

1952-2012:
**Congresses and major conferences
of the International Commission of Jurists**

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Composed of 60 eminent judges and lawyers from all regions of the world, the International Commission of Jurists promotes and protects human rights through the Rule of Law, by using its unique legal expertise to develop and strengthen national and international justice systems. Established in 1952 and active on the five continents, the ICJ aims to ensure the progressive development and effective implementation of international human rights and international humanitarian law; secure the realization of civil, cultural, economic, political and social rights; safeguard the separation of powers; and guarantee the independence of the judiciary and legal profession.

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International Commission of Jurists

P.O. Box 91,

33, Rue des Bains, Geneva, Switzerland E-mail: info@icj.org

www.icj.org



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Foreword

The 2012 Congress of the International Commission of Jurists marks the 60th anniversary of the founding of our organization. As we celebrate this important milestone, we would do well to look back and reflect on our long and steadfast commitment to the defence of human rights and the Rule of Law and how we have expressed that commitment over the course of six decades.

For the first time, the ICJ has brought together in a single document many of the key pronouncements enunciated by the organization as a whole since its foundation in 1952. These declarations are testament to the impact the ICJ has had over the past six decades. From the first International Congress of Jurists held in Athens in 1955 to the 16th World Congress held in Geneva in December 2008, the ICJ has consistently sought to mobilize jurists in support of the Rule of Law and to advance human rights. Some of the earliest statements of the ICJ, such as the 1959 Delhi Declaration setting out the ICJ conception of the dynamic conception of the Rule of Law, are still frequently referenced and carry continued authority to this day.

The ICJ's declarations are more than an expression of the organization's internal priorities at any one time. While some of the language in the early declarations may seem somewhat arcane, the documents reflect principles and objectives that carry universal and perennial applicability. The normative principles and objectives contained in these texts have frequently inspired inter-governmental bodies, including the United Nations, as well as bar associations, lawyers, academic centres and other human rights NGOs around the world. We can be proud of their impact and encouraged that the Congresses of the ICJ are seen as an important mechanism for defining and elaborating principles that actively contribute to the advancement of the Rule of Law and human rights.

As we approach the ICJ's 17th World Congress to consider 'the Call for Stronger International Mechanisms To Remedy Human Rights Violations', ICJ Commissioners, Honorary Members, National Sections and Affiliated Organizations have an important opportunity to address the need to strengthen international mechanisms, mindful that the objectives that emerge can have an impact similarly forceful to that of previous resolutions.

It is my hope that this compilation will serve as an inspiration to jurists and human rights defenders attending the 2012 Congress as they look to build upon the work of those that have represented the ICJ in the past.



Wilder Tayler
Secretary-General
International Commission of Jurists

International Congress of Jurists, 1952

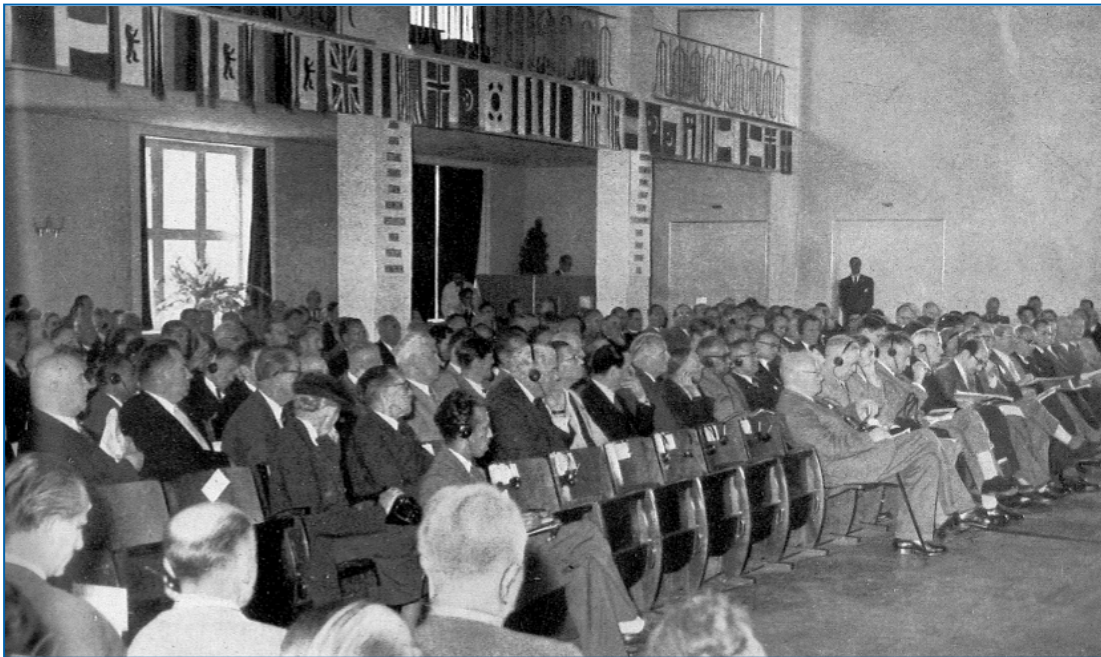
West Berlin, Germany

July 1952

The International Congress of Jurists emerged from a body of German jurists called the 'Investigating Committee of Free Jurists' (ICJF). The ICJF had been engaged in the task of gathering information about systematic injustices in the Soviet Zone of Germany. An important objective for the ICJF was to obtain the endorsement and support of jurists from around the world. With this in mind, the ICJF organised an 'International Congress of Jurists' to be held in West Berlin in July 1952.

The 106 voting delegates present at the first International Congress of Jurists included thirty-one ministers and statesmen, thirty-two professors, and thirty-five judges, counsel and presidents of high courts. Representatives of thirty-two free world countries participated, along with eleven refugee delegations representing Baltic Republics, Russia, Georgia and the Eastern European satellite States.

The Congress functioned as a tribunal to review the ICJF's complaints of injustice in the Soviet Zone. Assembled jurists heard witnesses and reviewed documents presented by the ICJF. The Congress focused almost exclusively on the situation in the Soviet Zone of Europe. It was claimed that British and Dutch jurists resisted an Indian delegate's efforts to discuss other human rights issues, such as racial discrimination in South Africa and decolonization.



Opening Meeting of the International Congress of Jurists, 25th July 1952

The Congress also determined to make some provision for the continuity and expansion of the work of the ICJF to other regions. Congress participants appointed a five-member 'Standing Committee of the Congress' to carry out further investigations into human rights violations. In 1953, the "International Congress of Jurists Standing Committee" became the "International Commission of Jurists (ICJ)" that we know today.

First Meeting of the Executive Committee of the International Commission of Jurists, 1953

The Hague, Netherlands

1st – 2nd October 1953

(At the meeting of the Executive Committee of the International Commission of Jurists on October 1 and 2, 1953, the following Memorandum on the functions and organization of the International Commission was accepted as the definitive programme. The original draft of Dr. Friedenau was altered in places as to wording. Only ^{the} preliminary "Note" was, on Dr. Zellweger's proposal, given a different version).

INTERNATIONAL COMMISSION OF JURISTS

Functions and Organisation

In July 1952 an International Congress of Jurists assembled in Berlin on the invitation of the Investigating Committee of Free Jurists. Delegates from 43 countries attended. (an account of the activities of the Investigating Committee of Free Jurists is contained in the enclosed monograph by its president, Dr. Theo Friedenau, on "The Conspiracy of Just Men".) The Congress showed that the delegations, ignoring all differences of race, religion and political views, were united by common conceptions of justice which led to their general agreement in estimation of judicial realities behind the Iron Curtain. The nature of these realities had been demonstrated to the Berlin Congress in examples from the constitutional, penal, economic and labour law in the Soviet Zone of Germany. The Investigating Committee of Free Jurists had presented a carefully worked out monograph on the subject under the title "Injustice the Régime". The Congress recognized that the systematic flouting of those principles of justice which are the common property of the civilised nations also constitute a danger to the rest of the world, and it is therefore the duty of jurists in all free countries to reveal and combat this danger by spreading information about it. The Congress therefore elected a committee of five members, the International Commission of Jurists, to continue its work.

Judging from the experience gained from the activity to date of the Investigating Committee of Free Jurists in West Berlin and of the Congress, it is to be expected that the prosecution of the work of the Congress would exercise an increasing pressure by conceptions of justice in the free world which in the long run is capable of leading to a weakening in the unjust actions and thus to aiding the population in those states ruled by unjust systems of government.

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I. PROGRAMME

The International Commission of Jurists must start from the point that without certain minimum guarantees of justice, which are recognised in all civilised countries as "Human Rights", life is not worth living. The Commission has thus two main tasks:

- A. To defend right in its entirety against the menace of injustice as a system of government and to intervene on behalf of the preservation and development of the principles of justice which have grown up in civilised countries in the course of centuries.
- B. To plead for the restoration of constitutional conditions in those countries now ruled by injustice.

To fulfil programme point A the ICJ suggests founding national committees for every free country in the world; these can then operate in a framework of continental sections (Europe, America, Africa, Near and Far East), availing themselves of the possibilities provided in the Centre.

The following steps appear necessary:

- 1. The spread of information about all cases of systematic injustice and the development of legislation under the totalitarian dictatorships by
 - a. Dispatching documentary material to all members and persons who can be interested in this, and to legal periodicals, politicians, the responsible UN commissions and international organisations.
 - b. Publishing a regular bulletin carrying the most important information about legal developments in those states ruled by unjust systems of government, in addition to contributions from prominent experts on questions of comparative legislation, suggestions for propagatory work, etc.
 - c. Publishing the results of the work of the expert committees on public law, civil law, labour law and criminal law on the basis of documentary material in professional periodicals, in speeches by jurists, organisations etc.
 - d. Organising lectures in the various countries. In the event of the national sections being large enough, the lectures can be arranged by them or by organisations which can be interested in the lectures. The possibility can be considered of using conventions, annual meetings etc. of business organisations or political and confessional groups as the occasions for such lectures.

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- e. Forming study circles, especially among university students.
 - f. Promoting centres for research into problems of Eastern law.
 - g. Promoting the publication of expert and propagatory literature on the subject.
2. Steps to combat the penetration of unjust ideas and the spread of acts of injustice into the free world.
- a. Attitude to be proclaimed to all happenings and political events having an influence on the international development of law, particularly to congresses and the activity of legal organisations and above all when legal forms are misused in the pursuit of political aims.
 - b. Stigmatising of manifest acts of injustice by organs of jurisdiction and government.
 - c. The holding of international working conventions and congresses.

For the fulfilment of programme point B the opening of branch offices near those countries ruled by injustice is necessary. These branches (Munich, Constantinople, Stockholm, Berlin etc.) should have an information department and an operative department. While the information department collects documentary material on legal developments and passes it on to the Centre in the Hague for collation, the operative department will use the information towards the operative combating of injustice.

The following steps are necessary:

1. The collection of all documentary material on legal development in those countries ruled by systems of injustice, e.g. legislation, ordinances, prosecutions and verdicts, and the interviewing of persons who have fled from those countries.
2. Registration of all acts of injustice, exposure of the transgressors who under orders from or tolerated by the rulers commit criminal acts, and the influencing of the judiciary to abstain from acts of injustice by reference to their responsibility under penal law.

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3. Steps to prevent a metamorphosis in the consciousness of justice by means of information to jurists and those performing a judicial activity in those states ruled by systems of injustice, as to the significance and function of justice in the free world in preventing the application of biased influence through unjust ideas. The International Congress of Jurists should arrange for internationally recognized experts who are qualified to undertake this to discuss the "new ideas of justice" by comparison with legal developments in the free world in special broadcasts (Radio Free Europe, The Voice of America, BBC) or in pamphlets.
4. Assistance for the population in those countries by means of distribution of advice on procedure and legal advice. In this use should be made of the information reaching the branch offices so as to inform the population by broadcast references and pamphlets about methods of defending itself against unjust measures.

In other respects the activity of the ICJ will be guided by the experience of the West Berlin Investigating Committee of Free Jurists.

The International Congress of Jurists, 1955

Athens, Greece

13th - 20th June 1955

"The great importance of the Athens Congress of Jurists lies in the fact that it contributed so greatly to the fortification of this idea of legality and unity among the Jurists of the world".

- Bulletin of the International Commission of Jurists, No. 3, p. 6

The 1955 Athens Congress was the first general congress held by the ICJ following the founding of the organization in 1952. The Congress began to elaborate the elements that would form the principles and values of the ICJ. It considered the question of the minimum safeguards necessary to ensure the Rule of Law, and the protection of individuals against arbitrary action by the State.

The Athens Congress gathered 176 participants from 48 countries. Although the impetus for the ICJ's establishment was persecution of jurists by the Soviet bloc, the organization was determined to be global in nature, covering all political systems. Hence, nine jurists from nine Soviet bloc countries participated. The jurists present included three Chief Justices, 15 Judges of Superior Courts, 98 lawyers and 60 law professors and lecturers.

The ideas underlying the International Congress in Athens were that the Rule of Law stands for a universally applicable set of principles, united by respect for the individual, and the abhorrence of any arbitrary rule or law laid down without the consent or control of the people over whom it is exercised. The application of the Rule of Law was not to be limited to any specific legal or economic system, nor to a particular form of government or culture.¹

The discussions of the Congress were informed by the ICJ briefing book: "Justice enslaved: a collection of documents on the Abuse of Justice for Political Ends" which documented the ICJ's Rule of Law doctrine and Eastern European "socialist legality". The participants constituted four thematic committees, addressing key issues on the Rule of Law and issuing resolutions on each of the following themes: Public Law; Criminal Law; Civil and Economic Law, and Labour Law. These resolutions reflected "the reaction of jurists from 48 countries to the juridical rule in States which have fallen under communist domination".²

The elaborated Act of Athens reflects the results of the deliberations of the four committees of the Congress and consists of a basic formulation of the Rule of Law. It was adopted by acclamation in plenary session.

¹ Foreword by Jean-Flavien Lalive, former ICJ Secretary-General, in the International Commission of Jurists (ed.), *The rule of Law in a Free Society. A Report on the International Congress of Jurists, New Delhi, India, January 5-10, 1959*, Geneva, p. VI.

² Bulletin of the International Commission of Jurists, No. 3, p. 9.

Act of Athens

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

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

Do solemnly Declare that:

1. The State is subject to the law.
2. The Governments should respect the rights of the individual under the Rule of Law and provide effective means for their enforcement.
3. Judges should be guided by the Rule of Law, protect and enforce without fear or favour and resist any encroachments by governments political parties on their independence as judges.
4. Lawyers of the world should preserve the independence of their profession, assert the rights of the individual under the Rule of Law and insist that every accused is accorded a fair trial.

And we call upon all judges and lawyers to observe the principles and

Request the International Commission of Jurists to dedicate itself to the universal acceptance of these principles and expose and denounce all violations of the Rule of Law.

Done at Athens this 18th day of June 1955

Resolutions of the Plenum of the International Congress of Jurists

Final Resolutions of the Congress

The International Congress of Jurists, convening in Athens with the participation of delegates from forty-eight countries,

after having studied the violations of human rights in the constitutional and judicial system of countries which do not respect the fundamental principles of State ruled by Law;

inspired by the conviction that the Rule of Law should be applied internationally as well as internally in every State and must permeate every domain of law, so that the rights and liberties of individuals are protected;

deems it important to state publicly:

I. that Justice demands that a people or an ethnic or political minority be not deprived of their natural rights and especially of the fundamental rights of man and citizen or of equal treatment for reasons of race, colour, class, political conviction, caste or creed;

II. that it is the duty of public authorities to respect those principles;

Finally the Congress asks the International Commission of Jurists to formulate a statement of the principles of Justice under Law, and to endeavour to secure their recognition by international codification and international agreement.

Resolution on Procedure

(...)



The International Congress of Jurists, Athens (1955)

Resolutions of the Committee on Public Law

Resolution I

WHEREAS, from the documentation presented to the International Congress of Jurists, it follows that systematically and on a broad scale human rights are being violated, and

WHEREAS, practical measures to put an end to such violations and to prevent the re-occurrence of such violations are needed, and,

WHEREAS, the United Nations is actively preparing the Convention on Human Rights,

RESOLVED, that the International Congress of Jurists expresses its wish that the United Nations accomplish this important task as soon as possible, and further

WHEREAS, being aware that in addition to the exact and binding formulation of these human rights, measures should be taken to guarantee that they will be respected,

RESOLVED, that the International Commission of Jurists is requested to appoint a special committee to study the question of determining practical means to prevent violations of these human rights and to publish its findings as soon as possible.

Resolution II

This Congress is of the opinion that discrimination based on race and colour is contrary to justice, the Charter of the United Nations, and the Universal Declaration of Human Rights, and is abhorrent to the conscience of the civilized world.

The Committee on Public Law of the International Congress of Jurists, after having heard the statements made by Mr. Purshottam Trikamdas on the legislation concerning the 'apartheid', establishing inequality before the Law to the prejudice of certain groups of population in South Africa, requests the International Commission of Jurists to proceed to an extensive investigation of the juridical situation of the groups of discriminated population and to publish the results of this survey as soon as possible.

Resolution III

Convinced that the recognition of the right to self-determination is one of the greatest achievements of our era and one of the fundamental principles of international law, the Committee on Public Law of the International Congress of Jurists emphatically condemns its non-application, expressing the wish that such practices should disappear forever.

Resolution IV

The Committee on Public Law of the International Congress of Jurists decides that the Cyprus question referred to it by the Plenary Session of the Congress is covered by the resolution regarding the application of the right of self-determination.

Resolution V

The Committee on Public Law of the International Congress of Jurists, Athens 1955,

having heard the specific reports by its rapporteurs,

having examined the documentation submitted by the International Commission of Jurists at The Hague,

having heard various witnesses testify on the problems covered therein,

having stated that in the captive countries of Central and Eastern Europe as well as in the Soviet Zone of Germany there are effectively violated the material, moral, and economic liberties of man as well as his fundamental rights, including particularly the right to participate in the public life of the country, and

with regard to the stipulations of the Universal Declaration of Human Rights,

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

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

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

II. No fundamental right may be interpreted as implying the authorization for any state or for anyone of its organs to issue legislative provisions, to undertake an activity or to commit an act having as its purpose the restriction or suppression of that fundamental right.

Consequently, everyone has the right to freedom of opinion and expression; this implies the right not to be molested or persecuted for holding opinions and not to be forced to express an opinion contrary to conviction.

III. Everyone must be guaranteed freedom of expression through all media of communication, particularly the press. There must be no legislative or administrative provisions encroaching upon this freedom.

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

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

IV. The private life of persons being inviolable, secrecy of mails must be guaranteed. No one must be persecuted for opinions expressed in correspondence.

V. Freedom of religion must be guaranteed. Religious faiths, the internal organization and worship of the different cults must be respected provided the public order and morals are not violated.

VI. Right to education must be guaranteed to all without any discrimination. School instruction must be given in the spirit of international understanding, of respect for the

dignity and fundamental rights of man. The teaching staff of the universities must not be molested by legislative or administrative measures taken to its detriment.

VII. Everyone is entitled to freedom of assembly and peaceful association and particularly to become a member of a political party of his own choice. No political party must be put in a preponderant position in the state apparatus through legislative or administrative provisions.

VIII. Everyone is entitled to take part either directly, or through freely chosen representatives, in the direction of the public life of his country.

The will of the people is the basis of the authority of public powers. This will must be expressed by free elections; all direct or indirect pressure exercised on the voters to the end to force them to express their opinion publicly is prohibited. The right to present candidates must belong to all political parties and to all political organizations. No measure should be taken during the elections which would permit the divulging of the personality of the voter or the contents of a ballot.

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

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

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

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

Resolutions of the Committee on Criminal Law

Resolution I

The Committee on Penal Law of the International Congress of Jurists, convening in Athens in 1955,

having perused the documents contained in Part B of the compilation of documents entitled "Justice Enslaved", and published in 1955 by the International Commission of Jurists at The Hague,

having heard the evidence of lawyers who have practiced in one of the so-called People's Democracies, and the evidence of persons who have been indicted, tried and punished, as well as that of others who have been arrested and imprisoned without trial in certain of these People's Democracies,

has passed the following Resolutions:

The Committee on Penal Law finds that there exists sufficient evidence to maintain that the fundamental rights of persons suspected or accused of crimes or offences, as laid down in the Universal Declaration of Human Rights, are disregarded and violated in certain People's Democracies, and deems it necessary to confirm the following principles as the basis of a penal system respectful of the law:

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

Every accused must have at least the right:

(a) to be immediately informed, on all points and in a language comprehensible to him, of the nature and the grounds of the charge brought against him;

(b) to be accorded the possibility and sufficient time for the preparation of his defense;

(c) to defend himself or to obtain the assistance of a defense counsel of his own choice, and, should he not dispose of the means of remunerating such counsel, to be assisted gratuitously by a defense counsel ex officio if the seriousness of the charge or the interests of justice so require;

(d) to examine or cause to be examined, in his presence, the witnesses for the prosecution, and to obtain the subpoena and the hearing of witnesses for the defense under the same conditions as apply to witnesses for the prosecution and according to the ordinary rules of procedure;

(e) to ask for the gratuitous assistance of an interpreter when he does not understand the language in which debates are conducted or is unable to express himself in the language of the court. Only the factual situation alone, such as it may appear as the result of judicial debate, may be decisive in the condemnation of the accused.

II. Since a free defense presupposes the liberty of the defense counsel, every lawyer called to represent an accused in a criminal matter must be permitted to prepare freely and

integrally a defense corresponding to the requirements of justice, to communicate with the accused, and to plead, free of influence or hindrance by reason of instructions from an official organ or party.

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

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

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

IV. Everyone has the right to liberty and security. No one shall be arbitrarily arrested, detained or deported. A person may be deprived of his liberty in the following cases only, and in accord with the methods and forms of procedure legally prescribed:

(a) when he is regularly arrested or detained for the purpose of compelling him to execute an obligation imposed on him by law;

(b) when he is regularly arrested or detained for the purpose of assuring his appearance before the competent jurisdiction, inasmuch as sufficient proof is available that the accused has committed a punishable offence and insofar as measures for public security and the administration of justice so require;

(c) when the person regularly arrested is a minor, the arrest being ordered for the purpose of supervised education or in view of bringing him before the competent authority.

(d) when the person is detained because he risks to spread a contagious disease, or because of mental illness, alcoholism, intoxication or vagrancy;

(e) when he is regularly arrested or detained for the purpose of preventing him from entering illegally on national territory, or because he is the object of a procedure for expulsion or extradition.

(f) when he is legally detained after conviction by a competent court.

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

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

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

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

V. No person may be subjected to torture in any form whatsoever, or to cruel, inhuman or degrading treatment.

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

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

VI. No person shall be subjected to cruel or inhuman punishment.

Every punishment must be determined within the bounds established by law. All the circumstances, both personal and those of fact, must be taken into consideration in order to arrive at an equitable sanction.

The punishment must not be inflicted exclusively for purposes of general intimidation, nor must it be imposed in a particularly severe manner for the purpose of utilizing convicted persons as an advantageous source of manual labor.

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

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

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

Resolution II

The Committee on Criminal Law of the International Congress of Jurists, convening in Athens in 1955,

having examined the documents listed in Part B of the collection of documents entitled "Justice Enslaved" and printed in 1955 by the International Commission of Jurists at The Hague, and

having heard the evidence of advocates who practiced the Law in one of the so-called People's Democracies, and the evidence of persons who were, in several other such People's Democracies, accused, tried and punished, and others who were arrested and imprisoned without trial,

has passed the following Resolutions:

I. The Committee finds that there was before it *prima facie* evidence to support the charge that fundamental rights of persons suspected or accused of a crime are being disregarded or violated in several of the People's Democracies contrary to the spirit of the Universal Declaration of Human Rights; and in particular;

A. the right of a person suspected of crime to have the ground for his arrest notified to him upon his arrest;

B. his right to counsel of his own choice, during his detention pending trial, at the trial, and on appeal, and to free communication with him;

C. his right to be brought to trial within a reasonable time after his arrest or else to be released, and his right not to be kept under arrest pending trial without warrant of a competent court;

D. the right of a person accused of crime to a fair trial; including:

1. his right to confront and examine all witnesses testifying against him;

2. his right to have defense witnesses produced in court and to testify in his presence;

3. his right to have the charges against him proved by lawful evidence, excluding confessions which have been obtained by threats, promises, violence or any other unlawful means; and excluding the accusation of accomplices or other witnesses obtained by threats, promises, violence or any other unlawful means;

E. the right of a person convicted of crime – other than petty contraventions – to appeal against convictions and sentence to a higher court.

II. The Committee is of the opinion that the fundamental rights of persons suspected or accused of crime, as enumerated above, should be guaranteed in every system of law and under international law.

III. The Committee expresses its grave concern at the apparent abuse of the process of courts for specific predetermined purposes of the executive branch of the government in the several People's Democracies. The evidentiary material before the Committee makes it appear *prima facie* that the personnel, machinery and procedure of criminal courts in those countries are being utilized to serve as cloak and cover for unlawful administrative acts and give them the outward appearance of judicial process. The Committee emphasizes that the right of a person accused of crime to a fair trial presupposes the existence and due functioning of courts of justice which are independent of, or in no way answerable to, the executive branch of the government or any organ of state other than a higher court of justice, as well as the existence and due functioning of a bar, the members of which are independent and in no way answerable for anything done or omitted in the performance of their duties as defending attorneys, other than to a court or an independent bar council.

Resolution III

Recommendation of the Criminal Law Committee concerning the KELEMEN case (Hungary).

The Committee on Penal Law of the International Congress of Jurists, assembled in Athens

in June 1955, has taken note of the report of the lawyer Veszy concerning the condemnation of Julius Kelemen in 1949 Hungary.

The Committee advises the International Commission of Jurists to carefully examine this case, and, should it prove desirable, to find appropriate ways and means which would result in a judicial reconsideration of the case.

Resolutions of the Committee on Civil and Economic Law

The work of this Committee was primarily concerned with the property relations and rights of the individual citizen with regard to State, State-owned and State-directed enterprises. The Committee recognizes that in the countries of the free world there exist essential differences, according to necessity, in the field of State enterprises.

In our time the state undertakes to an ever-increasing extent planning and responsibility with the aim of serving the public weal. The Committee insists, however, that a democratic state, no matter how far its planning and socialization extends, should ensure that it does not put itself above the law and that the private sector is not unjustly discriminated against or destroyed.

I. The Committee finds:

In the countries of the Soviet orbit private property is subjected to discrimination in favour of State property, confiscations and expropriations take place, which are arbitrary and run counter to the principles of a constitutional state. Such compensation, if any, as is paid upon expropriation, is inadequate or illusory. There is no possibility of appeal to an independent court on account of encroachments on private property.

The Committee holds:

A. That the right to own property is a fundamental human right and should be recognized in law and in practice without any discrimination.

B. That in case of expropriation or restrictions on use of private property, adequate compensation, of which the persons entitled may freely dispose, should be awarded. Confiscation of property through court judgments should not be used as a means of expropriation.

II. The Committee finds:

In the countries of the Soviet orbit private property and private enterprise are arbitrarily and unjustly subjected to discrimination through court judgments, through evasion of the laws in force or through a systematic interpretation thereof unilaterally in favour of the State or State-owned undertakings.

The Committee holds:

That in accordance with the principles of justice the state should be subject to the law in the same way and to the same extent as owners of private property or private enterprises.

III. The Committee finds:

Farmers and artisans in the countries of the Soviet orbit are forced through pressure and arbitrary measures to become and remain members of "cooperatives". Farmers designated as "kulaks" are systematically abused and their economic existence is threatened.

The Committee holds:

Farmers and artisans should be free to make their own decision as to whether or not to join and remain in or withdraw from all forms of cooperatives.

IV. The Committee finds:

The laws and regulations of the countries of the Soviet orbit examined by this Committee show that measures are taken against so-called "kulaks" while no juridical definition of the term "kulak" exists. This leaves to the representatives of the State power the possibility of arbitrarily including persons in this category in order to repress them.

The Committee holds:

That it is the elementary and imperative duty of the legislator to define unequivocally that category of persons to whom a certain law shall apply.

V. The Committee finds:

In the countries of the Soviet orbit marriage and family are subjected to vast and unjust encroachments by the State.

The Committee holds:

A. That a nubile citizen's right to choose a spouse should be free and unlimited. Political, party, racial, or class considerations should not be taken into account in matters of marriage and divorce.

B. That parents should not be deprived of the right to the custody and education of their children on the ground that the political and/or economic views of the parents do not find favor with the state.

Resolutions of the Committee on Labour Law

I. The Committee on Labour Law of the International Congress of Jurists, Athens, 1955,

having examined the documents presented by the International Commission of Jurists, The Hague,

having heard several independent reports and having questioned witnesses who had left the Iron Curtain countries recently,

submits the findings below on trade unions and conditions under Labour Law in the countries behind the Iron Curtain.

A. Trade unions are employed by the State as an instrument for furthering its own policy. They do not represent the interests of the workers:

1. Trade unions are not independent. They are dominated and controlled by the government and the Communist Party.
2. Trade unions are not free. Workers have no opportunity of electing their representatives through the usual method of free elections. Trade union officials are nominated by the Communist Party.
3. The interests of the trade unions are subordinated to the interests of the State which in an overwhelming part of the economy is the employer. Their task is to promote and carry out the State Economic Plans.
4. Workers are prevented in fact from forming free trade unions. Workers are prevented from forming a trade union organization outside the framework of the Communist Party-controlled unions.
5. There is no possibility of realizing the economic and social claims of workers by means of strikes or other methods usual to trade unions in democratic countries of the free world.

B. The government directs manpower wherever the interests of the regime require it:

1. In certain industries the government recruits by compulsion the manpower required for them from the ranks of the unemployed and of the youth.
2. The State transfers by compulsion and against their will workers from one factory to another, from one branch of industry to another and from one place to another.
3. The worker can change his place of work only with the approval of the competent State authority.

C. The workers are exploited by the government:

1. Working conditions and wages are determined unilaterally by the State on the basis of laws and regulations as well as by means of so-called collective agreements which however are not freely negotiated contracts between equal partners.

2. Standards (norms) of work are based on the maximum output of selected individuals. These standards are determined under particularly favourable conditions and often under pre-arranged situations without regard to the normal output of the average worker. Further, these standards are increased whenever possible.

3. Further, workers are often forced to assume so-called self-imposed obligations and to participate in competition in order to increase their output without receiving any additional pay for such increased output to the prejudice of their health and well-being.

D. For violations of labour discipline workers are punished to an extent which is disproportionate to the offence committed:

1. In such cases penalties are unilaterally inflicted by the employer and no possibility exists of an appeal to an independent authority.

2. Many breaches of work discipline are punished by a deprivation of liberty by the criminal courts, and may be considered as sabotage, acts of rioting, or offences against the interests of the State.

The Committee on Labour Law of the International Congress of Jurists declares that according to the results of the investigations carried out by it a direct violation exists of the Universal Declaration of Human Rights of the United Nations of 1948 and in particular of Articles 12, 23, 24, 25 and 26 of the above Declaration.



Closing Ceremony on the Pynx
The International Congress of Jurists, Athens (1955)

II. This Committee is therefore of the opinion that in order to establish in the Iron Curtain countries conditions conforming to the Rule of Law as understood in the free democratic world, it is necessary that the undermentioned conditions should be absolutely guaranteed;

this Committee is further of the opinion that these conditions should be guaranteed in all countries of the world where they do not as yet exist.

A. All workers should have the possibility to form free trade unions which ought to be independent of the government and employers.

B. The possibility should exist of determining wages and other working conditions by collective agreements. The right to strike should be guaranteed and all workers should be free to choose their occupation and place of work.

III. Finally this Committee affirms that the creation and development, in those countries where they do not as yet exist, of free and independent trade union organizations, based on the application of the above principles would give those countries much better means of fighting totalitarianism and would be in harmony with the interests of the workers.

The International Congress of Jurists, 1959

New Delhi, India

5th – 10th January 1959

"The Delhi Congress gave rise to three important elements in the concept of the Rule of Law. First, that the individual is possessed of certain rights and freedoms and that he is entitled to protection of these rights and freedoms by the State; second, that there is an absolute need for an independent judiciary and bar as well as for effective machinery for the protection of fundamental rights and freedoms; and third, that the establishment of social, economic and cultural conditions would permit men to live in dignity and to fulfill their legitimate aspirations."

- Lucian G. Weeramantry³

The New Delhi Congress was themed "The Rule of Law in a Free Society" and aimed to develop the principles and procedures underlying the Rule of Law as well as to define and clarify the concept itself.

The Indian Prime Minister and independence leader Jawaharlal Nehru delivered the keynote address at the Congress. Over 185 judges, lawyers and law professors from 52 countries participated in the Congress. Their discussions focused on the Congress Working Paper on the Rule of Law prepared by former ICJ Secretary-General, Mr. Norman Marsh. This 134-page document was based on information gathered in an international survey of lawyers and legal institutions conducted by the ICJ Secretariat in the course of 1957.

The Committees set up during the Congress each dedicated their work to one of the four themes: the Legislative and the Rule of Law, the Executive and the Rule of Law, the Criminal Process and the Rule of Law, and the Judiciary and Legal Profession under the Rule of Law. The Committees outlined the fundamental Rule of Law principles for the governance of a democratic state.

The Committee on the Legislative and the Rule of Law affirmed in its resolutions that in States with evolving democratic institutions certain limitations on the legislative power must be incorporated in a written Constitution, safeguarded by an independent judicial tribunal. These limitations included basic principles of non-discrimination and fundamental freedoms. The Committee on the Executive and the Rule of Law formulated certain conditions for the proper functioning of the Executive, including that it have sufficient authority and resources to discharge its functions with effectiveness and integrity. The Committee on the Judiciary and the Rule of Law outlined the essential functions and duties of an independent judiciary. The Committee on the Criminal Process and the Rule of Law highlighted the importance of institutions that limit the exercise of discretionary authority, which belong in particular to the prosecuting authorities and to the police.

The concept of the Rule of Law enunciated in the Declaration of Delhi is that the law is not static, but rather dynamic and evolving. The Rule of Law is not simply about enforcing rules, but also is aimed at preserving fundamental principles. Thus, the Rule of Law safeguards and advances not only the civil and political rights of the individual in a free society, but equally concerns the social, economic, educational and cultural conditions for realising man's legitimate aspirations and dignity. While falling short of affirming the equal primacy economic, social and cultural rights with civil and political rights, as the ICJ would do in subsequent years, it laid the groundwork for the ICJ work in this respect. The Conclusions of the Committees and the elaborated Delhi Declaration was to become a highly influential and a frequently referenced achievement in the effort to formulate the Rule of Law and to specify its role in a changing world.

Declaration of Delhi

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

Now solemnly,

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

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

Calls on the jurists in all countries to give effect in their own communities to the principles expressed in the conclusions of the Congress; and finally

Requests the International Commission of Jurists

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

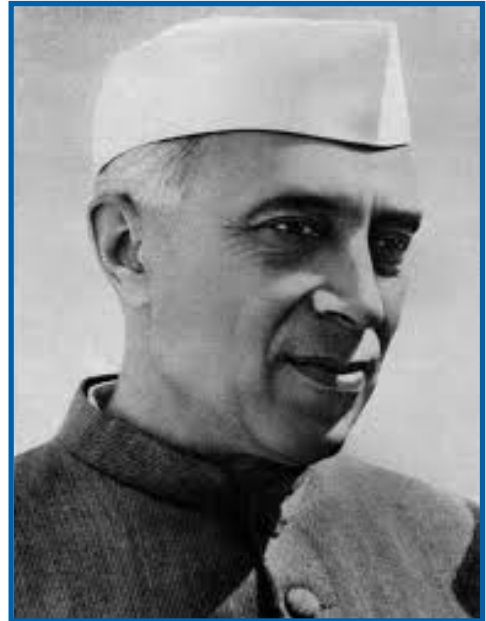
This Declaration shall be known as the Declaration of Delhi.

Done at Delhi this 10th day of January 1959.

Inauguration of the International Congress

MR. SETALVAD requested the Prime Minister of India, His Excellency Mr. JAWAHARLAL NEHRU, to inaugurate the Congress:

"I am happy to be here to accord you a warm welcome on behalf of the Government of India and of myself. Standing here, I feel somewhat overawed by these serried ranks of eminent jurists, lawyers and judges. Most of us have had some kind of experience or another of the law. My own experience has been varied, both to begin with as a lawyer appearing before judges, later as a prisoner in the dock. And so it might be said that some of us who were similarly circumstanced were able to see both sides of the question, because the first thing that strikes one who has the privilege of this type of experience is that there are two sides to a question even though only one side decides. However that may be, it is clear that unless a community lives under a Rule of Law it will tend to be lawless, to have no rule, and that means more or less an anarchical way of subsisting. So, a rule of law has to be there to bind a community and the first objective of this International Commission of Jurists, to preserve and maintain the Rule of Law, seems to me synonymous with the maintenance of civilised existence. Also if there is to be a Rule of Law there should be independent people, judges, to administer that law; otherwise the law may be used and exploited in the interest, not of the law, but of other interests. Those two basic facts seem to me to stand out.



At the same time some difficulties arise in facing the consequences of this. One difficulty, of course, is when the law ceases to function, as in war. War presumably is an absence of law and only the person with the biggest gun is supposed to be the arbiter of events. If war is the absence of law, as it is, and not only on the battlefield but also far away from the battlefield, the atmosphere of war, the effect of war on people's thinking, dulls the essence of the law even in the home countries which may be far removed from the theatre of war.

Law seldom functions with that objectivity, that dispassion, in times of war. If that is so during times of war, real war, some effect of that must surely come during times of cold war, affecting the objectivity of people, moving them to take up stronger attitudes than they normally would and thereby becoming advocates more than judges, inevitably, not deliberately, because even judges cannot always rise above the atmosphere prevailing around them. So it seems to me that, when we live in a period of what is called cold war, we suffer to some extent from that psychology of war which comes in the way of the Rule of Law, which comes in the way of objective, dispassionate consideration of problems and which tends almost inevitably to make us bend this way or that way. From the point of view, therefore, of the law the worst possible environment for it to flourish is war and, to a somewhat lesser degree, cold war, and I am not surprised therefore that law and justice often are casualties when such an atmosphere flourishes.

Now as I said law seems to be the basis of civilised existence. Without it society would go to pieces. At the same time society changes, it is not static, as we know very well. It has changed vastly because of, let us say, industrial and technical advance and the law has normally adapted itself to it. It had to. If it does not adapt quickly enough there is a divergence, there is a gap between the functioning of the law as it has functioned for some time past and a new development in society due to many happenings such as technological changes, etc. Undoubtedly some aspects of the law may be considered to embody some moral or ethical principles. Some other aspects may be the application of those principles to

changing circumstances and when those circumstances change the applications may also necessarily have to change, otherwise there is friction.

Obviously the law of, let us say, a thousand years ago when society was very different, would not fit in with society today; therefore law has changes. Law itself is a changing thing apart for some basic approaches. It cannot be otherwise. The moment it is static it becomes out of touch with a changing society and yet there is that danger of the law becoming static or of lawyers having to deal so much with basic things, and precedents, that they think more in terms of an unchanging approach to problems, and do not realise that life is ever changing. I suppose the two functions have to go together. In life, in society, the static element keeps it firmly rooted to certain basic principles and gives a certain continuity and there is also the element of change, which is so essential in a changing society. You want both, continuity and change. Without one of them difficulties arise, as they often have arisen.

It is obvious that, where kings are not ideal, people want to change them. If there are opportunities of change afforded to them through constitutional and peaceful methods, probably they will take advantage of them. If there are not open to them such opportunities, what then are they to do? What is a country to do under foreign rule with no constitution or anything? Where is the Rule of Law? It is a law imposed by an authority, which does not respond to the will of the people. Therefore all foreign rule – according to the Rule of Law, which you so ably administer – is outside the pale of law. All imposed rule is outside the pale of law. It follows logically, although in practice there may be difficulties. That is a different matter.

The Rule of Law requires many other things: equal treatment, no racial discrimination and all that. Yet, we know that all of this takes place, and therefore it is outside the pale of law. The Rule of Law requires that individual rights should be protected, and they should be protected, of course; and as our Attorney General pointed out to you, our Constitution in India lays special stress on the rights of the individual. And if I may say so, it is not our Constitution only, but the whole background of our ancient law says so.

Now, in protecting the rights of an individual, no law permits that individual to function in a predatory manner against his neighbour or against society. That is, the law is supposed to curb the predatory instincts of the individual. Now, where is protection of the rights of the individual fitted in with the curbing of the predatory instincts of that individual? Some line has to be drawn somewhere, and the line may vary. Otherwise the individual would become a menace to society or a group may become a menace to society. I am merely putting before this distinguished audience some difficulties and problems that arise in my mind because we live in obviously changing times, and times change with amazing rapidity.

If the distinguished lawyers and jurists of Plato's day had met together – and they were very able men – they would have taken slavery for granted, human slavery. When they accepted slavery, nobody challenged it. And yet later it was not only challenged and condemned, but uprooted, practically all over the world, because the social mind would not accept it as such.

So other things which may have been considered good in a certain age may become not so good, or out of date, in a subsequent age. Everyone knows that society changes very greatly because of scientific and technological developments. People's lives change, their association with each other, their problems, their businesses, their methods of production, distribution, everything has changed in the last two hundred years because of the industrial revolution. And the law has tried to keep pace with them because it is obvious that the law which applied to a pre-industrial society would hardly be applicable to the complicated society of today. And now, the changes go on at a terrific pace in this jet-age, or this space-travel age, brings about new problems.

All this leads one to think that the Rule of Law, which is so important, must run closely to the Rule of Life. It cannot go off at a tangent from life's problems and be an answer to problems which existed yesterday and are not so important today. It has to deal with today's problems. And yet law, by the very fact that it represents something basic and fundamental, has a tendency to be static. That is the difficulty. It has to maintain that basic and fundamental character but it must not be static, as nothing can be static in a changing world.

So, this International Commission of Jurists has this tremendous responsibility of looking at this changing world, changing before our eyes from day to day. There is a change in social relationships, in the relationships of nations with each other. Intimate contacts between countries arise all over the world, distances are annihilated, every country is practically the neighbour of another country. These changes were unknown in the old days when international law, or any other kind of law, was considered.

All these are new problems in a new context, in a new environment. And to look at these as dispassionately as possible, even in an age which suffers from this atmosphere of cold war, is a difficult task, but I am sure that the eminent judges and jurists who are present here and who are used to dispassionate consideration of problems, will be able to face it.

But before one faces it one has to formulate the question, the problem, just as in a case in Court the issues have to be framed, and unless they are correctly framed the decision may lead you away from the central factor which you are considering. I have ventured to place some thoughts that come into my mind and I do feel that law and war are incompatible. Just as law is a pre-condition of freedom and peace, the converse also, is true that freedom and peace are necessary before the law functions properly. Both sides, both aspects have to be considered. The Attorney General referred to various matters of deep interest which also lead one to think, lead one into various avenues of thought, and perhaps in the course of your discussions you will consider those various approaches, and the consequences of those approaches, because the biggest thing today is this fact of a rapidly changing society. And, unless that is kept in mind, one is apt to be left behind in one's thinking and action; there is, as the Attorney General said, the judge who protects the individual from the dangers of wrong, executive action. That is very necessary I think. And yet it may be that, in a changing society, the judge may be left a little behind by the changes that have come over society and which perhaps represents a reality more than the statute law which the judge administers. It may be even that the Executive represents that much more for the moment. It may of course be that the Executive acts wrongly and oppressively and should be pulled up. But there are all these aspects of these questions which are not so simple as to be put down in a simple phrase.

I welcome you again, distinguished delegates, and wish you success in your labours.

Conclusions of the International Congress

Report of Committee I The Legislative and the Rule of Law

Clause I.

The function of the legislature in a free society under the Rule of Law is to create and maintain the conditions which will uphold the dignity of man as an individual. This dignity requires not only the recognition of his civil and political rights but also the establishment of the social, economic, educational and cultural conditions which are essential to the full development of his personality.

Clause II.

(1) In many societies, particularly those which have not yet fully established traditions of democratic legislative behaviour, it is essential that certain limitations on legislative power referred to in Clause III hereof should be incorporated in a written constitution, and that the safeguards therein contained should be protected by an independent judicial tribunal; in other societies, established standards of legislative behaviour may serve to ensure that the same limitations are observed, and a lawyer has a positive interest, and duty to assist, in the maintenance of such standards of behaviour within his particular society, notwithstanding that their sanction may be of a political nature.

(2) To implement the principles set forth in the preceding Clause I it is essential that the powers of the legislature be fixed and determined by fundamental constitutional provisions or conventions which:

(a) guarantee the organisation of the legislature in such a way that the people, without discrimination among individuals, may directly, or through their representatives, decide on the content of the law;

(b) confer on the legislature, especially with regard to the matters set out in Clause I, the exclusive power of enacting general principles and rules as distinct from detailed regulations thereunder;

(c) provide for control, by the representatives of the people, over the exercise by the executive of such subordinate legislative functions as are necessary to give effect to legislation; and

(d) organise judicial sanctions enforcing the principles set out in this Clause, and protect the individual from encroachments on his rights under Clause III. The safeguards contained in the constitution should not be indirectly undermined by devices which leave only the semblance of judicial control.

Clause III.

(1) Every legislature in a free society under the Rule of Law should endeavour to give full effect to the principles enunciated in the Universal Declaration of Human Rights.

(2) The governments of the world should provide the means whereby the Rule of Law may be maintained and furthered through international or regional agreements on the pattern of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on November 4, 1950, or otherwise. Such agreements should provide an

opportunity of appeal to an international body for a remedy against denial of the rights implicit in the Rule of Law in any part of the world.

(3) Every legislature should, in particular, observe the limitations on its powers referred to below. The failure to refer specifically to other limitations, or to enumerate particular rights is not to be construed as in any sense minimizing their importance.

The legislature must:

- (a) not discriminate in its laws in respect of individuals, classes of persons, or minority groups on the ground of race, religion, sex or other such reasons not affording a proper basis for making a distinction between human beings, classes, or minorities;
- (b) not interfere with freedom of religious belief and observance;
- (c) not deny to the members of society the right to elected responsible government;
- (d) not place restrictions on freedom of speech, freedom of assembly or freedom of association;
- (e) abstain from retroactive legislation;
- (f) not impair the exercise of fundamental rights and freedoms of the individual;
- (g) provide procedural machinery ("procedural due process") and safeguards whereby the abovementioned freedoms are given effect to and protected.

Clause IV

(1) The principles stated in the foregoing Clauses represent the proper aspirations of all men. Every legislature and every government should endeavour to give full effect to the foregoing principles, not only in relation to their own countries, but also in relation to any territories under their administration or protection, and should take steps to abrogate any existing laws which are inconsistent therewith.

(2) The legislatures and the governments of the world should advance by every means in their power the ultimate and universal application of the principles here enunciated.

Report of Committee II **The Executive and the Rule of Law**

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

The following propositions relating to the executive and the Rule of Law are accordingly formulated on the basis of certain conditions which are either satisfied, or in the case of newly independent countries still struggling with difficult economic and social problems are

in the process of being satisfied. These conditions require the existence of an executive invested with sufficient power and resources to discharge its functions with efficiency and integrity. They require the existence of a legislature elected by democratic process and not subject, either in the manner of its election or otherwise, to manipulation by the executive. They require the existence of an independent judiciary which will discharge its duties fearlessly. They finally call for the earnest endeavour of government to achieve such social and economic conditions within a society as will ensure a reasonable standard of economic security, social welfare and education for the mass of the people.

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

Clause I.

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

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

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

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

Clause II.

To ensure that the extent, purpose and procedure appropriate to delegated legislation are observed, it is essential that it should be subject to ultimate review by a judicial body independent of the executive.

Clause III.

Judicial review of delegated legislation may be usefully supplemented by procedure for supervision by the legislature or by a committee or a commissioner of the legislature or by other independent authority either before or after such delegated legislation comes into effect.

Clause IV.

In general, the acts of the executive which directly and injuriously affect the person or property or rights of the individual should be subject to review by the courts.

Clause V.

The judicial review of acts of the executive may be adequately secured either by a specialized system of administrative courts or by the ordinary courts. Where specialized

courts do not exist it is essential that the decisions of ad hoc administrative tribunals and agencies, if created (which include all administrative agencies making determinations of a judicial character), should be subject to ultimate review by ordinary courts.

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

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

Clause VI.

A citizen who suffers injury as a result of illegal acts of the executive should have an adequate remedy either in the form of a proceeding against the state or against the individual wrongdoer, with the assurance of satisfaction of the judgment in the latter case, or both.

Clause VII.

Irrespective of the availability of judicial review to correct illegal action by the executive after it has occurred, it is generally desirable to institute appropriate antecedent procedures of hearing, enquiry or consultation through which parties whose rights or interests will be affected may have an adequate opportunity to make representations so as to minimize the likelihood of unlawful or unreasonable executive action.

Clause VIII.

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

Report of Committee III The Criminal Process and the Rule of Law

The rights of the accused in criminal trials, however elaborately safeguarded on paper, may be ineffective in practice unless they are supported by institutions, the spirit and tradition of which limit the exercise of the discretions, whether in law or in practice, which belong in particular to the prosecuting authorities and to the police. Bearing that qualification in mind, an attempt has been made to answer the question: If a citizen of a country which observes the Rule of Law is charged with a criminal offence, to what rights would he properly consider himself entitled? This question has been considered under the heads which follow. It is for each country to maintain and develop in the framework of its own system of law the following rules which are regarded as the minimum necessary to ensure the observance of the Rule of Law.

I. Certainty of the criminal law

It is always important that the definition and interpretation of the law should be as certain as possible, and this is of particular importance in the case of the criminal law, where the

citizen's life or liberty may be at stake. Certainty cannot exist in the criminal law where the law, or the penalty for its breach, is retrospective.

II. The presumption of innocence

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

III. Arrest and accusation

(1) The power of arrest, whether in flagrante delicto or not, ought to be strictly regulated by law, and should only be exercisable on reasonable suspicion that the person concerned has committed an offence.

(2) On any arrest the arrested person should at once be told the grounds of his arrest.

(3) On any arrest the arrested person should at once and at all times thereafter be entitled to the assistance of a legal adviser of his own choice, and on his arrest should at once be informed of that right in a way which he would clearly understand.

(4) Every arrested person should be brought, within as short a period as possible, fixed by law, before an appropriate judicial authority.

(5) After appearing before such judicial authority, any further detention should not be in the hands of the police.

IV. Detention pending trial

(1) No person should be deprived of his liberty except in so far as may be required for the purposes of public security or the administration of justice.

(2) Every arrested person should have a right, renewable at reasonably short intervals, to apply for bail to an appropriate judicial authority. He should be entitled to bail on reasonable terms unless either:

(a) the charge is of an exceptionally serious nature, or

(b) the appropriate judicial authority is satisfied that, if bail is granted, the accused is not likely to stand his trial, or

(c) the appropriate judicial authority is satisfied that, if bail is granted, the accused is likely to interfere with the evidence, for example with witnesses for the prosecution, or

(d) the appropriate judicial authority is satisfied that, if bail is granted, the accused is likely to commit a further criminal offence.

V. Preparation and conduct of defense

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

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

VI. Minimum duties of the prosecution

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

VII. The examination of the accused

No one should be compelled to incriminate himself. No accused person or witness should be subject to physical or psychological pressure (including anything calculated to impair his will or violate his dignity as a human being).

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

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

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

VIII. Trial in public

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

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

IX. Retrial

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

X. Legal remedies, including appeals

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

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

XI. Punishment

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

Report of Committee IV The Judiciary and the Legal Profession under the Rule of Law

Clause I.

An independent judiciary is an indispensable requisite of a free society under the Rule of Law. Such independence implies freedom from interference by the executive or legislature with the exercise of the judicial function, but does not mean that the judge is entitled to act in an arbitrary manner. His duty is to interpret the law and the fundamental principles and assumptions that underlie it. It is implicit in the concept of independence set out in the present paragraph that provision should be made for the adequate remuneration of the judiciary and that a judge's right to the remuneration settled for his office should not during his term of office be altered to his disadvantage.

Clause II.

There are in different countries varying ways in which the judiciary are appointed, re-appointed (where re-appointment arises) and promoted, involving the legislature, executive, the judiciary itself, in some countries the representatives of the practicing legal profession, or a combination of two or more of these bodies. The selection of judges by election and particularly by re-election, as in some countries, presents special risks to the independence of the judiciary which are more likely to be avoided only where tradition has circumscribed by prior agreement the list of candidates and has limited political controversy. There are also potential dangers in exclusive appointment by the legislature, executive, or judiciary, and where there is on the whole general satisfaction with the calibre and independence of judges it will be found that either in law or in practice there is some degree of co-operation (or at least consultation) between the judiciary and the authority actually making the appointment.

Clause III.

The principle of irremovability of the judiciary, and their security of tenure until death or until a retiring age fixed by statute is reached, is an important safeguard of the Rule of Law. Although it is not impossible for a judge appointed for a fixed term to assert his independence, particularly if he is seeking re-appointment, he is subject to greater difficulties and pressure than a judge who enjoys security of tenure for his working life.

Clause IV.

The reconciliation of the principle of irremovability of the judiciary with the possibility of removal in exceptional circumstances necessitates that the grounds for removal should be before a body of judicial character assuring at least the same safeguards to the judge as would be accorded to an accused person in a criminal trial.

Clause V.

The considerations set out in the preceding paragraph should apply to: (1) the ordinary civil and criminal courts; (2) administrative courts or constitutional courts, not being subordinate to the ordinary courts. The members of administrative tribunals, whether professional lawyers or laymen, as well as laymen exercising other judicial functions (juries, assessors, justices of the peace, etc.) should only be appointed and removable in accordance with the spirit of these considerations, in so far as they are applicable to their particular positions. All such persons have in any event the same duty of independence in the performance of their judicial function.

Clause VI.

It must be recognized that the legislature has responsibility for fixing the general framework and laying down the principles of organization of judicial business and that, subject to the limitations on delegations of legislative power which have been dealt with elsewhere, it may delegate part of this responsibility to the executive.

However, the exercise of such responsibility by the legislature including any delegation to the executive should not be employed as an indirect method of violating the independence of the judiciary in the exercise of its judicial functions.

Clause VII.

It is essential to the maintenance of the Rule of Law that there should be an organized legal profession free to manage its own affairs. But it is recognized that there may be general supervision by the courts and that there may be regulations governing the admission to and pursuit of the legal profession.

Clause VIII.

Subject to his professional obligation to accept assignments in appropriate circumstances, the lawyer should be free to accept any case which is offered to him.

Clause IX.

While there is some difference of emphasis between various countries as to the extent to

which a lawyer may be under a duty to accept a case it is conceived that:

(1) wherever a man's life, liberty, property or reputation are at stake he should be free to obtain legal advice and representation; if this principle is to become effective, it follows that lawyers must be prepared frequently to defend persons associated with unpopular causes and minority views with which they themselves may be entirely out of sympathy;

(2) once a lawyer has accepted a brief he should not relinquish it to the detriment of his client without good and sufficient cause;

(3) it is the duty of a lawyer which he should be able to discharge without fear of consequences to press upon the court any argument of law or of fact which he may think proper for the due presentation of the case by him.

Clause X.

Equal access to law for the rich and poor alike is essential to the maintenance of the Rule of Law. It is, therefore, essential to provide adequate legal advice and representation to all those threatened as to their life, liberty, property or reputation who are not able to pay for it. This may be carried out in different ways and is on the whole at present more comprehensively observed in regard to criminal as opposed to civil cases. It is necessary, however, to assert the full implications of the principle, in particular in so far as "adequate" means legal advice or representation by lawyers of the requisite standing and experience. This is a question which cannot be altogether dissociated from the question of adequate remuneration for the services rendered. The primary obligation rests on the legal profession to sponsor and use its best effort to ensure that adequate legal advice and representation are provided. An obligation also rests upon the State and the community to assist the legal profession in carrying out this responsibility.

New Delhi, India

January 10, 1959

African Conference on the Rule of Law, 1961

Lagos, Nigeria

3rd – 7th January 1961

"The high level on which the discussions were conducted and the unanimous adoption of the final decisions testify to the respect of African lawyers for the principles of law and justice."

- Jean-Flavien Lalive, former ICJ Secretary-General⁴

The African Conference on the Rule of Law in 1961 assembled 194 judges, practicing lawyers and teachers of law in Lagos, Nigeria. The participants came from 23 African nations as well as from nine countries of other continents. It was convening as the process of decolonization of the continent was in full force.

The Conference mandated the ICJ to investigate and report on the legal conditions in Africa and elsewhere, with regard to the Rule of Law and the observation of fundamental rights, particularly in respect of the legal systems operational as a legacy of the colonial powers. It furthermore assessed the political situation in the newly independent states in light of the guiding principles of the Rule of Law.

While considering the Rule of Law in the African context, the Conference reaffirmed the basic principles underlying the Rule of Law as enunciated in New Delhi, and recognized that these principles are universal in their application. The Conference concluded that the dignity of the human person is a universal concept, regardless of the different forms it may assume in one or another cultural environment. As such, the Rule of Law is a concept independent of any particular ideology and shared by countries of varying political structures and economic backgrounds.

The conclusions adopted at Lagos were directed to any society, irrespective of political system or status. They cover three major themes: human rights in relation to government security, human rights in relation to aspects of criminal and administrative law, and the responsibility of the Judiciary and the Bar for the protection of the rights of the individual in society. They were seen to be of universal importance and application, and thus necessary to be extended beyond the confines of the African Continent.⁵

The resolutions of the Conference also discussed the question of delegation of authority from the legislature to the executive, and the proper limitations of declarations of emergency and concomitant derogations of law. In addition the Conference anticipated the establishment of the African Convention and Court on Human and Peoples' Rights.

The African Conference declared the Law of Lagos establishing, among others, the vital principles that the Rule of Law "cannot be fully realized unless legislative bodies have been established in accordance with the will of the people who have adopted their Constitution freely" and that "in order to maintain adequately the Rule of Law all governments should adhere to the principle of democratic representation in their Legislatures".

Law of Lagos

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

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

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

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

NOW SOLEMNLY

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

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

Declares

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

5. That in order to promote the principles and the practical application of the Rule of Law, the judges, practicing lawyers and teachers of law in African countries should take steps to establish branches of the International Commission of Jurists.

This Resolution shall be known as the Law of Lagos.

Done at Lagos this 7th day of January 1961.

Conclusions of the Conference

Committee I

Human rights and government security – The legislative, executive and judiciary

Clause I

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

Clause II

The Conference, having considered the relative rights and obligations of legislative, executive and judicial institutions and their functions as affecting human rights and government security with particular reference to the observance of the Rule of Law in both independent and dependent countries in Africa and elsewhere; and having taken cognizance of allegations that discriminatory legislation based on race, colour or creed exists to the detriment of fundamental human rights of large sections of the population,

Requests the International Commission of Jurists to investigate, examine, consider and report on the legal conditions in Africa and elsewhere with particular regard to the existence of the rule of law and the observation of fundamental rights.

Committee II

Human rights and aspects of criminal and administrative law

The Rule of Law is of universal validity and application as it embraces those institutions and principles of justice which are considered minimal to the assurance of human rights and the dignity of man.

Further as a preamble to these Conclusions it is decided to adopt the following text from the Conclusions of the Second Committee of the International Congress of Jurists, New Delhi, India, 1959:

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

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

1. Taking full cognizance of and incorporating herein by reference Clause III 3 (a) of the Conclusions of the First Committee of the above-mentioned International Congress of Jurists in New Delhi,⁶ it is recognized and agreed that legislation authorizing administrative action by the Executive should not be discriminatory with respect to race, creed, sex or other such reasons and any such discriminatory provisions contained in legislation are considered contrary to the Rule of Law.

2. While recognizing that inquiry into the merits of the propriety of an individual administrative act by the executive may in many cases not be appropriate for the ordinary courts, it is agreed that there should be available to the person aggrieved a right of access to:

(a) a hierarchy of administrative courts of independent jurisdiction; or

(b) where these do not exist, to an administrative tribunal subject to the overriding authority of the ordinary courts.

3. The minimum requirements for such administrative action and subsequent judicial review as recommended in paragraph 2 above are as follows:

(a) that the full reasons for the action of the executive be made known to the person aggrieved; and

(b) that the aggrieved person shall be given a fair hearing; and

(c) that the grounds given by the executive for its action shall not be regarded as conclusive but shall be objectively considered by the court.

4. It is desirable that, whenever reasonable in the prevailing circumstances, the action of the executive shall be suspended while under review by the courts.

5. (i) No person of sound mind shall be deprived of his liberty except upon a charge of a specific criminal offence; further, except during a public emergency, preventive detention without trial is held to be contrary to the Rule of Law.

(ii) During a period of public emergency, legislation often authorizes preventive detention of an individual if the Executive finds that public security so requires. Such legislation should provide the individual with safeguards against continuing arbitrary confinement by requiring a prompt administrative hearing and decision upon the need and justification for detention with a right to judicial review. It should be required that any declaration of public emergency by the Executive be reported to and subject to ratification by the Legislature. Moreover, both the declaration of public emergency and any consequent detention of individuals should be effectively only for a specified and limited period of time (not exceeding six months).

(iii) Extension of the period of public emergency should be effected by the Legislature only after careful and deliberate consideration of the necessity therefore. Finally, during any period of public emergency the Executive should only take such measures as are reasonably justifiable for the purpose of dealing with the situation which exists during that period.

6. The courts and magistrates shall permit an accused person to be or to remain free pending trial except in the following cases which are deemed proper grounds for refusing bail:

(a) in the case of a very grave offence;

(b) if the accused is likely to interfere with witnesses or impede the course of justice;

(c) if the accused is likely to commit the same or other offences;

(d) if the accused may fail to appear for trial.

7. The power to grant bail is a judicial function which shall not be subject to control by the executive. Although a court should hear and consider the views and representations of the executive, the fact that investigation of the case is being continued is not a sufficient ground for refusing bail. Bail should be commensurate with the economic means of the accused and, whether by appeal or independent application, a higher court should have the power to release provisionally an accused person who has been denied bail by the lower court.

8. After conviction and pending review, the trial or appellate court should have discretionary power to admit the convicted person to bail subject to the grounds set forth in paragraph 6 above.

9. It is recommended that greater use be made of the summons requiring appearance in court to answer a criminal charge in place of arrest and the consequent necessity for bail and provisional release.

Committee III

The responsibility of the judiciary and of the bar for the protection of the rights of the individual in society

The Conference reaffirms the Conclusions reached by the Fourth Committee of the International Congress of Jurists, New Delhi, India, 1959, which are appended hereto; and having regard to the particular problems of emerging states, wishes to emphasize certain points in particular, and to add others.

1. In a free society practicing the Rule of Law, it is essential that the absolute independence of the judiciary be guaranteed. Members of the legal profession in any country have, over and above their ordinary duties as citizens, a special duty to seek ways and means of securing in their own country the maximum degree of independence for the judiciary.

2. It is recognized that in different countries there are different ways of appointing, promoting and removing judges by means of action taken by the executive and legislative powers. It is not recommended that these powers should be abrogated where they have been universally accepted over a long period as working well – provided that they conform to the principles expressed in clauses II, III, IV, V of the Report of the Fourth Committee at New Delhi.

3. In respect of any country in which the methods of appointing, promoting and removing judges are not yet fully settled, or do not ensure the independence of the judiciary, it is recommended:

(a) that these powers should not be put into the hands of the executive or the legislature, but should be entrusted exclusively to an independent organ such as the Judicial Service Commission of Nigeria or the *Conseil superieur de la magistrature* in the African French-speaking countries;

(b) that in any country in which the independence of the judiciary is not already fully secured in accordance with these principles, they should be implemented immediately in respect of all judges, especially those having criminal jurisdiction.

4. It is recommended that all customary, traditional or local law should be administered by the ordinary courts of the land, and emphasized that for so long as that law is administered by special courts, all the principles enunciated here and at New Delhi, for safeguarding the Rule of Law, apply to those courts.

5. The practice whereby in certain territories judicial powers, especially in criminal matters, are exercised by persons who have no adequate legal training or experience, or who as administrative officers are subject to the control of the executive, is one which falls short of the Rule of Law.

6. (a) To maintain the respect for the Rule of Law it is necessary that the legal profession should be free from any interference.

(b) In countries where an organized bar exists, the lawyers themselves have the right to control the admission to the profession and the discipline of the members according to rules established by law.

(c) In countries where an organized bar does not exist, the power to discipline lawyers should be exercised by the judiciary in consultation with senior practicing lawyers and never by the executive.

7. The Conference reaffirms clause X of the Conclusions of the Fourth Committee at New Delhi, and recommends that all steps should be taken to ensure equal access to law for both rich and poor, especially by a provision for and an organization of a system of legal aid in both criminal and civil matters.

8. The Conference expressly reaffirms the principle that retroactive legislation especially in criminal matters is inconsistent with the rule of law.

International Congress of Jurists, 1962

Rio de Janeiro, Brazil

11th – 15th December 1962

"The Congress of Rio de Janeiro marked a further step in the evolution of the modern concept of the Rule of Law which the International Commission of Jurists began to develop at its Congress of Delhi, 1959 and the Conference of Lagos, 1961. (...) [T]he Congress of Rio gave to the Conclusions of these earlier assemblies a more practical dimension."

- Sean MacBride, former ICJ Secretary-General⁷

Participants at the New Delhi Congress and the Regional Conference in Lagos in 1961 placed particular emphasis on the imperative of creating necessary safeguards against the abuse of power by the State. For this reason, the International Commission of Jurists chose "Executive Action and the Rule of Law" as the theme for the Rio Congress in 1962. The Resolution of Rio affirmed the definition of the Rule of Law as contained in the Act of Athens and the Declaration of New Delhi, while refining and expanding its definition.

The Rio Congress gathered nearly 300 Jurists from 75 countries. The following organizations, associations, provincial governments and committees were represented by observers: the American Bar Association, the Government of the Province of Cordoba, the Republic of Argentina, the International Bar Association, the International Institute of Administrative Sciences, the International Legal Aid Association, the Mouvement International des Juristes Catholiques (Pax Romana) and the Special Committee to Cooperate with the International Commission of Jurists of the Association of the Bar of the City of New York.

Although the independence of the judiciary was not explicitly prominent on the agenda in Rio, it was given high priority by the participants and pride of place in the resolutions. The participants' focus and encouragement for the establishment of regional human rights courts was also a notable aspect of the Congress. The Congress was furthermore the first international organization to formally recognize and emphasize the role of legal education in promoting the Rule of Law.

The discussions were based on a Working Paper prepared by the International Commission of Jurists, entitled "Executive Action and the Rule of Law", which was based on information gathered by a questionnaire that had been distributed by the Secretariat to the national sections and eminent jurists, representing legal traditions of 55 countries. The Working Paper identified the following four Committee topics for the Congress: Procedures Utilized by Administrative Agencies and Executive Officials, Control by the Legislature and the Courts over Executive Action, The Responsibilities of Lawyers in a Changing Society, and The Role of Legal Education in a Changing Society.

Another focus of the Congress was to examine the role of lawyers in societies governed by the Rule of Law. The Congress laid down a vision of the role of the lawyer in a changing and interdependent world, resolving that "lawyers should give guidance and leadership in the creation of new legal concepts, institutions and techniques to enable man to meet the challenges and danger of the times and to realize the aspirations of all people". In essence, the Congress envisioned the role of the lawyer in society to be that of a defender of human rights.

Resolution of Rio

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

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

NOW SOLEMNLY

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

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

1. The conditions in varying countries relating to the independence of the Judiciary, its security of tenure and its freedom from control, direct or indirect, by the Executive;
2. The encouragement of the establishment of International Courts of Human Rights on a regional basis;
3. The role and responsibility of lawyers in a changing world to concern themselves with the prevalence of poverty, ignorance and inequality in so many parts of the world, and to inspire and promote economic development and social justice;
4. The improvement of legal education so that the understanding of the Rule of Law in the best traditions of the Bench and of the Bar is inculcated in those entering the profession of the law;
5. The continuance of its important work in investigating and reporting on violations of the Rule of Law wherever they occur;

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

This resolution shall be known as the *Resolution of Rio*.

Done this 15th day of December 1962

Conclusions of the International Congress

Report of Committee I Procedures Utilized by Administrative Agencies and Executive Officials

Clause I.

To maintain the Rule of Law there must be on the one hand effective government capable of maintaining order and promoting social and economic development, and on the other adequate safeguards against the abuse of state power. Today all societies face the need for adjustment to the requirements of technological change and of social and economic development. In various areas of activity the executive branches are compelled to deal with problems for the solution of which no adequate machinery may exist and which may constantly require governmental and legislative intervention for the good of society and of the individuals within it. A major dilemma confronting government and citizens alike is how to balance the freedom of the executive to act effectively with the protection of the rights of the individual. It is the duty of all states in coping with this dilemma to preserve and advance the Rule of Law while undertaking measures of social and economic development.

Clause II.

The first guarantee of good administration and of the protection of the individual is the procedural framework used by the executive in making decisions affecting his rights. Judicial procedure for protection of the individual has evolved over a long period, but in modern societies the executive acts through various agencies which have no uniform rules of procedure and in which the Rule of Law is inadequately safeguarded. The conclusions which follow set out the principles and procedures which should be observed.

Clause III.

In nearly every country one type of action of administrative agencies and executive officials is in the nature of adjudication, and the decisions made are similar to judicial decisions. Whatever variations in procedure may be appropriate to this kind of executive action, there are certain fundamental principles that must be followed if the Rule of Law is to be preserved. These are:

- (1) adequate notice to the interested parties of the nature and purpose of the proceedings;
- (2) adequate opportunity for them to prepare the case, including access to relevant data;
- (3) their right to be heard, and adequate opportunity for them to present arguments and evidence, and to meet opposing arguments and evidence;
- (4) their right to be represented by counsellor or other qualified person;
- (5) adequate notice to them of the decision and of the reasons therefore;
- (6) their right of recourse to a higher administrative authority or to a court.

Clause IV.

To ensure the independence of the members of the administrative bodies which customarily

render decisions similar to judicial decisions, and to protect them from undue interference, such members must not be removable during their term of office, except for good cause and by due process of law.

Clause V.

Decisions taken by the executive not involving adjudication may still vitally affect the freedom and interests of individuals. Therefore, it is necessary that in these cases certain minimum safeguards for the Rule of Law to be preserved.

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

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

(a) notification of the contemplated measure and the reasons for its adoption;

(b) right of access to the relevant data;

(c) right to be heard;

(d) notice of the decision.

Clause VI.

It is essential that effective publication be made promptly of all decisions of a legislative character made by the executive, so that interested parties may be advised of measures adopted affecting their interests.

Clause VII.

This Congress reaffirms the principles adopted by the Lagos Conference relating to the declaration of a state of emergency and to the exercise of emergency powers, including preventive detention.

The principles set out in these *Conclusions* must be maintained at all times, except in a period of national emergency duly declared by the state, or in exceptional circumstances and for limited periods in coping with public calamity or necessity, directly affecting the life or livelihood of the people. At such times, certain of those principles may have to be temporarily relaxed. This relaxation is justified only to the extent actually required and should be confined to the executive agencies directly concerned. In no case should fundamental human rights and the dignity of the individual be disregarded.

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

Clause VIII.

The fundamental principles referred to above should not be left to the discretion of governments, but should be clearly formulated and adopted in all countries in the most appropriate manner (Constitution, law, decree, administrative code, etc.).

Clause IX.

It is desirable that states should prepare and adopt international conventions providing a right of appeal to individuals and interested groups before an international tribunal to guarantee, in exceptional as well as in normal circumstances, the protection of the prescribed rights.

Report of Committee II

Control by the Courts and the Legislature over Executive Action

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

A. Judicial control

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

6. It is considered to be necessary that at least in cases involving human rights there should be an international court to which final recourse might be had by an individual whose rights have been infringed or threatened. Such an international tribunal would be a World Court of Human Rights, its writ effective in any jurisdiction.

7. The first step in this direction could be regional conventions with optional clauses analogous to the European Convention for the Protection of Human Rights and Fundamental Freedoms and the Inter-American Draft Convention on Human Rights, and regional courts analogous to the European Court of Human Rights. Close liaison between such regional courts would have to be established in order to develop a common case law.

B. Legislative control

1. The complexity of modern society may necessitate the delegation of legislative power by the legislature to the executive, particularly where requirements of fair practice demand frequent changes or where the legislature cannot reasonably be expected to deal with technical details.

2. The enactments by which such legislative powers are delegated should carefully define the extent, purpose and where necessary duration of delegated legislation and should provide for the procedure by which it can be brought into effect.

3. Delegated legislation should always be fair and reasonable and should be drafted in clear form. In no circumstances should it deviate from general principles of legislation or from the directions laid down by the legislature.

4. To ensure that the executive should loyally discharge its legislative mandate, the legislature should entrust appropriate organs, such as standing committees, with the task of scrutinizing all delegated legislation and reporting to it at fixed intervals the results of their scrutiny.

5. Attention is called to the powers of the legislature to exercise control through its right to appropriate public money. Such control can be strengthened by a high and independent official, like a controller or auditor-general, appointed by parliament, who exercises control over expenditure of public money.

6. A high official, such as the ombudsman in the Scandinavian countries and in New Zealand, should be appointed by the legislature for a fixed period. He should be entirely independent of the executive, be responsible only to the legislature and be remunerated directly by it. He should be entitled and under an obligation to act either on his initiative or on complaints from any individual. He should have full access to all government documents and files. He should have the power of summoning and examining witnesses as in a court of law. His reports should be made at least once a year and should be given due publicity.

Report of Committee III

The Role of Lawyers in a Changing World

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

The lawyer today should not content himself with the conduct of his practice and the administration of justice. He cannot remain a stranger to important developments in

economic and social affairs if he is to fulfil his vocation as a lawyer: he should take an active part in the process of change. He will do this by inspiring and promoting economic development and social justice.

The conditions to be fulfilled and the steps to be taken in order to enable the lawyer to play this role effectively were dealt with to some extent in the *Conclusions* of the Fourth Committee of the International Congress of Jurists, New Delhi, India, 1959, and of the Third Committee of the African Conference on the Rule of Law, Lagos, Nigeria, 1961.

This Congress adopts the following further conclusions.

Clause I.

The skill and knowledge of lawyers are not to be employed solely for the benefit of clients, but should be regarded as held in trust for society.

Clause II.

It is the duty of lawyers in every country, both in the conduct of their practice and in public life, to help ensure the existence of a responsible legislature elected by democratic process and an independent, adequately remunerated judiciary, and to be always vigilant in the protection of civil liberties and human rights.

Clause III.

Lawyers should refuse to collaborate with any authority in any action which violates the Rule of Law.

Clause IV.

Lawyers should be anxiously concerned with the prevalence of poverty, ignorance and inequality in human society and should take a leading part in promoting measures which will help eradicate those evils, for while they continue to exist, civil and political rights cannot of themselves ensure the full dignity of man.

Clause V.

Lawyers have a duty to be active in law reform. Especially where public understanding is slight and the knowledge of lawyers is of importance, they should review proposed legislation and present to the appropriate authorities programmes of reform.

Clause VI.

Lawyers should endeavour to promote knowledge of and to inspire respect for the Rule of Law, and an appreciation by all people of their rights under the law.

Clause VII.

If lawyers are to discharge their obligations under the Rule of Law they will need to exercise individual initiative and to act through every available organization, including in particular self-governing lawyers' associations. Such associations must be entirely free of interference and control by the executive.

Clause VIII.

The Rule of Law requires lawyers of competence and integrity who are available to, and do in fact represent the whole community regardless of racial, religious, political, geographical or other differences. Lawyers should be numerous and diverse enough to serve the needs of the community and to ensure that every person can obtain adequate representation by a lawyer of his own choice.

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

Clause IX.

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

Clause X.

This Congress specifically endorses the Conclusions of Delhi regarding the relationship between lawyers and clients, and in addition stresses the following matters.

1. In order to ensure adequate representation, it may be essential in some cases to allow lawyers from foreign countries to appear.
2. Lawyers' associations must take all necessary steps to ensure the representation of clients whose causes may be unpopular
3. It is essential to the Rule of Law that the client be free to discuss all matters with his lawyer without fear of disclosure by the lawyer, either voluntarily or by compulsion.

Clause XI.

In an interdependent world, the lawyer's responsibilities extend beyond national boundaries. They require his deep concern for peace, and support for the principles of the United Nations and the strengthening and development of international law and organizations. The lawyer should also promote an increased application of arbitration, adjudication and other legal procedures in the settlement of disputes among nations. Finally, the lawyer should support the negotiation and conclusion of international conventions and agreements on human rights and fundamental freedoms, thus leading to the day when the universality of the Rule of Law may be achieved.

Clause XII.

At all times the lawyer should strive to be a visible example of the ideals of his profession-integrity, competence, courage and dedication to the service of his fellow men.

Report of Committee IV

The Role of Legal Education in a Changing Society

Introduction

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

- (1) reveal the processes through which law can evolve, promoting orderly and significant changes in the social and economic organization of society leading to improved standards of living;
- (2) stress the study of the principles, institutions and proceedings that are related to the safeguarding and promotion of the rights of individuals and groups;
- (3) imbue students with the principles of the Rule of Law, making them aware of its high significance, emphasizing the need of meeting the increasing demands of social justice, and helping develop in the student the personal qualities required to uphold the noble ideals of the profession and secure the effective enforcement of law in the community.

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

- (1) in the countries which do not yet have faculties of law or other institutions especially designed for the training of jurists, their should be priority for the establishment thereof;
- (2) the faculties of law do not restrict their activities only to the education of practitioners, judges and law teachers, in numbers they deem sufficient to meet social requirements, but that they also supply training in the principles and practice of law to public officials, managers in private business, leaders of professional or trade unions, journalists and publicists. Furthermore, faculties of law should pursue, to the extent permitted by the stage of development reached by each particular Community, a campaign for the public dissemination of the basic principles related to the Rule of Law. These activities must be carried out with a view to acquainting the people with the principles of the Rule of Law in addition to similar activities being pursued at other levels of education, both public and private;
- (3) it is not enough that faculties of law and other institutions specially engaged in the teaching of law endeavor to attain the highest levels of technical preparation of students. They must also make a special effort to shape their characters, to develop their sense of social responsibility and to strengthen their moral discipline: these requirements will have to be all the more keenly met in communities where there are no other organizations to serve those ends.

I. Legal studies

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

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

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

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

II. Students of law

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

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

III. Teachers of Law

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

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

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

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

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

IV. Regulation of the teaching of Law

With a view to attaining the goals defined in the *Introduction* to the conclusions of this Committee, it is considered that legal education should be controlled by faculties of law themselves, free from any influence foreign to the interest of scholarship and education. Members of the teaching staff should have major share in such control.

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

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

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

South-East Asian and Pacific Conference of Jurists, 1965

Bangkok, Thailand

15th – 19th February 1965

"By laying stress on social and economic problems, the conclusions and resolutions of Bangkok marked an important step forward in the definition and elaboration of the principles underlying the Rule of Law (...)."

- Sean MacBride, former ICJ Secretary-General⁸

"The Dynamic Aspects of the Rule of Law in the Modern Age" was chosen as the major theme for the Bangkok Conference. From 15 to 19 February 1965, this Conference brought together 105 jurists from 16 countries of South-East Asia and the Pacific. It aimed to show that, although the problems in this region are distinct, solutions could equally be sought through the establishment and observance of the Rule of Law.

Three principal Committees reported their conclusions to the plenary session of the Conference. The first Committee focused on the Basic Requirements of Representative Government under the Rule of Law being free elections, general freedom of expression, independent political parties and a written constitution. The second Committee worked on the Economic and Social Development within The Rule of Law. The Conference of Bangkok thus clearly emphasized the social, economic, educational and cultural aspects of the Rule of Law. Committee three dedicated its activities to the theme "The Role of the Lawyer in a Developing Country", acknowledging the lawyer's vital role in the solutions of the region's problems.

A Declaration concluded with the Conference recognizing that the Rule of Law and representative government were often endangered by hunger, poverty and unemployment and that, therefore, lawyers should commit their skills and techniques to the elimination of these scourges.

Building on the themes discussed at Rio, the Congress also discussed the role of the lawyer in a developing society, declaring that "[p]overty, lack of opportunity and gross inequality in the Region (The South East Asian and Pacific Region, with which the Bangkok Conference was primarily concerned) require leaders who understand the need for evolutionary change, so that every citizen may look to a future in which each may realize his full potential as an individual in a free society".

Declaration of Bangkok

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

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

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

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

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

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

AND NOW SOLEMNLY

Adopts the Conclusions and Resolutions annexed to this Declaration.

This Declaration shall be known as the Declaration of Bangkok.

Done at Bangkok, this 19th day of February, 1965.

Conclusions and Resolutions

Conclusions of Committee I

Basic Requirements of Representative Government under the Rule of Law

PREAMBLE

Recalling and reaffirming the definition of the Rule of Law adopted by the International Commission of Jurists at the New Delhi Congress in 1959, which reads: The principles, institutions and procedures, not always identical but broadly similar, which the experience and traditions of lawyers in different countries of the world, often having themselves varying political structures and economic backgrounds, have shown to be important to protect the individual from arbitrary government and to enable him to enjoy the dignity of man;

Believing that the protection of the individual from arbitrary government and his enjoyment of the dignity of man are best assured by a representative government under the Rule of Law;

And with the object of setting out and defining the basic requirements of, and considerations affecting, representative government under the Rule of Law;

This Committee has reached the following Conclusions in relation to such requirements:

Clause I.

The Rule of Law can only reach its highest expression and fullest realization under representative government.

Clause II.

By representative government is meant a government deriving its power and authority from the people, which power and authority are exercised through representatives freely chosen and responsible to them.

Clause III.

Free periodic elections are therefore important to representative government. Such elections should be based on universal and equal adult suffrage and should be held by secret ballot and under such conditions that the right to vote is exercised without hindrance or pressure. Where a legislature is elected by districts, there should be a periodic re-distribution of seats or districts so as to ensure as far as practicable that each individual vote has the same value. It is also necessary to ensure that election expenses of candidates are regulated in such a manner and to such an extent as may be necessary to ensure that elections are both free and fair.

Clause IV.

No adult citizen should by reason of race, colour, sex, language, religion, political or other opinion, national or social origin, wealth, education, status or birth be deprived of the right to be a candidate at any election, to seek votes, or to cast his vote for any candidate.

Clause V.

Freedom of expression through the press and other media of communication is an essential element of free elections and is also necessary to ensure the development of an informed and responsible electorate.

Clause VI.

Representative government implies the right within the law and as a matter of accepted practice to form an opposition party or parties able and free to pronounce on the policies of the government, provided their policies and actions are not directed towards the destruction of representative government and the Rule of Law.

Clause VII.

Illiteracy is an impediment to representative government reaching its highest expression and fullest realization. It is therefore the duty of the state to provide compulsory free education for all children and free education for all illiterate adults up to such standard as is necessary ultimately to remove such impediment.

Clause VIII.

To enable representative government to yield the best results, the people should not only be literate, but should have a proper understanding and appreciation of the principles of democracy, the functions of the different branches of the government and the rights and duties of the citizen vis-à-vis the state. Civic education through schools and through all mass media of communication is therefore a vital factor for ensuring the existence of an informed and responsible electorate.

Clause IX.

It is essential for the effective operation of the Rule of Law that there should be an efficient, honest and impartial civil service.

Clause X.

This Committee has reached the following further Conclusions relating to the guarantee of individual freedom and dignity within the framework of a representative government:

(1) In a state in which the Rule of Law prevails there should be effective machinery for the protection of fundamental rights and freedoms, whether or not these rights and freedoms are guaranteed by a written constitution.

(2) In countries where the safeguards afforded by well-established constitutional conventions and traditions are inadequate, it is desirable that the rights guaranteed and the judicial procedures to enforce them should be incorporated in a written constitution.

(3) While governments should of their own volition refrain from action infringing fundamental rights and freedoms, the ultimate determination as to whether the law or an executive or administrative act infringes those rights and freedoms should be vested in the courts.

(4) The ultimate protection of the individual in a society governed by the Rule of Law depends upon the existence of an enlightened, independent and courageous judiciary, and upon adequate provision for the speedy and effective administration of justice.

Clause XI.

In view of the fact that some governments in the Region often have recourse to preventive detention, this Committee has found it necessary to reaffirm, reiterate and extend the Conclusions of Lagos relating to preventive detention in the following terms:

(1) Save during a period of public emergency threatening the life of the nation, no person of sound mind shall be deprived of his liberty except upon a charge of a specific criminal offence, and preventive detention without trial is held to be contrary to the Rule of Law.

(2) During such period of public emergency, legislation often authorizes preventive detention of an individual if the Executive finds that public security so requires. Such legislation should provide the individual with safeguards against continuing arbitrary confinement by requiring a prompt administrative hearing and decision upon the need and justification for detention, with a right to judicial review as to the need and justification for such detention and with the right to representation by counsel at all stages. It should be required that any declaration of public emergency by the Executive be forthwith reported to, and be subject to ratification by, the Legislature. Moreover, both the declaration of public emergency and any consequent detention of individuals should, except in times of war, be effectively only for a specified and limited period of time (not exceeding six months).

(3) Extension of the period of public emergency should be effected by the Legislature only after careful and deliberate consideration of the necessity therefore. Finally, during any period of public emergency the Executive should only take such measures as are reasonably justifiable for the purpose of dealing with the situation which exists during that period.

(4) Even where the preventive detention of an individual is permitted by law by reason of a public emergency threatening the life of the nation, it is essential that the Executive should not act arbitrarily and that it should forthwith supply the person detained with the grounds for his detention and particulars thereof.

(5) Where it is necessary in order to prevent hardship, the State should support the dependents of a person placed under preventive detention.

Clause XII.

Finally, this Committee, having anxiously considered the factors which challenge the Rule of Law in the Region, wishes to add that in its view there are no intrinsic factors in the area which make the ultimate establishment, maintenance and promotion of representative government under the Rule of Law incapable of attainment.

Conclusions of Committee II Economic and Social Development within the Rule of Law

PREAMBLE

Considering that the Rule of Law requires the establishment and observance of certain standards that recognize and foster not only the political rights of the individual but also his economic, social and cultural security;

Realizing that the Rule of Law is endangered by the continued existence of hunger, poverty and unemployment, which tend to make a truly representative form of government impossible and promote the emergence of systems of government opposed to the principles of the Rule of Law;

Believing that the lasting and effective way of reaching the social and economic goals necessary to the smooth operation of the Rule of Law is by methods and procedures that conform to its principles; and

Bearing in mind, in consonance with the Universal Declaration of Human Rights, the economic, social and cultural rights of the individual include the right to work, to free choice of employment, to protection against unemployment, to just and favorable conditions of work and remuneration which will ensure to the worker and his family an existence worthy of human dignity, to security and social protection, and to the satisfaction and enrichment of his intellectual and cultural faculties;

The Committee has arrived at the following conclusions regarding social, economic and cultural development in the Region:

Clause I.

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

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

Clause II.

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

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

Clause III.

It is recognized in general, and more particularly in the case of the developing countries, that in order to achieve greater economic and social benefits for the individual some measure of intervention in property rights may become necessary, but such intervention should never be greater than is absolutely necessary in the public interest and should be subject to safeguards afforded by the Rule of Law.

Clause IV.

The land problem is one of the most fundamental and complicated problems. Consideration to appropriate land reform programs must therefore be given high priority.

Clause V.

While no specific methods of land reform can be suggested by the Committee which are uniformly appropriate for all communities, it is recognized that such methods may properly include qualification of the right to own or to succeed to land, provision for the maximum utilization of land, facilities for the granting of credit on advantageous terms, the issuance of land titles, the strengthening of the right of association of rural people for their political, economic, social and cultural advancement, and support for rural development in general. These and other measures of land reform must, however, conform to the principles and procedures of the Rule of Law.

Clause VI.

Sound economic planning is essential to the social and economic development of all countries, but the Rule of Law requires that both the ends and the means embodied in such planning derive from and reflect the ideas, the needs and the aspirations of the people themselves.

Clause VII.

To inspire confidence and to reduce the possibility of maladministration, especially in regard to capital investment in public economic development projects, it is recommended that full accounts on such projects be the subject of independent and expert examination, and that reports thereon be regularly submitted to the legislature.

Clause VIII.

Nationalization of private enterprises by a democratically elected government when necessary in the public interest is not contrary to the Rule of Law. However, such nationalization should be carried out in accordance with principles laid down by the legislature and in a manner consistent with the Rule of Law, including the payment of fair and reasonable compensation as determined by an independent tribunal. The same considerations should apply to other governmental action taken with similar purpose and effect.

Clause IX.

It is in accord with the Rule of Law to adopt, when necessary in the interest of public welfare, fair and reasonable measures with respect to price control, state trading, control of private trade and anti-trust legislation.

Clause X.

In every developing country it is desirable in the interest of social and economic peace that there be legal machinery for the peaceful settlement of labor disputes. It is recommended that, where necessary, states which have ratified the relevant conventions of the International Labour Organization implement the same by appropriate legislation.

Clause XI.

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

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

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

Clause XII.

In order to minimize infringements of the rights and freedoms of the individual, particularly in developing countries where far-reaching administrative decisions are necessary, such decisions affecting these rights and freedoms should be supported by stated reasons and be subject to review. The Conclusions of Committee II of the New Delhi Congress (Clauses IV and V), and of Committee II (A and B) of the Rio Congress of the International Commission of Jurists are reaffirmed.

Clause XIII.

Full observance of the Rule of Law requires that the government be liable for wrongs committed by it or its servants in the execution or the purported execution of public duties. The relevant conclusion of the New Delhi Congress (Committee I, Clause VI) is reaffirmed.

Clause XIV.

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

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

Conclusions of Committee III on the Role of the Lawyer in a Developing Country

PREAMBLE

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

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

Poverty, lack of opportunity and gross inequality in the Region require leaders who understand the need for evolutionary change, so that every citizen may look to a future in which each may realise his full potential as an individual in a free society. The great need of the peoples of the Region requires action, lest freedom be utterly forfeited. Beset by threats from the right or left, the statesman must find means to advance economic and social development of this country and countrymen, whilst preserving or establishing the institutions and the freedoms which are the cornerstones of a free society under the Rule of Law.

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

The lawyer must look beyond the narrower confines of the law, and gain understanding of the society in which he lives, so that he may play his part in its advancement. The inspiration of the lawyers of the world, particularly those of the Region, with the ideals proclaimed at the Rio Congress in the Conclusions of Committee III, "The Role of Lawyers in a Changing World", could play a large part in moulding free societies of the future, able to promote the full dignity of man, and to withstand the perils and dangers of the changing times.

This Committee therefore reaffirms and reiterates the Conclusions of the Rio Congress, and adopts the following further Conclusions with particular reference to developing societies:

CLAUSE I The lawyer has a deep moral obligation to uphold and advance the Rule of Law in whatever sphere he may be engaged or in which he has influence, and he should fulfil that obligation even if it brings him into disfavour with authority or is contrary to current political pressures. He can give effect to many of the principles underlying the Rule of Law in his daily work; for the rest, it is his responsibility as a citizen in a developing community to apply them for the benefit of society and his fellow-men.

CLAUSE II An indispensable aspect of the maintenance of the Rule of Law is the availability of lawyers to defend the civil, personal and public rights of all individuals and the readiness to act for those purposes resolutely and courageously. Such a readiness involves the obligation to take an active part in implementing and making effective schemes of legal aid for the poor and destitute.

CLAUSE III The lawyer should endeavour:

1. To secure the repeal or amendment of laws which have become inappropriate or unjust or out of harmony with the needs and aspirations of the people;
2. To review proposed legislation and delegated legislative enactments, and to ensure that they are in accord with the Rule of Law;
3. To ensure that the law is clear and readily accessible;
4. To promote legislation establishing the legal framework which will enable a developing society to advance, and its members to attain their full dignity as human beings.

CLAUSE IV The lawyer should assist in the work of administration; he should insist, nonetheless that it be executed with respect for the rights of the individual and otherwise according to law, and strive to assure judicial review of all administrative acts which affect human rights.

CLAUSE V Lawyers must bring to bear in the field of international relations the underlying principles of the Resolution of Rio, and the Conclusions of this conference: respect for law, coupled with a concern for all mankind, particularly the poor, the weak, the illiterate, and the oppressed.

CLAUSE VI This conference endorses the Conclusions of Rio regarding the Role of Legal Education in a Changing Society as being particularly relevant in the context of the Rule of Law in developing societies. It urges lawyers to be actively concerned with legal education and the provision of adequate incentives for teachers of law, and to do their utmost to implement the principles enunciated in those Conclusions. The Rule of Law, as a dynamic concept, requires that legal education should bear a realistic relation to the social and economic conditions obtaining in developing societies, so that future lawyers in the Region may be better equipped to perform their role in a constructive manner.

CLAUSE VII This Committee recommends the adoption by the Commission of a resolution, in the form attached, relating to the consideration of the feasibility of promoting a South-East Asian and Pacific Law Institute.

CLAUSE VII Lawyers should endeavour to enlist the aid of their professional associations to secure the acceptance by their members of the ideals set forth above.

**Resolution of Committee III
on the Role of the Lawyer in a Developing Country**

WHEREAS the countries in the Region vary in standards of legal education; and

WHEREAS co-operation on a regional basis is an effective means of enhancing the role of legal education in advancing the Rule of Law in the Region;

AND WITH A VIEW TO:

1. Providing a centre where training programmes may be conducted for teachers of law in the region;

2. Examining existing methods of legal education and teaching techniques;
3. Providing a clearing house for information as to common problems and experiences in the Region and initiating a comparative study of the problems confronting various legal systems;
4. Encouraging and facilitating research into the vital problems of social and legal adjustment posed by the impact of Western legal institutions and concepts;

This Conference requests the International Commission of Jurists to consider the feasibility of the establishment of a South-East Asian and Pacific Law Institute to realise the foregoing objectives.



ICJ Secretary-General Sean MacBride (1963 – 1971)

**Resolution of Advisory Group
on Human Rights Regional Conventions for South-East Asia and the Pacific**

(...)

Conference of Lawyers, 1966

Colombo, Thailand

10th – 13th January 1966

"The Declaration of Colombo stressed the duty of lawyers to bring to the attention of all members of the community the practical relevance of the Rule of Law in their daily life and aspirations."

- Sean MacBride, former ICJ Secretary-General⁹

An underexplored aspect of previous conclusions and resolutions regarding the Rule of Law was the means and methods by which they could be given practical effect and, more particularly, how individuals could be helped to understand and appreciate the significance of the Rule of Law and what it meant to his or her personal development and advancement. The Ceylon Colloquium on the Rule of Law was organized as a follow-up to the Bangkok Conference.

The Declaration of Colombo was adopted in the ambit of this Colloquium in 1966. It stressed the duty of lawyers to bring to the attention of all members of the community the practical relevance of the Rule of Law in their daily life and aspirations. It also drew attention to the role of informal and prompt means of addressing the grievances of citizens in their dealings with the administration.

The colloquium considered such matters as problems arising from the nationalization of property and examined how the citizen could be provided with an informal and prompt means of redress of grievances in dealings with the government.



Members of the ICJ Commission at ICJ Headquarters, Geneva (1966)

Declaration of Colombo

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

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

BELIEVING

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

SOLEMNLY DECLARES

1. That it is the duty of lawyers to bring to the attention of all members of the community the practical relevance of the Rule of Law in their daily life and aspirations, to devote their labors to the improvement of those aspects of law and procedure which justifiably incur the criticism of the general public, to explain those features inherent and necessary in the legal system, the importance of which is not sufficiently understood, and generally through all means of publicity to secure the co-operation of every element of the community in the realization of the Rule of Law;
2. The nationalization is not an end in itself but has to be considered in the light of the social and economic benefits it may bring to the community, the fairness of the method of assessment and the adequacy of the compensation offered to former owners, the interests of the workers in the undertaking nationalized and of the consumers involved, and the machinery set up to ensure proper supervision and control of the nationalized activities;
3. That a Parliamentary Commissioner for Administration or Ombudsman provides an informal and prompt means of drawing attention to the grievances of citizens in their dealings with the administration, of securing redress of such grievances by the weapons

of publicity, persuasion and recommendation and generally of ensuring the highest standards of efficient and fair administration;

4. That on the international level the countries of the Asian and Pacific Region should be encouraged to press for an enforceable Covenant of Human Rights and for the setting up of a United Nations High Commissioner for Human Rights, on the regional level for Regional conventions of Human Rights and on the national level for the more effective entrenchment of Human Rights in national constitutions;

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

Conference of French-Speaking African Jurists, 1967

Dakar, Senegal

5th – 9th January 1967

"During a conference organised in Dakar, Senegal, the participants returned to the idea first raised in Lagos and adopted the Declaration of Dakar in which they asked the ICJ to examine, in consultation with relevant African organisations, the possibility of creating a mechanism for the protection of human rights in Africa. The participants went as far as proposing the idea of an Inter-African Commission on Human Rights with consultative powers and the power to make recommendations."

- Germain Baricako, former Secretary of the African Commission on Human and Peoples' Rights

The Dakar Conference met from 5 to 9 January in 1967 under the auspices of the International Commission of Jurists, in collaboration with the Association Sénégalaise d'Etudes et de Recherches Juridiques and with Libre Justice. The Conference brought together 80 jurists from 15 countries of French-speaking Africa and from Madagascar, as well as a large number of African and other observers and representatives of the leading international organizations. The theme of the Conference was dedicated to "The Function of Law in the Development of Human Communities".

Speeches were given by representatives of the major international organizations, the United Nations, the UN High Commissioners for Refugees, the International Labour Organisation, the Council of Europe and the Organisation Commune Africaine et Malgache.

The Conference discussed and reached conclusions in respect of two main themes. First was "The Protection of Human Rights from the Arbitrary Exercise of Power, which included the areas of "personal freedom", "freedom of work", freedom of association", and "the criminal process". Second was the question "Popular Awareness of the Rule of Law".

At the conclusion of its work, the Declaration of Dakar was adopted. This Declaration stressed the importance and the function of the Law and the role of jurists in this regard, with particular attention paid to the African continent.

Declaration of Dakar

This Conference, meeting in Dakar (Senegal) from 5 January to 9, 1967, under the auspices of the International Commission of Jurists, in collaboration with the *Association Sénégalaise d'Etudes et de Recherches Juridiques* and with *Libre Justice*, and consisting of 80 jurists from 15 countries of French-speaking Black Africa and from Madagascar, reached the following Conclusions:

THE CONFERENCE,

CONVINCED

That Law is the only sure foundation of an organized world, built on Peace and Justice, which is the aspiration of all mankind;

That in particular the Law can and must be the principal instrument of the internal cohesions and stability required for the force for the development of modern and prosperous States able to afford all members of the community the standard of living and the enjoyment of the rights and freedoms essential to the dignity of Man,

CONSIDERS

That the Law cannot fully perform its function unless it enjoys the loyalty, respect and support of the people;

That the example of submission to the law must come from the State, the public authorities and leaders at every level of responsibility;

That a campaign to inform and educate public opinion is essential in order that everyone shall understand the function of the Law, shall recognize the need for rules to govern the relations of citizens with one another and with their leaders if a country is not to be plunged into either anarchy or despotism, and shall realize that the Law exists to assist him, and in particular the humblest of his brethren, in their political, economic and social life;

That jurists have a duty to take the initiative necessary to give substance to these ideas in the daily lives of the citizens and to demonstrate in actual practice the advantages they may obtain from a legal system conforming to the Rule of Law whenever they consider that they have a just grievance;

That the independence of the judiciary remains the best safeguard of legality, and that a judicial system adequate both in size and quality to perform the services expected of it, far from being a luxury even in a poor State, must be accepted as one of the essential cogs in the mechanism of society and the progress of the nation as a whole:

BELIEVES

That abuses of power occur even in the most enlightened democracies, and it is therefore imperative to have available effective machinery to provide protection against the arbitrary use of power and provide a means to redress if need be;

That the political, economic and social construction of emerging nations, and especially the systematic planning of programmes for development, are liable to lead to

encroachments on certain individual rights. Jurists must therefore maintain constant vigilance to ensure an equitable balance between the requirements of the public well being and the rights of the individual, and must ensure that measures adopted to deal with pressing problems of a temporary nature are not allowed to be used as permanent solutions;

That it is not possible to introduce discrimination into the concept of the dignity of man; that the dignity of man in Africa calls for standards no lower than those recognized elsewhere; that any erosion of this ideal would be an unacceptable retrograde step; and that always and everywhere an irreducible minimum must be preserved below which the dignity of man can no longer exist;

That the development of the nation and the advancement of the individual politically, economically and socially are not oppressing, but rather mutually interacting concepts, and that the mobilizing of the vital energies of a country can only lead to real and lasting results if it is carried out by methods consistent with the dignity of man and the principles of the Rule of Law.

AFFIRMS

That once the problems resulting from the heritage of the colonial era have been isolated, it becomes apparent that the basic requirements of the Rule of Law are not essentially different in Africa from those accepted elsewhere; that the economic, social and cultural difficulties Africa faces today cannot justify the abandonment of the fundamental principles of the Rule of Law, and that it is the duty of all jurists to make these principles the dynamic concept through which progress is achieved.

CONDEMNS

Intolerance and discrimination in all their forms, especially racial discrimination and political systems based on apartheid, as being incompatible with the dignity of man and the principles of the Rule of Law;

All vestiges of an outworn colonialism which hamper the growth of an African Africa towards progress, stability and unity, at the same time solemnly, re-affirming that the will of the people is the only basis for the authority of those in power.

APPEALS

To all who believe in Peace and Justice to take part, each within his own sphere of activity or influence, in a vast campaign at the national, regional and global levels so that the year 1968, designated by the United Nations as the International Year of Human Rights in commemoration of the twentieth anniversary of the Universal Declaration, may be a milestone in the progress of all the peoples of the earth toward the acknowledgment, the respect and the promotion of the Rights and Freedoms which are essential to human dignity.

And ADOPTS as a whole the Conclusions annexed to this Declaration.

Conclusions adopted by the Conference

Protection of Human Rights from the Arbitrary Exercise of Power

Conclusions on proposal of Commission I

Convinced that the protection of the individual from the arbitrary exercise of power and the right of each person to the full enjoyment of human dignity must be expressly guaranteed, not only by the Law, but also by appropriate institutions and by simple and effective procedures, both at the national level, as well as by criminal sanctions against those who infringe fundamental rights and freedoms,

This Conference of French-speaking African Jurists, meeting in Dakar, examined in particular questions relating to personal freedom, freedom of work, freedom of association, the criminal process and the protection of the individual against the arbitrary exercise of administrative power, these being matters which, in the present situation of Africa and Madagascar, appeared essential for the application of the Rule of Law.

The Conference reached the following conclusions:

Article I – Personal freedom

1. The status of the person is the subject of legislation which varies from one African country to another. This diversity should not, however, prevent each of the States from adopting laws which formally condemn slavery and the slave-trade, as well as other institutions or practices similar to slavery, such as servitude for debt, bond-service, oppressive labour contracts, obstructions placed in the way of a free choice of marital partner, any abuse of parental authority, especially by exploiting the work of children, and generally any situation interfering with the freedom of the individual and arising from the alleged consent of the person concerned.
2. The application of these principles should be ensured by laws providing for criminal sanctions against all who violate them, and by affording to the person whose freedom has been curtailed, effective, practical, simple and free means – in particular by way of legal remedies – by which he may recover that freedom and fully enjoy it.
3. These measures can only be effective if the public authorities do their utmost to ensure that each individual is fully aware of his rights and of his duty to respect the rights of others. The public authorities must also establish such economic and social structures as are necessary to protect or to restore the freedom of each individual, for example by adopting an appropriate land tenure system.
4. To emphasise their determination to eliminate every form of slavery, States should subscribe to the International Convention of September 28, 1926, amended by the Protocol of December, 1953, and the Supplementary Convention of September 7, 1956, on "the abolition of slavery, of the slave trade, and of other institutions or practices similar to slavery".

Article II – Freedom of work

1. The French-speaking African States are at present struggling for economic and social development, and are faced with especially difficult situations in their endeavour to ensure that each of their citizens may reach a standard of living acceptable to modern man. To accomplish this, the States should awaken in each individual the awareness of his own obligations in the building of his country.

2. Nevertheless, no exigency of development can justify forced labour, because it gravely jeopardises the dignity and freedom of man. The public authorities have the duty to provide employment for each individual, at the same time guaranteeing him a free choice of employment and fair conditions of work, so that he may participate freely and to his utmost in the development of his country, from which he will be the first to benefit.
3. Freedom of work is nevertheless compatible with vocational guidance with a view to the utilisation of the capacities of each individual in the best interests of the community and, in exceptional circumstances, with the obligation of the citizen to perform a given task for which he shall receive a fair remuneration. In this respect, plans must be made for appropriate vocational training as well as for a fully organised system of labour inspection in order to guarantee fair conditions of work.
4. Each State should co-operate in the initiatives undertaken in this field by the International Labour Organisation, in particular by ratifying the International Labour Conventions and by enacting the legislation required for their effective application.

Article III – Freedom of association

1. The right to participate in the political life of the country, freedom of religion, freedom of association and trade union rights are all aspects of the fundamental right of each individual to form and express his opinions. This right must be guaranteed against arbitrary suppression or restriction, and must not be limited in any way so long as it is not exercised in a manner detrimental to public order and safety.
2. The right of all persons to take part in public life implies the possibility for differing trends of opinion to find free expression and thus contribute to the common task of building the nation.
3. The rights and freedoms of the worker are merely illusory when they are not sustained by free trade unionism. By free trade union is meant a trade union entirely independent of the public authorities and open to all who fulfil the conditions of membership. Membership of a trade union should not be obligatory.
4. The initiatives of the United Nations Organisation and of the International Labour Organisation in relation to freedom of expression and trade union rights, should receive the full participation of States, in particular by the ratification and application of the existing international conventions.

Article IV – The criminal process

1. There should be strict adherence to the principle that criminal offences and penalties must be defined and provided for by legislation. Legislative provisions should leave no margin for far arbitrary interpretation, no should they accept vague notions such as those of “idleness”, “subversion” or “danger to the community”. This principle requires absolute respect of the rule against retro-activity of criminal legislation.
2. Freedom from arbitrary arrest or detention should be scrupulously safeguarded by law and in practice. Preventive detention without trial must be considered contrary to the Rule of Law. Every person on arrest should be brought before a judge or magistrate within a very short time, and should be set free if he has been arbitrarily arrested. He should subsequently be able to claim compensation for damage suffered.
3. Every person accused of a criminal offence has the right to all the necessary safeguards for his defense.

4. Since complete independence of the courts is the best guarantee the individual can have against the arbitrary exercise of executive power, it is indispensable that the principle of the separation of powers should be scrupulously observed.
5. In situations of armed conflict or other public dangers threatening the life of the country, the creation of special courts may be allowed only for the strict exigencies required by the emergency, and subject to the observance, in all circumstances, of the safeguards set out in this Article.

Article V – Protection of the individual from the arbitrary exercise of power by the administration

It is essential for each individual to have a readily available remedy against acts of the administration which violate his rights and freedoms, and in particular, access to a court of law.

Article VI – Institutions and procedures tending to promote and ensure respect for Human Rights at the international level

1. States, in co-operation with the United Nations Organisation and its specialised agencies, should ensure respect for human rights and fundamental principles in practice, by putting into operation the principles contained in the Universal Declaration of Human Rights, by ratifying existing international conventions relating to human rights, especially the conventions designed to eliminate discrimination in all its forms, and by taking appropriate steps to ensure their application.
2. States are urged to support the project for the institution of a United Nations High Commissioner for Human Rights.
3. The International Commission of Jurists is requested, in co-operation with the competent African organisations, to study the feasibility of creating a regional system for the protection of human rights in Africa; an Inter-African Commission on Human Rights, with consultative jurisdiction and the power to make recommendations, might be the first element in such a system.

Public Opinion and the Rule of Law

Conclusions on proposal of Commission II

Believing that public opinion cannot comprehend the concept of the Rule of Law unless the State affords its citizens the necessary material and moral background, free and readily available access to the law, a legal system they can understand and an appropriate educational programme,

This Conference of French-speaking African Jurists, meeting in Dakar, AFFIRMS that the immediate and absolute imperative for government action is the struggle for the economic, social and cultural advancement of the African.

IT RECOGNISES:

- that since action for the implementation of the Rule of Law necessarily involves its full acceptance by political leaders, the latter must be convinced that this Rule of Law, far from

being an impediment to action, constitutes a dynamic factor in economic and social progress.

In this respect, the African jurists draw the attention of governments to the fact that acceptance of the Rule of Law by public opinion engenders national security and stability in human relationships, without which there can be no public confidence.

I. Access of the Individual to Justice

1. Access to the law by individuals is best assured if they are able to play a part, under a democratic system, in the enactment of the law.
2. To ensure respect for the Rule of Law in practice, it is essential that the layman should have available to him a legal system to which he can turn with complete confidence. It is also essential that the layman should be acquainted with the institutions which exist to vindicate his rights and freedoms when he considers that they have been infringed, that these institutions should be readily available to him, and that the persons responsible for administering justice should enjoy his confidence and respect.

- a. The role of the judges is all the more important in that cases are often decided by a single judge. Hence the question of the quality of judges is a fundamental one. Their training and recruitment often raise problems for the African States, due on the one hand to technical and financial difficulties, and on the other to the reluctance of young people to embark on a judicial career.
- b. The independence of the judiciary is the fundamental element in a system based on the separation of powers and ensuring the protection of human rights against the arbitrary exercise of power; it should not be guaranteed solely by statute, but above all by a military and financial position which protects the judge from attempts at corruption and other pressures that may be put upon him.

It must be remembered that the judge himself plays an important part in the establishment of his independence; therefore, he should, in particular, refrain from any activity liable to jeopardise it.

- c. Whether he is a citizen or a foreigner, the practising lawyer should be aware of the role he has to play in the public eye. The fact that he is the person to whom the litigant turns initially gives him the opportunity to act as educator and counsellor. If the layman is to have full confidence in the lawyer, the latter must strictly apply and observe the rules and ethics of his profession should provide the necessary safeguards both of his independence vis-à-vis the authorities, and of conditions permitting him fully to perform his duty, especially in criminal cases.
 - d. In order that assessors and interpreters may enjoy the confidence of the layman, and for the satisfactory administration of justice, certain standards of honesty and competence should govern their recruitment.
 - e. In all court proceedings, it is essential that the clerks of the court perform their duties diligently and punctually.
 - f. It is imperative that the citizen should understand that his attendance at court as a witness is an obligation he must fulfil with complete honesty and with no other purpose than to assist in the administration of justice.
3. Respect for the Rule of Law is also based on the effective operation of the judicial system, which implies an absolute respect for the status of the judiciary and a simple,

rapid, effective and inexpensive procedure for bringing matters before the courts, for obtaining a judgment and for the execution of judgments.

4. An understanding by the layman of the language used in the courts is a necessary condition for the realisation of the Rule of Law.
5.
 - a. In Africa, where case law plays a major part in law-making, it is essential that the judges should be fully aware of their responsibility in the interpretation of laws likely to have a profound effect on the daily lives of individuals, and the vague wording of which may leave room for their wrongful or arbitrary application.
 - b. The effective implementation of the judgements of the courts is an essential factor in establishing and maintaining the layman's confidence in the legal system and its administration. This implies a complete co-ordination between judges and judicial officers.
6.
 - a. The lack of qualified judges constitutes an extremely grave impediment to the effective administration of justice in certain countries. To overcome this, it is of the utmost importance that a vast effort should be undertaken to arouse the interest of young people in a legal career.
 - b. It would be desirable to explore ways and means of setting up an African inter-state body for professional training, and possibly a system of inter-African technical assistance provided by those countries which have the greatest number of jurists, judges and practising lawyers.
 - c. The project currently under study by the *Organisation Commune Africaine et Malgache* (OCAM) to set up a legal department within the organisation, responsible in particular for the centralisation of information and co-ordination of activities in the legal field, would be of considerable help in this connection and should be strongly encouraged and supported.
 - d. It is desirable that methods of recruiting and training judges should be standardised by procedures similar to those operating in certain countries, so as to eliminate the antagonisms that might arise from varying standards and might result in a lack of respect and confidence on the part of the layman in the judgements of the courts.
 - e. It would undoubtedly be valuable if young African judges could have their training broadened to include other disciplines that would enable them, along with their judicial function, to play a role as educators in a population too often ignorant of the most elementary legal concepts.
 - f. The International Commission of Jurists is requested to explore ways in which it might be able to play a role in legal education and training at the higher levels, where the problem is most acutely felt.
7.
 - a. If the legal system is to have the full confidence of the layman, it must necessarily be physically within his reach, that is to say that courts, either permanent or operating on a circuit system, should be distributed throughout the whole territory, even in the most inaccessible places. In this connection, young qualified jurists must be firmly reminded that it is their civic duty to accept posts in rural areas.

- b. To facilitate the work of judges, especially when circumstances do not make it possible for the litigants to have the assistance of a lawyer, it might prove useful to introduce a civil examining magistrate who would be responsible for establishing the facts of the case.
 - c. Especially where those seeking justice are very often poor, legal aid, easy to obtain and with maximum coverage, is indispensable for the protection of rights and freedoms.
 - d. In countries where there is a particularly serious shortage of practising lawyers, it would be desirable to study ways of providing for easier access to the Bar and to the right of audience before the courts.
8. Racial discrimination and intolerance result in inequality of citizens before the law; therefore, every regime which gives legal or factual status to a policy of apartheid must be most vigorously condemned.

II. Popular awareness of the Rule of Law

9. Since the Rule of Law can only protect citizens to the extent that they are aware of its value and its usefulness to them, particular efforts must be made to develop this awareness in the minds of the people.
10. A massive drive to educate public opinion is therefore imperative. It must devote itself particularly to teaching all citizens:
- a. that it is necessary for them to accept and respect the rules of law governing their community, so that the relations of citizens with one another and with their leaders may not degenerate into anarchy or despotism;
 - b. that the primary purpose of these rules is to protect them, especially the humblest and weakest among them, in their political, economic and social life;
 - c. that it is therefore in everyone's interest to protect these rules and contribute to their proper functioning.

Such a programme will have to be adapted to the special conditions of the various social categories, and will have to be carried on both within the public sector, using the means available to it, and also within the private sector and the family circle, in urban centres, and especially in rural areas.

The technique of information campaigns preceding certain legislative reforms, which are necessary for the development of the country but involve profound changes in traditional customs, should be encouraged, so as to bring about popular participation in the legal life of the community.

11. General education, especially the civic education of all citizens and above all of youth should be intensively undertaken by the State. Popular manuals explaining the Rule of Law should be published for teaching at primary, secondary and university levels. Such publications might be prepared by the national education authorities of the various countries, in collaboration with international organisations, in particular UNESCO and the other specialised agencies of the United Nations.
12. All organisations which may have a bearing on the life of an individual should provide him with a civic training to develop his awareness of the Rule of Law. Among others, political parties, trade unions, student organisations and religious groups, can play a considerable role in this respect.

13. In countries where the majority of the population is rural, the rural leader has an essential task in promoting economic advance, the capacity to think for oneself, the diffusion of information and in providing an introduction to the modern world. His influence may be great, and the task of developing an awareness of the Rule of Law in the group to which he belongs devolves principally upon him.

14. Mass communications media are essential for imparting to public opinion an awareness of the principles designed to safeguard the Rule of Law.

It is essential that national radio stations broadcast regular educational programmes on Human Rights.

It is also essential that legislation dealing with the media of communication should provide them with a legal status guaranteeing the freedom of expression of all opinions.

Since mass communication media must also be educational, it is desirable that they should benefit from the large-scale support of the State; this should not, however, lead the government to succumb to the temptation to aid only those media which disseminate the ideas of the party in power; and a steady expansion must go hand-in-hand with the most complete freedom.

Well-informed public opinion is an important factor in the development and construction of a country.

15. Given the essential role of woman in the social structure, economic and social progress is inescapably linked with her advancement. This requires a special effort to provide women with the standard of education which will allow them to play their full part in society.

The efforts undertaken to this end by the legislatures of most of the African countries since independence should be continued and encouraged.

16. The States should encourage each year the observance of Human Rights Day, 10th December, commemorating the adoption of the Universal Declaration of Human Rights in 1948.

The International Year for Human Rights, 1968, which will commemorate the 20th anniversary of the adoption by the United Nations of the Universal Declaration, should provide States with the opportunity to undertake among their citizens a vigorous and extensive popularisation campaign of the fundamental concepts of the Rule of Law and Human Rights.

European Conference on the Individual and the State, 1968

Strasbourg, France

26th – 27th October 1968

"All the participants clearly agreed that one of the greatest responsibilities of the modern state towards its individual citizens is to provide adequate, efficient and effective mechanisms for the protection of their fundamental rights and freedoms, not only against infringements by fellow citizens, but also against infringements by the State itself."

- Sean Macbride, former ICJ Secretary-General¹⁰

The European Sections of the International Commission of Jurists organized a Conference from 26 to 27 October 1968 to mark the International Year for Human Rights inviting European jurists to re-think their approach to human rights. The Conference was held at the Council of Europe (Strasbourg) and focused on the theme of "The Individual and the State". The Conference brought together 130 participants from European and non-European countries, as well as from international organizations. The honourable Mr. Justice T.S. Fernando, President of the International Commission of Jurists, opened the Conference and it was further presided over by the Honourable René Mayer, president of Libre Justice and former Prime Minister of France.

The Conference discussed the essential legal elements required for the protection of the individual. Particular attention was given to the increasingly complex machinery of the modern state. A key theme was the need to protect the individual not only from abuse of political power, but also from bureaucratic autocracy or from simple administrative errors. The Conference focused on adaptations European states need to meet modern developments and continue to protect and respect human rights.

The Conclusions reached reflect an understanding of the collective duty to protect human rights by the Rule of Law. The preamble recalls the function of the legislature and effective government in this regard. It further mentions the new dangers to human rights presented by technological evolution, and by the expanding scope of State regulation in all spheres of human activity. The operative part of the Conclusions then sets out the Essential Legal Elements for the protection of the individual representing a comprehensive view of the consensus of legal thinking in Europe on the protection of the individual.

The Conclusions are followed by "General Recommendations" based on the acknowledgment that the greatest needs are related to a proper political, social and economic structure, fulfillment of which is a prerequisite for the effective protection of human rights. They thus set out the basic essential needs in all societies, such as education, elections, free press, etc.; and recommend extra measures for the effective protection of human rights. Some recommendations are made concerning the international protection of human rights. In particular, an international mechanism to provide effective implementation machinery in the form of a Universal Court of Human Rights is encouraged.

Conclusions

Preamble

WHEREAS the Universal Declaration of Human Rights recites that 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, and enumerates the human rights and fundamental freedoms which States have undertaken to promote and observe,

AND WHEREAS by the European Convention on Human Rights (1950) the Member States resolve to take the first steps for the collective enforcement of certain of the Rights set forth in the Universal Declaration and guarantee the enjoyment of the rights and freedoms set forth in the European Convention,

AND WHEREAS by Article 2 paragraph 1 of the International Covenant on Civil and Political Rights (1966) each State party to the Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the 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,

AND WHEREAS by Article 2 paragraph 2 each State party to the said Covenant undertakes to take the necessary steps, in accordance With its constitutional processes and with the provisions of the Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognised in the Covenant,

RECALLING that the International Commission of Jurists has, at its Congress of New Delhi (1959), stressed that it is a function of the legislature in a free society under the Rule of Law to endeavour to give full effect to the principles enunciated in the Universal Declaration of Human Rights and to create and maintain the conditions which will uphold the dignity of man as an individual, which dignity requires the recognition of his fundamental rights,

AND RECALLING that the International Commission of Jurists has, at the Congress of Rio de Janeiro (1962) on 'Executive Action and the Rule of Law,' concluded that the Rule of Law depends upon effective government capable of maintaining order and promoting social and economic development on the one hand and upon adequate safeguards against the abuse of State power on the other,

AND RECALLING that the Assembly for Human Rights held at Montreal in March 1968 and the United Nations International Conference on Human Rights held at Teheran in April/May 1968 recognised that many aspects of modern technological evolution presented new dangers to human rights and to human dignity and recommended that a study be undertaken in this field,

AND REALISING that one of the primary responsibilities of the State towards the individual is to provide adequate and effective mechanisms for the protection and furtherance of his fundamental rights and freedoms;

NOW THEREFORE this European Conference of Jurists adopts the following Conclusions:

Part I Essential Safeguards

1. Guarantee of Rights

Fundamental human rights and freedoms should be guaranteed by law, preferably by a written constitution.

2. Separation of Powers

The principle of separation of the legislative, executive and judicial powers of the State should be respected.

3. Independence of the Judiciary

The independence of the judiciary should be secured. Such independence implies freedom from interference by the executive and legislature and freedom to interpret and apply the laws of the land in accordance with the Rule of Law and the fundamental principles of justice. In order to ensure the independence of judges it is essential that their appointment should be free from political interference or patronage; they should enjoy full security of tenure and should receive adequate remuneration which cannot be altered to their disadvantage during their term of office. (For more detailed requirements see New Delhi Conclusions on the Judiciary and the Legal Profession under the Rule of Law.)

4. Availability of Remedy

Remedies should be provided by Law against infringements of the rights of the individual, by State organs, public authorities or individuals.

5. Speed of Remedy

Judicial process should provide for the disposal of cases without undue delay Civil and criminal proceedings should be free from unnecessary procedural difficulties and technicalities, which result in undue expense or delay and present other obstacles to the speedy vindication of rights. To obviate delays it is essential that there should be an adequate number of judges and court officials.

6. Fair Hearing

There should be fairness and objectivity in judicial and quasi-judicial proceedings. This entails not only an objective tribunal, giving each party a fair and equal opportunity to present his case, but also the existence of an adequate system of legal aid.

7. Judicial Appeal and Review

There should be an effective right of appeal from the decisions of a lower court to at least one higher court. Administrative acts which may injuriously affect the rights of the individual should be subject to judicial review.

8. Availability of Evidence

The defence in a criminal case, a party to a civil action and a party before an administrative tribunal should have access to all oral and documentary evidence relevant to his case or to the matter under investigation, and effective machinery for compelling the attendance of witnesses and for ensuring the production of documents is essential. In any cause in which the State or a public authority is involved, the State should not be allowed to prevent the production of relevant documents or other evidence unless the court comes to the conclusion that the security of the State, or the fair administration of justice, would be seriously prejudiced by such production.

9. Safeguards Against Retroactive Legislation

Constitutional or legal safeguards should ensure that the rights of an individual are never adversely affected by retroactive legislation or regulations.

10. Provision Against Double Jeopardy

Due regard should be had for the principle, "Nemo bis vexat in eadem causa."

Part II Administrative Acts

11. Legal Basis

Public authorities may only make decisions that are based on existing law, and in

furtherance of the object envisaged by the law under which they are made.

12. *Prior Consultation*

Where an executive or administrative order ultimately affects the rights or interests of individuals, the public authority concerned should consult the organisations or groups interested in the measure contemplated and give to interested individuals a reasonable opportunity to present their views.

13. *Motivation for Order*

When an administrative order is made which affects or is likely to affect the rights of the individual, the reason for the order should be fully stated.

14. *Concept of State Responsibility*

The State should be liable for damage arising from the negligence or wrongful acts of its executive and other organs. Under the concept of State responsibility, the State should also be liable in principle for damage resulting from those of its operations which cast upon an individual a burden which is unreasonable in relation to the rest of society, particularly when his ability to earn his livelihood, his family rights or his property rights are adversely affected.

15. *Minimum Requirements for Quasi-Judicial Acts*

Save in periods of genuine public emergency, where an executive or administrative body has a discretionary power to make orders amounting to an adjudication affecting the rights and interests of an individual, the following requirements should be observed:

- (a) There should be adequate notice to the interested parties of the contemplated measures and the reasons therefore;
- (b) The interested parties should have an adequate opportunity to prepare their case, including the right of access to all relevant data;
- (c) The interested parties should be given the right to be heard, to present evidence and to meet opposing arguments and evidence;
- (d) The interested parties should be given the right to be represented by counsel or other qualified person;
- (e) Notice of the decisions reached and of the reasons therefore should be communicated without undue delay to the interested parties.

Part III Extra-Judicial Protection

16. *Administrative Protection*

Consideration should be given to the provision of simple, inexpensive extra-judicial remedies within the administration itself for correcting administrative errors or abuses. Any such extrajudicial remedies should be capable of being grafted upon the existing legal and political systems.

17. *Ombudsman System*

The institution of "Ombudsman," now operating in Denmark, England, Finland, Guyana, New Zealand, Norway, Sweden, and Tanzania, has proved of considerable assistance both in protecting the rights of the individual and in achieving a more efficient administration. An institution of this or a similar nature would be a valuable adjunct to the existing judicial safeguards in any jurisdiction, especially in countries which do not have a system of Administrative Courts.

Part IV: Control Over Assumption of Emergency Powers

18. Restriction on Assumption of Emergency Powers

The restrictions on the assumption and exercise of emergency powers as set out in the European Convention for the Protection of Human Rights and Fundamental Freedoms and the United Nations Covenant on Civil and Political Rights, should be the minimum adopted in any State. Steps should be taken by every State to have at least these restrictions embodied in its basic law.

19. Judicial Control

There should be a system of judicial control over the assumption and exercise of emergency powers by the executive with a view to:

- (a) determining whether the circumstances have arisen and the conditions have been fulfilled under which the powers may be exercised;
- (b) limiting the extent to which such emergency powers may be exercised in derogation of the fundamental rights of the individual; and
- (c) giving the courts a supervisory jurisdiction to ensure that emergency powers are used for the specific purpose for which they were granted, and that they are not exceeded. The courts should have the power to grant effective remedies in cases of misuse or abuse of emergency powers.

20. Confirmation by Legislature

Wherever the executive power is legally authorised to declare a state of emergency, the declaration should be compulsorily referred to the legislature for confirmation within the shortest possible time. The legislature should retain control over the duration of emergency periods, which should only be extended from time to time when the legislature is satisfied that extension is needed.

21. Periodic Legislative Review

An obligation should be imposed upon the executive power to submit its programme and procedures to legislative review from time to time during an emergency.

22. Safeguards Against Continuing Arbitrary Confinement

During periods of public emergency, legislation authorising preventive detention should contain safeguards for the individual against continuing arbitrary confinement by requiring in each case a prompt hearing and decision upon the need and justification for the detention. Such decision should always be subject to judicial review.

General Recommendations

The principle task of the Conference was to set out the specific legal elements necessary to ensure the protection of the individual: these are embodied in the Conclusions of the Conference. Realising, however, that the proper safeguard of human rights cannot be assured solely by domestic legal remedies and that a proper political, social and economic structure is an essential prerequisite for the effective protection of human rights, the Conference makes the following General Recommendations:

1. Economic and Social Rights

The establishment and observance of standards that recognise and foster not only the political rights of the individual but also his economic, social and cultural rights and security-in accordance with the European Social Charter (1961) and the International Covenant on Economic, Social and Cultural Rights (1966)-is one of the first essentials.

2. Public Opinion

A further essential is a society of citizens conscious of their rights, resolute in their support

of the institutions designed to safeguard them, and vigilant against erosion of the right to receive and impart information, the rights of free expression, assembly and petition and civil and political rights in general.

3. Education

It follows that there must be an adequate scheme of education in principles of human rights which utilises to the full all modern means of mass communication such as radio, television, films, newspapers and publications. Further, human rights should figure prominently in the curricula of schools and in the education of public officers.

4. Free Press

In order to ensure that the public is conscious of its rights and maintains its interest in human rights' problems, it is essential that there should also exist a free press, which not only truly represents different shades of public opinion, but also provides a medium for the expression of different points of view and of general or individual grievances.

5. Elections

A system of periodic and genuine elections on the basis of universal and equal suffrage by secret ballot must form the basis of government authority.

6. Periodic Review

To ensure that laws and procedures conform to the provisions of the Universal Declaration of Human Rights, there should be a system of periodic review of legislation. A competent body should be authorised by the legislature to examine existing legislation and formulate appropriate suggestions to better secure the rights of the individual and their protection.

7. Advisory Institutions

A valuable adjunct to State organs of protection would be an institution or institutions to examine the causes of infringements of different rights of the individual and to recommend legislative and administrative measures to prevent such infringements by State officials and other persons.

8. Earlier Conclusions

The individual rights which should be safeguarded are enumerated in the Universal Declaration of Human Rights, and the relevant international conventions- they have in many instances been defined by earlier Congresses and Conferences of the International Commission of Jurists, particularly the Congress of New Delhi (1959), the Conference of Lagos (1961), the Congress of Rio de Janeiro (1962), the Conference of Bangkok (1965) and the Ceylon Colloquium on the Rule of Law (1966). Accordingly, this Conference has not attempted to redefine them all.

In the light of present day evolution, the Conference considers that special attention should be drawn to two other Conferences of the International Commission of Jurists, each held to examine a specific right in depth, namely the Nordic Conference on "The Right to Privacy" (1967) and the Bangalore Conference on "The Right to Freedom of Movement" (1968). The Conference also wishes to draw special attention to the Conclusions of the United Nations Seminar held at Kingston, Jamaica, in 1966 on "Effective Realisation of Civil and Political Rights at the National Level" and other recent United Nations Seminars on human rights.

9. International Jurisdictions

While the protection of the individual is most effectively safeguarded at the national level, international judicial and other effective supervision is also necessary. In order to give full effect to the provisions of the Universal Declaration, regional conventions and other arrangements should be encouraged. Such conventions should provide effective implementation machinery analogous to that provided by the European Convention on Human Rights. Consideration should also be given to the setting up within the framework of the United Nations of a Universal Court of Human Rights that could act as a final court of

appeal in all matters related to human rights. In any international machinery provided, the right of individual petition is regarded as essential. Consideration should also be given to the establishment of an international jurisdiction to deal with crimes against humanity.

10. *United Nations High Commissioner for Human Rights*

The adoption of the proposal now before the General Assembly of the United Nations for the establishment of a U.N. High Commissioner for Human Rights with an independent status should be encouraged.

11. *Ratification*

Finally, this Conference urges every country:

(a) to adhere to the principles embodied in the European Convention for the Protection of Human Rights and Fundamental Freedoms (including Article 25 and the Articles relating to the jurisdiction of the Court), and those in the European Social Charter;

(b) to sign and ratify the International Covenant on Civil and Political Rights (including the Optional Protocol), the International Covenant on Economic, Social and Cultural Rights and the Convention on the Elimination of all forms of Racial Discrimination; and

(c) to take early steps by legislation or otherwise to ensure the effective existence in its legal and administrative structure of the essential and basic elements necessary for the protection of the individual.



ICJ Executive Committee (1968): E.W. Debevoise, A.J.M. van Dal, Justice T.S. Fernando (President), René Mayer, Sir John Foster, Sean MacBride (Secretary-General)

Conference on Justice and the Individual, 1971

Aspen, Colorado, USA

8th – 12th September 1971

The Aspen Conference was dedicated to the theme of "Justice and the Individual: The Rule of Law under Current Pressures". The meeting was sponsored by the American Association for the International Commission of Jurists and the Aspen Institute for Humanistic Studies. Among the participants were 22 Commissioners, 21 guest participants and two observers.

Professor Louis Henkin of Columbia University introduced the theme of the conference. Subsequent in-depth discussion centered on the following presentations of background papers: "The Growing Use of Arbitrary Power", by Professor Frank Newman of the University of California; "Violence and Human Rights", by former ICJ Secretary-General Sean MacBride; and "Racial Discrimination", by Professor Joel Carlson of the Center for International Studies at New York University.

In the final document of the Aspen conference, conclusions were adopted on the three themes of the papers. In its conclusions, the Commission first outlined the various pressures to which the Rule of Law had been subjected in many countries of the world. Such pressures included the tendency of many governments, especially in countries where there was an urgent need for economic advancement, to undermine the basic civil and political rights of individuals. The Commission also pointed to the widespread disregard for international humanitarian law and the phenomenon of "infectious violence", which, as the Universal Declaration of Human Rights recognizes, is often the last resort of those who are too long denied their human rights under the Rule of Law. The Commission also expressed its concern over the situation in South Africa.

Final Document of the Aspen Conference

The International Conference of lawyers from 25 countries, convened by the International Commission of Jurists from 8 to 12 September 1971, as guests of the Aspen Institute for Humanistic Studies, Aspen, Colorado, in the United States of America,

Having take note of

- (a) pressures to which the Rule of Law is subjected in many countries of the world, in particular the increasing tendency of many governments, aided by modern technology, to undermine basic rights of the individual; and the tendency of authorities, especially in countries where there is an urgent need for the economic advancement of their peoples, to assert that such advancement requires and justifies arbitrary rule and the denial of civil and political rights;
- (b) flagrant denial by many governments of human rights now protected by international customary and treaty law;
- (c) widespread disregard in armed conflict, including internal strife, of the minimum standards of civilised conduct required by international humanitarian laws;
- (d) infectious violence which, as the Universal Declaration of Human Rights recognises, is often the last resort of those who are too long denied their human rights under the Rule of Law;

And having, without prejudice to its continuing concern about racial discrimination and colonial oppression in other areas, specially considered

- (e) the racially repressive minority regime, maintained by unjust laws, which in violation of human rights persist in South Africa;

Now resolves that

(1) denial of civil and political rights affords no short-cut to the attainment of economic, social and cultural rights for every individual; all these rights are interdependent and advances must be made on both fronts to meet the obligations of the International Bill of Human Rights (comprising the Universal Declaration, the two Covenants and the Optional Protocol) and of other international and regional instruments for the protection of human rights; this balanced progress will not be made unless the economic policies of the developed countries and of international economic institutions are such as to further economic and social reform in the developing countries;

(2) all lawyers, whether judges, advocates, government lawyers, teachers of law or participants in the law-making processes have a special responsibility, which they have not as yet sufficiently discharged:

- (a) to help to develop and utilise institution, procedures and expertise to bring economic, social and cultural advance to their fellow countrymen within the framework of the Rule of Law;
- (b) to stimulate a greater awareness of the international obligations in respect of human rights, to which under treaty and customary law their countries are subject;
- (c) to encourage the application of that law in national tribunals and to make fuller and bolder use of international remedies for violations of those rights in their own and other countries;

(3) a permanent independent Commission of Enquiry should be set up within the framework of the United Nations to receive and investigate complaints of violations of international humanitarian laws occurring in armed conflicts, as proposed by the Special Committee of Non-Governmental Organisations on Human Rights at Geneva on February 18, 1971;

Further welcomes as a step in the better protection of human rights

(4) the new procedures for handling communications addressed to the United Nations relating to gross violations of human rights and fundamental freedoms, contained in Resolution I (XXIV) of the Sub-Commission on Prevention of Discrimination and Protection of Minorities of August 14, 1971;

And draws attention to

(5) the importance of securing in the organs of the United Nations concerned with human rights, a discussion of all issues in an atmosphere free from any consideration other than a concern to protect and further individual and group rights, and, in particular, of ensuring that the experts charged with supervising the application of the Convention on the Elimination of All Forms of Racial Discrimination should be persons of independent status, known for their impartiality;

And in the absence of effective machinery or governmental action on the international level, calls upon the International Commission of Jurists

(6) to consider setting up in different parts of the world appropriate agencies to investigate violations of human rights and, as a matter of immediate and special urgency, to institute an enquiry into alleged violations of human rights, the humanitarian laws and the Rule of Law in East Pakistan;

And finally resolves, in reference to racial discrimination that

(7) (a) systematic racial discrimination, like other violations of human rights, is a matter of international concern not excluded by the domestic jurisdiction provision in Article 2 (7) of the Charter. Every offending state is therefore subject to appropriate U.N. action;

(b) moreover, racial discrimination, as practised in its most flagrant and systematic form in South Africa, inevitably leads to violence and is a threat to the peace justifying action under Chapter VII of the Charter, as decided in the case of Rhodesia;

(c) foreign trade and financial interests operating in South Africa should at least, in accordance with the principles of the Convention on the Elimination of All Forms of Racial Discrimination, be prohibited by their governments from themselves aiding and abetting racial discrimination in the conduct of their business;

(d) victims of racial discrimination, like all individuals, must be afforded the right to leave and return to their country. The right of asylum and other rights relating to refugees must be strengthened so that victims of racial discrimination who seek refuge in other countries should, as a matter of right, be received and protected. When needed, international aid must be provided to make this possible and, as a minimum requirement of humanity, to give them adequate opportunities of livelihood in their country of asylum or elsewhere.

25th Anniversary Meeting, 1977

Vienna, Austria

19th – 22nd April 1977

The 25th Anniversary meeting of the International Commission of Jurists in Vienna was dedicated to the theme of "Human Rights in an Undemocratic World". The meeting gathered more than 60 participants from 32 countries in all parts of the world. Participants included representatives of national sections and a number of well-known international jurists, including: Lord Gardiner, the former Lord Chancellor of Great Britain; Judge Dudley Bonsal of the United States District Court in New York; Judge Haim Cohn of the Supreme Court of Israel; Judge Gustaf Petren, the former Swedish Ombudsman; Roberto Conception, the former Chief Justice of the Philippines; and John P. Humphrey, the former director of the United Nations Human Rights Division.

The participants asserted the need to devise ways of assisting lawyers and judges who were being harassed or persecuted as a consequence of their work in defence of human rights, and in defending political prisoners. The discussion resulted in the establishment of the ICJ's Centre for the Independence of Judges and Lawyers (CIJL) within the Geneva Secretariat; a centre similar to the one which had already established within the United States Section of the ICJ.

Another prominent theme of discussion was the ineffectiveness of the UN machinery in protecting human rights. Participants affirmed the need to make use of the "1503 procedure" of the UN Commission on Human Rights, and to make more effective the complaint mechanisms under the International Covenant on Civil and Political Rights and under the Convention on the Elimination of Racial Discrimination. Many participants voiced the opinion that the ICJ could have an invaluable role to play at the international level in assisting and compelling the UN to strengthen its mechanisms.

Other discussions and conclusions focused on the Rule of Law in one-party States and the Rule of Law under Military Regimes, and the question of minority rights.

Conclusions of Vienna

International Implementation of Human Rights

A number of resolutions were approved containing proposals for the improved international implementation of human rights. These included proposals

- to preserve, extend and strengthen the UN Human Rights Commission's Resolution 1503 procedure for considering communications alleging gross violations of human rights;
- for expanding the right of individual petition within the United Nations so as to ensure that prisoners can communicate with the UN Secretary-General without censorship, and to give complainants the same rights as States to appear at hearings where their complaints are examined;
- to develop a code of procedure for collecting, sifting, presenting and preserving evidence before international fact-finding bodies, whether inter-governmental or non-governmental;
- for a renewed initiative to establish a UN High Commissioner for Human Rights;
- for the wider use of proceedings before domestic tribunals 'to enforce in a transnational way international human rights law';
- to establish an international secretariat to work in cooperation with lawyers' professional organizations for the independence of the judiciary and the legal profession, in particular where judges or lawyers are harassed or victimized for carrying out their professional duties;
- for drawing attention to the dangers to human rights created by nuclear weapons and materials and nuclear power programmes and calling upon governments to take them into account before formulating their nuclear policies and to do so with full public participation;
- to press for ratification of all human rights conventions, in particular the International Covenant on Civil and Political Rights, the Optional Protocol with declarations under article 41 (on interstate communications); the Inter-American Convention; and the Convention on the Elimination of Racial Discrimination with declarations under Article 14 (right to individual petition);
- to establish machinery, in conjunction with other organisations for protecting scholarly freedom;
- to have torture recognised as an international crime, with universal jurisdiction before national or international tribunals wherever the crime is committed;
- to promote education in human rights at primary school, secondary school and university levels in cooperation with UNESCO;
- to promote east-west dialogue between lawyers and lawyers' organisations;
- to intensify links with religious bodies to ensure better recognition and protection of human rights;
- to study the possible extension of the jurisdiction of the International Court of Justice in the field of human rights, including a right for accredited non-governmental organisations to file amici curiae briefs.

The Rule of Law in Emerging Forms of Society: One Party States

The Commission discussed the problems of the Rule of Law in the One-Party State with particular reference to the seminar on that theme held in Dar el Salaam in September 1976, which was attended by participants from six countries of East and Central Africa. The Commission welcomed the initiative taken by the Secretariat and the Executive Committee in providing for the discussion of the complex and important issues involved, and urged that future meetings of this kind should be arranged.

The Commission was of the view that there were dangers of abuse of power inherent in one-party systems which were less likely to arise if there existed an effective multi-party system. Human rights could, however, be endangered by ineffective attempts to duplicate multi-party systems without due regard to cultural traditions and the historical development of particular countries.

The Commission was pleased to note the real concern shown by all delegates at the seminar that the Rule of Law and human rights should be preserved in the countries from which they had come and agreed that the achievement of this goal would be facilitated in the following principles propounded at the seminar were actually observed.

1. Electoral freedom of choice is essential to any democratic form of society. The party should guarantee genuine popular choice among alternative candidates.
2. Everyone should be free to join the party or to abstain from party membership or membership in any other organisation without penalty or deprivation of his or her civil rights.
3. The party must maintain effective channels of popular criticism, review and consultation. The party must be responsive to the people and make it clear to them that this is party policy.
4. In a one-party state it is particularly important that
 - (a) the policy-forming bodies of the party utilise all sources of information and advice, and
 - (b) that within the party members should be completely free to discuss all aspects of party policy.
5. The independence of the judiciary in the exercise of its judicial functions and its security of tenure is essential to any society which has a respect for the Rule of Law. Members of the judiciary at all levels should be free to dispense impartial justice without fear in conformity with the Rule of Law.
6. The independence of the legal profession being essential to the administration of justice, the duty of lawyers to be ready to represent fearlessly any client, however unpopular, should be understood and guaranteed. They should enjoy complete immunity for actions taken within the law in defence of their clients.
7. Facilities for speedy legal redress of grievances against administrative action in both party and government should be readily available to the individual.
8. The absence of an opposition makes it essential to provide mechanisms for continuous, impartial, and independent review and investigation of administrative activities and procedures. In this respect such institutions as the ombudsman and médiateur with powers to initiate action can be usefully adopted.
9. In a one-party state, criticism and freedom of access to information should be permitted and encouraged.
10. The right to organise special interest associations such as trade unions, professional, social, religious or other organisations, should be encouraged and protected. Such organisations should be free to affiliate or not with established political parties.
11. All members of the society must be made aware of their human rights to ensure their effective exercise and for that reason education in human rights at all levels should be a matter of high priority. In particular, officials of the party and government should be made to understand the limits on the exercise of power which derive from the recognition of fundamental human rights and the Rule of Law.

Limited-Party States

The Commission also noted with interest the constitutional innovation of the limited-party state, as in Senegal and Egypt where three parties of defined political tendencies are permitted. Fears were expressed that the attempt to limit political thinking and freedom of expression and association into arbitrary prescribed channels might create difficulties. The Commission noted the argument that such an innovation should permit greater freedom of choice than was offered in one-party states and even in some nominally multi-party states. In the absence of in depth discussion and study the Commission considered it best to defer

reaching a conclusion. In due course the Executive Committee could arrange a seminar for an evaluation of the working of this new system.

The Rule of Law under Military Regimes

The Commission agreed that:

1. Human Rights can only be enjoyed and protected in a society in which the Rule of Law is observed.
2. Inherent in the Rule of Law is the subordination of the civil authority to the constitution and of the military establishment to the civilian authority.
3. Where a military establishment overthrows a legally constituted government acting within the constitution and assumes total control of the State, the Rule of Law is necessarily destroyed and human rights are as a result unprotected.
4. The situation is in nearly all respects similar where civilian authority, though ostensibly remaining in control, has by its actions subverted the constitution relying on the military authorities for the necessary power to perpetuate itself in office. The almost inevitable consequence of this is the eventual total takeover by the military establishment.
5. There may be unusual circumstances, as for example in Portugal, where the military establishment intervened to restore constitutionality, but generally the Commission concluded that the overthrow or legally constituted governments by military governments should be condemned.
6. In circumstances where the civil government is clearly acting to subvert the constitution, the military, as any other sector of society, may refrain from lending its support in order to bring pressures to bear on the civil authority to return to constitutionality.
7. In the event that such acts lead to the fall of the civil power without its immediate replacement, the exigencies of the situation might demand that the military carry out the functions of maintaining law and order through the normal constitutional mechanisms of the civil police and the courts. This should be for a period strictly required to restore constitutionality and the Rule of Law.
8. where a state of siege or martial law is declared to deal with the exceptional situation, the following basic safeguards should be strictly observed:
 - (a) Arrest and detentions, particularly administrative detentions, must be subject to judicial control, and remedies such as habeas corpus or amparo must always be available to test the legality of any arrest or detention. Any other forms of review prescribed by the law of the country in case of emergency should also be available. The right of every detainee to legal assistance by a lawyer of his choice must at all times be recognised. The holding of suspects incommunicado should be strictly limited to a very short period predetermined by law.
 - (b) Effective steps must be taken to prevent torture and ill-treatment of detainees. When it occurs, those responsible must be brought to justice. All detention centres, prisons and camps for internment of detainees must be subject to judicial control. Delegates of accredited international organisations should be granted the right to visit them.
 - (c) Illegal or unofficial forms of repression practised by paramilitary or parapolice groups must be ended and their members brought to justice.
 - (d) The jurisdiction of military tribunals should be restricted to offences by the armed forces. Civilians should not be tried in military tribunals.
 - (e) The independence of the judiciary and of the legal profession should be fully respected. The right and duty of lawyers to act in the defence of, and to have access to, political and other prisoners, and their immunity for action taken within the law in defence of their client, should be fully recognised and respected.

Minority Rights

The Commission agreed the following statement of principles concerning minority rights:

In this statement of principles the term "rights of minorities" refers to the rights of non-dominant groups. The gross violation of human rights involved in the domination of a people by a minority group, such as occurs in South Africa, Zimbabwe/Southern Rhodesia and Burundi has no place in the subject of minority rights.

1. The right of an ethnic minority to enjoy its own culture, of a religious minority to profess and practise its religion, and of a linguistic minority to use its language is now recognised in international law under Article 27 of the International Covenant on Civil and Political Rights. Serious or persistent violations of these rights are, therefore, a proper matter of international concern.
2. While the problems of minorities have certain common elements, the analysis of and solution to any particular minority issue must take into account the political, economic, geographical, social and historical context in which it arises.
3. Preservation of minority cultures is important to the happiness and well-being of the individuals who belong to the minorities and may contribute to the enrichment of the life of the nation as a whole.
4. Cultural diversity and the freedom of the individual are inter-related. Opportunities for free expression of minority languages, religions and cultures may contribute to the freedom of the individual.
5. The elimination of all forms of discrimination against minorities promotes social stability and economic development of the whole community.
6. An ethnic minority within a state has a right to a feasible opportunity to pursue its economic, social, and cultural development, subject to the interests of the whole community.
7. Any claim of a minority to autonomy within or secession from a state should be advanced by peaceful means, considered, and dealt with in accordance with the principles of international law.
8. Members of minorities who are citizens should enjoy the same rights and be subject to the same duties as other citizens without prejudice however to any special rights provided for their protection. Members of minorities who are residents but no citizens, including migrant workers, should as far as possible have the same rights and duties as citizens.
9. Lawyers have a responsibility to promote and implement measures which guarantee the equality of status and other rights of minorities.
10. Parallel to constitutional and legislative measures, there must be appropriate administrative action, especially in the field of education as indicated in the UNESCO Convention on Discrimination in Education of 1960, to make effective the enjoyment of minority rights.
11. As a general principle, minorities should benefit equitably from national expenditures for economic, social and cultural development. In some circumstances, they may require special programmes to promote their economic, social, and cultural development.
12. When disagreements arise out of a minority's economic, social and cultural claims and the interests of the whole state community, such conflicts should whenever possible, be settled by negotiation with the representatives of the minority.
13. Where minorities live or move across national boundaries, such as nomads, stateless persons, and refugees, the international co-ordination of policies towards them by the states concerned is desirable.
14. In a case where a public authority seriously or persistently violates a minority's rights, some international protection should be developed through existing or strengthened UN human rights machinery or otherwise. It is recommended that in such cases minorities should be given the opportunity to present their grievances before an impartial international forum, and that such a forum should be able where necessary to investigate and to make recommendations.

Conference on Development and the Rule of Law, 1981

The Hague, Netherlands

27th April – 1st May 1981

The Conference at The Hague, held from 27 April to 1 May 1981, was dedicated to the theme of "Development and the Rule of Law". The ICJ's interest in this area can be traced back to the series of conferences it held from 1955 to 1968. At the 1959 New Delhi Congress of Jurists, for example, the participants had expanded the concept of the Rule of Law to include the legal protection of all fundamental rights and not merely civil and political rights. At later conferences, namely at the Bangkok Conference in 1965 and at the Rio Congress in 1962, participants called on lawyers in all countries to exercise their skills to promote legislation, legal institutions and procedures to maintain and enforce economic, social and cultural standards.

The Conference gathered 21 Commissioners, five Honorary Members, 19 representatives of National Sections and nine Development Experts, including economists, political scientists and lawyers. Shridath Ramphal, Secretary-General of the Commonwealth and a member of the Brandt Commission, gave the opening keynote speech.

The work of the Conference was based on an ICJ Working Paper by Philip Alston, then a UN Consultant on the Right to Development, and on his 125-page paper entitled "Prevention versus Cure as a Human Rights Strategy". The Conference considered the concepts of the "right to development", participation in the formulation and application of development policies, self-reliance in development strategies, agrarian reform, and the role of lawyers and legal assistance in development.

The notion of the essential role of lawyers was further developed at The Hague in 1981. The Congress affirmed that members of the legal profession had special responsibilities to ensure an enhancement of the Rule of Law that promoted development. Therefore, members of the legal profession were not only responsible for providing legal aid, but should also represent collective demands and group interests, be educators in raising awareness of the laws, critics of proposed legislation, law reformers, and creators of new jurisprudential concepts aimed at the realization of the right to development.

Summaries of the discussions and conclusions

Development

The participants recognised that development strategies based solely on increasing the growth of the Gross National Product (GNP), frequently lead to violations of economic and social as well as civil and political rights of the poor who represented the majority of the population in developing countries. Development strategies should thus aim to relieve a permanent state of dependency on aid, by ensuring structural changes at all levels and by applying the principle of non-discrimination.

Human Rights

True development required considering economic, social and cultural rights in addition to civil and political rights as inseparable human rights under the Rule of Law. The participants recognised the need for human rights organisations to become more involved in the field of economic, social and cultural rights. They also identified the need to organise and mobilise the poor in developing countries to promote and protect their own rights.

The right to Development

There was extensive discussion of the concept of "the right to development". It was agreed that development should be understood as a process designed to progressively create conditions in which every person can enjoy, exercise and utilise all his or her human rights under the Rule of Law, whether economic, social, cultural, civil or political. Legal basis for the right could be found in the UN Charter, the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights.

It was however also recognised that the right to development would need more elaboration as a legal concept and that the implementation of the right would require participation by those concerned with the formulation and application of development policies.

Whilst the primary obligation to promote development resided with each state for its own territory, the participants agreed that it was also a matter of international responsibility, as the development process was considered a necessary precondition for peace and friendship amongst States. States would thus have a moral if not legal obligation to render the international economic order more just and equitable.

Governments of all countries were called on to ratify the two International Covenants on Human Rights and the Optional Protocol to the Covenant on Civil and Political Rights.

Lastly, the participants agreed that economic sanctions imposed on countries with poor human rights records often provoked defiance rather than compliance. Instead of merely condemning the violations or punishing the offenders, the international community should aim to restore rights and give assistance to victims.

Militarisation

The participants pointed to the changing role of the military in recent decades. The traditional role of the military, to serve their government and safeguard their country against invasion, had in many countries been undermined by military overthrowing the government, imposing authoritarian regimes, and suppressing the rights of the people.

This phenomenon resulted in a total disregard for human rights. Moreover, military regimes in developing countries tended to divert a disproportionate amount of the country's scarce resources to military purposes.

Participation

It was agreed that the legal community should concentrate its efforts on enhancing the ability of the impoverished to assert their right to development. Full participation in the decision-making process should be enabled through procedures and processes suitable to the full realisation of this right.

In order to ensure proper utilisation of development assistance, it was deemed necessary that beneficiaries participate in the process of allocation. Another way of ensuring that development assistance did not increase the arsenal of weapons or support repressive policies was to give preference the targeted giving of development aid.

Reasons for the Continuance of Poverty

It was argued that the reasons for the continuance of poverty could be found in several myths that governed the policies of development and the relations between states and people.

The first myth was that economic growth was the solution to the problem of poverty. It was concluded that a considerable increase in the standard of living of the majority of the population could be obtained with a lower rate of growth in the GNP by focussing on the fight against poverty.

Other myths included that western-style modernisation could be applied to developing countries and that of international solidarity between states.

Lastly, it was stated that there was a myth that a New International Economic Order could free governments of developing countries from the imperative of internal social reforms. The participants agreed that the New International Economic Order needed to be linked to the struggle for justice in human relations at the national level.

Agrarian Reform

The participants agreed that "maldevelopment" was often caused by a failure to carry out agrarian reform. It was also considered that development strategies too often concentrated on industrialisation and production for export rather than on satisfying the basic needs of the population. In an effort to make developing country exports competitive, prices of agricultural goods had been lowered through a reduction in wages. Furthermore, employment opportunities had been reduced as a result of the mechanisation of agriculture, especially in the production of cash crops, causing migration from the rural areas to the urban shanty towns. This phenomenon had disastrous effects on the social and economic rights of rural and urban populations.

In seeking solutions to these problems, the participants found it necessary to increase participation of communities in the formulation and implementation of development policies, which in turn could lead to comprehensive reform programmes.

Labour and Social Legislation

It was agreed that labour and social legislation in all countries should be in accordance with basic ILO Conventions and that human rights organisations should manifest their concern over policies of transnational corporations in curtailing the rights of workers.

The Role of the Lawyer and Legal Assistance

The participants stipulated that members of the legal profession had special responsibilities to ensure an enhancement of the Rule of Law that promoted development.

Members of the legal profession were not only responsible for providing legal aid, but also for building up their legal resources. Thus suggesting that legal professionals be advocates of collective demands and group interests, educators in raising awareness of the laws, critics of proposed legislation, law reformers and creators of new jurisprudential concepts aimed at the realisation of the right to development.

It was stated that lawyers in developing countries were often drawn from ruling elites and were therefore unable to understand the needs of the impoverished majority. It was suggested that internship programmes should be developed for newly qualified lawyers to be trained to defend human rights.

Subjects for Study

It was agreed that many of the issues discussed would call for further study by human rights lawyers, aided by experts in other fields. Among those issues mentioned were: the relationship between development policies and human rights observance in practice; the reasons for military take-overs; obstacles in accessing the courts, and the relationship between activities of financial institutions, transnational corporations and banks and the enjoyment of human rights. Other suggestions included the possibility of drawing up a draft model code for legislation relating to development, a study on recent experiences in the field of human rights and development and a study on the need for a free and independent judiciary and adequate legal services as an indispensable part of the process of development.

Conference on the Implementation of Human Rights in Africa, 1985

Nairobi, Kenya

2nd – 4th December 1985

The African Charter on Human and Peoples' Rights was adopted in 1981, requiring 26 ratifications to bring it into force. After 15 States had ratified the Charter, there was little impetus towards attaining the further 11 required. To address this stalled momentum, the ICJ convened a Congress of African Jurists in Nairobi, with a view to promoting and stimulating the ratifications needed to bring the Charter into force.

There was participation by 16 African experts, 12 ICJ Commissioners, nine members of national sections or affiliated organizations, 19 members of the Kenyan Section of the ICJ, one representative of the African Bar Association and three observers. In total, there were participants from around 40 countries.

The President of Kenya, Daniel T. Arap Moi opened the Congress. Abdou Diouf, the President of Senegal and Chairman of the Organisation of African Unity sent an opening message.

The conference had two main themes: The African Charter on Human and Peoples' Rights and Legal Services for the Rural Areas.

The first declaration specifically concerned the situation in South Africa:

Declaration Number 1: South Africa

1. The entire system of apartheid in South Africa, based as it is on racial discrimination, is a gross violation of international law, and has rightly been declared a crime against humanity.
2. Recent events illustrate the growing determination of the black majority in South Africa, whatever the price, no longer to tolerate the inhuman indignity of the apartheid system.
3. In response the South African government has intensified its repression. It declared a state of emergency in 38 districts and in three of the largest cities, Johannesburg, Port Elisabeth and Cape Town. Recent months have also seen a considerable increase in massive arrests and detentions without trial, systematic torture, and the indiscriminate use of firearms against unarmed civilians exercising their universally recognised democratic right causing the deaths of hundreds, including children. Moreover, the security forces have been granted immunity against all crimes committed in the course of this repression. Treason trials have been mounted against the leaders of political movements and trade unions seeking to establish without violence a democratic nation.
4. The only basis for lasting peace in South Africa and Namibia is equality of all before the law, leading to the repeal of unjust laws, the dismantling of the so-called 'independent' Bantustans, and the establishment of a democratic nation under the Rule of Law, free of all racial and other discrimination.
5. The United Nations Charter, the Universal Declaration of Human Rights and the International Covenants on Human Rights prohibit racism and racial discrimination. On its part Article 20 of the African Charter of Human and Peoples Rights, adopted unanimously by the Heads of State and Governments of the Organisation of African Unity provide that "colonised or oppressed peoples shall have the right to free themselves from the bonds of domination by resorting to any means recognised by the international community", and the Preamble to the Charter recognises the duty of African States to achieve the total liberation of Africa, and in particular the elimination of apartheid.
6. The intensification of the struggle for the liberation of the black majority in South Africa, and the threats and attacks made by the South African government against neighbouring states supporting this struggle, demonstrates that the system of apartheid is a threat to international peace and security.

In these circumstances the Conference

- appeals to all member states of the United Nations Organisation, the Organisation of African Unity and inter-governmental and non-governmental organisations to intensify their support for the struggle against apartheid, racism and racial discrimination;
- appeals urgently to the international community to take all necessary steps to persuade the government of South Africa to release immediately and unconditionally all political prisoners, and in particular Nelson Mandela; and
- earnestly hopes that the Security Council of the United Nations will declare the system of apartheid to be a threat to international peace and security, and impose upon South Africa mandatory and effective sanctions aimed at terminating the system of apartheid and enabling the peoples of Southern Africa to enjoy democratic rights without discrimination and with full respect for human dignity.

The second declaration considered the issue of the African Charter on Human and Peoples' Rights:

Declaration Number 2: African Charter on Human and Peoples' Rights

The Conference,

Considering that the African Charter on Human and Peoples' Rights was adopted unanimously at Nairobi on 26 June 1981 by the Conference of Heads of State and Government of the OAU;

After having studied carefully all the provisions of the Charter and their various implications, national and international;

Having noted that the Charter is based on strict respect for African historical traditions, on the values of African civilisation, and on the conception of law and human rights in Africa;

After having taken note of the compatibility between the provisions of the Charter and the constitutions of the Member States of the OAU and, in general, the totality of the laws in these States;

Having assessed the role which the entry into force and the implementation of the African Charter on Human and Peoples Rights can play in the struggle for the elimination of apartheid, racism and racial discrimination;

Conscious of the contribution which the Charter will make to the strengthening of the promotion and protection of human and peoples' rights in Africa;

1. Appeals to all States which have not yet done so to ratify the African Charter on Human and Peoples' Rights;
and

2. Decides to form in six regions of Africa follow-up groups charged with:

- bringing, where necessary, to the competent authorities all information which could help to clarify the content of the provisions of the Charter and their various implications;
and

- following the procedures for ratification of the Charter already in hand or to come, and, when asked, giving any legal assistance required for this purpose.

Conference on the Independence of Judges and Lawyers, 1989

Caracas, Venezuela

16th – 18th January 1989

"This Conference is a good example of the International Commission of Jurists' activities, with the support and collaboration of other national and international non-governmental organizations, the United Nations and other regional and universal intergovernmental entities, as well as the governments of different states".

- Ambassador Andrés Aguilar, former ICJ President¹¹

The Caracas Conference in 1989 marked the 10th anniversary of the ICJ's Centre for the Independence of Judges and Lawyers (CIJL) and was held under the auspices of the United Nations. Participants of the Conference included 20 Commissioners, four Honorary Members, 25 Representatives of National Sections and Affiliated Organisations, and 16 Experts including judges and lawyers from four continents.

The purpose of the Conference was to acquaint the Jurists with the international instruments setting forth standards for the independence of judiciary and the legal profession, including the Milan Principles on the Independence of Judges and the document on the Rights and Duties of Lawyers drawn up for the 1990 UN Congress on Crime Prevention and Control. Discussions during the Conference focused on such issues as pressures on the judiciary in states of emergency and during violent changes of government, the independence of the legal profession and the implementation of the UN Basic Principles on the Independence of the Judiciary.

Dr. German Nava Carrillo, then Foreign Minister of Venezuela, gave the opening speech. Other keynote speeches included those on: the Pressures on and Obstacles to the Independence of Judges (by Justice Bhagwati, former Chief Justice of India); on the Montreal Principles and the Milan Principles on the Independence of Judges (by Justice Jules Deschênes, former Chief Justice of Quebec and former member of the UN Sub-Commission); and on the Independence of the Legal Profession (by Param Cumaraswamy, former president of the Bar Association of Malaysia). The conference concluded by approving the "Caracas Plan of Action", which set the work of the CIJL for the years following the meeting.

Summary of the Discussions

I. Pressures on the Judiciary

It was agreed that:

1. An independent judiciary is the firmest guarantee of the maintenance of the Rule of Law and the protection of human rights.
2. The Independence of the Judiciary can only be secured if all concerned, whether judges, magistrates, lawyers or the public in general, are committed to sustaining free and democratic institutions.

States of Emergency

3. States of Emergency pose serious problems for the independence of the judiciary. When wide powers are given to the executive, the armed forces or the police, they should be subject to strict controls to ensure that the powers are used only for the purpose for which they are introduced. The judiciary should be free to review executive actions and to ensure that emergency measures do not go beyond what is required in the circumstances. States of emergency should be governed by the principles of necessity and proportionality. These principles should form the framework for deciding the legality of the declaration, and the continuance of the state of emergency, as well as of particular pieces of legislation or particular acts taken during the state of emergency. An independent judiciary is necessary to ensure that these principles are followed.

4. Pursuant to article 4 of the International Covenant on Civil and Political Rights, certain fundamental rights are deemed to be non-derogable even in times of emergency. Whilst the right to due process of law and the right to be heard before an independent tribunal are not expressly contained among these non-derogable rights, it is increasingly obvious that the effective enjoyment of non-derogable rights rests upon the availability of essential judicial guarantees. In this respect, account should be taken of Advisory Opinions OC-8/87 and OC-9/87 of the Inter-American Court of Human Rights holding that “essential” judicial guarantees which are not subject to derogation include habeas corpus, amparo and any other effective remedy before judges or competent tribunals which is designed to guarantee the respect of rights and freedoms guaranteed in the Inter-American Charter.

Violent changes of government, de facto regimes

As guardians of the rule of law and of the constitution, judges should always protect and uphold the constitution and not permit, justify or condone its abrogation or suspension by resort to doctrines inconsistent with the Rule of Law.

Judges should also refrain from collaborating with or lending legitimacy to regimes that overthrow democratic governments upholding the Rule of Law.

Lastly, it was considered important for the Judiciary to gain the support of the public. It was claimed that the pressure of the Public Opinion is indispensable when enforcing judgements against the government.

II. The Independence of the Legal Profession

The participants agreed that the existence of a free, fearless, independent but responsible and responsive legal profession is essential for the preservation of the Rule of Law. The legal profession must thus be seen to be working for the common good. To this end, it must widen access to legal services by participating in programmes designed to simplify the law and legal procedures, by co-operating with other organisations working in deprived

communities and by developing alternative legal services and instituting schemes within the financial possibilities, for the provision of competent legal services.

It was also considered important that lawyers refuse to co-operate with authorities that violate the Rule of Law and human rights and refuse to assist or participate in the drafting or implementation of laws which violate human rights norms or which undermine the Rule of Law.

The participants recognised the need to mobilise national and international public opinion to safeguard the independence of the legal profession. In this respect, it was suggested that bar associations should consider ways in which they can participate more effectively in the activities of the ICJ's Centre for the Independence of Judges and Lawyers.

There was a duty on the legal profession to ensure that the competent authorities give lawyers access to their clients and to appropriate information, documents and files. It was further considered that bar associations should ensure adequate and effective machinery for the discipline of members of the legal profession. Such disciplinary measures should be taken against lawyers who assist in the elaboration of repressive laws or who undermine the observance of the Rule of Law.

Finally, it was agreed that bar associations and lawyers should work actively for the adoption of the Draft Basic Principles on the Role of Lawyers by the United Nations and when adopted should institute mechanisms for monitoring their observance.



ICJ Secretary-General Niall MacDermot (1970 – 1990) with Reed Brody (1987-1992)

III. Implementation of the UN Principles

It was agreed that the UN Basic Principles on the Independence of the Judiciary represent the minimum standards and should be fully implemented. In addition to the reporting procedures already envisaged under the Basic Principles, the participants considered it necessary to establish a complaint procedure such as a UN Special Rapporteur.

The participants also envisaged several advocacy activities with respect to the Basic Principles, including periodic seminars at the national and regional level for judges.

It was finally suggested that increased support should be given to the action taken by the UN Human Rights mechanisms.

Caracas Plan of Action

Considering the mission of the International Commission of Jurists (ICJ) to uphold the principles of the rule of law, the independence of the judiciary and human rights,

Considering the establishment by the ICJ of the Centre for the Independence of Judges and Lawyers and the work of the Centre,

Considering the summaries of discussions presented by the three rapporteurs of the Conference,

The participants *adopt* by consensus the following Plan of Action:

I. Action in the area of standard-setting

The International Commission of Jurists, its National Sections and Affiliated Organisations are requested to urge Governments:

- a) To support and, where necessary, to strengthen the United Nations Draft Basic Principles on the role of Lawyers with a view to their adoption by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders in 1990 through its regional preparatory meetings in 1989;
- b) To support and, where necessary, to strengthen the Draft Procedures for the Effective Implementation of the United Nations Basic Principles on the Independence of the Judiciary with a view to their adoption at the May 1989 Session of the United Nations Economic And Social Council;
- c) To take constructive measures at the 45th session of the United Nations Commission on Human Rights (February-March, 1989) regarding the Draft Declaration on the Independence of Justice.

II. Measures in the field of implementation

1. The International Commission of Jurists and its Centre for the Independence of Judges and Lawyers are requested:

- a) To undertake, where possible with the co-operation of the ICJ National Sections and Affiliated Organisations, and other parties concerned, country studies on the extent to which international standards on the independence of justice and in particular the United Nations Basic Principles on the Independence of the Judiciary are implemented, as well as on obstacles with regard to their implementation;
- b) To seek ways and means to assist governments to fully comply with international standards on the independence of justice and in particular the Basic Principles. In this regard the following methods should be utilized in line with the Draft Procedures for the Effective Implementation of the Basic Principles on the Independence of the Judiciary and in co-operation and consultation with the competent United bodies:

- rendering technical assistance and advisory services,
 - promoting the appointment at the United Nations level, and where possible at regional levels, of a Rapporteur on the independence of the judiciary and the legal profession, establishing contacts and carrying out dialogues with governments,
 - Sensitizing national and international public opinion, to the importance of an independent judiciary and legal profession through all appropriate means of publicity, including the mass media,
- c) To place renewed emphasis on intervening, by appropriate means, to protect judges and lawyers who are harassed or persecuted as a result of carrying on their professional duties including in situations where the institutional independence of the judiciary or the legal profession is threatened;
- d) To provide the U.N. Human Rights Committee and the Special Rapporteurs of the U.N. Commission on Human Rights with relevant information on the independence of the judiciary in countries under examination by them.
- e) To continue its public education and promotional work through regional and national seminars on the independence of judges and the role of lawyers.
2. The United Nations is urged to offer assistance to governments in the implementation of international standards on the independence of justice and in particular the Basic Principles, by providing research and training programmes as well as technical assistance.
3. Governments are urged to respond, if they have not done so, to the United Nations Survey of 31 December 1987 on the implementation of the Basic Principles on the Independence of the Judiciary, to be presented to the United Nations Committee on Crime Prevention and the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders.

III. The role of the Centre for the Independence of Judges and Lawyers

The Centre for the Independence of Judges and Lawyers is requested:

- a) To send the conclusions and recommendations of the Conference as well as the present Plan of Action to local, regional and international associations of judges and lawyers, including ICJ National Sections and Affiliated Organisations;
- b) To initiate and implement the present Plan of Action and to act as a focal point in all matters concerning the independence of the judiciary and the legal profession.

Conference on Economic, Social and Cultural Rights and the Role of Lawyers, 1995

Bangalore, India

23rd – 25th October 1995

"Very early on, specific attention was given to social, economic, and cultural rights and the rule of law as a determinant for development. The fundamental principles of interdependence, indivisibility and interrelatedness of all human rights molded the organization's [ICJ's] own program of activities. In 1995, a conference held in conjunction with the organization's triennial meeting in Bangalore (India), on the role of lawyers and economic, social and cultural rights, laid an emphasis on those rights in the program of activities at the dawn of the new millennium."

- Nathalie Prouvez and Nicolas M.L. Bovay¹²

The ICJ's 1995 Congress focused on the issue of Economic, Social and Cultural Rights and the Role of Lawyers. The Conference took place in Bangalore, India, from 23 to 25 October 1995. The Honourable A.M. Ahmadi, Chief Justice of India, and the Honourable S. Kurseed, Minister of State for External Affairs, inaugurated the Conference.

The Conference recalled the long-standing commitment of the ICJ to the indivisibility of all human rights, including civil, cultural, economic, social and political rights. That commitment has been evidenced over the years by earlier important ICJ documents, including the Declaration of Delhi 1959, the Law of Lagos 1961, the Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights 1986, and the paper for the World Summit on Social Development 1995. These are in addition to the many other ICJ activities concerned with the promotion and protection of human rights for the attainment of the Rule of Law.

The Bangalore Conference concluded with the adoption of a "Bangalore Plan of Action" describing the actions to be undertaken on a national and international level in order to fully realize economic, social and cultural rights. With reference to the same goal, the Action Plan also referred to the actions required by individuals and jurists. The Bangalore Conference signaled the new prominence expected to be given to economic, social and cultural rights in the work of the ICJ.

Bangalore Declaration

Conference in Bangalore

1. Between 23-25 October 1995, the International Commission of Jurists (ICJ), in conjunction with the Commission's triennial meeting, convened in Bangalore, India, a conference on economic, social and cultural rights and the role of lawyers.
2. The Conference was inaugurated by the Chief Justice of India (The Honourable A.M. Ahmadi) and the Minister of State for External Affairs (The Honourable S. Kurseed, MP).
3. The Conference recalled the long-standing commitment of the ICJ to the indivisibility of human rights - economic, social, cultural, civil and political. That commitment has been evidenced over the years by the *Declaration of Delhi* 1959, the *Law of Lagos* 1961, the *Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights* 1986, and the paper for the *World Summit on Social Development* 1995, amongst many other ICJ activities concerned with the promotion and protection of human rights for the attainment of the Rule of Law.



Conference in Bangalore, India (1995)

Reaffirming the Limburg Principles

4. The Conference reaffirmed the *Limburg Principles*. It considered regional perspectives on the realisation of economic, social and cultural rights. It examined the means of monitoring the attainment of such rights, including the observance of States' obligations under the International Covenant on Economic, Social and Cultural Rights (ICESCR). It considered the issues relating to the implementation and justiciability of those rights. It reviewed the steps which might be taken to achieve global endorsement of ICESCR in a way which promoted, at once, universal ratification of the Covenant and its genuine application as an influence upon the conduct of States and others.

The Conference reflected upon the need for an Optional Protocol to the ICESCR, to provide an individual and group complaint procedure similar to the *First Optional Protocol* to the *International Covenant on 'Civil and Political Rights* (ICCPR). This would provide a

complaints mechanism to permit international monitoring of complaints of departures from the rights expressed in the ICESCR. In this regard, the Conference considered the several drafts for such a Protocol, including the 1994 draft prepared by the Chairperson of the Committee on Economic, Social and Cultural Rights, the 1994 draft for CEDAW prepared in Maastricht and the 1995 draft prepared by a group of experts in Utrecht. The advantages of the several drafts were studied.

The role and responsibility of international financial institutions, in the promotion and protection of economic, social, and cultural rights were recognised. The recent concern about issues of economic, social and cultural rights on the part of the World Bank was welcomed.

5. The participants in the Conference reminded themselves that, in the words of the *Limburg Principles* :

- Economic, social and cultural rights are an integral part of international human rights law;
- The ICESCR is part of the *International Bill of Rights*;
- As human rights and fundamental freedoms are indivisible and interdependent, equal attention and urgent consideration should be given to the implementation, promotion and protection of economic, social and cultural rights as well as civil and political rights;
- The achievement of economic, social and cultural rights may be realised in a variety of political settings. There is no single road to their full attainment;
- Non-Governmental Organizations (NGOs), all sectors of society, Specialised Agencies and officers of the United Nations and individuals have an important part to play, in addition to the role of governments in attaining economic, social and cultural rights to their full measure.
- Trends in international and economic relations should be taken into account in assessing the efforts of the international community, to achieve the objectives of the ICESCR.

6. In particular, the participants noted that since the *Limburg Principles* were adopted, the centrally planned economies in a number of countries of Central and Eastern Europe and of Asia have collapsed. The economic arrangements of many countries had altered in ways which were then unpredictable.

7. The Conference recalled that the 1993 World Conference on Human Rights in Vienna had reaffirmed the universality, interdependence and indivisibility of economic, social, cultural, civil and political rights and stressed the need for elaborating an *Optional Protocol* to the ICESCR aimed at establishing an international complaints system to monitor States compliance with their obligations in this field. By stressing both the human Right to Development and the importance of all human rights in achieving the goal of sustainable development, the *Vienna Declaration and Programme of Action* made an important contribution to linking the human rights discourse with development.

8. The Conference recalled the reaffirmation by the United Nations World Summit on Social Development Copenhagen, 1995, of the universality, indivisibility, interdependence, and inter-relation of all human rights, including the right to development of people such that human rights, whether economic, social and cultural or civil and political, are a legitimate concern of the international community. The participants also recalled that the Copenhagen Summit's *Final Declaration* encouraged the ratification and implementation by States of the ICESCR.

9. The Conference called attention to the acute disadvantages of women in the areas of economic, social and cultural rights and to the need for taking steps to overcome obstacles facing women's full realisation of those rights. Jurists should co-operate with women and grass-roots organisations to formulate concrete measures to protect and promote economic, social and cultural rights of women, bearing in mind the *Platform for Action* adopted by the 1995 United Nations World Conference on Women held in Beijing.
10. Consideration was given to the extent, variety, and sometimes apparent incompatibility of reservations entered by States' at the time of ratifying the ICESCR and other relevant treaties. The need for the development of a procedure for reviewing reservations or limiting their duration was discussed and supported. The Conference was reminded of the general principles of the law of treaties limiting the operation of incompatible reservations and of a recent general comment of the Committee on Human Rights that such reservations would be disregarded as inconsistent with the act of ratification.

Jurists' Doubts and Neglect

11. Much time was devoted, as befitted a Conference of jurists, to examining the extent to which and means by which, in domestic jurisdiction the human rights recognised in ICESCR and other relevant international instruments are, or may become, justiciable. The Conference sought to analyse the reasons, often myths, why jurists had been less involved in the pursuit of the attainment of economic, social and cultural rights. Amongst other reasons, the participants identified and considered, the beliefs of some jurists that:
 - Economic, social and cultural rights are not really rights of a legally enforceable kind;
 - Such rights are variable in content, altering over time and resistant to precise legal enforcement;
 - Such rights, however important, are not really the specific domain of lawyers;
 - Such rights, for their attainment typically involve large expenditures of money and other resources the determination of which should better be left to government which is, or should be, accountable to the people rather than to the courts whose members may have neither expertise nor the information with which to make decisions having a large economic or social significance;
 - Whilst realisation of civil and political rights have clear economic costs, the attainment of the "right to work", "right to housing" and other economic, social and cultural rights is much more likely to involve large issues of social and political policy in which lawyers have a role to play as politicians and citizens but much lesser role to play as legal professionals. Several participants warned against the tendency of the law, its institutions and professionals, to overstretch their proper function and expertise and to "legalise" issues which are more properly decided in a context, and according to considerations, larger than typically found in courts of law.
12. The Conference acknowledged the foregoing concerns and opinions which, amongst others, help to explain the reluctance of jurists to become directly concerned in the realisation of economic, social and cultural rights by means of the techniques of the law and using the courts and other instruments of legal practice. The widespread ignorance of the ICESCR, not only amongst judges and lawyers but also amongst governments and in the community was a matter of concern.

The Conference however,

- reaffirmed the fact that economic, social and cultural rights are an essential part of the global mosaic of human rights;
- noted the important role of lawyers and judges in countries, such as India, in applying and judicially enforcing economic, social and cultural rights in the context of the right to life, fair trial, equality before the law, equal protection of the law and other civil and political rights;
- resolved that jurists in the future should play a greater part in the realisation of such rights, than they have in the past, without in any way diminishing the vital work of lawyers in the attainment of civil and political rights;
- affirmed that the realisation of economic, social and cultural rights is often of wider application and more pressing urgency, affecting every day, as such rights do, all members of society. For lawyers to exclude themselves from a proper and constructive role in the realisation of such rights would be to deny themselves a function in a vital area of human rights;

The task of the Conference was, therefore, one of defining those activities in support of the realisation of these rights in which lawyers qua lawyers might have a legitimate and constructive function and to promote within the judiciary and the legal profession, in every land, a realisation of the opportunities and obligations which fall to lawyers in this regard.

13. The Conference affirmed that impunity of perpetrators of grave and systematic violations of economic, social and cultural rights, including corruption by State officials is an obstacle to the enjoyment of economic, social and cultural rights which must be combated.
14. An independent Judiciary is indispensable to the effective implementation of economic, social and cultural rights. Whilst the judiciary is not the only means of securing the realisation of such rights, the existence of an independent judiciary is an essential requirement for the effective involvement of jurists in the enforcement, by law, of such rights, given that they are often sensitive, controversial and such as to require the balancing of competing and conflicting interests and values. The Conference accordingly recalled existing principles such as the *Bangalore Principles on the Domestic Application of International Human Rights Norms* and urged that it be promoted at a universal level, with particular emphasis on economic, social and cultural rights.

Follow-up to the Conference

15. The participants resolved to request the ICJ to publish and disseminate the proceedings of the Conference and to ensure that the papers and the record of the reflections of the participants be widely distributed and publicised. The aim should be to enlarge awareness amongst jurists throughout the world of their proper and legitimate functions in promoting and securing the attainment of the economic, social and cultural rights which belong to humanity. The record of the Conference will reflect the sense of urgency and sometimes of professional failure and indifference, which has often marked, in the past, the response of lawyers to this area of human rights.
16. The Conference also recommended that the ICJ publish and disseminate for widespread discussion and action, some of the suggestions which were made during the Conference. Other such suggestions appear in the papers and record of the

Conference. Together, such proposals constitute the *Bangalore Plan of Action* for the better attainment of economic, social and cultural rights in every land. To that end, all agreed that the *Plan of Action* which follows should be placed before jurists everywhere as a contribution to further reflection upon the role which they can play in the attainment of such rights. Jurists have a vital role in such attainment as stated in the United Nations *Basic Principles on the Role of Lawyers*. Lack of involvement of jurists in the realisation of more than half of the field of human rights, vital to humanity, is no longer acceptable.

Bangalore Plan of Action

At the International Level

17. The following actions for the full realisation of economic, social and cultural rights at an international level should be adopted:

17.1. The ICJ and other international and national human rights NGOs, should embark upon fresh action to attain universal ratification of the ICESCR.

17.2. Specific pressure should be applied to obtain more ratifications by countries in the Asia Pacific and other regions where ratifications of treaties are few. It should be supplemented by renewed consideration of the establishment of effective regional or sub-regional mechanisms for dealing with complaints about derogation from fundamental human rights (including economic, social and cultural rights);

17.3. Renewed efforts should be directed towards the adoption of an Optional Protocol to the ICESCR. The ICJ should take a leading role and ensure that such a Protocol is adopted without further delay;

17.4. The ICJ and other international human rights organisations should redouble their efforts to monitor and report upon departures in the realisation of economic, social and cultural rights. Where necessary, such NGOs should consider issuing alternative reports, to supplement the reports of Members States under the ICESCR. They should also create awareness in the communities affected about the Governments' reports to the Committee so as to stimulate the political, legal and other action necessary to redress wrongs;

17.5. Treaty bodies of the United Nations need to develop mechanisms to allow NGOs to contribute and assist in their work. Pending such institutional reforms, NGOs should be imaginative and innovative to assist Treaty bodies even where not granted consultative or observer status.

17.6. NGOs should develop a strategy for drawing attention to defaults in reporting under the relevant treaties including by use of the national and international media;

17.7. The Inspection panel created by the World Bank should be supported to carry out its mandate effectively. Complaints and suggestions for the better attainment of the principles of the ICESCR should be made to the Panel by NGOs and jurists.

17.8. The attainment of economic, social and cultural rights in the international context in relation to other international initiatives requires a number of steps. Accordingly the ICJ and the NGO community should urgently develop steps to:

(i) monitor progressive compliance of State obligations under the ICESCR, and examine critically the spending of resources devoted to arms purchases and debt repayment;

(ii) ensure control of the international trade in arms and the huge burden of military expenditures;

- (iii) control and redress corruption and offshore placement of corruptly obtained funds;
- (iv) achieve an increase in the empowerment of women, including by general education and in particular by promoting the reproductive rights of women;
- (v) bring about the reform of agricultural policies of certain developed countries arising from the uneconomic subsidisation of local agricultural production to the exclusion of markets for agricultural producers in developing countries; and
- (vi) improve and make more efficient the functioning of the regional systems and bodies with respect to the attainment of economic, social and cultural rights.

At the National Level

18. The following action, amongst others should be taken at a national level:-

18.1. An increase in the sensitisation of judges, lawyers, government officials and all those concerned with legal institutions as to the terms and objectives of the ICESCR, its mechanism, other relevant treaties and the vital importance for individuals of these aspects of human rights as well as the legitimate role of jurists in attaining them. Universities, law colleges, judicial training courses and the general media also have a responsibility to promote greater awareness of such rights and their legal content; they should therefore be encouraged to assume this responsibility.

18.2. Specifying those aspects of economic, social and cultural rights which are more readily susceptible to legal enforcement requires legal skills and imagination. It is necessary to define legal obligations with precision, to define clearly what constitutes a violation; to specify the conditions to be taken as to complaints; to develop strategies for dealing with abuses or failures and to provide legal vehicles, in appropriate cases, for securing the attainment of the objectives deemed desirable;

18.3. Amongst specific actions to be taken where appropriate, the following were endorsed :

18.3.1. Reform of constitutional provisions, where necessary, to incorporate references to economic, social and cultural rights.

18.3.2. Revision of other municipal law to state in precise and justiciable terms, economic, social and cultural rights in a way susceptible to legal enforcement;

18.3.3. Reform of the law of standing and encouragement of public interest litigation (such as has occurred in India) by test cases, to further and stimulate the political process into attention to economic, social and cultural rights and to afford priority to the hearing of such cases.

18.3.4. Establishment and enhancement of the functions and powers of the Ombudsman or of specialized Ombudsmen, to provide accessible and independent agencies for receiving complaints against government and others concerning departures from the obligations to ensure the attainment of economic, social and cultural rights.

18.4. The growth and sustenance of an independent judiciary should be encouraged. Steps should be taken to ensure the continuous sensitisation of the judiciary on their role in promoting and protecting these rights.

18.5. Other steps necessary to ensure real progress in the attainment of these ends, include:

18.5.1. The adoption of effective means of independent public legal aid and like assistance in appropriate cases;

18.5.2. The provision by Bar Associations and Law Societies of pro bono services and the enlargement of their agendas in the field of human rights to involve the services of their members in this regard;

18.5.3. Empowerment of disadvantaged groups, including women, minorities, indigenous peoples and others lacking legal experience and confidence in the legal system, to encourage them to come forward to claim and secure their rights and the need for court procedure, to adapt to these ends;

18.5.4. Judges should apply domestically international human rights norms in the field of economic, social, and cultural rights. Where there is ambiguity in a local constitution or statute or an apparent gap in the law, or inconsistency with international standards, judges, should resolve the ambiguity or inconsistency or fill the gap by reference to the jurisprudence of international human rights bodies. Renewed efforts should be made, including by the ICJ, to promote the existing principles such as the Bangalore Principles, on the universal level with particular emphasis on economic, social and cultural rights.

Action by Individuals

19. Jurists as individuals should take the following action:

19.1. Action within Bar Associations and Law Societies to add a focus upon economic, social and cultural rights to their agenda for the attainment of human rights in full measure;

19.2. As legislators, community leaders and as citizens to enlarge governmental and community knowledge about, and understanding of, social, economic and cultural rights, so that the obligations of the ICESCR and other relevant treaties will become better known; and

19.3. Use by jurists, in addition to the courts and tribunals, of other independent organs such as the Ombudsman, independent Human Rights Commissions, as well as national, regional and international bodies to promote the attainment of the standards of relevant treaties. In States in which such institutions have not been established, jurists should promote their establishment. Jurists should work closely with the institutions of civil society to help promote and attain the objectives of the ICESCR and other relevant treaties in full measure.

Adopted in Bangalore, India, 25 October 1995

Conference on the Rule of Law in a Changing World, 1998

Cape Town, South Africa

20th – 22nd July 1998

"The rapid trend toward a globalized economy affects economic, social and cultural rights and has implications for many other aspects of the rule of law. There is a growing interdependence of peoples and national economies. Unbridled economic liberalism and privatization, the weakening regulatory capacity of states- notably in the domain of human rights- and the growing impact of global economic actors on the enjoyment of human rights, have created new challenges for human rights organizations.

The ICJ decided to assess these challenges and the impact of globalization on the rule of law and human rights at its triennial conference in Cape Town in July 1998."

- Nathalie Prouvez and Nicolas M.L. Bovay¹³

The 1998 Congress of the ICJ focused on the theme of the Rule of Law in a Changing World and was held from 20 to 22 July 1998 in Cape Town, South Africa.

The Minister of Justice of South Africa, Dr. A.M. Omar, opened the Conference and brought a message from President Nelson Mandela recalling with gratitude the contribution of the ICJ to the struggle against apartheid. Archbishop Desmond Tutu, who underscored the primordial importance of truth and justice in the liberated, democratic, free, non-racial and non-sexist State of South Africa also addressed the Conference.¹⁴

The three main topics of the Conference were trade and investment liberalization and their impact on the respect of human rights, threats to universality and emerging concepts of responsibility, and the emerging international judiciary and new challenges to the rule of law.

Discussions on these themes, clearly fitting within the globalized context, were developed in the plenary sessions and working groups. They were examined through the prism of the Rule of law as defined by the ICJ in its previous work and fora.¹⁵ The Congress ended with the declaration of the "Cape Town Commitment" which was a plan of action for the ICJ Secretariat concerning global actors and justice instruments. Among the areas discussed were the need to monitor the activities of international financial and trade and investment organizations and to tackle the question of violations by corporations; and efforts to establish an International Criminal Court.

Conclusions

On the issue of trade and investment liberalisation and their impact on respect for human rights, consideration was given to the following points:

- The role of the State and the fora where States interact are changing; large spheres of decision-taking are no longer within the remit of national law and of States, and many of the crucial decisions are now taken by other entities;
- some functions which used to be carried out through inter-State cooperation, have been taken over by global/regional/privatised actors, whose major characteristic is that they are difficult to hold accountable under international procedures in general, and traditional and established human rights procedures in particular;
- multilateral trade and investment agreements should be permeated with principles of the rule of law and respect for human rights. It is necessary to ensure that these agreements be subjected to existing international human rights law mechanisms and that the multilateral treaties concluded by States in the context of trade and investment liberalisation do not prevent those same States from fulfilling their international human rights obligations;
- there is an urgent necessity to ensure that international financial institutions operate in conformity with the rule of law. The lack of mechanisms for judicial review of the activities of international financial institutions in order to ensure that they themselves do not, through their activities, contribute to, or encourage, the violation of human rights, poses a challenge to human rights and rule of law organisations like the ICJ. There is a need for a strategy focusing on the justiciability of the actions of international financial institutions, the accountability of governments, and the participation of the people;
- consideration was given to the necessity of developing existing international human rights instruments and mechanisms, so that they can be used to ensure that corporations realise they too have responsibilities under human rights law. Multinational and transnational corporations must be held liable under criminal and civil law for violating international human rights norms;
- the balance between civil and political rights on the one hand, and economic and social rights on the other is more than ever threatened. Globalisation has created more insecurities, particularly among marginalised groups throughout the whole world, in the south as well as in the north. However, there are new possibilities for sowing the seeds of economic and social rights, as international financial institutions start to pay attention to the social dimension of their policies. On many occasions, the Conference discussed and stressed the importance of including human rights clauses or social clauses in international trade and investment agreements.
- the linkage between corruption and the enjoyment of economic, social and cultural rights led the Conference to conclude that fighting corruption ought to be part of the fight for human rights and the rule of law which is central to the ICJ mandate. legislative and other measures are required to combat corruption and impunity of its perpetrators.

In considering the threats to universality and emerging concepts of responsibility, participants noted in particular the following issues:

- a distinction must be drawn between universality and globalisation. Whereas globalisation is developed in one part of the world and spreads thereafter to other parts, universality implies that human rights take their roots from all parts of the world;

- the notion of universality involves respect for difference and diversity, and tolerance. However, human rights are universal. The respect for human rights cannot be subjected to issues of social, cultural and economic relativism.

The Conference reaffirmed that the Rule of law is an essential condition of both freedom and stability. The main challenges discussed were the problems of access to the courts and the provision of appropriate remedies and that people must be made aware of the existence of their rights. In this regard, the Conference welcomed the new opportunities created by the emerging body of international criminal law and the establishment of new regional and international human rights tribunals. In particular, the adoption of the Statute for the establishment of the International Criminal Court and of the Protocol on the African Court on Human and Peoples' Rights were welcomed.

Further discussion on the independence of the Judiciary took place during the panel discussion which was held on the occasion of the commemoration of the twentieth anniversary of the centre for the Independence of Judges and lawyers. This commemoration was launched with an address by the Chief Justice of South Africa, the Honourable Justice I. Mohamed. The Conference examined the status of judicial independence today and recalled that this fundamental constitutional value for a democratic State and for the preservation of the Rule of Law is yet the most threatened. It reiterated that the independence and impartiality of and equality within the judiciary are those building blocks necessary to the achievement of more equitable societies. The Conference emphasised that accountability constitutes a basic and essential component of every power, including judicial power. There is a necessity to rely on a system of self-accountability of judges protected by tenure and with a sense of responsibility. The Conference also acknowledged that international financial institutions and civil society are becoming increasingly important actors in creating the appropriate environment for the functioning of an independent and impartial judiciary.

THE CAPE TOWN COMMITMENT

Challenges and Action Plan for the ICJ

- i. There is a need for the ICJ to develop strategies for monitoring the activities of the new global actors, in particular, of international financial institutions and trade and investment organisations such as WTO, WIPO, the World Bank, the IMF and regional financial institutions. The ICJ should lobby for and contribute to the drafting of international trade and investment agreements which conform to international human rights standards.
- ii. The ICJ should contribute to raising human rights awareness of Corporations and to the strengthening of existing international human rights mechanisms and instruments to ensure the accountability of Corporations for human rights violations perpetrated as a consequence of their activities.
- iii. The ICJ should link up with other organisations to begin a campaign against corruption and the impunity of its perpetrators by developing normative strategies at the national, regional and universal levels. Efforts should be made to work closely in this respect with International Financial Institutions and intergovernmental organisations.
- iv. The ICJ should continue to monitor, assist and cooperate fully with the International Tribunals for Rwanda and the Former Yugoslavia in their crucial tasks. Concurrently, the ICJ should continue to work towards the establishment of the International Criminal Court. In Africa, the ICJ should continue to work closely with the OAU towards the establishment of the African Court. Campaigns should be launched for the ratification of the ICC statute and the Protocol for the establishment of the African Court.

v. The ICJ and its CIJL should continue their relentless combat for the promotion and protection of the independence of judges and lawyers.

Cape Town
Republic of South Africa
24 July 1996

ICJ Triennial Conference, 2001

Geneva, Switzerland

10th – 14th September 2001

The ICJ Triennial Conference in 2001 focused principally on two internal issues: the ICJ Statute and the ICJ Network Agreement.

The Preamble and General Provisions of the ICJ Statute agreed at the Conference provide an indication of the fundamental values of the organization.

The full ICJ Statute can be accessed on the website at:

icj.wpengine.netdna-cdn.com/wp-content/uploads/2012/10/ICJ-Statute-Final-20121.pdf



ICJ Commission, September 2001

Preamble

The International Commission of Jurists, herein referred to as the Commission, affirms that human rights and humanitarian law are essential to achieve the goals of a just, democratic, peaceful and humane society. The Commission affirms that human rights, as articulated in international standards, are universal, interdependent and indivisible.

The Commission affirms that the Rule of Law is indispensable to safeguard and advance all human rights.

The Commission recognises that an independent judiciary and legal profession, maintaining the highest ethical standards, assume a primary role in achieving these goals.

General provisions

Article 1 – International Commission of Jurists, Legal Status and Headquarters

1. The Commission is a non-profit and non-political association.
2. The Commission, which is an association governed by Articles 60 to 79 of the Swiss Civil Code, has legal personality.
3. The Headquarters of the Commission are in Geneva, Switzerland.

Article 2 – Mission

Subject to the terms of this Statute, the Commission, its Officers, its National Sections, Affiliated Organisations and Associated individuals have a duty to give effect to the principles set out in the preamble.

Article 3 – Objectives

The Commission carries out activities at the global, regional, national and local level and in particular takes effective steps to:

1. Support and advance the Rule of Law and human rights on the basis of the principles set out in the preamble;
2. Advance the independence of the judiciary and the legal profession and the administration of justice in full compliance with standards of international law;
3. Promote the global adoption and implementation of international human rights standards and other legal rules and principles that advance human rights and the Rule of Law.

ICJ Biennial Conference, 2004

Berlin, Germany

27th – 29th August 2004

"The 11 succinct principles of the Berlin Declaration set out the legal norms that should guide the counter-terrorism measures of every State".

- Nicholas Howen, former ICJ Secretary-General¹⁶

The ICJ brought its network of jurists from around the world – Commissioners, Honorary Members, National Sections and Affiliates – to Berlin, Germany, for its 2004 Conference. Over three days they considered the need to ensure that efforts to combat terrorism were undertaken within the framework of international law and the Rule of Law.

The Conference, held on 28th August 2004, adopted a Declaration on Upholding Human Rights and the Rule of Law in Combating Terrorism. The Declaration highlights the grave challenge to the Rule of Law brought about by excessive counter-terrorism measures, reaffirms the most fundamental human rights violated by those measures, and delineates methods of action for the worldwide ICJ network to address the challenges. The Berlin Declaration reflects existing international human rights law, criminal law, humanitarian law and refugee law.

Since its adoption, the Berlin Declaration has been frequently cited by intergovernmental bodies – including United Nations human rights experts, the Office of the High Commissioner for Human Rights, the European Parliament, bar associations, lawyers, human rights NGOs, legal academic institutions and national tribunals around the world.

The ICJ has also prepared a Legal Commentary to the Declaration, with the aim of explaining the international law, jurisprudence and expert interpretations that underlie the Berlin Declaration. The Commentary explores legal controversies that have been raised before and since 9/11. It further explains what the principles mean in practice and what international legal standards apply. The purpose of the Commentary is to help policy-makers, judges, lawyers and human rights defenders when they are considering or challenging counter-terrorism legislation, policies or practice.

The Berlin Declaration on Upholding Human Rights and the Rule of Law in Combating Terrorism adopted 28 August 2004

160 jurists, from all regions of the world, meeting as Commissioners, Honorary Members, National Sections and Affiliated Organisations at the International Commission of Jurists (ICJ) Biennial Conference of 27-29 August 2004, in Berlin, Germany, where it was founded 52 years ago, adopt the following Declaration:

The world faces a grave challenge to the rule of law and human rights. Previously well-established and accepted legal principles are being called into question in all regions of the world through ill-conceived responses to terrorism. Many of the achievements in the legal protection of human rights are under attack.

Terrorism poses a serious threat to human rights. The ICJ condemns terrorism and affirms that all States have an obligation to take effective measures against acts of terrorism. Under international law, States have the right and the duty to protect the security of all people.

Since September 2001 many States have adopted new counter-terrorism measures that are in breach of their international obligations. In some countries, the post-September 2001 climate of insecurity has been exploited to justify long-standing human rights violations carried out in the name of national security.

In adopting measures aimed at suppressing acts of terrorism, States must adhere strictly to the rule of law, including the core principles of criminal and international law and the specific standards and obligations of international human rights law, refugee law and, where applicable, humanitarian law. These principles, standards and obligations define the boundaries of permissible and legitimate state action against terrorism. The odious nature of terrorist acts cannot serve as a basis or pretext for States to disregard their international obligations, in particular in the protection of fundamental human rights.

A pervasive security-oriented discourse promotes the sacrifice of fundamental rights and freedoms in the name of eradicating terrorism. There is no conflict between the duty of States to protect the rights of persons threatened by terrorism and their responsibility to ensure that protecting security does not undermine other rights. On the contrary, safeguarding persons from terrorist acts and respecting human rights both form part of a seamless web of protection incumbent upon the State. Both contemporary human rights and humanitarian law allow States a reasonably wide margin of flexibility to combat terrorism without contravening human rights and humanitarian legal obligations.

International and national efforts aimed at the realization of civil, cultural, economic, political and social rights of all persons without discrimination, and addressing political, economic and social exclusion, are themselves essential tools in preventing and eradicating terrorism.

Motivated by the same sense of purpose and urgency that accompanied its founding, and in the face of today's challenges, the ICJ rededicates itself to working to uphold the rule of law and human rights.

In view of recent grave developments, the ICJ affirms that in the suppression of terrorism, States must give full effect to the following principles:

1. Duty to protect: All States have an obligation to respect and to ensure the fundamental rights and freedoms of persons within their jurisdiction, which includes any territory under their occupation or control. States must take measures to protect such persons from acts of terrorism. To that end, counter-terrorism measures themselves must always be taken with strict regard to the principles of legality, necessity, proportionality and non-discrimination.

2. Independent judiciary: In the development and implementation of counter- terrorism measures, States have an obligation to guarantee the independence of the judiciary and its role in reviewing State conduct. Governments may not interfere with the judicial process or undermine the integrity of judicial decisions, with which they must comply.

3. Principles of criminal law: States should avoid the abuse of counter-terrorism measures by ensuring that persons suspected of involvement in terrorist acts are only charged with crimes that are strictly defined by law, in conformity with the principle of legality (*nullum crimen sine lege*). States may not apply criminal law retroactively. They may not criminalize the lawful exercise of fundamental rights and freedoms. Criminal responsibility for acts of terrorism must be individual, not collective. In combating terrorism, States should apply and, where necessary, adapt existing criminal laws rather than create new, broadly defined offences or resort to extreme administrative measures, especially those involving deprivation of liberty.

4. Derogations: States must not suspend rights which are non-derogable under treaty or customary law. States must ensure that any derogation from a right subject to derogation during an emergency is temporary, strictly necessary and proportionate to meet a specific threat and does not discriminate on the grounds of race, colour, gender, sexual orientation, religion, language, political or other opinion, national, social or ethnic origin, property, birth or other status.

5. Peremptory norms: States must observe at all times and in all circumstances the prohibition against torture and cruel, inhuman or degrading treatment or punishment. Acts in contravention of this and other peremptory norms of international human rights law, including extrajudicial execution and enforced disappearance, can never be justified. Whenever such acts occur, they must be effectively investigated without delay and those responsible for their commission must be brought promptly to justice.

6. Deprivation of liberty: States may never detain any person secretly or incommunicado and must maintain a register of all detainees. They must provide all persons deprived of their liberty, wherever they are detained, prompt access to lawyers, family members and medical personnel. States have the duty to ensure that all detainees are informed of the reasons for arrest and any charges and evidence against them and are brought promptly before a court. All detainees have a right to *habeas corpus* or equivalent judicial procedures, at all times and in all circumstances, to challenge the lawfulness of their detention. Administrative detention must remain an exceptional measure, be strictly time-limited and be subject to frequent and regular judicial supervision.

7. Fair trial: States must ensure, at all times and in all circumstances, that alleged offenders are tried only by an independent and impartial tribunal established by law and that they are accorded full fair trial guarantees, including the presumption of innocence, the right to test evidence, rights of defence, especially the right to effective legal counsel, and the right of judicial appeal. States must ensure that accused civilians are investigated by civilian authorities and tried by civilian courts and not by military tribunals. Evidence obtained by torture, or other means which constitute a serious violation of human rights against a defendant or third party, is never admissible and cannot be relied on in any proceedings. Judges trying and lawyers defending those accused of terrorist offences must be able to perform their professional functions without intimidation, hindrance, harassment or improper interference.

8. Fundamental rights and freedoms: In the implementation of counter- terrorism measures, States must respect and safeguard fundamental rights and freedoms, including freedom of expression, religion, conscience or belief, association, and assembly, and the peaceful pursuit of the right to self-determination, as well as the right to privacy, which is of particular concern in the sphere of intelligence gathering and dissemination. All restrictions on fundamental rights and freedoms must be necessary and proportionate.

9. Remedy and reparation: States must ensure that any person adversely affected by counter-terrorism measures of a State, or of a non-State actor whose conduct is supported or condoned by the State, has an effective remedy and reparation and that those responsible for serious human rights violations are held accountable before a court of law. An independent authority should be empowered to monitor counter-terrorism measures.

10. Non-refoulement: States may not expel, return, transfer or extradite a person suspected or convicted of acts of terrorism to a State where there is a real risk that the person would be subjected to a serious violation of human rights, including torture or cruel, inhuman or degrading treatment or punishment, enforced disappearance, extrajudicial execution, or a manifestly unfair trial, or be subject to the death penalty.

11. Complementarity of humanitarian law: During times of armed conflict and situations of occupation States must apply and respect the rules and principles of both international humanitarian law and human rights law. These legal regimes are complementary and mutually reinforcing.

Legal Commentary to the ICJ Berlin Declaration

An electronic copy of the Legal Commentary to the ICJ Berlin Declaration can be found on the ICJ website by following this link:

<http://www.icj.org/no-1-legal-commentary-to-the-icj-berlin-declaration/>

ICJ World Congress, 2008

Geneva, Switzerland

2nd – 3rd December 2008

"The Geneva Declaration is more than simply an expression of ICJ organizational policy. The principles it contains are universal, undergirded by international law, standards and jurisprudence which reflect the evolution of the international human rights architecture since the ICJ elaborated its seminal statements on the topic of the 1950s and 1960s."

- Wilder Tayler, ICJ Secretary-General¹⁷

The World Congress in Geneva in December 2008 gathered the ICJ Commissioners as well as Honorary Members, National Sections, Affiliated Organizations and Secretariat. The Congress explored ways to address the serious challenges confronted by the legal community in crisis situations and affirmed the ICJ's responsibility to meet those challenges.

The members of the Congress adopted the Declaration on Upholding the Rule of Law and the Role of Judges and Lawyers in Times of Crisis (The Geneva Declaration) containing a number of key principles to which all judges and legal practitioners should adhere. The principles cover areas such as the separation of powers, the function of judicial review, effective administration of justice, the right to a fair trial by an independent and impartial tribunal, the terms and conditions of tenure of judges: judicial responsibility in states of emergency, protection of judges and legal professionals from threats and persecution, and the accountability of judges and lawyers for unethical or criminal conduct. In order to equip the Declaration with optimal force and to aid legal professionals and human rights advocates in making effective use of the principles, the ICJ has furthermore prepared a legal commentary to the Declaration.

The Declaration together with its commentary serve as a valuable source of information and inspiration for judges, prosecutors, lawyers and other members of the legal profession and human rights advocates in taking on their heavy but essential responsibilities in a troubled world.

The Geneva Declaration and Plan of Action on Upholding the Rule of Law and the Role of Judges and Lawyers in Times of Crisis



ICJ World Congress, Geneva (2008)

Reaffirming its primary mission to uphold the principles of the Rule of Law, the independence of the judiciary and the legal profession and human rights;

Recalling that the principles of the separation of powers and the independence of the judiciary are bedrock components of the Rule of Law and must remain invulnerable in times of crisis;

Emphasising the universality, indivisibility and interdependence of all human rights and the need in times of crisis to protect civil, cultural, economic, political and social rights;

Recognising that in times of crisis, the capacity of judges and lawyers, including prosecutors and government counsel and advisers, to fulfil their essential role as protectors and guarantors of human rights may come under enormous strain;

Aware that such crises may consist in or arise out of, among other situations, a declared or undeclared public emergency, armed conflict, internal political instability, period of transitional justice, civil unrest, generalised situation of violence, terrorism, social, economic or financial upheaval, or natural disaster;

Recalling the critical role of the legal community in opposing impunity for violations of human rights and international humanitarian law;

Reaffirming that the victims of violations of economic, social and cultural rights must be protected, including by means of access to effective judicial remedy;

Recalling its commitment to take effective steps to promote the abolition of the death penalty, and urging retentionist states to abolish the death penalty and in the interim to observe a moratorium on the practice;

Recalling its Declarations, resolutions and conclusions adopted at previous Conferences, in

particular, the Act of Athens on the Rule of Law (1955), the Declaration of Delhi on the Rule of Law in a Free Society (1959), the Law of Lagos (1961), the Resolution of Rio de Janeiro on Executive Action and the Rule of Law (1962), Declaration of Bangkok (1965), the Conclusions of Vienna on Human Rights in an Undemocratic World (1977), the Caracas Plan of Action on the Independence of Judges and Lawyers (1989) and the Berlin Declaration on Upholding Human Rights and the Rule of Law in Combating Terrorism (2004) and the principles and standards to which the ICJ is committed; Recalling principles and standards of international law, including the UN Basic Principles on the Independence of the Judiciary, the UN Basic Principles on the Role of Lawyers, the UN Guidelines on the Role of Prosecutors;

The International Commission of Jurists proclaims the following principles and plan of action:

Principles on Upholding the Rule of Law and the Role of Judges and Lawyers in Times of Crisis

1. The role of the judiciary and legal profession is paramount in safeguarding human rights and the Rule of Law in times of crisis, including declared states of emergency. The judiciary serves as an essential check on the other branches of the State and ensures that any laws and measures adopted to address the crisis comply with the Rule of Law, human rights and, where applicable, international humanitarian law. In times of crisis, the principle of judicial review is indispensable to the effective operation of the Rule of Law. Judges must retain the authority within the scope of their jurisdiction as final arbiters to state what the law provides. The judiciary itself must have the sole capacity to decide upon its jurisdiction and competence to adjudicate a case.
2. In times of crisis, the executive, legislative and judicial branches must preserve and guarantee, in law and practice, the independence and effective functioning of the judiciary in carrying out the fair administration of justice and the protection of human rights. They must ensure effective remedies and full reparation for violations. They must not take any decision or action the effect of which would be to nullify, invalidate or otherwise revise or undermine the integrity of judicial decisions, without prejudice to mitigation or commutation of sanctions by competent authorities consistent with international law.
3. The executive, legislative and judicial branches should under no circumstance invoke a situation of crisis to restrict the competence or capacity of the judiciary to carry out its essential functions, to transfer those functions to non-judicial bodies or to circumvent judicial proceedings, control or review. They must not:
 - a) remove from the jurisdiction or supervision of ordinary tribunals the capacity to adjudicate complaints concerning human rights violations or to provide fundamental judicial remedies; or
 - b) place the administration of justice under military authority; or
 - c) confer on the military any power or authority to carry out criminal investigations in matters within the jurisdiction of ordinary justice.
4. To safeguard the Rule of Law and the indivisibility of all human rights, all measures adopted to address the crisis, including those taken pursuant to a declared state of emergency or to prevent social dissent in times of economic crisis, must be subject to judicial oversight and review. Affected persons must have the right to fair and effective judicial proceedings to challenge the legality of these measures and/or their conformity with national or international law.
5. In times of crisis the stability and continuity of the judiciary is essential. Judges should not be subject to arbitrary removal, individually or collectively, by the executive, legislative or judicial branches. Judges may only be removed, by means of fair and transparent proceedings, for serious misconduct incompatible with judicial office, criminal offence or

incapacity that renders them unable to discharge their functions. The right of judges and lawyers to freedom of association, including the right to establish and join professional associations, must at all times be respected.

6. The establishment of temporary or interim judges during times of crisis should be avoided. In respect of exceptional circumstances where it may become necessary to augment the capacity of the judiciary by expanding the number of active judges or through the creation of special chambers or units, the fundamental principles regarding the appointment and security of tenure must be strictly respected. Considerations of merit must remain essential criteria for appointments. Appropriate terms of tenure, protection and remuneration of judges must be ensured and the judiciary must have adequate resources to discharge its functions.

7. Since the protection of human rights may be precarious in times of crisis, lawyers should assume enhanced responsibilities both in protecting the rights of their clients and in promoting the cause of justice and the defence of human rights. All branches of government must take all necessary measures to ensure the protection by the competent authorities of lawyers against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of their professional functions or legitimate exercise of human rights. In particular, lawyers must not be identified with their clients or clients' causes as a result of discharging their functions. The authorities must desist from and protect against all such adverse actions. Lawyers must never be subjected to criminal or civil sanctions or procedures which are abusive or discriminatory or which would impair their professional functions, including as a consequence of their association with disfavoured or unpopular causes or clients.

8. In times of crisis, lawyers must be guaranteed prompt, regular and confidential access to their clients, including to those deprived of their liberty, and to relevant documentation and evidence, at all stages of proceedings. All branches of government must take necessary measures to ensure the confidentiality of the lawyer-client relationship, and must ensure that the lawyer is able to engage in all essential elements of legal defence, including substantial and timely access to all relevant case files.

9. In times of crisis, anyone who is deprived of liberty or any person with a legitimate interest has the right to challenge the lawfulness of detention (*habeas corpus*, *amparo*) before an ordinary tribunal or court and to be released if the detention is arbitrary or otherwise unlawful. Deprivation of liberty must at all times be under judicial control or supervision. Judges, prosecutors, lawyers and other competent authorities must do all in their power to ensure that detainees enjoy the right to prompt access to lawyers, contact with family members, and when necessary, access to adequate and prompt medical attention.

10. In times of crisis, only courts and tribunals should dispense justice and only a court of law or tribunal should try and convict a person for a criminal offence. Every person has the right to a fair trial by an independent and impartial tribunal or court established by law. In times of crisis, civilians must only be tried by ordinary courts or tribunals, except when special rules of international law allow military tribunals to try civilians. All such proceedings must respect the inherent minimum guarantees of a fair trial. In particular, governments must not, even in times of emergency, derogate from or suspend the presumption of innocence, the right to be informed of the charge, the right of defence, the right against self-incrimination, the principle of equality of arms, the right to test evidence, the prohibition against the use of information obtained under torture or other serious human rights violations, the non retroactivity of criminal liability and the right to judicial appeal.

11. The executive, legislative and judicial branches should under no circumstance invoke a situation of crisis to deprive victims of human rights violations and/or their relatives of their rights to effective access to justice, effective judicial remedies and full reparation. The adoption of measures to remove jurisdiction or the judicial remedies for human rights

violations from the ordinary courts constitutes a serious attack against the independence of the judiciary and basic principles of the Rule of Law. State secrecy and similar restrictions must not impede the right to an effective remedy for human rights violations.

12. The integrity of the judicial system is central to the maintenance of a democratic society. Impartiality of the judiciary requires that cases be decided only on the basis of lawfully and fairly obtained evidence and on the application in good faith of the law, free from any extraneous influences, inducements, pressure, threats or interference, direct or indirect, from any quarter or for any reason.



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13. Members of the legal profession, including members of the judiciary and their legal staff, prosecutors, legal advisers to the executive and legislature, public defenders, members of the private bar, and lawyers' associations have a legal and ethical responsibility to uphold and promote the Rule of Law and human rights and to ensure that in carrying out their professional functions they take no measures that would impair the enjoyment of human rights. Judges in times of crisis are under a special duty to resist actions which would undermine their independence and the Rule of Law. Judges are entitled to protection to enable them to discharge their professional duties. A lawyer who knowingly gives advice which would foreseeably lead to a violation of human rights or international humanitarian law or to a crime under international law breaches his or her professional responsibility. When such advice leads to a crime under international law, the offending lawyer should incur civil and criminal responsibility.

Plan of Action

The International Commission of Jurists, including its Commissioners, Honorary Members, National Sections and Affiliated Organisations, in pursuance of its primary mission to uphold the principles of the Rule of Law, the independence of the judiciary, the legal profession and human rights:

1. Reaffirms that the judiciary and legal profession have an enhanced responsibility during times of crisis to ensure the Rule of Law, the protection of human rights and the effectiveness of the administration of justice.
2. Calls on all members of the Judiciary, the legal profession and bar associations around the world to support the primacy of the Rule of Law in countries facing times of crisis and in particular to support judges and lawyers who may be under attack, persecution or harassment;
3. Decides as a global network to work collectively:
 - (a) To monitor situations where the institutional independence and effectiveness of the judiciary or the legal profession are threatened or under attack;
 - (b) To intervene, by appropriate means, to support and protect judges and lawyers who are harassed or persecuted as a result of carrying out their professional duties in times of crisis;
 - (c) To challenge, through advocacy and litigation, any legislation, measures or other actions contemplated, established or implemented in times of crisis at the national level, which place at risk or undermine the independence and effectiveness of the judiciary and the legal profession and their essential missions to protect human rights and the Rule of Law;
 - (d) To provide to the United Nations and regional organisations relevant information on the independence of the judiciary and the legal profession in times of crisis and to request from them action to protect judges and lawyers under attack.
4. Charges its Centre for the Independence of Judges and Lawyers (CIJL) with the responsibility:
 - (a) To act as a focal point in all matters concerning the independence and effectiveness of the judiciary and the legal profession in times of crisis;
 - (b) To initiate and implement the above Plan of Action;
 - (c) To work with the ICJ Network to assist efforts and initiatives to support and protect judges and lawyers in times of crisis; and,
 - (d) To disseminate this Declaration and the Plan of Action of the Conference to national, regional and international associations of judges and lawyers (including ICJ National Sections and Affiliated Organisations), to intergovernmental organisations and to governments.

Legal Commentary to the ICJ Geneva Declaration

An electronic copy of the Legal Commentary to the ICJ Geneva Declaration can be found on the ICJ website by following this link:

<http://www.icj.org/legal-commentary-to-the-icj-geneva-declaration-upholding-the-rule-of-law-and-the-role-of-judges-lawyers-in-times-of-crisis/>

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**International
Commission
of Jurists**

P.O. Box 91
Rue des Bains 33
CH 1211 Geneva 8
Switzerland

t +41 22 979 38 00

f +41 22 979 38 01

www.icj.org