

Article 4

1. Subject to the provisions of article 3, the Committee shall bring any communications submitted to it under the present Protocol to the attention of the State Party to the present Protocol alleged to be violating any provision of the Covenant.

2. Within six months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.

Article 5

1. The Committee shall consider communications received under the present Protocol in the light of all written information made available to it by the individual and by the State Party concerned.

2. The Committee shall not consider any communication from an individual unless it has ascertained that:

(a) The same matter is not being examined under another procedure of international investigation or settlement;

(b) The individual has exhausted all available domestic remedies.

This shall not be the rule where the applications of the remedies is unreasonably prolonged.

3. The Committee shall hold closed meetings when examining communications under the present Protocol.

4. The Committee shall forward its views to the State Party concerned and to the individual.

Article 6

The Committee shall include in its annual report under article 45 of the Covenant a summary of its activities under the present Protocol.

Article 7

Pending the achievement of the objectives of resolution 1514 (XV) adopted by the General Assembly of the United Nations on 14 December 1960 concerning the Dec-

laration on the Granting of Independence to Colonial Countries and Peoples, the provisions of the present Protocol shall in no way limit the right of petition granted to these peoples by the Charter of the United Nations and other international conventions and instruments under the United Nations and its specialized agencies.

Article 8

1. The present Protocol is open for signature by any State which has signed the Covenant.

2. The present Protocol is subject to ratification by any State which has ratified or acceded to the Covenant. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Protocol shall be open to accession by any State which has ratified or acceded to the Covenant.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States which have signed the present Protocol or acceded to it of the deposit of each instrument of ratification or accession.

Article 9

1. Subject to the entry into force of the Covenant, the present Protocol shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the tenth instrument of ratification or instrument of accession.

2. For each State ratifying the present Protocol or acceding to it after the deposit of the tenth instrument of ratification or instrument of accession, the present Protocol shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

Article 10

The provisions of the present Protocol shall extend to all parts of federal States without any limitations or exceptions.

Article 11

1. Any State Party to the present Protocol may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the States Parties to the present Protocol with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that

at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Protocol in accordance with their respective constitutional processes.

3. When amendments come into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Protocol and any earlier amendment which they have accepted.

Article 12

1. Any State Party may denounce the present Protocol at any time by written notification addressed to the Secretary-General of the United Nations. Denunciation shall take effect three months after the date of receipt of the notification by the Secretary-General.

2. Denunciation shall be without prejudice to the continued application of the provisions of the present Protocol to any communication submitted under article 2 before the effective date of denunciation.

Article 13

Irrespective of the notifications made under article 8, paragraph 5, of the present Protocol, the Secretary-General of the United Nations shall inform all States referred to in article 48, paragraph 1, of the Covenant of the following particulars:

(a) Signatures, ratifications and accessions under article 8;

(b) The date of the entry into force of the present Protocol under article 9 and the date of the entry into force of any amendments under article 11;

(c) Denunciations under article 12.

Article 14

1. The present Protocol, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States referred to in article 48 of the Covenant.

APPENDIX VII

UNESCO AND HUMAN RIGHTS: THE IMPLEMENTATION OF RIGHTS RELATING TO EDUCATION, SCIENCE, CULTURE AND COMMUNICATION

STEPHEN MARKS

Contents

Introduction

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Introduction

1. Within the United Nations system,

Unesco along with several other institutions, such as the UN's Division of Human Rights and the various organs it serves, and the ILO with its instruments and implementation mechanisms relating to international labour standards is and has been since its inception thirty years ago very much involved in international cooperation for the universal and effective respect for human rights for all.

2. Its contribution has been essentially intellectual and ethical, being particularly well suited to stimulate thought and diffuse knowledge about human rights. Its contribution has also been through the mechanisms of international standard setting and implementation of legal instruments, which will be the emphasis in this paper.

3. Thus, the legal basis for Unesco's role as regards both promotion and protection of human rights will be our starting point. In the second part, the content of the human rights norms with which Unesco is called upon to deal will be briefly described. Finally, some of the means which Unesco uses to implement human rights will be discussed in the last section.

I. The legal basis of Unesco's concern and competence in the field of human rights

4. The distinction between 'promotion' and 'protection' of human rights has been widely used by human rights lawyers and is no doubt useful to define the competence and functions of organs especially created to deal with human rights matters. No clear distinction of this kind can be made, however, for an organization like Unesco, whose mandate is very general as regards human rights. Nevertheless, while its general competence in this field certainly covers activities aimed at the *promotion* of human rights, specific additional mandates given by its competent organs have provided a legal basis for its action relating to the *protection* of human rights.

A. The legal basis of Unesco's action in promoting human rights

5. The fundamental, albeit indirect, basis for any activity by the Organization in the sphere of human rights is Article 1, paragraph 3 of the Charter of the United Nations, which declares that one of the purposes of the United Nations is 'to achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all . . .'. In accordance with Article 56, moreover, the Member States of the United Nations pledge themselves to take action in co-operation with the Organization for the achievement of the purposes set forth in Article 55, including 'universal respect for, and observance of, human rights and fundamental freedoms for all . . .'. As a Specialized Agency brought into relationship with the United Nations in accordance with Article 63 of the Charter, Unesco pursues the same aims.

6. The Constitution of Unesco,¹ which is the direct legal basis for its competence in the matter of human rights, states that the purpose of the Organization is 'to contribute to peace and security by promoting collaboration among the nations through education, science and culture *in order to further universal respect for justice*, for the rule of law and for the *human rights and fundamental freedoms* which are affirmed for the peoples of the world . . . by the Charter of the United Nations'. (*Emphasis added.*) The preamble to the Constitution stresses Unesco's specific role in the sphere of human rights inasmuch as the Member States declare themselves to believe in 'full and equal opportunities for education for all, in the unrestricted pursuit of objective truth, and in the free exchange of ideas and knowledge . . .'. Article I states, *inter alia*, that, to that end, the Organization will re-

1. As adopted in London on 16 November 1945 and amended by the General Conference at its second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, twelfth, fifteenth, seventeenth, and nineteenth sessions.

commend 'such international agreements as may be necessary to promote the free flow of ideas by word and image'. Furthermore, if we have regard to Article I, paragraph 2 of the Constitution, concerning the methods by which the Organization is to realize its purpose, we find that these methods consist essentially in promoting: the Organization must 'collaborate in the work of advancing the mutual knowledge and understanding of peoples', 'give fresh impulse to... the spread of culture' and 'maintain, increase and diffuse knowledge'.

7. On the basis of this constitutional authority and given the importance the competent organs of Unesco have always attached to human rights as reflected in the resolution of the General Conference, there has never been any doubt as to Unesco's competence to conduct studies, bring out publications, encourage teaching and in general contribute to the promotion of human rights. The discussion below on the means used in the execution of the programme activities will clarify the nature of Unesco's role in the promotion of human rights.²

8. As other activities involve the adopting of international standards and the establishment of organs of supervision of these standards they approach the functions of protection while, of course, continuing to contribute to the promotion of human rights.

B. Legal basis for Unesco's action in protecting human rights

9. The above-mentioned provisions of the UN Charter and of Unesco's Constitution establish general competence of the Organization as regards human rights. Certain additional provisions deserve mention in order to identify the Organization's specific competence with respect to protection of human rights. To the extent that protection of human rights involves the situation within Member States all action by the Organization must be conducted with respect for all the relevant provisions of the Constitution, and must therefore also take account of Article I, paragraph 3, whereby the Organiza-

tion is prohibited from 'intervening in matters which are essentially within [the] domestic jurisdiction' of Member States. This provision undeniably sets limits to the Organization's action in this sphere. To be sure, in so far as a specific question of human rights has become the subject of a standard-setting instrument drawn up under the auspices of the Organization, that question is no longer exclusively within the domestic jurisdiction of Member States that are parties to such a legal instrument.

10. Within the framework of its standard-setting activity aimed at the realization of human rights, Unesco has convened international conferences of States, or has submitted draft texts for adoption by the General Conference, and thus it is the Member States in concert which have adopted all the Organization's Conventions and Recommendations, many of which involve human rights, as will be shown in the next part of this paper and in the Annex which lists the principal human rights instruments of Unesco.

11. Apart from the Constitution and these Conventions and Recommendations, a further basis for Unesco's action in the human rights field is provided by resolutions of the General Conference and decisions of the Executive Board. The General Conference has frequently made reference to Unesco's role in the sphere of human rights. At the conclusion of the general policy debate at the eighteenth session, for example, the General Conference adopted a resolution containing the following:

*The defence and promotion of human rights and fundamental freedoms and the struggle against incitement to war, colonialism, neo-colonialism, racialism, apartheid and all other forms of oppression and discrimination are an essential duty for Unesco, because infringements of human rights are a source of conflict and consequently a threat to international peace and security, and because one of the Organization's tasks is to foster respect for human dignity.*³

2. See Part III, A, below.

3. 18/C/Resolution 9.1, paragraph 4.

The Conference also expressed the view:

*that Unesco and its Member States should redouble their efforts on behalf of human rights and international peace and security by condemning and eliminating all anti-humanistic practices stemming from fascism in view of their adverse effect on the development of friendly relations and mutual respect among nations, . . .*⁴

12. At the same session, the General Conference called upon:

Member States to ratify as soon as possible the International Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights and to take a decision concerning the Optional Protocol relating thereto;

and invited:

*the Director-General to give the widest possible publicity to the entry into force of these Covenants and to their implementation in the fields of Unesco's competence . . .*⁵

13. At its nineteenth session, among other decisions relating to human rights, the General Conference in adopting the Medium-Term Plan for 1977 to 1982⁶ considered:

*that the Organization's work to further human rights is linked with all those activities through which Unesco aims at supplying an answer to the major problems existing today in its fields of competence, and should take account of the new context created by the recent entry into force of the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights . . .*⁷

It was in the same spirit that the General Conference adopted Resolution 12.1 by which it noted 'that violations of human rights in Unesco's fields of competence are increasingly frequent and are the subject of

numerous complaints sent to the Organization'.⁸

14. As already mentioned, the legal basis for the Organization's action of the type commonly considered as contributing to the protection of human rights, is also based on decisions of the Executive Board. Some of these decisions will be discussed later.⁹

15. Whether Unesco's action concerns the promotion or the protection of human rights, the emphasis is necessarily laid on those rights which fall within its fields of competence.

II. The human rights which fall within Unesco's fields of competence

16. As defined by its Constitution, Unesco's competence extends to the fields of education, science, culture, and communication, and it is by reference to these four fields that the human rights which fall within the Organization's sphere of competence must be defined.

17. These spheres of competence cover those human rights which refer explicitly to them, namely, the following, as expressed in the Universal Declaration of Human Rights: the right to education (Article 26), the right to share in scientific advancement (Article 27), the right freely to participate in the cultural life of the community (Article 27), and the right to information, which includes, in particular, freedom of opinion and expression (Article 19). These human rights imply certain others which may be considered to fall implicitly within Unesco's competence, such as freedom of thought and conscience, freedom to seek, receive and disseminate information and ideas, and the right to intellectual property.

18. The normative activity of Unesco has aimed at defining these rights and laying down the modalities for their promotion and their protection. Some remarks are therefore in order as regards this activity in

4. 18 C/Resolution 11.31.

5. 18 C/Resolution 11.1, paragraphs 24 and 25.

6. See below, paras. 48 and 49.

7. 19 C/Resolution 100, paragraph 7.

8. 19 C/Resolution 12.1, Part II, Preamble.

9. See below, paras. 63-71.

each of the Organization's fields of competence.

A. Rights relating to education

19. The right of everyone to education is reaffirmed in Article 13 of the International Covenant on Economic, Social and Cultural Rights, which contains several specific undertakings relating to the fundamental goals of education, its accessibility and the role of parents.

20. A series of Unesco instruments has further elaborated this right: the Convention and Recommendation against Discrimination in Education of 1960; the Recommendation concerning Technical and Vocational Education (1962) which was revised in 1974; the Recommendation concerning the Status of Teachers (1966) and the Recommendation concerning Education for International Understanding, Cooperation and Peace and Education relating to Human Rights and Fundamental Freedoms (1974).

21. The Convention against Discrimination in Education was adopted by the General Conference of Unesco in 1960 and entered into force in 1962.¹⁰ According to Article 3 of this Convention, States Parties undertake to eliminate and prevent discrimination, which is defined in Article 1, at all levels of education by legislative measures, aimed at the abrogation of discriminatory statutes and instructions and protecting against discrimination, and by changes in practices to ensure equality of treatment. The Convention also sets out, in Article 5, certain standards concerning the aims of education (development of the human personality, strengthening of respect for human rights, promoting international understanding and tolerance, etc.), the liberty of parents to choose private or religious institutions and the rights of minorities. As regards edu-

10. On the functioning of this Convention see Pierre Mertens, 'L'application de la convention et de la recommandation de l'Unesco concernant la lutte contre la discrimination dans le domaine de l'enseignement: un bilan provisoire', *Revue des droits de l'homme*, vol. 1, no. 1, 1968, pp. 91-108.

cational policy, Article 4 establishes standards which are alluded to in Article 13 of the International Covenant on Economic, Social and Cultural Rights, particularly concerning free and compulsory primary education, general accessibility of secondary and higher education, equality of standards of education in all public education institutions of the same level, encouragement and intensification of education of persons who have not completed the primary education and training of teaching staff.

22. In the field of technical and vocational education the General Conference of Unesco adopted a recommendation in 1962. The International Labour Conference has also adopted a number of instruments on this subject, particularly the Vocational Guidance Recommendation, 1949, the Vocational Training (Agriculture) Recommendation, 1956, and the Vocational Training Recommendation, 1962. Having these instruments in mind, the General Conference of Unesco adopted in 1974 the Revised Recommendation concerning Technical and Vocational Education, which sets forth general principles, goals and guidelines to be applied according to the needs and resources of each country. According to this Recommendation, technical and vocational education should 'contribute to the achievement of society's goals of greater democratization and social, cultural and economic development' (Part II, para. 5(a)), and be directed to 'abolishing barriers between levels and areas of education, between education and employment and between school and society' (II, 6(a)). Among the principles enunciated in the Recommendation are equality of access for women and men (II, 7(f)), special forms of education for disadvantaged and handicapped persons (II, 7(g)), participation of representatives of various segments of society in policy formulation on the national and local levels (III, 12) and equal standards of quality in different educational streams in order to exclude possible discrimination between them (III, 14). Principles relating to technical and vocational education as part of general education, as preparation for an occupational field and as continuing education are set out in some

detail, as are goals relating to methods and materials and staff.

23. Another important instrument establishing or reaffirming international standards relevant to the right to education is the Recommendation concerning Education for International Understanding, Co-operation and Peace and Education relating to Human Rights and Fundamental Freedoms, which was adopted by the General Conference of Unesco in 1974. All stages and forms of education should be guided by the principles set forth in this Recommendation, which may be considered as an elaboration of the aims of education specified in Article 26, paragraph 2 of the Universal Declaration. These principles stress international solidarity and a global perspective for education, which should develop a sense of social responsibility and contribute to strengthening world peace. Member States are encouraged to ensure that the principles of the Universal Declaration and of the Convention on the Elimination of All Forms of Racial Discrimination are applied in daily conduct of education; that every person is familiarised with the operation of local, national and international institutions in order to participate in the solving of problems of the community and the world; that education is linked with action where possible. Certain methods, equipment and materials and approaches to issues are recommended for different levels and types of education, both in school and out-of-school, as well as teacher training and research and experimentation. Under international co-operation, States should develop international education, receive foreign students, research workers, teachers and educators, provide for exchange programmes and dissemination of information, without intervening in matters essentially within the domestic jurisdiction of any other State.

B. Rights relating to science

24. The right to benefit from scientific progress and its application is reaffirmed in Article 15 of the International Covenant on Economic, Social and Cultural Rights. The same article refers to the right to benefit from the protection of the moral and mate-

rial interests resulting from any scientific, literary or artistic production. In this regard brief mention will be made of the Universal Copyright Convention and its various Protocols in the section on rights relating to culture.¹¹

25. As regards more specifically the benefits of scientific progress, Unesco's approach is essentially related to the overriding problems of the application of science and technology to development. Indeed, how can the benefits of scientific progress be shared when the inequalities between nations and within them keep knowledge of science, considered by Unesco as part of mankind's common heritage, from people at large in many countries? Unesco's role thus becomes in large part a matter of developing science education and promoting the formulation and application of policies and improvement of planning and financing in the fields of science and technology.

26. At the same time as it carries out large-scale programmes relating to science policy and application of science and technology to development, Unesco is concerned with the human rights problems of the men and women who devote their lives to science. Thus, the General Conference adopted at its 18th session a major instrument relating to scientific researchers: the Recommendation on the Status of Scientific Researchers of 20 November 1974.

27. This recommendation sets out in some detail the role of scientific researchers in national policy-making, their education and vocation, their working conditions and career development and the role of their associations. From the human rights perspective one can note the stress laid on the academic freedom of scientific researchers. For example, the Recommendation calls upon Member States to institute procedures for the public accountability of such researchers 'while at the same time enjoying the degree of autonomy appropriate to their task It should be fully taken into account that creative activities of scientific researchers should be promoted in the na-

11. See para. 33 below.

tional science policy on the basis of utmost respect for the autonomy and freedom of research necessary to scientific progress'. (II, 8). Equal opportunity as regards initial education and access to the profession as well as non-discrimination in conditions of work and remuneration are clearly matters about which Member States should take appropriate measures. (III, 11(a); V, 20(d)). The Recommendation provides that Member States should seek to encourage the conditions in which scientific researchers have the responsibility and the right:

(a) to work in a spirit of intellectual freedom to pursue, expound and defend the scientific truth as they see it;

(b) to contribute to the definition of the aims and objectives of the programmes in which they are engaged and to the determination of the methods to be adopted which should be humanely, socially and ecologically responsible;

(c) to express themselves freely on the human, social or ecological value of certain projects and in the last resort withdraw from those projects if their conscience so dictates;

(d) to contribute positively and constructively to the fabric of science, culture and education in their own country, as well as to the achievement of national goals, the enhancement of their fellow citizens' well-being, and the furtherance of the international ideals and objectives of the United Nations; . . . (IV, 14)

28. A matter covered by the Recommendation which may give rise to human rights problems concerns freedom to publish. In this regard, the Recommendation considers that it should be standard practice for employers of scientific researchers, including States,

(a) to regard it as the norm that scientific researchers be at liberty and encouraged to publish the results of their work;

(b) to minimize the restrictions placed upon scientific researchers' right to publish their findings, consistent with public interest and the right of their employers and fellow workers;

(c) to express as clearly as possible in writing in the terms and conditions of their employment the circumstances in which such restrictions are likely to apply;

(d) similarly, to make clear the procedures by which scientific researchers can ascertain whether the restrictions mentioned in this paragraph apply in a particular case and by which he can appeal. (V, 37)

29. Other provisions concern copyright, communication without hindrance with colleagues throughout the world, rights as workers and a number of other aspects of the rights of this particular category of person whose protection is important for the realization of all rights relating to science.

C. Rights relating to culture

30. The concept of cultural rights covers many aspects of the rights to education, to participate in cultural life, to communication and to information. Hundreds of definitions exist of 'culture' and it would take us too far afield to approach the problem of the meaning of culture in all its complexity. It should be borne in mind, however, that we are dealing with the fundamental relationship between people and their society, and that the human rights involved concern the development of their full human potential within that society. Cultural rights are, moreover, all interdependent and closely connected to other economic and social rights, as well as to certain civil and political rights. The right to education, for example, has already been mentioned under rights relating to education but is clearly also an essential component of cultural rights.¹²

12. In a meeting on 'Cultural rights as human rights' convened by Unesco in 1968, one participant stated: 'the mere existence of cultural rights supposes that the right to education, as set forth in Article 26 of the Universal Declaration of Human Rights, has first found a practical application. Indeed there is no right to culture without a minimum of education'. B. Boutros Ghali, 'The Right to Culture and the Universal Declaration of Human Rights', in *Cultural Rights as Human Rights*, Studies and documents on

31. For the purposes of the present paper we shall evoke briefly certain aspects of other cultural rights which concern the situation of creators and transmitters of culture (artists, writers, etc.), the access of the public at large to and their participation in cultural life and the cultural identity of peoples.

32. The first two of these dimensions of cultural rights are considered together in Article 15 of the International Covenant on Economic, Social and Cultural Rights and Article 27 of the Universal Declaration. The Covenant goes further by stipulating that the States Parties undertake to respect the freedom indispensable for scientific research and creative activity and to take steps necessary for the conservation, the development and the diffusion of science and culture. They also recognise the importance of encouraging and developing international contacts in these areas.

33. A meaningful participation in cultural life and use of the benefits of scientific progress is possible only if there is effective protection of copyright and preservation of cultural heritage. The moral and material interests in intellectual production are protected, *inter alia*, by the Universal Copyright Convention of 1952, as revised in Paris in 1971 and by more specialised conventions relating to the protection of performers and producers of phonograms and broadcasting organizations (1961), protection against unauthorised duplication of phonograms (1971) and prohibiting and preventing illicit import, export and transfer of ownership of cultural property (1970).

34. As regards the protection of cultural property, particular attention has been given to preserving certain monuments, sites, buildings, manuscripts and collections of books or archives from destruction or damage in time of armed conflict, as well as from theft, pillage or vandalism. The Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and Regulations for the Execution of the Convention, both of 1954, contain detailed

cultural policies, Unesco, 1970, p. 73. See also Imre Szabo, *Cultural Rights*, Akademiai Kiado, Budapest, 1974, pp. 11-42.

principles and regulations of the type found in the Geneva Conventions for the protection for internationally registered property (for which there is an 'International Register of Cultural Property under Special Protection') and provision for control with the assistance of special commissioners-general, transport of such property and other provisions aimed at preserving treasures belonging to the cultural heritage of mankind.

35. Although Article 27 of the Universal Declaration refers to the right of everyone freely to participate in the cultural life of the community it has only been recently that normative action has been taken to specify how this right is to be implemented. A number of inter-governmental conferences were convened by Unesco in different parts of the world (Venice, 1970; Helsinki, 1972; Yogyakarta, 1973) leading up to the adoption by the General Conference at its 19th session in Nairobi on 26 November 1976 of the Recommendation on Participation by the People at Large in Cultural Life and Their Contribution to It. The Recommendation is a fairly detailed instrument containing, in addition to some 25 preambular paragraphs, a series of principles and norms which are to be implemented in accordance with the constitutional practice of each State. They cover definitions, legislation and administration; technical, administrative, economic and financial measures and international co-operation. The Recommendation stipulates, *inter alia*, that States should guarantee cultural rights as human rights, guarantee equality of cultures, provide access to the treasures of national and world culture without discrimination, protect and develop authentic forms of expression and a number of other policies relating to the status of persons participating in the creative processes, mass communication, education, leisure, etc. Certain measures are recommended in order to make these policies operationally effective, such as decentralisation of facilities, activities and decision-making, utilising non-institutionalised and non-professional initiatives and advisory structures, wide use of information media, diversification of programmes, and granting

subsidies and awarding prizes for cultural activities.

36. Closely related to democratic access to the participation in cultural life is the respect for cultural identity. Developing countries, especially those which were still barely a generation ago under colonial domination, are intensely aware of the need to establish and assert a national identity on the basis of cultural values which often need to be revised and adapted to present conditions. Cultural identity contributes to liberation for it provides a justification for independence movements and resistance to colonialism. Since the Bandung Conference of 1955, the importance of cultural identity has been reflected in international declarations and meetings and the promotion of cultural identity is a recognised objective within the context of a global development strategy, as well as a way of furthering independence and mutual appreciation among individuals, groups, nations and regions.¹³ In 1966 the General Conference of Unesco adopted the Declaration of Principles of International Cultural Co-operation, which proclaims, in Article 1:

1. *Each culture has a dignity and value which must be respected and preserved.*
2. *Every people has the right and the duty to develop its culture.*
3. *In their rich variety and diversity, and in the reciprocal influences they exert on one another, all cultures form part of the common heritage belonging to all mankind.*

These principles are continually being updated and reaffirmed to give greater weight to this essential component of cultural rights.

13. 'Promotion of the appreciation and respect for cultural identity of individuals, groups, nations or regions' has been accepted by the Member States of Unesco as one of the objectives of its Medium-Term Plan (1977-1982). See document 19 C/4, Objective 1.2, Unesco, 1977.

D. Rights relating to communication

37. Freedom of expression as defined in Article 19 of the Universal Declaration and of the International Covenant on Civil and Political Rights includes freedom to seek, receive and impart information and ideas of all kinds regardless of frontiers and by any means. Free flow of information has always occupied an important place in Unesco, where the approach has progressively broadened in order to meet the challenge of the vastly increased volume of international communication and exchange of information in a world of serious imbalance as regards the means and structures for the transmission and reception of information and ideas.

38. Many developing countries are acutely aware that their lack of access to world communication channels, except as recipients of a disproportionate volume of information from foreign sources, poses problems for the preservation of cultural heritage and systems of values while at the same time reducing their capacity to inform the world of their problems and aspirations. As mentioned above in regard to science and technology, the crucial problem in the definition and implementation of human rights relating to communication and information is to take full account of the realities of the inequalities among and within nations. In the words of Unesco's Medium-Term Plan, 'Communication . . . is an essential component of a new social and economic order, and equal access to information sources and flows between and within societies is necessary for its establishment'.¹⁴

39. It will be recalled that the first means specified in Unesco's constitution to realize the Organization's purposes is to:

Collaborate in the work of advancing the mutual knowledge and understanding of peoples through all means of mass communication and to that end recommend

14. Medium-Term Plan 1977-1982, Objective 9.1: Promotion of a free and balanced flow of information and of international exchanges, document 19 C/4, Unesco 1977.

such international agreement as may be necessary to promote the free flow of ideas by word and image.

The Organization has adopted a number of international instruments in this field beginning with the Agreement Facilitating the International Circulation of Visual and Auditory Materials of an Educational, Scientific and Cultural Character of 10 December 1948.¹⁵ Subsequently, the Agreement on the Importation of Educational, Scientific and Cultural Material was adopted on 17 June 1950¹⁶ and may be extended through a protocol relating to new materials resulting from technological advances.

40. One of the most striking technological advances in communication since the creation of Unesco has been the development of satellite broadcasting and its application to the diffusion of knowledge and information. The matter had been taken up by the United Nations in the early 1960s and the principle was proclaimed that communication by means of satellites should be available as soon as practicable on a global and undiscriminatory basis.¹⁷ The United Nations invited Unesco to direct its attention to the problems which arise in this regard in its fields of competence. After considerable study of the matter the General Conference proclaimed on 15 November 1972 the Declaration of Guiding Principles on the Use of Satellite Broadcasting for the Free Flow of Information, the Spread of Education and Greater Cultural Exchange.

41. Among the salient features of the Declaration are non-discrimination as to the availability of the benefits of satellite broadcasting (Art. III), factual accuracy of information broadcast (Art. V), the right of States to determine the content of educational programmes broadcast (Art. VI), the promotion through such broadcasting of

15. This agreement has been ratified by 29 States, including from the Caribbean region, Cuba, Haiti, and Trinidad and Tobago.

16. This agreement has been ratified by 69 States, including Barbados and Cuba, Haiti, and Trinidad and Tobago.

17. General Assembly Resolution 1721D (XVI) of 20 December 1961.

international understanding and respect for others (Art. IV and VII) and co-operation to achieve the objectives of the Declaration (Art. III and VIII). The Declaration concludes by stating that its principles 'shall be applied with due regard for human rights and fundamental freedoms' (Art. XI).

42. As part of its programme concerning communications policy, Unesco has begun a series of regional inter-governmental conferences, the first one of which was devoted to the region of Latin America and the Caribbean. It was held in San José de Costa Rica on 12-21 July 1976 and, after examining the problems of the development of modern communication systems, the formulation of communications policy, problems of planning, training and research, the Conference adopted a Declaration and some 30 recommendations. A number of human rights principles are reflected in the Declaration of San José: the right of access to all cultural property and the right to free and democratic participation in various forms of expression; the duty to use means of communication for peaceful purposes; the joint responsibility of the State and of its citizens to set up programmes for the broad and positive use of means of communication within the framework of development policy; the need to base national communication policy on national realities, freedom of expression and respect for individual and social rights.¹⁸ The Recommendations are addressed to the Member States of Latin America and the Caribbean and set out specific measures suited to the particular realities of those countries. It should be noted that these Recommendations reflect a clear recognition of the divergence of political opinions concerning freedom of expression and the right to information in the light of the just and necessary demands of the countries of the region for a more balanced international circulation of communication and information. The adoption of appropriate legislation, the creation of national information agencies and the establishment of coherent communication policies are among

18. Final Report, Document COM/MD/38, Unesco, Paris, October 1976.

the measures recommended to remedy the situation.¹⁹ The Member States of the region are invited to recognize the existence of a 'right to communicate'²⁰ and Unesco is requested to prepare a declaration on this right.²¹

43. These same problems were at the forefront of the examination by the General Conference at its 19th session (Nairobi, November 1976) of the text of a Draft Declaration on Fundamental Principles Governing the Use of the Mass Media in Strengthening Peace and International Understanding and in Combatting War Propaganda, Racism and Apartheid. The General Conference invited the Director-General to hold further broad consultations with experts with a view to preparing a final draft to be submitted to Member States in late 1977 or early 1978.²² The new draft may be presented to the 20th session of the General Conference as this item will be on its agenda.

III. The means available to Unesco for the implementation of human rights within its fields of competence

44. As has been already stated, Unesco contributes to the implementation of human rights by activities relating to promotion or protection or both, although the distinction is rarely made between the two types of implementation. A typical promotional activity would be the publishing of a textbook for the teaching of human rights at institutions of higher learning or the organizing of an open house at the Organization's headquarters on Human Rights Day. The examination of reports submitted by governments on the measures taken to implement a recommendation adopted by the General Conference or the handling of a communication referring to a particular case of an alleged violation of a human right falling within Unesco's field of competence would be closer to what is commonly understood

as the protection of human rights. The fact that the dissemination of the recommendation in question increases awareness of human rights illustrates how the function of promotion and protection are easily combined.

45. The emphasis in this paper being on the legal aspects of Unesco's role with respect to human rights, only brief mention will be made of the means it uses to promote human rights within its fields of competence through the execution of its programme activities. Greater attention will be paid to the application of conventions and recommendations, adopted under its auspices and to the handling of communications.

A. The execution of Unesco's programme activities

46. The programme and budget of Unesco are adopted every two years by the General Conference, which determines the policies and the main lines of work of the Organization.²³ The Executive Board which normally meets twice a year, examines the programme of work prepared by the Secretariat, submits its recommendations thereon to the General Conference and, under the authority of the latter, is responsible for the execution of the programme.²⁴

47. The human rights activities appearing in the programme may be proposed by the Director-General, which is the most common practice, by Member States during the preparation of the draft programme by the Secretariat, by the Executive Board as it makes recommendations on the draft programme or by Member States during the examination of the draft programme by the General Conference. Ample opportunity is provided to devise activities particularly suited to the promotion of human rights which may take the form of expert meetings, research projects, publications of all sorts, production of audio-visual materials, exchange of information, establishing of research and training centers, provision of fellowships and study grants and other appropriate activities. All

19. Recommendation No. 1.

20. Recommendation No. 4.

21. Recommendation No. 5.

22. 19 C/Resolution 4.143.

23. Constitution Article IV, B, 2.

24. Constitution Article V, B, 5(4) and (6) and VI, 3(a).

of these means are in fact used for the promotion of human rights.

48. A major innovation in the elaboration of Unesco's programme was the preparation of a Medium-Term Plan for 1977-1982, which has already been quoted several times. This plan, in the words of the General Conference, is 'based on a thorough analysis of the world's major problems which makes a significant contribution to the work of reflection undertaken by the international community with a view to finding solutions to these problems, founded, in particular, on a concern for justice and equity'.²⁵ The document lists ten sets of world problems and places 'the assurance of human rights' at the head of the list. In approving the broad lines of the document, the General Conference expressed the opinion that they would 'strengthen Unesco's activities on behalf of human rights and peace'.²⁶ The five 'objectives' adopted by the General Conference under Problem 1-Assurance of human rights, are:

1.1 Promotion of research on measures aimed at assuring human rights and fundamental freedoms both for individuals and for groups, on the manifestations, causes and effects of the violation of human rights, with particular reference to racialism, colonialism, neo-colonialism and apartheid, as well as on the application of the rights to education, science, culture and information and the development of normative measures to further these rights.

1.2 Promotion of appreciation and respect for the cultural identity of individuals, groups, nations or regions.

1.3 Improvement of the status of women.

1.4 Development of activities to aid refugees and national liberation movements in the fields of Unesco's competence.

25. 19 C/Resolution 100 adopted on 29 November 1976, para. 2.

26. 19 C/Resolution 100, para. 5(a).

1.5 Promotion of education and wider information concerning human rights.

49. In the relevant section of the Medium-Term Plan for each of these objectives, the basic problem is stated, its historical background explained, the principles of action and desired impact defined and the main programme actions proposed.²⁷ With the orientation this Medium-Term Plan provided and the high priority the Member States have given to human rights in it, Unesco's action in the promotion of human rights is bound to be reinforced in the years to come.

B. The application of conventions and recommendations adopted under the auspices of Unesco

50. It should be recalled that most of the 23 conventions, agreements and protocols, and of the 22 recommendations adopted by the General Conference or by special intergovernmental conferences, involve questions of human rights.²⁸ The Constitution of Unesco sets out the implementation machinery for these instruments: 'The General Conference shall receive and consider the reports sent to the Organization by Member States on the action taken upon the recommendations and conventions' adopted by it (Article IV, paragraph 6). Member States submit these reports to the Organization 'at such times and in such a manner as shall be determined by the General Conference' (Article VIII). The reporting procedure is governed by Part VI of the 'Rules of Procedure concerning Recommendations to Member States and International Conventions covered by the terms of Article IV, paragraph 4 of the Constitution', adopted by the General Conference at its 5th session

27. Document 19 C/4, Unesco, 1977, pp. 1-34.

28. The six conventions, and their relevant protocols, the two declarations and the twelve recommendations considered as having the most direct bearing on human rights are listed in the annex to the present paper with indications as to how many ratifications have been received and which Caribbean countries are parties.

and modified at its 7th and 17th sessions. In accordance with these Rules, the Member States report to the General Conference 'on the action they have taken to give effect to conventions or recommendations adopted by the General Conference' (Article 16). An initial report is submitted to the first ordinary session of the General Conference following the one which adopts the instrument and additional reports may be requested by the General Conference. Comments made by the General Conference on these reports are transmitted not only to Member States but also to the United Nations, to National Commissions and 'to any other authorities specified by the General Conference' (Article 19).

51. Two Unesco conventions make provision for a specific procedure whereby action can be taken on the implementation of certain human rights—norms within the spheres of competence of Unesco: these are, on the one hand, the Convention against Discrimination in Education and its related Protocol, and on the other, the Convention for the Protection of Cultural Property in the Event of Armed Conflict.

52. As regards the Convention and Recommendation against Discrimination in Education adopted on 14 December 1960 and entered into force on 22 May 1962,²⁹ the reports by the States Parties are drawn up on the basis of a detailed questionnaire, prepared by the Committee on Conventions and Recommendations in Education and adopted by the General Conference. The replies received by the Secretariat are analysed by the Secretariat and examined by the above-mentioned Committee.³⁰ After examining the reports the Committee itself draws up a report for submission to the Executive Board, which transmits it with its comments to the General Conference.

53. Article 8 of the Convention allows for jurisdiction of the International Court of Justice, 'at the request of the parties' over

29. This Convention has been ratified or accepted by 64 States, including Barbados and Cuba.

30. Decisions 70/EX 5.2.1 and 98 EX/9.6, para. 12(a).

any dispute between two or more States Parties to the Convention concerning the interpretation or application of the Convention. This procedure, which is dependent on the will of the Parties and takes place outside the Organization, has never been used.

54. Another procedure has been established by the Protocol instituting a Conciliation and Good Offices Commission to be responsible for seeking the settlement of any disputes which may arise between States Parties to the Convention. This Protocol was adopted in 1962, and entered into force in 1968. Unlike Article 8 of the Convention, the Protocol makes the powers of the Commission mandatory. The Commission is a permanent one, and consists of eleven members elected by the General Conference from among candidates nominated by the States Parties to the Protocol. The members serve in their personal capacity, but an *ad hoc* member may be designated when no member is a national of one of the States Parties to the dispute. The Commission deals with communications from States Parties to the Protocol alleging that another Party is not giving effect to a provision of the Convention (Article 12, paragraph 1).

55. Article 13 of the Protocol stipulates that from the sixth year after its entry into force (i.e. October 1974), the Commission may also be made responsible for seeking the settlement of any dispute between States which are parties to the Convention but not necessarily parties to the Protocol, subject to the agreement of these States. Referral to the Commission is thus open to all States Parties to the Convention and to them. However, all domestic remedies must have been exhausted before the Commission can deal with a matter. The Commission's role is to ascertain the facts and make its good offices available to the States concerned in the dispute with a view to a solution based on respect for the Convention (Article 17). If an amicable solution is reached, the Commission makes a brief report stating the facts and the solution reached; otherwise it makes recommendations. For example, it may request the International Court of Justice to give an advisory opinion on any legal question connected with the matter (Article

18). Separate opinions and the written and oral submissions of the Parties are attached to the report (Article 17).

56. It should be noted that the procedure under the Protocol is limited to disputes between States, there being no provision for complaints by individuals. To date, no communication of the type referred to in paragraph 1 of Article 12 of the Protocol has been submitted to the Commission.

57. The Convention for the Protection of Cultural Property in the Event of Armed Conflict was adopted at the Hague on 14 May 1954 and is supplemented by a set of Regulations for the Execution of the Convention.³¹ Instruments of ratification or accession relating to this Convention have been deposited on behalf of 67 States. According to the Regulations supervision of the application of the provisions of the Convention is the responsibility of Commissioners-General for Cultural Property, who are chosen from an international list drawn up by the Director-General of Unesco and consisting of persons nominated by the High Contracting Parties. As soon as hostilities break out a Commissioner-General is appointed to each of the States engaged in conflict, by common agreement between the government of the country in which he is to carry out his mission and the Protecting Power acting for the other Party, or in the absence of such a Protecting Power, by a neutral State. Each belligerent appoints a representative for cultural property situated in its territory, and the Protecting Power acting for each Party, where such Powers have been designated, appoints delegates accredited to the other Party. The delegates of the Protecting Power may have recourse to the Commissioner-General in the event of violation of the Convention, and in all cases they keep him informed of their activities with a view to ensuring observance of the Convention. The Commissioner-General may make representations with a view to the application of the Convention and, with the agreement of the State to which he is

31. The Convention has been ratified by 67 States, including Cuba and the Dominican Republic.

accredited, has the right to order an investigation or to carry one out himself. He may appoint inspectors or experts for specific missions. The Commissioner-General draws up reports on the application of the Convention and communicates them to the parties concerned and to their Protecting Powers. He sends copies to the Director-General, who may make use only of their technical contents.

58. In addition to the special machinery established for the application of the two Conventions which have just been discussed; a special procedure has been set up to deal specifically with one of Unesco's recommendations: the Joint ILO/Unesco Committee of Experts on the Application of the Recommendation concerning the Status of Teachers.

59. This recommendation was adopted on 5 October 1966 by a special intergovernmental conference and the decision to set up the Joint Committee was taken at the 14th session of the General Conference of Unesco (Paris, October-November 1966) and the 167th session of the Governing Body of ILO (Geneva, November 1966). The Committee's terms of reference are to examine the reports received from governments on action taken by them on the Recommendation and to report thereon to the two bodies which set it up. In accordance with a decision taken by the Governing Body of ILO (170th session) and the Executive Board of Unesco (77th session), the Joint Committee consists of 12 members sitting in their personal capacities and chosen on the basis of their competence in the principal domains covered by the Recommendation, each organization designating six members for the domains falling mainly within its province. So far the Committee has met three times (1968, 1970 and 1976).

60. In determining its methods of work, the Committee decided that it could take into consideration information on implementation of the Recommendation which might be received from national organizations representing teachers or their employers, and from international teachers' organizations having consultative status with

Unesco, without excluding information from other authoritative sources.³² Information concerning a particular country is communicated to that country for any observations it may wish to make. The Committee also drew up a questionnaire with a view to obtaining information on the application of the main provisions of the Recommendation by the Member States of both organizations. Apart from these sources, the Committee makes use only of official information contained in United Nations, ILO and Unesco documents.

61. The Committee's Secretariat (provided by Unesco and the International Labour Office) undertakes a preliminary analysis of all information received, and this analysis is then examined by a working group of the Committee. After studying the information provided, the Committee, in its report, adopts conclusions and recommendations concerning any studies it may consider necessary on situations where it feels that the application of the Recommendation is unsatisfactory. The Committee's report is then submitted to the governing bodies of the two organizations. In the case of Unesco, the report is first studied by the Committee on Conventions and Recommendations in Education, after which it is transmitted, together with the latter's recommendations, to the Executive Board, which in turn transmits it to the General Conference with its own recommendations.

C. The handling of communications addressed to Unesco in connection with specific cases of violation of human rights in the Organization's spheres of competence

62. As early as its 29th session (1952)

32. Since no definition was given of 'other authoritative sources', the Secretariat of the Joint Committee has not considered itself entitled to pass on to the Committee reports from organizations, particularly research organizations, that did not fall into the other categories mentioned, nor communications from individuals. In principle, the latter are handled in accordance with the procedure laid down by 77 EX/Decision 8.3. which will be examined below.

the Executive Board noted that the Director-General and the Board's Chairman 'receive communications from private persons or associations alleging violations by States . . . of certain human rights . . .'.³³ and at its 30th session decided that the Chairman of the Board could examine such communications and submit to the Board those which seemed to him to call for some action by the Organisation.³⁴ The application of this decision fell into disuse and it was not until the 77th session (1967) that the Board adopted another procedure in its Decision 8.3, which is still in force.

63. The procedure of 77 EX/Decision 8.3 is analogous but not identical to that set out in Resolution 728F of ECOSOC. The difference lies essentially in the requirement that the author of the communication must accept that his name be divulged if the procedure is to be applied.

64. In application of the terms of 77 EX/Decision 8.3 and in accordance with the practice established by the Secretariat, communications received by the Secretariat are transmitted to the Committee on Conventions and Recommendations in Education (formerly the Special Committee on Discrimination in Education) if they are found (a) to be addressed to Unesco by an identifiable author (i.e., not anonymous or merely copies of communications addressed elsewhere), (b) to concern specific cases (i.e. refer to an identifiable victim or victims), (c) to involve human rights and (d) to relate to Unesco's fields of competence.

65. If the above conditions are not met no action is taken in application of 77 EX/Decision 8.3.

66. Before communications which meet the conditions mentioned above are sent to the Committee, the author is notified of the procedures and asked if he wants it to be applied and if he has no objection to his name or that of his organization being divulged. When an affirmative reply is received from the author, the communication is transmitted to the government concerned with a

33. 29 EX/Decision 11.3

34. 30 EX/Decision 11

letter informing it of the procedure and the possibility for that government to send a reply which it can request to have transmitted in part or in full to the Committee.

67. The communication and the reply, if any, from the government are transmitted to the Committee which examines them in private sessions. The government concerned may, upon its request, be heard before the Committee.

68. Once the Committee has completed its work, it reports to the Executive Board. The latter takes such decisions as it deems appropriate in connection with the report. With respect to the situation in Chile, the Board endorsed the conclusions of the Committee contained in the report, and expressed its 'profound disquiet at the continuing infringements according to the information received, of human rights in the fields of education, science, culture and information'. It also renewed its appeal to the authorities of that country to take all necessary measures to restore and safeguard human rights and decided that the Committee should examine further the communications which would call for additional consideration.³⁵

69. In the same Decision the Board invited the Committee to review its procedures, including methods of work and of reporting to the Board, with a view to making recommendations for improvement. Before this review had been completed, the General Conference invited the Board and the Director-General 'to study the procedures which should be followed in the examination of cases and questions which might be submitted to Unesco concerning the exercise of human rights in the spheres to which its competence extends, in order to make its action more effective'.³⁶

70. It will be noted that the study involved refers not only to cases, as is true in the procedure of 77 EX/Decision 8.3, but also to 'questions' and that it concerns not only violations but, more generally 'the exercise of human rights'. A document on this subject was submitted to the Board at its 102nd

session³⁷ and, after a preliminary examination, was studied in greater depth by a 13-man working group,³⁸ whose report is before the 103rd session.³⁹

71. A final word should be said about the possibility which exists parallel to the procedures described above for humanitarian intercession. As is commonly practised by high officials of government or the Secretary-General of the United Nations, the Director-General of Unesco may intercede, through appropriate channels and with due discretion and respect for the rule of non-intervention in internal affairs of States, in order to secure a solution to a matter involving the violation of human rights consistent with the obligation all Member States of the United Nations have subscribed to, namely to act jointly and separately in cooperation with the Organisation in order to achieve universal respect for and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.

72. It is this objective, which is as noble as the aspirations of the peoples of the United Nations for whom the Charter was written, to which Unesco, in its fields of competence, is committed and toward which it will continue to strive.

37. 102 EX/19. The analytical summary of the discussion is found in document 103 EX/18.

38. The Group was created in accordance with 102 EX/Decision 5.6.2.

39. 103 EX/19

35. 99 EX/Decision 9.5

36. 19 C/Resolutions 6.113 and 12.1

HUMAN RIGHTS INSTRUMENTS OF UNESCO

A. CONVENTIONS AND AGREEMENTS

of a normative character adopted either by the General Conference or by international conferences of States convened solely by Unesco or jointly with other international organizations.

(The number of States on whose behalf instruments of ratification or acceptance, or notifications of succession, have been deposited and the names of States of the Caribbean region among them are shown in parentheses.)

1. Universal Copyright Convention, with Appendix Declaration relating to Article XVII and resolution concerning Article XI. 6 September 1952. (72 States, including Bahamas, Cuba and Haiti)
 - 1a Protocol 1 annexed to the Universal Copyright Convention, concerning the application of that Convention to the works of stateless persons and refugees. 6 September 1952. (52 including Haiti and Cuba)
 - 1b Protocol 2 annexed to the Universal Copyright Convention, concerning the application of that Convention to the works of certain international organizations. 6 September 1952. (54 including Cuba and Haiti)
 - 1c Protocol 3 annexed to the Universal Copyright Convention concerning the effective date of instruments of ratification or acceptance of, or accession to, that Convention. 6 September 1952. (45 including Haiti)
2. Convention for the Protection of Cultural Property in the Event of Armed Conflict, with Regulations for the Execution of the Convention. 14 May 1954. (58 including Cuba and Dominican Republic)
 - 2a Protocol for the Protection of Cultural Property in the Event of Armed Conflict. 14 May 1954. (58 including Cuba)
3. Convention against Discrimination in Education. 14 December 1960. (65 including Barbados and Cuba)
 - 3a Protocol instituting a Conciliation and Good Offices Commission to be responsible for seeking the settlement of any disputes which may arise between States Parties to the Convention against Discrimination in Education. 10 December 1962. (23)
4. Convention on the Means of Prohibiting and Preventing the illicit Import, Export and Transfer of Ownership of Cultural Property. 14 November 1970. (35 including Dominican Republic)
5. Universal Copyright Convention as revised at Paris on 24 July 1971 with Appendix Declaration relating to Article XVII and Resolution concerning Article XI. 24 July 1971. (24 including Bahamas)
 - 5a Protocol 1 annexed to the Universal Copyright Convention as revised at Paris on 24 July 1971 concerning the application of that Convention to works of Stateless persons and refugees. 24 July 1971. (16)
 - 5b Protocol 2 annexed to the Universal Copyright Convention as revised at Paris on 24 July 1971 concerning the application of that Convention to the works of certain international organizations. 24 July 1971 (17)
6. Convention concerning the Protection of the World Cultural and Natural Heritage. 16 November 1972. (32 including Guyana)

B. DECLARATIONS

1. Declaration of the Principles of International Cultural Co-operation. 4 November 1966.
2. Declaration of guiding principles on the use of satellite broadcasting for the free flow of information, the spread of education and greater cultural exchange. 15 November 1972.

C. RECOMMENDATIONS

1. Recommendation concerning the Most Effective Means of Rendering Museums

- Accessible to Everyone, 14 December 1960.
2. Recommendation against Discrimination in Education, 14 December 1960.
 3. Recommendation on the Means of Prohibiting and Preventing the Illicit Export, Import and Transfer of Ownership of Cultural Property, 19 November 1964.
 4. Recommendation concerning the Status of Teachers, 5 October 1966. (Adopted by a special intergovernmental conference convened by Unesco.)
 5. Recommendation concerning the Preservation of Cultural Property Endangered by Public or Private Works, 19 November 1968.
 6. Recommendation concerning the Protection, at National Level, of the Cultural and Natural Heritage, 16 November 1972.
 7. Recommendation concerning Education for International Understanding, Co-operation and Peace and Education relating to Human Rights and Fundamental Freedoms, 19 November 1974.
 8. Revised Recommendation concerning Technical and Vocational Education, 19 November 1974.
 9. Recommendation on the Status of Scientific Researchers, 20 November 1974.
 10. Recommendation on the development of adult education, 26 November 1976.
 11. Recommendation on participation by the people at large in cultural life and their contribution to it, 16 November 1976.
 12. Recommendation concerning the international exchange of cultural property, 26 November 1976.

APPENDIX VIII

**TABLE OF CARIBBEAN RATIFICATIONS OF
INTERNATIONAL INSTRUMENTS ON HUMAN RIGHTS**

(As at June 30, 1977

x = ratified

S = signed but not ratified)

| State | Convention on Racial Discrimination | Internat'l Covenant on Economic, Social and Cultural Rights | Internat'l Covenant on Civil and Political Rights | Optional Protocol |
|--------------------|-------------------------------------|---|---|-------------------|
| Bahamas | X | X | X | X |
| Barbados | X | X | X | X |
| Cuba | X | | | |
| Dominican Republic | | | | |
| Grenada | | | | |
| Guyana | X | X | X | |
| Haiti | X | | | |
| Jamaica | X | X | X | X |
| Surinam | | X | X | X |
| Trinidad & Tobago | X | | | |
| Venezuela | X | S | S | S |